

This General Administration manual
covers all transmittals through 95.02 dated
10/31/95

Dept. Staff Manual

GENERAL ADMINISTRATION



OFFICE OF THE SECRETARY

... *Department Staff Manual System* . ☒☒



INTRODUCTION

The General Administration Manual is one of several manuals of the Department's Staff Manual System. The System is an authoritative source **for** the policies, standards, and procedures which govern administrative operations of the Department.

All manuals of the System except the General Administration Manual cover a specific subject matter area and are directed to a particular group of employees (e.g., auditors, accountants, personnel specialists, secretaries, etc.). Current manuals in the System cover these subject matter areas:

Accounting	Printing Management
ADP Systems	Procurement
Correspondence	Public Affairs
Emergency	Records Management
Facilities Engineering	Safety Management
Forms Management	Security
Grants Administration	Telecommunications
Material Management	Time and Leave
Organization	Travel
Personnel	Voucher Examination

The General Administration Manual covers those administrative areas which are not covered by the specialized manuals. Subjects currently covered by the Manual include:

Committee Management	Mail Management
Directives Management	Legislative Affairs
Environmental Affairs	Patents and Inventions
Federal Register Documents	Privacy of Employees
Intergovernmental Relations	Reports Management
International Relations	Tort Claims
Legislative Matters	User Charges

The General Administration Manual is issued pursuant to the authority vested in the Assistant Secretary for **Management** and Budget, as stated in the HHS Organization Manual. It is developed and maintained by the Office of Management Analysis and Systems, Office of the Secretary. Its contents are based upon applicable laws, regulations, and Department policy. They are applicable to all elements of the Department unless otherwise stated.



Contents
 General Administration Manual
 HHS Transmittal 81.05 (9/1/81)

Introduction 0-1
 Plan of the Manual 0-2
 Contents 0-3
General Index to Staff Manuals 0-4

Part 1 - GENERAL

HHS **Staff** Manual System..... **1-00**
 Secretarial Directives 1-05
 Use of Department and Principal Operating Component
 Seals 1-20
Conference Management 1-40
 Visits to Regional Offices and Field Installations... 1-45
 Notaries Public - Official Business..... 1-50
 Policy on Smoking in HHS Occupied Buildings and
 Facilities 1-60
 Clearance of Personnel for Separation or Transfer.... 1-90
 Delegations of Authority and Policies Relating to
 Subsistence and Laundry Services 1-100
 Administration Policy and Procedure on Executive
 Privilege*.....*..... 1-119
 Public Information Regulation 1-120
 Review Procedures for Audio-Visual Materials..... 1-121
 Nomination and Functioning of Designated Agents..... 1-130
 Payroll Liaison Function..... 1-140
 PHS Employee Assistance Programs (PHS Only).....PHS:1-141
Major System Acquisitions*.....*..... 1-150

Part 3 - FEDERAL REGISTER DOCUMENTS

The Federal Register 3-00
 Processing Requirements Applicable to all
 Federal Register Documents 3-10
 Preparation of Federal Register Documents..... 3-15
 Department Procedures for Writing Regulations..... 3-20
 Publication of General Notices 3-30

Part 4 - CLAIMS

General Information 4-00
 The Federal Tort Claims Act 4-10
 Regulations 4-20
 Procedure 4-30
 Claims 4-35
 Waiver of Overpayment of Pay 4-40
 The Federal Claims Collection Act of 1966 4-50
 Claims Collection Regulations 4-60
 Claims Collection Procedures 4-70

Part 5 - INVESTIGATIONS OF MISCONDUCT AND CRIMINAL VIOLATIONS

Responsibility and Procedures For Reporting
Misconduct and Criminal Violations..... 5-10

Part 6 - PATENTS AND INVENTIONS

Regulations and Procedures..... 6-10
Criteria for Patenting or Publication - Proof of
Invention 5-30

Part 8 - MANAGEMENT AND ORGANIZATION

Submission of Documents for Secretarial Approval....h:8-05
Regional Management Review Program 8-13
Consultant Services 8-15
Annual Review of Positions 8-40
Securing Approval of Organizational Changes 8-60
Organization Nomenclature 8-65
Uniform System of Department and POC
Organization Charts 8-67
Use of Position Title of Deputy Assistant Secretary. 8-68
Standard Administrative Code 8-69
Interagency Agreements 8-77
Employee Suggestion System 8-90
Procurement Planning 8-95
Training Requirements for Project Officers and
Technical Proposal Evaluators 8-96
Delegations of Authority 8-100
Delegations of Authority by the Secretary 8-101

Part 9 - COMMITTEE MANAGEMENT

General Principles of Committee Management 9-00
Records and Reports on Committees: 9-10
Public Advisory Committees..... 9-20
Selection of Members for Public Advisory Committees. 9-25
Interdepartmental Committees..... 9-30
Departmental Committees 9-40

Part 10 - REPORTS MANAGEMENT

Reports Management Program..... 10-00
Preparation and Submission of Reports to
Congress Required of the Secretary.....h:10-10
Reports Management-- Other than Public Reports 10-13

Clearance of Interagency Reports	10-15
Determining Costs of Reports	10-17
Reports Management Compliance with the Privacy Act of 1974	10-19
Policies and Responsibilities for Obtaining Reports from Non-Federal Sources	10-20
Safeguards of Privacy	10-21
Needs and Standards for Data	10-22
Procedures for Clearance and Review	10-23

Part 11 - UNIFORM ALLOWANCES

General	11-00
Department Committee on Uniforms and Uniform Allowances	11-05
Use of and Payment for Uniforms.....	11-10
Delegations of Authority Relating to Furnishing Uniforms Under the Federal Employees Uniform Allowance Act	11-15
Schedules of Uniforms under the Federal Employees Uniform Allowance Act.....	11-20
Schedules of Uniform Allowances - Office of the Secretary	11-30
Schedules of Uniform Allowances - Social Security Administration	11-40
Schedules of Uniform Allowances - Public Health Service	11-50
Schedules of Uniform Allowances - Saint Elizabeths Hospital	11-70

Part 12 - MAIL AND RELATED SERVICES

Mail and Related Services - General	12-00
Mail and Messenger Services	12-10
Official Mail	12-20
Department Policy and Procedures on Mail Covers	12-25
Telegraph Services	12-40

Part 13 - USE OF RESEARCH FACILITIES

Use of HHS Research Facilities by Academic Scientists, Engineers and Students.....	13-10
Use of Department Facilities for Nonofficial Purposes *	13-20

Protection of Human **Subjects** in Intramural
Research (PHS Only) *..... **PHS:13-40**

Part 14 - LIBRARY SYSTEMS AND SERVICES

Department Library **System**..... 14-00
Acquisition, Preservation, and Circulation of
DHHS Publications by the Department Library..... 14-10

Part 15 - ADMINISTRATIVE PRACTICES

HHS Telephone Directory **System**..... **15-10**

Part 18 - COMMERCIAL-INDUSTRIAL ACTIVITIES AND USER CHARGES

Commercial-Industrial Activities of DHHS Providing
Products and Services for Government Use..... 18-10
User Charges *..... 18-20

Part 19 - INTERGOVERNMENTAL RELATIONS

Consultation with Heads of State and Local
Governments: Proposed Regulations, Interagency
Agreements, and Organization Changes..... 19-11
Procedures for Notification of Grant and
Contract Awards..... 19-30
Department Fellowship Review **Panel**.....**h:19-60**

Part 20 - INTERNATIONAL ACTIVITIES

Development of DHHS and Welfare Positions Regarding
Foreign Policy Matters 20-10
Department Working Agreement with Agency for
International Development.....*..... 20-15
Interagency Agreements for International Activities.. 20-20
Foreign Gifts and Decorations..... 20-25
Requests for Waiver of Foreign Residence
Requirement, Exchange Visitor Program.....;..... 20-30
DHHS International **Agreements**.....**h:20-50**
Review, Clearance, and Reporting of Foreign Affairs
Research Supported by HHS Grants and Contracts..... 20-60

Part 21 - LEGISLATIVE DEVELOPMENT AND REPORTING

General Information *.....*..... **h:21-90**
Legislative Drafting..... **h:21-91**
Preparation and Processing of Legislative Reports.. **h:21-92**
Preparation of Testimony on Bills **h:21-93**

Reports on Enrolled Bills	*....	h:21-94
Requests from Private Persons and Groups for Technical Assistance in Developing Legislative Proposals		h:21-95

Part 22 - CORRESPONDENCE POLICY

Signing Authority for Replies to Correspondence Addressed to the Secretary.....		h:22-10
Suggested Guidelines for Concurrence and Review of Outgoing Correspondence Prepared for Signature of Office of the Secretary Officials.....		h:22-20
International Correspondence.....	22-30	
Printing and Use of Letterhead and Memorandum Stationery	22-40	
White House Mail		h:22-50

Part 23 - LEGAL MATTERS

Compliance with Court Orders	23-10	
Service of Process	23-20	
Testimony in Private Litigation (PHS only).....	PHS:23-3	0
Comptroller General Decisions	23-40	

Part 25 - EMPLOYEE ORGANIZATIONS

DHHS Employee Welfare and Recreation Associations....	25-10	
---	-------	--

Part 26 - CENTRALIZED SERVICES

Centralized Services in Federal Buildings - General..	25-00	
Centralized Field Duplicating Services.....	26-10	

Part 27 - EQUAL EMPLOYMENT OPPORTUNITY

Nondiscrimination in Employment by Government Contrac- tors and Subcontractors and by Federally Assisted Construction Contractors and Subcontractors	27-10	
---	-------	--

Part 29 - BUILDING MANAGEMENT

Protection of Banking Facilities	29-05	
--	--------------	--

Part 30 - ENVIRONMENTAL AFFAIRS

Environmental Protection	30-00	
Policy	30-10	
Administrative Requirements	30-20	

General Review Procedures for All Environmental Acts	30-30
Cultural Asset Review.....*	30-40
Natural Asset Review.....	30-50
NEPA Review.....	30-60
Reviewing External EISS	30-70

Part 45 - **PRIVACY** AND FREEDOM **OF** INFORMATION

Privacy Act - Basic Requirements and Relationships ...	45-10
Safeguarding Records Contained in Systems of Records.....*.....*	45-13

ACTIVE CIRCULARS--General Series

Use of Department Facilities for Meetings for Non-Official Purposes.....	69.5 (Rev)
Reports from Non-Federal Sources.....	73.1

ACTIVE CIRCULARS--Headquarters Series

Standard Federal Regional Boundaries.....	h-72.1
Property Pass Regulations for Southwest Area.....	h-75.1
HEW Photo ID for Southwest Area.....	h-76.1

ACTIVE GUIDES--General Series

Reports from Non-Federal Sources	73.1
---	------

ACTIVE GUIDES--Headquarters Series

Communications Services in the Washington Area.....	HEW.h-1
Soliciting, Vending, Collection of Private Debts, and Display or Distribution of Commercial Advertising.....a	h-3
Service Charges--Working Capital Fund, Visual Aids Branch.....	h-6
Obtaining Laboring, Trucking, Shipping and Receiving Services.....	h-8
Obtaining Procurement and Contract Services.....	h-9 (Rev)
Guide to the Use of the Department Library.....*	h-10

ACTIVE GUIDES--OS Headquarters Series

Management Consultant Approval Requirements, OS.....	OS.h-8-15
--	-----------

Subject: **HHS** STAFF MANUAL SYSTEM

1-00-00 Purpose
10 Administration of the System
20 BBS Staff Manuals
30 Description of Directives
40 Development of Directives
50 Distribution of Directives
60 Request for Change to Manuals
70 Request for Waiver

Exhibit **1-00-A**, BBS Staff Manuals
1-00-B, Structure of **HHS** Staff Manuals
1-00-C, Guidelines for Writing Directives (Chapters)
for the BBS Staff Manual System
1-00-D, Guidelines for Preparing and Processing
Directives (Chapters) for the BBS Staff
Manual System
1-00-E, How to Order Manuals and Individual
Directives
1-00-F, Directives Distribution Coordinators

J-00-00 PURPOSE

The BBS Staff Manual System serves as an official medium for providing instructions and information to BBS employees on administrative management, financial management, personnel management and related activities. This chapter describes the system and the standards and procedures applicable to its operation.

1-00-10 ADMINISTRATION OF THE SYSTEM

A. The Office of Management and Acquisition (**OMAC**), Office of the Assistant Secretary for Management and Budget (**ASMB**), Office of the Secretary (OS), oversees the administration of the **HHS** Staff Manual System through the BBS Staff Manual Coordinator. The **HHS** Staff Manual Coordinator is responsible for establishing standards for style and distribution of staff manual material, monitoring the use of these standards; coordinating the printing and distribution of staff manual material; and providing technical assistance to elements of the Department on directives management.

- B. The Office of Human Resource Programs (OBRP), Office of the Assistant Secretary for Personnel **Administration** (ASPER), OS, coordinates the development and preparation of HHS Personnel Manual material issued by **ASPER**. It provides oversight on the distribution of these materials and the materials issued by the **Office** of Personnel Management. It also establishes policies for the issuance of personnel materials by other Department components.
- c. The Executive Secretariat, OS, provides OMAC with the Secretary's policy management decisions for inclusion in the BBS Staff Manual System.
- 'D. OS Staff Divisions (**STAFFDIVs**) and Operating Divisions (**OPDIVs**) with functional responsibility for subjects covered by the **HHS** Staff Manual System are responsible for developing and updating directives on those subjects.
- E. OMAC maintains mailing lists for BBS staff manuals, prints and distributes staff manual material developed by OS and other components of the Department. OMAC also distributes manual material issued by the General Services Administration and Office of Personnel Management.
- F. Each OPDIV, STAFFDIV, and OS Regional Office oversees the effective use of the **HHS** Staff Manual System within its own organization. This oversight responsibility includes:
1. Development and publication of supplements, *where* necessary. All supplements must conform to Department policy.
 2. Development and publication of new directives on topics not covered or planned to be covered by the Department, after consultation with the appropriate STAFFDIV.
 3. Designation of one or more directives distribution coordinators (see Exhibit 1-00-F) to control the distribution of staff manual material within the component or office.

J-00-20 HHS STAFF MANUALS

The BBS Staff Manual System provides instructions and information to BBS employees through a series of manuals. Exhibit **1-00-A, HHS Staff Manuals**, lists the **manuals of th HHS Staff Manual System (except the personnel Manual)**, and provides the following information about each **manual**:

- Summary and scope of its contents
- Explanation of how and when to use it
- Responsible OPDIV or STAFFDIV

Each manual (**with two** exceptions) deals with a single administrative subject (e.g., accounting, travel). The exceptions **are** the:

Organization Manual which describes the organizational structure of the Department, the functions performed by each organization, and the program authorities assigned to **each** organization.

General Administration Manual which contains **instructions** and information on subjects not covered by the other manuals. Using the **Organization Manual**, the ASMB will identify the responsible offices for **those** chapters with subject **areas** that are cross cutting.

Exhibit 1-00-B, Structure **of HHS** Staff Manuals, outlines the general structure recommended for manuals.

1-00-30 DESCRIPTION OF DIRECTIVES

- A. **Types of Directives.** The directives used in the **HHS** Staff Manual System are:
1. **Secretarial Directives**-- Secretarial Directives **are** described in Chapter **1-05** of this manual.
 2. **Chapter**--the medium for issuing **continuing** instructions. (In the **Personnel Manual**, chapters are called instructions.)
 3. **Circular**--the medium for issuing **temporary** instructions, including those requiring action of a one-time nature.
 4. **Exhibits**--attachments to other directives which supplement instructions contained in those directives.

5. Transmittal--the covering document used to transmit chapters and describe the material contained in them.
- B. Format and Numbering System Exhibit **1-00-D**, Guidelines for Preparing and Processing Directives for the BBS Staff Manual System, illustrates the formats and the numbering systems of these directives. The HHS Acquisition Regulation, Materiel Management and Telecommunications Manuals use the numbering systems of the Federal regulations upon which they are based. The introduction of these manuals explains their numbering systems.

1-00-40 DEVELOPMENT OF DIRECTIVES

- A. Responsibility for Development Each STAFFDIV or OPDIV with functional responsibility for subjects covered by the manual system is responsible for developing, updating and cancelling directives on those subjects. This responsibility includes making certain that directives are accurate, current and complete; preparing directives for publication; and complying with the requirements of this chapter.
- B. Preparation The responsible STAFFDIV or OPDIV should follow the guidelines of Exhibits **1-00-C**, Guidelines for Writing Directives for the HHS Staff Manual System, and **1-00-D**, Guidelines for Preparing and Processing Directives for the BBS Staff Manual System. .
- C. Review and Clearance The responsible OPDIV or STAFFDIV should provide other concerned **OPDIVs** or **STAFFDIVs** and Regional Offices the opportunity to review and comment on proposed directives before publication in the manual system. For example, any directive that contains a Department policy or practice which may affect conditions of employment must be coordinated with the Office of Human Relations, **ASPER**, OS, prior to final formulation of the directive.
- D. Approval. The approving official must sign each **directive** before it can be published in the manual system. The signature appears on transmittals for chapters. For circulars, transmittals are not used; the signature appears on the last page of the circular itself. Within OS, the approving official is the head of the responsible STAFFDIV or the official who has functional responsibility for the subject matter.

- E. Effective Date. The effective date of a directive is the issue date unless otherwise noted in the **directive** or its transmittal. The issue date appears in the heading of each page of a directive, as shown in Exhibit 1-00-D.
- F. Effect on Previous Directives. Any directive issued in the manual system states the official position of the issuing organization as of the issue date. It supersedes any previous directive (issued by the issuing organization) which is in conflict with it.
- G. Supplements and New Directives OPDIVs, STAFFDIVs, and OS Regional Offices may issue: '(1) supplements to material in the manual system; and, (2) new directives on topics not covered or planned to be covered in the system by the Department. OPDIVs may authorize their major subordinate elements to issue supplements.

1-00-50 DISTRIBUTION OF DIRECTIVES

A. Directives Distribution Coordinators

1. Designation. The chief administrative official of each OPDIV **and** each Regional Office (OS offices only) should designate a directives distribution coordinator (DDC). Within OS, the **HHS** Staff Manual Coordinator serves as the DDC, with the STAFFDIV administrative officers or executive officers generally serving as liaisons to the OS DDC. Each agency will provide the **HHS** Staff Manual Coordinator with the name, address, and telephone number of each such coordinator and the service area.
2. Area Served. **DDCs** for each OPDIV serve the headquarters, field and each Regional Office of their respective organizations. The OS Coordinator in the Regional Office serves only the Office of the Regional Director, Regional Administrative Support Center, and the OS STAFFDIVs located in the Regional Office. The **HHS** Staff Manual Coordinator controls the distribution for all headquarters offices of OS. See Exhibit 1-00-F for a Directives Distribution Coordinators list.

3. **Services Provided.** Each DDC provides these services within the service area:
 - a. Reviews requests for and orders, as needed, copies of *manual* and individual directives from **OMAC** for employees in the service area.
 - b. Requests OMAC to make changes to the mailing list for each manual, as requested by officials in the service area.
 - c. Updates periodically, or upon request from the **HHS** Staff Manual Coordinator, the distribution list for each manual.

B. **Mailing Lists**

OMAC maintains a mailing list for each staff manual and uses that list to distribute material for the manual. OMAC compiles and updates the list from the information received from the **DDCs**.

Exhibit **1-00-E**, How to Order Manuals and Individual Directives, explains the process for inclusion on the mailing list and how to order manuals and individual directives.

1-00-60 REQUEST FOR CHANGE TO MANUALS

Any STAFFDIV or OPDIV that wishes to create a new manual, discontinue a current manual, make substantive changes to an existing manual or add a new part to the, **General Administration Manual**, should request approval of the change from the Deputy Assistant Secretary for Management and Acquisition, **ASMB**, OS, during the initial planning stage. The request should explain the change and why it is essential.

1-00-70 REQUEST FOR WAIVER

Any STAFFDIV or OPDIV that wishes to obtain a waiver of any provision of this chapter should make its request in writing through its chief administrative official to the Deputy Assistant Secretary for Management and **Acquisition**. The request must state specifically why the waiver is needed and how it **will assist** the requesting office and the users of the manual. OMAC will maintain a complete file on each waiver request.

HHS STAFF MANUALS

This Exhibit lists each manual of the HHS Staff Manual System except the Personnel Manual, which is issued by the Center for Human Resource Strategic Planning and Policy, ASPER. It also describes the content, intended users, and the STAFFDIV or OPDIV responsible for each manual. HHS employees may obtain more information about each manual from the responsible office.

ACCOUNTING MANUAL provides instructions on accounting and financial reporting operations within the Department. It sets forth principles, standards, and other requirements prescribed by the Comptroller General, the Treasury Department, the Office of Management and Budget, and other control agencies.

Intended users: system accountants, operating accountants, and other personnel responsible for management and accounting of funds and for the financial reporting activities.

Responsible office: Office of Finance (OF), ASMB, OS.

COMMUNICATIONS STYLE GUIDELINES contains instructions on how to prepare and process letters, memoranda, and other forms of correspondence.

Intended users: supervisors, stenographers, typists, and others who prepare and process correspondence.

Responsible office: Executive Secretariat, Immediate Office of the Secretary (OIS), OS.

EMERGENCY PLANNING AND OPERATIONS MANUAL contains policies, procedures, and requirements governing the Department's emergency management, planning, and operations. It is the sole source for all permanent directives pertaining to crisis management matters, including major disasters, national emergencies, defense mobilization, and other major catastrophes in which the Department may be involved.

Intended users: personnel within the Department responsible for planning or carrying out emergency preparedness activities.

Responsible office: Deputy Assistant Secretary for Health Operations, Office of the Assistant Secretary for Health (OASH), PHS.

FORMS MANAGEMENT MANUAL contains instructions for carrying out a forms management program. It states the program objectives, assigns responsibility for meeting these objectives, and **prescribes basic** policies, standards, and procedures for establishing and maintaining such a program. It provides standards and procedures on basic requirements, legal limitations,, clearances, reproduction, use of forms, the assignment of form numbers, and coordination with other Government agencies. (Will eventually be incorporated into the **Information Resources Management Manual** series.)

Intended users: personnel engaged in the development, clearance, and control of forms and related procedures.

Responsible office: Office of Information Resources Management (OIRM), ASMB, OS.

GENERAL ADMINISTRATION MANUAL contains instructions and information on subjects which do not fall within the scope of the other HHS staff manuals.

Intended users: all offices that have a need to know administrative procedures and policies.

Responsible office: Various **STAFFDIVs** and **OPDIVs**.

GRANTS ADMINISTRATION MANUAL sets forth Department-wide grants administration policies and procedures which have not been published in regulations. It contains instructions to granting agencies for managing both discretionary and mandatory grant **programs**, and deals with the establishment of both internal operating procedures and external policies governing the terms and conditions of grants and relations with grantees.

Intended users: all grants management and program officials who are involved in the award or administration of grants.

Responsible office: Office of Management and Acquisition (OMAC), ASMB, OS.

HHS ALERT LIST is a quarterly listing of "high risk" organizations which have either had grants terminated or awarded with special conditions. The List is distributed to all HHS grants officers and **must** be consulted before making new awards.

Intended users: personnel engaged in negotiating and awarding discretionary grants and cooperative agreements.

Responsible office: Office of Management and Acquisition (OMAC), ASMB, OS.

GUIDE FOR TIMEKEEPERS MANUAL contains information and instructions for completing and maintaining time, attendance and leave for certain employees of the Department. Its coverage includes providing narrative and graphic up-to-date information on the use and preparation of the various kinds of time and attendance reports; earning, crediting and charging leave; correcting leave and amending time and attendance reports; filing and maintaining leave accounts **and** attendance records; and assuring the time, leave and attendance records are available in the event of an audit by the General Accounting Office. (Instructions for PHS commissioned officers are contained in a separate manual.)

Intended users: timekeepers, supervisors and others associated with time, attendance and leave accounts activities.

Responsible office: Office of Human Resources Information Management (OHRIM), ASPER, OS.

HHS ACQUISITION REGULATION (HHSAR) serves as the single authoritative reference of the Department for uniform policies, procedures, regulations, systems, and delegations of authority applicable to the procurement of personal property and nonpersonal services (including construction). Its format differs from that of other manuals in the HHS Staff Manual System and is patterned after the format of the Federal Acquisition Regulation, issued by the General Services Administration.

Intended users: personnel engaged in the procurement of property and nonpersonal services.

Responsible office: Office of Management and Acquisition (OMAC), ASMB, OS.

INFORMATION RESOURCES MANAGEMENT MANUAL (IRM) identifies and describes the policies, procedures, and responsibilities of IRM related activities administered by the Department. IRM encompasses both information itself and the resources, such as personnel, equipment, funds, and technology used to create, collect, process, transmit, disseminate, use, store, and dispose of information. When the **IRM Manual** is revised, it will incorporate information currently contained in the Records Management Manual and the telecommunications Management Manual. As this takes place, these **manuals** will be **discontinued**.

Intended Users: DHHS personnel engaged in IRM activities. Intended users may include, but are not limited to, IRM officials and employees, end users, systems, computer, and **telecommunication** specialists and security forms and records officers.

Responsible Office: Office of Information Resources Management (**OIRM**), **ASMB, OS**.

MATERIEL MANAGEMENT MANUAL serves as the single authoritative reference of **the Department** for uniform policies, systems, regulations, procedures, and delegations of authority pertaining to the management of personal property, transportation, and motor vehicles. Its format differs from that of other manuals in the **HHS Staff Manual System** and is patterned after the format of the Federal Property Management Regulations, issued by the General Services Administration.

Intended users: personal property management and property accountable officers; other personnel concerned with the management of inventories of supplies, materials, and equipment acquired for use within the Department and of government property in use at a contractor's facility.

Responsible office: Office of Management and **Acquisition** (OMAC), **ASMB, OS**.

NATIONAL SECURITY INFORMATION MANUAL Contains policy and procedures for handling and safeguarding classified national security information. Its coverage provides information and instructions regarding access to national security information, accountability, storage, and destruction of this sensitive information, and security awareness while in contact with foreign nationals or during foreign travel.

Intended users: personnel security representatives, logging control officers, custodians of classified files, and all HHS employees or contractors who have security clearances for access to classified national security information.

Responsible office: Office of Personnel Services, **ASPER**, OS.

ORGANIZATION MANUAL describes the officially approved structural and functional organizations of the Department.

Intended users: principal officers of the Department.

Responsible office: Office of Management and Acquisition (OMAC), ASMB, OS.

PRINTING MANAGEMENT MANUAL contains policies, responsibilities, and instructions for the guidance of personnel concerned with the preparation, production, procurement, and distribution of printed and duplicated materials, and the acquisition of copying and printing equipment. (Will eventually be incorporated into the IRM Manual series.)

Intended users: administrative officers, public information officers, procurement officers, printing officers, and editors.

Responsible office: Office of Information Resources Management, (OIRM), ASMB, OS.

PUBLIC AFFAIRS MANAGEMENT MANUAL sets forth policies covering the production and distribution of publications, audiovisuals, the setting up of exhibits and the review of public affairs services contracts. The manual also defines responsibility for public affairs planning, evaluation, financial accountability, staff development and for implementing the Freedom of Information and Privacy Acts, and it sets forth the requirements related to the operating of **HHS** clearinghouses and information centers.

Intended users: personnel engaged in the preparation and/or mass dissemination of information to either internal or external audiences or both.

Responsible office: Office of Assistant Secretary for **Public Affairs (ASPA)**, OS.

RECORDS MANAGEMENT MANUAL contains policies, procedures, and standards for the creation, use, maintenance, and disposition of **records** as prescribed by the Federal Records Act of 1950, as amended. It also contains the General Records Schedules promulgated by the National Archives and Records Service. These schedules prescribe retention periods for the official records of the Department. (Will eventually be incorporated into the IRM Manual Series.)

Intended users: records officers, files custodians, and others concerned with the management of records.

Responsible office: Office of Information Resources Management (**OIRM**), **ASMB**, OS.

SAFETY MANAGEMENT MANUAL sets forth the objectives, **policies**, standards, procedures, and responsibilities for the development and implementation of a Department-wide safety and occupational health program. The program meets the requirements of 29 U.S.C. 668 (**The** Occupational Safety and Health Act of 1970); Executive Order 12196; Title 29 CFR Part 1960 and 5 U.S.C. 7902.

Intended users: management officials at all levels, safety and occupational health managers, and other employees and **consultants** whose duties relate to safety and occupational health.

Responsible office: Office of Management and Acquisition (OMAC), **ASMB**, OS.

TELECOMMUNICATIONS MANAGEMENT MANUAL serves as the single authoritative reference for policies, procedures, regulations, and delegations of authority pertaining to the management of telecommunications services and facilities in the Department. Its format differs from **the regular format of the HHS Staff Manual System** and is based **on** the format of the Federal Property Management Regulations, issued by the General Services Administration (See Title 41 Code of Federal Regulations, Chapter 101). This manual is being revised and will eventually be incorporated into the IRM Manual Series.

Intended users: telecommunication management officials and designated officials assigned telecommunication management responsibility **as** an adjunct to their primary responsibility.

Responsible office: Office of Information Resources Management (OIRM), **ASMB**, OS.

TRAVEL MANUAL covers such matters as travel orders; passenger travel and expenses; per diem **in lieu** of subsistence; transportation of dependents, household goods, and personal effects; foreign travel; and similar items relating to the travel and transportation of government personnel. The **manual contains** excerpts from laws and regulations which affect travel and addresses such related subjects as advance of funds, attendance at meetings, **and** disposal of travel records.

Intended users: personnel who provide travel service, approve travel or related functions, or audit travel expenses.

Responsible office: Office of Finance (OF), **ASMB**, OS.

VOUCHER EXAMINATION MANUAL covers policies and procedures for performing the audit of vouchers related to the expenditure of funds appropriated directly to the Department or expended **by the** Department on behalf of other Federal agencies. Its coverage includes instructions **on** regulatory materials which govern administrative audits, types **of** expenditures requiring audit, collection and refunds, certification of payments by designated officers, records of expenditures, post audit by General Accounting Office, and preparation of related documents.

Intended users: personnel concerned with voucher audit of funds expended by the Department and its component organizations.

Responsible office: Office of Finance (OF), **ASMB**, OS.

STRUCTURE OF EMS STAFF MANUALS

The recommended structure for most staff manuals is outlined below.

Introduction states the purpose of the manual.

plan of the Manual summarizes contents of the manual, explains structure of the manual, and tells how manual material is developed, identified, maintained, and distributed.

Contents list title and number of each part and each chapter of the manual.

Index tells where in the manual specific subjects or topics are discussed.

parts are the main subdivisions of the manual. Each part except the first is limited to **one** subject or topic. The first part is a "general" part and treats several topics.

Chapters and Circulars are the chief subdivisions of parts and the **basic directives** of the HHS Staff Manual system. Chapters contain material of a continuing nature, while circulars contain material of a temporary nature.

Exhibits are attachments to chapters and circulars.

Check List of Transmittal allows each office to **keep a** record of all transmittals it has received for the manual.

Transmittals provide a record of the material issued, revised **or** cancelled in the manual.

If a staff manual varies from this structure, the plan of the manual or part one of the manual should explain the variance.

GUIDELINES FOR WRITING DIRECTIVES (CHAPTERS)
FOR **THE HHS STAFF MANUAL SYSTEM**

1. Keep your audience in mind. Write specifically for it.
2. Keep your directive brief and concise. Use simple words with clear meanings. Keep average number of words per sentence under 20.
3. Use the active voice. Use gender neutral terms.
4. Use short, descriptive headings for subdivisions.
5. State purpose of your directive in the first section.
6. State authority for your directive in the first **or** second section.
7. Where feasible, cross reference your directive to material within the same manual, to other manuals of the Department Staff Manual System, and to directives outside the system.
 - a. Define any unusual or complex term the first **time you** use it.
9. Identify abbreviations and acronyms the first time you use them.
10. Identify each form by its number and title the first time you refer to it. Thereafter, identify it by its number only.
11. Identify each exhibit (by name and number) in the text of its parent chapter or circular.
12. Use examples or illustrations, where feasible, to improve understanding.
13. Do not include lengthy laws, executive orders, **or** other regulations as attachments to your directive if they are available to employees from other sources. State where they may be found.

GUIDELINES FOR WRITING DIRECTIVES (CHAPTERS)
FOR THE HHS STAFF MANUAL SYSTEM (con't)

14. Review your directive from **the user's** point of view after you have completed it. Do you think it tells the user everything he/she needs to know?

15. Proofread final copy for errors and omissions before it goes to the printer.

GUIDELINES FOR PREPARING AND PROCESSING DIRECTIVES (CHAPTERS)
FOR THE HHS STAFF MANUAL SYSTEM

1. **FORMAT.** Use the formats shown in this exhibit for preparing chapters, circulars, exhibits, and transmittals. (In the Personnel Manual, chapters are called instructions.)
2. **NUMBERING.** Use the numbering systems described in the illustrations of this exhibit to number the four types of directives. In addition, whenever a directive receives limited distribution within the issuing organization, add a distribution prefix to its number. The standard prefixes are: h-headquarters, r-regional office, f-field. Examples of their use are as follows:
 - o chapter - **HHS** Chapter h:1-00; PHS Chapter **hf:3-60**;
SSA Chapter **f:7-40**
 - o circular - **HHS** Circular **r:4-90.2**; **OHDS** Circular **hr:6-130.1**
 - o exhibit - **HHS** Exhibit h:1-00-A; OS Exhibit **hr:4-70-B**
 - o transmittal - **HHS** Transmittal **hr:90.01**, PHS Transmittal **rf:90.01**.
3. **DRAFT COPIES.** Prepare draft copies of each directive in the formats shown in this exhibit. **Type** or stamp the word "**Draft**" and date of preparation in upper right corner of first page only.
4. **REVIEW.** Send draft **copy** simultaneously to each reviewing office. Indicate time limit of review on memorandum **or** route **slip**.
5. **FINAL COPY.** Prepare final copy of each directive in formats shown in this exhibit. Always maintain a record of the final document for your files.
6. **CLEARANCE.** Have each concurring official respond in writing as a permanent record for your files.
7. **TRANSMITTAL DOCUMENTS.** Use transmittals to transmit and distribute chapters. Do not use transmittals with circulars since the transmittal information and the reason for issuing the circular **appear** on first page of circulars.

**GUIDELINES FOR PREPARING AND PROCESSING DIRECTIVES (CHAPTERS)
FOR THE HHS STAFF MANUAL SYSTEM (con' t)**

8. **BACK-UP FILES.** If your office is in the Office of the Secretary, keep the following records on each directive your office prepares:
 - a. Copy of final directive.
 - b. Drafts circulated for comments.
 - c. Comments received about circulated drafts;
 - d. Any special document (e.g., briefing memorandum to approving official).

9. **PRINTING AND DISTRIBUTION.** Send original and two dummy copies for printing and distribution to the HHS Staff Manual Coordinator, OMAC. Also include a completed HHS-26 form, Request for Printing and Visual Services.

FORMAT FOR MANUAL CHAPTERS - FIRST PAGE

BBS Chapter 0-00 Page 1.
General Administration Manual
HHS Transmittal 00.00 (0/00/00)

Subject: **PREPARING MANUAL CHAPTERS**

0-00-00 Purpose
10 **Preparing the First Page**
20 **Preparing All Other Pages**
30 **Numbering Manual Chapters**

0-00-10NG THE F I R S T PAGE

- A. **Typo first page on plain, white, 8 1/2" x 11" paper;** follow format *shown* on this page.
- B. **Maintain left and right side margins of one inch.**
- C. **Begin typing heading six lines from top of page. Include:**
 - **chapter number**
 - **title of manual**
 - **transmittal number & issue date (month, day, year)**
- D. **Type page number opposite chapter number.**
- E. **Three lines below heading, type Subject: and chapter title; typing the title in capital letters.**
- F. **Three lines below subject line, typo number and title of section of chapter.**
- G. **Three lines below section listing, begin typing chapter text. Follow these rules when typing text:**
 1. **Use block paragraphs. Double space between all sections and subdivisions.**
 2. **Begin each section at the last margin; (all other subdivisions, as shown in Section 0-00-30).**
 3. **Always underline number of section. Typo each section title in capital letters.**
 4. **End text six typing lines from bottom of page.**

FORMAT FOR **MANUAL** CHAPTERS • ALL OTHER PAGES

HHS Chapter 0-00
General Administration Manual
HHS Transmittal 00.00 (0/00/00)

Page 2

PREPARING ALL OTHER PAGES

- A. Type all other pages on plain, white, 8 1/2" x 11' paper; follow format shown on this page.
- B. Maintain left and right side margins of one-inch.
- C. Begin typing heading six lines from top of page. Include:
 - chapter number
 - title of manual
 - transmittal number & issue date (month, day, year)
- D. Type page number opposite chapter number.
- t. Three lines below heading, continue typing chapter text. Follow rules for typing text as stated on page 1, (Subsection 0-00-100).

0-00-30 NUMBERING MANUAL CHAPTERS

- A. Use this numbering system for 811 manuals except as noted below
 - 0-00 (chapters)
 - 0-00-00 (sections)
 - A. (subsections)
 - 1. (paragraphs)
 - (8) (items)
 - (1) (subitems)

FORMAT FOR MANUAL CHAPTERS - ALL OTHER PAGES (con't)

BBS Chapter 0-00
General Administration Manual
HHS Transmittal 00.00 (0/00/00)

Page 2

Note: The Materiel Management, HHS Acquisition Regulations, and the Telecommunications Management Manuals use different numbering systems. See Introductions of these manuals.

B. Number chapters of each part consecutively in multiples of five or ten (e.g., 0-05, 0-10, 0-15, etc.; or, 0-00, 0-10, 0-30, etc.).

FORMAT FOR **MANUAL CIRCULARS - FIRST PAGE**

HHS Circular 0-00 .0
General Administration Manual
Issue date: 00/00/00

Page 1

Subject: PREPARING MANUAL CIRCULARS

- A. **Typo circulars on plain, white, 8 1/2" x 11" paper.**
- B. **Use format shown here. Use other formats for the text only if they better serve your purpose.**
- C. **Maintain left and right side margins of one inch.**
- D. **Begin typing heading six lines from top of page. Include:**

-- circular number
-- title of manual
-- issue date (month, day, year)

Circular number contains initials of issuing organization (i.e., HHS, PHS, SSA, NIH, etc.); the number of the relevant chapter; a distribution prefix if necessary (see Section 2, Page 1 of this appendix); and a sequential number assigned by the directives control person in the issuing organization.

- E. **Type page number opposite circular number on all pages.**
- F. **Three lines below heading, type Subject: and title of circular; typing the title in capital letters.**
- G. **Three lines below subject line, begin typing circular text; using block paragraphs. Double space, or one and a half space between all subdivisions.**

FORMAT FOR MANUAL CIRCULARS - FIRST PAGE (con't)

HHS Circular O-00.0
General Administration Manual
Issue date: 00/00/00

Page 1

8. **First page only, end text 12 typing lines** from bottom of page.
1. **Type a solid, 1 and 1/2 inch line, nine typing liars** from bottom of page. **Immediately below the line, type distribution, filing, and cancellation information.** If the circular **supersedes another circular, include information below cancellation date.** Your **organization's directives control person will assist you with the completion of this information.**

Distribution:

Filing Instructions:

Cancellation Date:

Material Superseded:

FORMAT FOR MANUAL CIRCULARS - ALL OTHER PAGES

HHS Circular O-00.0
General Administration Manual
Issue date: (00/00/00)

Page 2

J. On 811 other pages, type heading beginning at left margin, six lines from top of page. Include:

- circular number
- title of manual
- issue date (month, day, year)

Always type heading on left side of page.

- K. Type page number opposite circular number. .
- L. Three lines below heading, continue typing text.
- M. Stop typing text about six typing lines from bottom of page. Provide enough space on last page for signature of approving official.
- N. Six lines below last line of text beginning at center on last page of circular, type name and title of approving official.

(name and title of approving official)

†

FORMAT FOR MANUAL EXHIBITS

BBS Exhibit 0-00-A
General Administration Manual
BBS Transmittal 00.00 (00/00/00)

Page 1

PREPARING MANUAL EXHIBITS

Manual exhibits have no definite format. The material they contain is to be displayed so that it fulfills the needs of the users. Hence, the preparing office must decide the format it will use. However, observe the following guidelines when preparing exhibits:

- A. Prepare exhibits on plain, white, a 1/2" x 11" paper.
- B. Maintain left and right side margins of one inch.
- C. Number exhibit by adding a capital letter to chapter or circular number. The first exhibit to Chapter 4-70 would be numbered Exhibit 4-70-A; the second, Exhibit 4-70-B; and so on. The first exhibit to Circular (L-70.1) would be numbered Exhibit 4-70.1-b.
- D. Identify each page of the exhibit with exhibit number, title of manual, transmittal number (calendar year and sequential number--use only with chapters), and issue date (month, day, year). Put this information in same location on each page.
- E. Number each page.
- F. Identify each exhibit (by name and number) in the tract of its parent chapter or circular.
- G. Consult with the HHS Staff Manual Coordinator if you wish to use oversized originals to prepare exhibits.

EXAMPLE OF TRANSMITTAL FORMAT

HHS TRANSMITTAL 00.00
General Administration Manual
Issue date: 0/00/00

Page 1

Material transmitted

**Chapter 1-20, Use of Department and Operating
Division Seals (pages 1-3).**
Chapter 1-40, Conference Management (pages 1 and 2).
Chapter 8-69, Standard Administrative Code (pages 1-11).

Material superseded

Chapter 1-20 (pages 1-4: 68.17, 76.1 and 74.10).
Chapter 8-69 (pages 1-15: 76.11).
Circular 1-20.2 (pages 1-S).

Background

**Chapter 1-20 updates organization nomenclature previously
included in Circular 1-20.2; deletes reference to HEW
Forms 366 and 348A since they are obsolete; and transmits
recent delegations by the Secretary and the Assistant
Secretary for Management and Budget (ASMB) to certify
true copies of documents.**

**Chapter 1-40, a new chapter, reflects the recent decision
to exclude "advisory committees," as defined
by the Federal Advisory Committee Act, from the
requirements of this chapter.**

**Chapter 8-69 incorporates codes for new or redesignated
organizations and makes several minor editorial changes.
The principal code conventions remain unchanged.**

EXAMPLE OF TRANSMITTAL FORMAT (con't)

HHS TRANSMITTAL 00.00
General Administration Manual
Issue date: 0/00/00

Page 1

Filing instructions

Remove superseded material; replace it with the new material.
Change Table of Contents in the General Administration
Manual to reflect the changes to chapter titles. Post
receipt of this transmittal to the HHS Check List of
Transmittals *and file this transmittal in sequential order
after the* check list.

James R. Murphy, Director
Office of Management Directives

Distribution: MS:HRFC-124

INSTRUCTIONS FOR PREPARING TRANSMITTALS

1. Use format shown in example on page 10.
2. Type transmittal on plain, white, 8 1/2" x 11" paper.
3. Maintain a left and right side margins of one inch.
4. Type heading, beginning six lines from top of page. Include transmittal number, title of manual, and issue date. Use same heading on each page.
5. Type page number opposite transmittal number.
6. Three lines below heading, begin typing the four sections of text material described here using block paragraphs. Underline section headings; double space between sections.

Material transmitted

Identify each chapter and exhibit to be transmitted. Include number, title and page numbers of each.

Material superseded or cancelled

Identify each chapter, circular, exhibit, etc., to be superseded or cancelled. Include number, page numbers, and transmittal number(s) of each.

Background

Explain the reasons for issuing the transmitted material. Be specific.

Filing instructions

Tell each user what to do with the transmitted material, the superseded and/or the cancelled material upon receipt of the transmittal.

7. On the last page of the transmittal, beginning six lines below the last line of text and centered, type the name and title of approving official.
8. On first page only, type "Distribution:" at left margin six lines from bottom of page. Your directives distribution **coordinator will** add the information on distribution.

HOW TO ORDER MANUALS AND INDIVIDUAL DIRECTIVES

A. Ordering Manuals and Individual Directives

1. Using the **HHS-68** form, Request for **Staff Manual Materials and Mailing List Changes**, order staff manuals and copies of individual directives from your Directives Distribution Coordinator. See Exhibit 1-00-F for a listing of coordinators.
2. Complete the requested information; affix your signature as **requestor**. Obtain the approval and signature of your office head and administrative officer; and, send the **form** to your Directives Distribution Coordinator.
3. With completion and submission of the **HHS-68** form through your Directives Distribution Coordinator, your name and address will be **added to the** mailing list to receive updates.

B. Mailing List Changes

Report each change in your mailing **address** to your Directives Distribution Coordinator to ensure continued receipt of updates. Use the **HHS-68** form to **do this**.

DIRECTIVE 8 DISTRIBUTION COORDINATORS

HEADQUARTERS

ACE

Management Services Branch
4th Floor West/Aerospace Bldg.
370 **L'Enfant** Promenade, S.W.
Washington, DC 20201
Attention: Vanita Reynolds
Telephone: 202-401-5586
FTS 441-5586

AOA

Administrative Officer, **AOA**
Room 4652, Wilbur **J. Cohen** Bldg.
300 Independence Avenue, S.W.
Washington, DC 20447
Attention: James Duffy
Telephone: 202-619-0641
FTS 269-0641

HCFA

Production and Distribution Branch,
Division Communications Services
Room 555, **East** High Rise Bldg.
6325 Security Boulevard
Baltimore, MD 21207
Attention: Priscilla Thomas
Telephone: 301-966-7853
FTS 646-7853

OS

HHS Staff Manual Coordinator
Room 4724 Wilbur **J. Cohen** Bldg.
330 Independence Avenue, S.W.
Washington, DC 20201
Attention: Geerie Jones
Telephone: 202-619-0511
FTS 269-0511

PHS

Printing and Reproduction
Management Branch, **PHS**
Parklawn Services Center
Room **3B26 Parklawn** Bldg.
5600 Fishers Lane
Rockville, MD 20857
Attention: George Allen
Telephone: 301-443-6740

SSA

Design and Development Branch
Division Publications Management
Room 1-B-19, Operations Bldg.
6401 Security Boulevard
Baltimore, MD 21235
Attention: Maureen Kubolcif
Telephone: 301-965-4128
FTS 625-4128

OS Regional Office8 (continued)

Region VII

Division Administrative Services,
RASC, HHS
601 E.12th Street, Room 206
Kansas City, MO 64106
Attention: Maud Thomas
Telephone: FTS 867-3536

Region VIII

Division Administrative Services,
RASC, HHS
Federal Office Bldg., Room 1185
1961 Stout Street
Denver, CO 80294
Attention: Richard C. Mohn
Telephone: **FTS 564-5568**

Region IX

Division Administrative Services
RASC, HHS
Service Systems Support Branch
50 United Nations Plaza, Room 8
San Francisco, CA 94102
Attention: Barbara Chase
Telephone: FTS 556-7134

Region X

Division Administrative Services
RASC, HHS
2201 Sixth Avenue, MS/RX07
Seattle, WA 98121
Attention: Paula Nelson
Telephone: **FTS 399-4306**

DIRECTIVES DISTRIBUTION COORDINATORS

OS REGIONAL OFFICES

Region I

Division Administrative Services,
RASC, HHS
JFK Federal Bldg., Room 2411
Boston, MA 02203
Attention: Lorrain Long
Telephone: **FTS 835-1500**

Region II

Division Administrative Services,
RASC, HHS
26 Federal Plaza, Room 41-122
New York, NY 10278
Attention: Cathy Sullivan
Telephone: **FTS 264-5756**

Region III

Division Administrative Services,
RASC, HHS
Room 11020, Mail Stop 03
3535 Market Street
Philadelphia, PA 19101
Attention: Robert Heath
Telephone: **FTS 596-6460**

Region IV

Division Administrative Services
RASC, HHS
101 Marietta Tower
Atlanta, GA 30323
Attention: John Jordan
Telephone: **FTS 841-2471**

Region V

Division Administrative Services,
RASC, HHS
105 W. Adams Street, 22nd Floor
Chicago, IL 60603
Attention: Roosevelt Anderson
Telephone: **FTS 353-6789**

Region VI

Division Administrative Services,
RASC, HHS
1200 Main Tower Bldg., Room 1290
Dallas, TX 75202
Attention: Sonja Osborne
Telephone: **FTS 729-3221**

HHS Chapter 1-05
General- Administration Manual
HHS Transmittal 80.8 (11/26/80)

Subject: Secretarial Directives

1-05-00	Purpose
10	Scope
20	Requirement to Receive
30	Format
40	Numbering
50	Initiation
60	Executive Review
70	Distribution
80	Inclusion Into HHS Staff Manual System
90	References
100	Maintenance
110	Mailing List Changes
120	Copies of Active Directives

1-05-00 PURPOSE

Secretarial Directives define current administrative policies of the Secretary and the Under Secretary. This chapter **describes the** scope of the directives, illustrates their format, explains how they originate, and prescribes their distribution and their inclusion into the HHS Staff Manual System. (See Chapter 1-00, General Administration Manual, for information on the system.)

1-05-10 SCOPE

The Secretary and the Under Secretary use Secretarial Directives to issue policies and instructions on administrative matters that are Departmentwide in scope and permanent *in* nature (e.g., they are likely to remain in effect for six months or more).

1-05-20 REQUIREMENT TO RECEIVE

The head of each HHS organization through division level (e.g., component, office, bureau, institute, division) is required to receive and maintain Secretarial Directives.

1-05-30 FORMAT

Exhibit 1-05-A illustrates the format of Secretarial Directives.

1-05-40 NUMBERING

Secretarial Directives are serially numbered by calendar year, such as 80-01, 80-02, 80-03, etc. The OS Executive Secretariat numbers the directives.

1-05-50 INITIATION

Whenever an HHS component or office prepares a decision package for the Secretary which is likely to result in a Secretarial Directive, it should prepare the directive in the prescribed format and include it in the decision package. If the component or office questions whether or not it should include such a directive, it should consult with the OS Executive Secretariat.

1-05-60 EXECUTIVE REVIEW

The OS Executive Secretariat coordinates the review of each directive with concerned officials, and recommends a **course** of action on the directive to the Secretary or the Under Secretary.

1-05-70 DISTRIBUTION

- A. After the Secretary or the Under Secretary approves the directive, the OS Executive Secretariat makes the initial distribution to the addressees listed on the directive and delivers a copy to the Office of Management Analysis and Systems, ASMB.
- B. The Office of Management Analysis and Systems, **ASMB**, **coordinates** the distribution of each directive to the heads of **all HHS** organizations through division level.
- C. Each POC and OS office may make any further distribution (e.g., deputy heads of organization through division level, branch chiefs, **section chiefs**, etc.) that it deems essential.

1-05-80 INCLUSION INTO HHS **STAFF MANUAL** SYSTEM

The substance of each Secretarial Directive is to be included into HHS Staff Manual System not later than three months after its approval. The Assistant Secretary for Management and Budget determines the appropriate staff manual in which to issue the directive and monitors the inclusion of the directive into the appropriate **manual**.

1-05-90 REFERENCES'

The Office of Management Analysis and Systems, ASMB, prepares and distributes to each HHS manager who is required to **receive** and maintain Secretarial Directives the following references each January and July:

- o Subject Index
- o Listing of Active Directives--which identifies each active directive and the staff manual into which it has been or will be incorporated

1-05-100 MAINTENANCE

Each HHS manager who is required to receive and maintain Secretarial Directives should maintain them and the references in a binder as follows:

- o Listing of Active Directives
- o Subject Index
- o Active Directives (in sequential order)

1-05-110 MAILING LIST CHANGES

Each HHS manager through division level is responsible for reporting to his/her Directives Distribution Coordinator any change to his/her mailing address so that he/she can continue to receive Secretarial Directives. (See Exhibit 1-00-G, General Administration Manual, for listing of coordinators.)

1-05-120 COPIES OF ACTIVE DIRECTIVES

HHS managers may obtain copies of active directives from the Printed Media Unit, OS Office of Management Services, Room G-322, Switzer Building, 3rd and C Streets, S.W., Washington, D. C. 20201.



Page 2 • Secretarial Directive 80-01

(Name of Secretary)

CHAPTER 1-20

USE OF DEPARTMENT AND PRINCIPAL OPERATING COMPONENT SEALS

- 1-20-00 Purpose and Scope
 - 10 General Policy
 - 20 Department Seal
 - 30 Public Health Service Seal
 - 40 Retired Seals

1-20-00 PURPOSE AND SCOPE

This chapter provides policies and procedures concerning the use of the Department and Public Health Service seals. It does not apply to the use of flags and uniforms on which replicas of the seals have already been affixed.

1-20-10 GENERAL POLICY

- A. The Department and Public Health Service seals shall be used only as provided in this chapter, **unless** an exception has been granted **by** the Assistant Secretary for Management and Budget. Requests for such exceptions must show that the intended **use** of the seals is in the best interests of the Department.
- B. No other principal operating component seal shall be adopted, **and the use** of existing seals shall **be** limited as indicated in this Chapter.

1-20-20 DEPARTMENT SEAL

- A. Legal Authority. The Secretary, Department of Health, Education, and Welfare is authorized to adopt an official seal by 42 U.S.C. 3505. The Department seal was approved by the President by Executive Order 10510 of **December 17, 1953**. The following is **the** Department Seal:



- B. Description of Seal. E.O. 10510 describes the Department Seal in heraldic terms as follows:

SHIELD: Argent an open book with sanguine binding charged overall with a staff of Aesculapius paleways within an annulet of chain all proper.

CREST: On a wreath argent and sanguine an American bald eagle displayed and wings partially inverted proper.

Below the shield a white scroll inscribed with the motto "SPES ANCHORA VITAE" in black letters, all on a circular sanguine background within a white band, inner edge white, outer edge sanguine, and inscribed "DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE U.S.A."

- C. Custody of the Seal. One official seal of the Department, including the die and the press, shall remain in the custody of the Director, Office of Management Services, Office of the Secretary. Duplicate seals, including dies and presses, shall remain in the custody of those officials designated in Exhibit X1-20-2 and their delegates. Department seal presses shall be locked when not in use.

D. Use of the Seal

1. The Department seal may be used to certify that a document is a true copy of a document on file in the Department and it may also be used on agreements, awards, citations, diplomas, and similar documents.
 2. When an authorized official certifies a document to be a true copy of a document on file in the Department, he or she shall do so by causing the impression of the Department seal to be affixed to a "certification" form which shall be the top cover sheet of the copy being certified. Form HEW-347 (see Exhibit X1-20-1) has been designated for this purpose.
 3. Documents shall be appropriately signed before being presented for impression.
 4. Each authorized official and his or her delegates shall furnish to the supervisor of the activity having custody of their seal, a specimen of their signature.
- E. Use of Facsimiles of the Department Seal. A facsimile of the Department Seal may be used: (1) to embellish publications or other informational media, (2) to embellish administrative

media, forms, and stationery, or (3) otherwise as an embellishment. On publications and other public information materials, the Office of Assistant Secretary for Public Affairs shall determine whether proposed use of seals is proper.

1-20-30 PUBLIC HEALTH SERVICE SEAL

- A. Authority. The Public Health Service Seal was adopted administratively prior to the Department Seal. Limited use of this seal is still authorized in accordance with established custom. New uses of this seal are not authorized in the interest of establishing the Department Seal as the official insignia of the Department and its principal operating components. The following is the Public Health Service Seal:



- B. Use of the Official Seal. The Public Health Service Seal may be impressed on certificates of sanitation, foreign quarantine immunization certificates, and certificates designed exclusively for the Commissioned Corps, provided they also bear the name of the Department.
- C. Use of Facsimiles of the Public Health Service Seal. Facsimiles of the Public Health Service Seal may be used on agency-level awards certificates and on certificates, recruitment literature and exhibits developed for the Commissioned Corps. It may also be used on foreign quarantine immunization certificates and national health survey program forms which are given to the public, provided all of these bear the name of the Department. Facsimiles of the Public Health Service Seal shall not be used on stationery or forms other than those specified.

1-20-40 RETIRED SEALS

The seals of the Office of Education and the Social Security Administration have been retired and their use is no longer authorized.

UNITED STATES OF AMERICA

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

CERTIFICATION OF TRUE COPY

Pursuant to the provisions of 42 U.S.C. 3505 and the authority vested in me by delegation from the Secretary (F.R.), I hereby certify that the annexed are true copies of the documents on file in the Department of Health, Education, and Welfare.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the Department of Health, Education, and Welfare to be affixed.

on this _____ day of
_____ 19 ____.

43 FR 58870-71, 12/18/78

Office of the Secretary

ASSISTANT SECRETARY **FOR MANAGEMENT AND BUDGET**

Delegation of Authority To Certify True Copies and Affix the Department Seal

By the authority vested in me as Secretary, I hereby delegate to the Assistant Secretary for Management and Budget the authority to: Certify true copies of **any** books, records, papers, or other documents on **file** within the Department; or extracts from such; certify that copies are true copies of the entire **file** of the *Department*; **certify** the complete, original **record**; **certify** the *nonexistence* of records on **file** within the Department; and cause the seal of the Department **to be affixed** to such certifications.

I also delegate to the Assistant Secretary for Management and Budget authority to cause the seal of the Department to be affixed to agreements, awards, citations, diplomas and similar documents.

This delegation supersedes the previous delegation of this authority approved by the Secretary on October 22, 1969 and published at 34 FR 17346, October 25, 1969. Redelegation under the previous authority shall remain in effect until superseded by new delegations.

This delegation is effective immediately and **may be redelegated**.

Dated: November 2, 1978.

**JOSEPH A. CALIFANO, Jr.,
Secretary.**

[FR Doc. 78-35076 Wed 12-15-78; 8:45 am]

44 FR 1473, 1/5/79

REDELEGATION OF AUTHORITY TO CERTIFY TRUE COPIES

NOTE.—This document is republished with corrections, from the Issue of Monday, December 18, 1978, page 58871.

Under the authority vested in me by the Secretary:

1. I hereby redelegate to the following the authority to certify true copies of **any** books, records, papers, or other documents on file within the Department, or extracts from such, to **certify** that true copies are true copies of the entire **file** of the *Department*, to **certify** the complete original record or to **certify** the nonexistence of records on **file** within the Department, and to cause the Seal of the Department to be **affixed** to such certifications.

These same officials are authorized to -- the Seal to be Affixed to agreements, awards citations, diplomas, and similar documents.

44 FR 1473, 1/5/79

To whom delegated	Area of authority
General Counsel.....	Department
Director, Office of Management Services, Office of the Secretary.	Office of the Secretary
Administrator, Health Care Financing Administration.	Health Care Financing Administration
Assistant Secretary for Education.	Education Division
Commissioner of Social Security.	Social Security Administration
Assistant Secretary for Human Development Services.	Office of Human Development Services
Assistant Secretary for Health.	Public Health Service
Director, Office of Child Support Enforcement.	Office of Child Support Enforcement

This authority may be redelegated.

2. I also redelegate to the Civil Rights Hearing Clerk, Office of the Assistant Secretary or Personnel Administration, the authority as official custodian of the files in all matters pertaining to compliance proceedings under Title VI of the Civil Rights Act and as such custodian the authority to certify true copies of **any** books, records, papers, or other documents of the Department pertaining to such matters and to certify extracts from **any** such books, records, papers, or other documents on file within the Department as true extracts and to certify that true copies are true copies of the entire file of the Department in any such matters, and to cause the Seal of the Department to be affixed to such certifications. This authority may not be redelegated.

3. The above redelegations supersede the redelegations made under previous authority (34 FR 18049-50 dated 11/7/89 and 35 FR 16384, dated 10/20/70). Further redelegations made under the aforementioned redelegation of authority shall remain in effect until appropriate new redelegations are made.

Dated: December 1, 1978.

**FREDERICK M. BOHEN, .
Assistant Secretary
for Management and Budget**

[FR Doc. 78-35077 Filed 12-15-78; 8:45 am]

VISITS TO REGIONAL OFFICES AND FIELD INSTALLATIONS

1-45-00 Purpose
10 Scheduling Field Visits

1-45-00 PURPOSE

This chapter provides a single reference point for information relating to scheduling visits to field installations.

1-45-10 SCHEDULING FIELD VISITS

- A. Requirements. In order to permit scheduling which will best serve the visitor and regional office personnel, advance notification of the following are to be communicated to the regional office concerned:
1. Contemplated visits by headquarters personnel to a regional office, a State or local agency, or a field station or activity under the supervision of a regional office.
 2. Contemplated visits by principal staff of the Office of the Secretary or by heads of Principal Operating Components or their major subunits to a field station or activity not under supervision of a regional office. (Notification of visits by other personnel to such points is not required.)
 3. Any changes in previously announced plans.
- B. Procedure
1. Headquarters Staff: Direct memorandum or telegram a week in-advance of proposed visit, where possible, to appropriate member of regional office staff. Include in memorandum or telegram such information as dates of visit, hotel, itinerary within region, and similar information about the visit. Furnish copy of each such communication to the Office of Regional Liaison, Office of the Secretary.
 2. Regional Office Staff: Advise Regional Director, as appropriate, of contemplated visits of headquarters personnel.

CHAPTER 1-50
NOTARIES PUBLIC -- OFFICIAL BUSINESS

- X-50-00 Purpose and Authority
 - 10 Standards
 - 20 Allowances
 - 30 Procedure
 - 40 Designation of Notaries Public

1-50-00 PURPOSE AND AUTHORITY

- A. Purpose. This Chapter states the criteria to be used in requiring civilian officers and employees to serve as notaries public in the performance of official business, the allowances to be paid them for expenses incurred, and the procedure for obtaining payment.
- B. Legal Basis. The Notaries Public Expense Act of 1965 (PL 681, 84th Cong., **approved 7/11/56**) provides that civilian officers and employees of the **departments** and establishments of the Federal Government who are required to **serve** as notaries public in connection with the **performance of official** business shall be paid an allowance to be established by the **department** or establishment concerned, not to exceed the expense required to be incurred by them in order to obtain their commission.

1-50-10 STANDARDS

A. Amount and Accessibility of Notarial Services

Officers or employees of the department will serve as notaries public for the performance of official business.

B. Selection of Notaries. To the extent practicable, individuals should be selected from among personnel:

1. Who are centrally located and would usually be available to provide service.
2. Whose regular assignments and workloads would not be adversely affected by recurring interruptions involved in providing service.
3. **Who** have knowledge of, or could readily orient themselves to, the format of a wide variety of legal documents.

1-50-20 ALLOWANCES

On or after January 1, 3.955, each officer or employee who is required to serve as a notary public and obtains his commission shall be

reimbursed for the actual expenses required to obtain or renew his **commission, including fee, bond** (when required), and the minimum amount necessary to obtain a satisfactory seal and stamp when such reimbursement is claimed as provided in 1-50-30 below.

Note: Executive Order 977 (November 24, 1908) prohibits charge for notarial services during working hours.

1-50-30 PROCEDURE

A. Notification of Commission. It is the responsibility of any person required to **serve** as notary for official **business** who does not have a current valid commission to file the **necessary** application with the clerk or other official responsible for processing commissions in the local jurisdiction. Each such officer or employee shall notify the officer who designated him, by memorandum, in two copies, whether he has obtained the necessary commission, and (if so) of its effective date and date of expiration. The designating officer will **forward** one copy of the memorandum reporting the commission to the appropriate fiscal office with a notation as to the appropriation to be charged with the allowances. This will ordinarily be the **appropriation** currently available for general expenses of the program for which the major portion of the services are performed.

B. Claim for Reimbursement

1. Each officer or employee who has been designated and has obtained his commission shall certify an itemized claim for actual expenses which he was required to incur to obtain or renew his **commission**, on or after January 1, 1955, on SF-1129 (original and two carbon copies) and shall execute the following certification on the back of the original:

I **hereby** certify that I am and have been since (date) required to serve as a notary public in connection with the performance of official business for the Department of Health, Education, and Welfare. I understand that I am not permitted to charge a fee for notarial services **performed** during working hours.

Employee

2. He shall forward the original and one copy to **the** appropriate fiscal office, together with a copy of his formal **designation** and receipts for each item of **expense** claimed, and **retain** one copy of the voucher for his own records.
3. The fiscal office will process the voucher for payment,

1-50-40 DESIGNATION OF NOTARIES PUBLIC

Heads of **POCs**, Principal Regional Officials, and the Assistant Secretary for Management and Budget for the Office of the Secretary have the authority to designate officers and employees to serve as notaries public when it is determined that such service is required for the facilitation of department business. The area of exercise of this authority is within organizational elements under their direct supervision or in installations where they provide the administrative support. POC heads will not designate notaries public for their regional organizations where the PRO has provided for this service. These officials may redelegate this authority.



Subject: POLICY ON SMOKING IN HHS OCCUPIED BUILDINGS AND FACILITIES

1-60-00	Purpose
10	Background
20	Policy
30	Applicability and Scope
40	Responsibilities
50	Implementation Directives
60	Education and Training
70	Notices and Signs
80	Referral of Questions

1-60-00 PURPOSE

The purpose of this chapter is to provide a Departmentwide policy on smoking in HHS-occupied buildings and facilities. It supersedes General Administration Manual Chapter 1-60, dated January 8, 1978 'Policy on Smoking in HHS-Occupied Buildings..

1-60-10 BACKGROUND

The Department of Health and Human Services is the Federal Government's principal agency for furthering the health of Americans and providing them with essential human services. The health risks of smoking and exposure to smoke are clearly documented by reports of the Surgeon General. This Department accepts the evidence that: involuntary smoking is a cause of disease, including lung cancer, in healthy nonsmokers; and, the simple separation of smokers and nonsmokers within the same air space may reduce, but does not eliminate, the exposure of nonsmokers to environmental tobacco smoke. It is therefore essential that the Department, in the accomplishment of its mission, provide a smoke-free environment in all HHS owned and leased building space.

1-60-20 POLICY

The Department's policy is to establish a smoke-free environment in all HHS building space.

HHS Chapter 1-60
General Administration Manual
HHS Transmittal 87.01 (8/25/87)

Implementation of this policy as set forth in section 1-60-50 of this chapter will be achieved through the cooperation, understanding and support of both the operating management of this Department and the Department's employees and employee representatives.

1-60-30 APPLICABILITY AND SCOPE

- A. The provisions of this directive apply to all organizational elements of HHS that occupy HHS owned and HHS leased buildings and facilities.
- B. The provisions of this directive also apply to HHS elements occupying Government owned or leased space which is assigned to HHS elements by GSA, and space obtained on a use permit, or nominal rental or rent-free basis. In multi-tenant buildings, the Departmental policy will apply within the confines of the assigned space over which HHS elements have exclusive custody and control including corridors, rest rooms, cafeterias, stairways and other public space on floors or within blocks of space assigned to HHS elements.
- C. Nothing in these regulations precludes an HHS organizational element from establishing more stringent guidelines.

1-60-40 RESPONSIBILITIES

- A. The Heads of **OPDIVs** (for their headquarters, and field components); Regional Directors (for the space/facilities elements under their direct control); and Director, Office of Administrative and Management Services, OS; are responsible and accountable for implementing the provisions of this chapter as follows:
 - o In HHS occupied buildings, facilities and space, the senior **HHS** official has the responsibility for implementing the Secretary's policy as it relates to space under his or her jurisdiction and control as implemented by his/her appropriate headquarters.

- o In multiple occupancy buildings and facilities the senior HHS official will negotiate with the senior officials of other occupant Government agencies (if any) to insure that, as a minimum, the GSA smoking policy is enforced in non-HHS occupied space in the building. Additionally, the senior HHS official is encouraged to seek adoption of the HHS policy by all occupants in a multiple occupancy building.
- B. Heads of Staff Offices will support the provisions of this policy and assist the Heads of **OPDIVs, RDs** and the Director, Office of Administrative and Management Services, OS, in its implementation. The Assistant Secretary for Management and Budget and Assistant Secretary for Personnel Administration will provide, within their areas of responsibility, training guidance and assistance.
- C. Prior to implementation of this chapter or any provision thereof, the organizational element shall meet its obligation under 5 U.S.C. Chapter 71, as appropriate, where there is an exclusive representative for the employees. In other cases employee consultation should be direct.

1-60-50 IMPLEMENTATION DIRECTIVES

- A. General. HHS officials are directed to implement and enforce the smoking policy through the prohibition of smoking in areas as defined in paragraph 1-60-30.
- B. Implementation of this policy is to be achieved:
- o immediately in building areas where separate ventilation (single-pass air handling system) does not exist, and
 - o no later than six months from the date of this issuance for space which can serve as temporary designated smoking areas (space which has pre-existing single pass **air** ventilation such as most restrooms), to allow a fixed but reasonable time for training and transition.

- o consistent with the requirements of 5 USC Chapter 71 and provisions of negotiated agreements.
- C. The Department recognizes that prior labor/ management agreements can affect the actual realization of a smoke-free environment at various sites and different points of time in the six-month period for transition.

1-60-60 EDUCATION AND TRAINING

The Assistant Secretary for Personnel Administration has issued Departmental guidance covering education, training and related personnel issues (HHS Instruction 792-3, Personnel Manual).

1-60-70 NOTICES AND SIGNS

- A. Notices to Employees. Officials responsible for implementing requirements of this chapter shall inform employees under their jurisdiction in writing of the provisions applicable to them.
- B. Signs
- o Suitable signs shall be placed on or near entrance doors of buildings or HHS occupied areas subject to these regulations. Signs should be procured and installed in cooperation with the GSA Buildings Manager in buildings managed by GSA. It should not be necessary to display a sign in every room of each building.
 - o In accordance with the Federal Acquisition Regulation, Part 8, the mandatory source of supply for the purchase of the aforementioned signs is UNICOR, Federal Prison Industries, Inc. (FPI). Prior approval from FPI is required before using any other source of **supply**. Purchase Orders should be submitted to: UNICOR, Federal Prisons Industries, Inc., 320 First Street, N. W., Washington, DC 20534, (202) 724-8239.
 - o The accepted international symbol for no smoking may be used as appropriate.

1-60-80 REFERRAL OF QUESTIONS

- A. Questions on these general policy provisions as they affect HHS occupied space and facilities should be referred to the Office of Special Programs Coordination, Office of the Assistant Secretary for Management and Budget (**ASMB**). FTS telephone Number 245-7426
- B. Questions relating to personnel policy matters affected by this regulation shall be referred to the Office of Special Initiatives, Office of the Assistant Secretary for Personnel Administration, telephone number PTS 245-7153.
- C. Technical questions concerning smoking and health, educational materials, or suggested methods of discouraging cigarette smoking in Government buildings, should be referred to the Office on Smoking and Health, Centers for Disease Control, Department of Health and Human Services, Washington, DC 20201; phone (**FTS**) 443-1575 commercial (**301**) 443-157s.

DEPARTMENT OF
HEALTH AND HUMAN SERVICES
WASHINGTON, D.C. 20201

OFFICIAL • † • 0 • 2 • 6 • 6 • 6
PENALTY FOR PRIVATE USE, \$300

POSTAGE AND FEES • 
U.S. DEPARTMENT OF H.H.S.

HHS-391



THIRD CLASS

Subject: CLEARANCE OF **PERSONNEL** FOR SEPARATION OR TRANSFER

1-90-00 Purpose
10 Definitions
20 Responsibility for Developing and Maintaining
Clearance Procedures
30 Policy
40 Minimum Requirements of Clearance Procedures
50 Items for Which Clearance is Required
60 Clearance Form
70 Supply of Forms

Exhibits

1-90-A Form HHS-419, Clearance of Employees for Separation or
Transfer
1-90-B Instructions for Completion of Form HHS-419
1-90-c **Sample Installment** Repayment Agreement for Transferring
Employees
1-90-D Post-Employment Restrictions Applicable to Former
Employees of the Department of Health and Human
Services

1-90-00 PURPOSE

This chapter sets forth policy and instructions concerning the clearance of separating or transferring employees.

1-90-10 DEFINITIONS

For purposes of this Chapter, the following definitions apply:

Accountable Property - All personal and real property which is made subject to accountability by appropriate authority. Such property includes that capitalized in the fiscal records of the Department and usually all personal property for which quantitative record control is required to be maintained.

Administrative Officer - An employee whose primary activity consists of providing staff, auxiliary, or administrative services for an organizational unit.

Custodial Officer - An employee designated by an organization to be responsible for the custody of its personal property.

Debt - An amount of money, property and/or advanced leave owed to the Department.

Finance Office - The office responsible for providing **accounting** services to the departing employee's organization.

Salary Offset - A procedure by which payroll may **collect** outstanding employee debt from an employee's salary.

Separating Employee - An employee or officer (including a Commissioned Officer of the Public Health Service) who leaves the employment of the Federal Government.

Servicing Personnel Office (SPO) - The **personnel** Office that handles the processing of personnel actions for the departing employee, and which is responsible for maintaining the employee's Official Personnel Folder.

Transferring Employee An employee who transfers to another Federal agency, or from one HHS component to another HHS component (i.e., from the jurisdiction of one **HHS** supervisory position to another).

J-90-20 **RESPONSIBILITY FOR DEVELOPING AND MAINTAINING CLEARANCE PROCEDURES**

- A. The following officials are responsible for the development and maintenance of clearance procedures within their agency or offices:
1. The Executive Officer or designee in each Operating Division (OPDIV) for the **OPDIV's** headquarters employees and its field employees not under the jurisdiction of the Regional Finance Offices.
 2. The Regional Director or designee in Regional Offices for all employees under the jurisdiction of the Regional Finance Offices.
 3. The Assistant Secretary for Management and Budget or designee for Office of the Secretary (OS) headquarters employees.

4. The Inspector General or designee for the Office of the Inspector General (OIG) employees.
- B. Officials listed in "A" above, in conjunction with their respective Finance Office, shall review the operation and effectiveness of the clearance procedures within their respective agency or office at least once every three years and shall take immediate action to correct any deficiencies in the procedures.
- C. Officials listed in "A" above shall ensure that supervisors receive appropriate training and shall issue an annual reminder notice to supervisors of their responsibilities pertaining to the clearance procedures.

1-90-30 POLICY

- A. For each separating or transferring employee, the employee's immediate supervisor, with assistance from the organization's administrative officer, is responsible for the following:

1. **Immediately** notifying the SPO when the supervisor learns of an impending employee separation or transfer: preparing SF 52, Request for Personnel Action, and submitting it to the SPO in a timely manner.
2. Preparing Form BBS-419, Clearance of Personnel for Separation or Transfer, Part A (items 1-7) and Part B (items 8-14) in accordance with Exhibit 1-90-A **and obtaining appropriate clearances.** Item 14 in Part B (Other Clearances) may be used to enter additional clearance requirements. (See Exhibit 1-90-B for instructions.)

For locations which are distant from the clearance offices, the supervisor has the option to complete the appropriate items on the Form BBS-419 through a telephone exit interview with the appropriate clearance officials. Telephone clearances must be annotated on this form with the name of the official contacted, status of each item, and date of clearance.

3. Ensuring that issues of employee indebtedness to the Department are resolved and that actions taken are noted on Form BBS-419. (Reference: Debt Collection Act of 1982 as implemented by 45 CFR Part 30. Also see Departmental Accounting Manual Chapters 10-30 and 10-41 and HHS Personnel Manual Instruction 550-g.)

a. **Separating from the Federal Government**

- (1) If the employee is separating from the Federal Government, all outstanding indebtedness must be repaid before separation. Agreements for repayment after separation are not acceptable.
- (2) If the employee has an outstanding debt that is unresolved at the time of separation, the supervisor is responsible for ensuring that the employee's final timecard is not sent to payroll through the normal process. The supervisor will send the timecard and an explanatory memorandum to payroll through the payroll liaison. Payroll will withhold the amount of the debt from the final salary payment and the lump-sum annual leave payment. If necessary, payroll will take other appropriate actions permitted under the Debt Collection Act and other authorities as required, including a request to the Office of Personnel Management (OPM) to withhold the appropriate amount when the employee seeks to withdraw retirement monies. (Procedures for collecting debt from Commissioned Officers are contained in the PHS Commissioned Corps Manual.)
- (3) If indebtedness is discovered after submission of the final timecard, the supervisor must immediately request the payroll liaison to arrange for withholding from the final salary payment, lump-sum annual leave payment and retirement benefits. (Procedures for collecting debt from Commissioned Officers are contained in the PHS Commissioned Corps Manual.)
- (4) If the indebtedness is later cleared by the employee, the supervisor should inform the payroll liaison so that the employee can be paid any amounts withheld.

b. **Transferring to another HHS component**

- (1) If the employee is transferring to another HHS component and has an outstanding debt, the employee may elect to pay off the debt in full prior to transfer, pay the debt in

installments, or have payroll automatically deduct payments from his/her salary. Employees must sign an agreement in the case of installment payments (see Exhibit 1-90-C for sample agreement). If an installment agreement or salary offset is already in effect, the employee may continue repayment through this mechanism until the debt is satisfied.

- (2) If the employee has an outstanding debt that is unresolved under b(1) above at the time of transfer, the supervisor will notify the payroll liaison and request initiation of salary offset (see HHS Personnel Manual Instruction 550-9).
- (3) If indebtedness is discovered after the employee has transferred, the SPO will inform the employee's new SPO and request assistance in obtaining resolution from the employee (see HHS Personnel Manual Instruction 550-g). If full payment or a signed agreement for installment payments is not received within 60 days, salary offset is to be initiated.

C. Transferring to another Federal Agency.

- (1) If the employee is transferring to another Federal Agency and has an outstanding debt, the employee may elect to pay off the debt in full prior to transfer, pay the debt in installments, or if salary offset is already in effect, continue repayment through salary offset at the new agency until the debt is satisfied. Employees must sign an agreement in the case of installment payments. (See Exhibit 1-90-C for sample agreement.) To either initiate or continue salary offset, payroll computes the status of employee indebtedness as of the effective date of transfer, and provides this information to the SPO. The SPO will then request the new agency to initiate or continue salary offset until the debt is satisfied.
- (2) If the employee has an outstanding debt that is unresolved under C(1) above at the time of transfer, the supervisor will notify the payroll liaison and request initiation of

salary offset (see HHS Personnel Manual Instruction 550-9).

- (3) If indebtedness is discovered after the employee has transferred, the SPO will inform the employee's new agency and request assistance in obtaining resolution from the employee (see HHS Personnel Manual Instruction 550-9). If full payment or a signed agreement for installment payments is not received within 60 days, the SPO will request salary offset.
4. Ensuring that the employee has satisfactorily accounted for accountable property, funds, forms, and records.
 - a. If the employee's responsibilities include accountability for property at an installation or accountability for funds, appropriate arrangements **must be** made to verify the accuracy of records and/or accounts and to transfer responsibility to a successor in accordance with HHS Materiel Management Manual Part 103-27.5015.
 - b. Issues regarding property provided to employees with disabilities as a reasonable accommodation and the possibility of its transfer to another part of HHS or another Federal agency should be handled in accordance with HHS Materiel Management Manual Parts 103-43.1 and 103-43.3.
 - c. If accountable property, funds, forms and records are not returned or proper clearances not obtained, the supervisor is responsible for ensuring **that** issues of employee indebtedness to the Department are resolved and that actions taken are noted on Form HHS-419.
 - (1) For employees separating from the Federal Government, see 1-90-30A.3a.
 - (2) For employees transferring to another HHS component, see 1-90-30A.3b.
 - (3) For employees transferring to another Federal agency, see 1-90-30A.3c.
 - d. When deductions for missing property have been made from an employee's final salary payment, lump-sum leave payment and/or retirement account,

and the missing property is later returned, the former employee is entitled to repayment for any amounts deducted. The supervisor, with assistance from the administrative officer, should instruct the former employee to submit a claim for repayment in writing to the Finance Office stating name, current address and reason for claim and specifying the amount due.

5. Ensuring the return of all identification and building passes and keys.
6. Ensuring that the Personnel Security Representative is notified whenever an employee in a sensitive position who has a security clearance for access to Top Secret, Secret, or Confidential information is separating or transferring. . The employee must be debriefed and the security clearance must be withdrawn.
7. Ensuring that appropriate measures are taken to cancel access to HHS ADP systems, databases, networks (local and wide area), data centers, etc. All employee ADP related identification codes, computer passwords and account numbers will be changed or deleted on all systems, networks, etc., prior to or simultaneous with the transfer or separation of the employee.
(Reference: The Computer Security Act of 1987, PL 100-235 and OMB Circular A-130 Appendix III, Security of Federal Automated Information Systems (AIS). Also see HHS AIS Security Program Handbook.)
8. Following the completion of the clearance processing and satisfactory resolution of any issues, obtaining the employee's signature and date in item 15 of the **Form** HHS-419. (If the employee is unable or refuses to sign, the supervisor will note this in item 15.) The supervisor will then sign and date item 16 of the Form HHS-419 certifying that all required clearances have been obtained.
9. Issuing a copy of the completed Form HHS-419 to the employee, forwarding an information copy to the SPO, and returning the completed original to the administrative officer for retention. The Form HHS-419 will be retained for one year or for one year after any indebtedness is recovered, whichever is longer.
10. Ensuring that all communication with employees with disabilities is conveyed in a medium that is understood by the employees.

- B. Employees are responsible for the following:
1. Notifying their supervisor of plans to separate or transfer at least two (2) weeks in advance of the scheduled date.
 2. Resolving any issues of 'indebtedness before separation or transfer and working with the supervisor to ensure that proper clearances are obtained.
 3. Returning all accountable property, forms, records and other Government property to the appropriate clearance office.
 4. Completing and returning all required forms.
 - 5 . Signing and dating the certification block in item 15 of the Form BBS-419 which attests that the employee has no unresolved indebtedness with the Department or Government property in his/her possession.
 6. Informing management if written or oral communication needs to be presented in alternate formats to accommodate an employee's disability.

1-90-40 MINIMUM REQUIREMENTS OF CLEARANCE PROCEDURES

- A. Each clearance procedure developed under 1-90-20 shall assign to supervisors, with assistance from the appropriate administrative officer within the organization, the responsibility for coordinating the clearance of all employees who separate or transfer from the organizational unit. Additionally, the organizational unit responsible for each part of the clearance process must be clearly identified.
- B. The procedures shall include the policy in 1-90-30.
- C. The procedures shall place responsibility for follow-up action to resolve any outstanding issue and/or to collect any outstanding indebtedness following the separation or transfer of an employee.

J-90-50 **ITEMS FOR WHICH CLEARANCE XS REQUIRED**

Clearance is required for all funds and property, including personal custody, custodial, and accountable advances made to the employee, and accountable and controlled forms, files and records issued to the employee.

1-90-60 **CLEARANCE FORM**

Clearance of separating and transferring employees will be secured through the use of Form HHS-419, Clearance of Personnel for Separation or Transfer (see Exhibit 1-90-A). An OPDIV or Region with a similar form that meets all the requirements of this chapter may use such alternative form. Previous versions of this form are no longer authorized for use.

1-90-70 **SUPPLY OF FORMS**

Form HHS-419, Clearance of Personnel for Separation or Transfer, may be obtained through normal requisitioning channels. Public Health Service activities should obtain their supply of forms in accordance with the information contained in the PHS Forms Catalog.

CLEARANCE OF EMPLOYEES FOR SEPARATION ON TRANSFER											
Part A - IDENTIFICATION INFORMATION											
1. EMPLOYEE NAME:				2. SOCIAL SECURITY NUMBER:				3. TIMEKEEPER NUMBER:			
4. ORGANIZATION MD WORK LOCATION:								5. DATE OF SEPARATION/TRANSFER:			
6. CHECK ONE: <input type="checkbox"/> SEPARATING FROM FEDERAL GOVERNMENT:						7. FORWARDING ADDRESS:					
<input type="checkbox"/> TRANSFERRING TO ANOTHER HHS COMPONENT OR FEDERAL AGENCY (SPECIFY):											
Part B - CLEARANCES TO BP OBTAINED											
CLEARANCE ITEMS						N/A - NOT APPLICABLE					
CLEARANCE ITEMS	BLDG & ROOM #	CLEARED	NOT CLEARED	N/A	INITIALS	CLEARANCE ITEMS	BLDG & ROOM #	CLEARED	NOT CLEARED	N/A	INITIAL
8. SUPERVISOR/ ADMINISTRATIVE OFFICER:						10. PERSONNEL					
a. ADP Security						a. Debt Collection					
b. Advanced Leave						b. Employment Agreement					
c. Building Pass						c. Required Notices/Forms					
d. ID Cards						d. Security Clearance					
• Keys						• Training in Outside Institutions					
f. Motor Vehicle Operator ID Card						11. CUSTODIAL OFFICER - HHS-Owned Equipment					
g. Official Files/Records						12. LIBRARY					
9. FINANCE:						13. PARKING PERMIT					
a. Accountable Forms						14. OTHER:					
b. Credit Cards						a.					
c. Employee Emergency Payments						b.					
d. Jury Fees						c.					
• Relocation Allowance						d.					
• Travel Advance						e.					
15. I CERTIFY THAT I HAVE NO HHS PROPERTY, RECORDS, OR CORRESPONDENCE AND I DO NOT HAVE ANY UNRESOLVED INDEBTEDNESS NITN TNB DEPARTMENT.						16. I CERTIFY THAT I HAVE REVIEWED THIS FORM AND THAT ALL REQUIRED CLEARANCES HAVE BEEN OBTAINED.					
SIGNATURE OF EMPLOYEE						SIGNATURE OF SUPERVISOR					
DATE						DATE					

GUIDELINESFORCOMPIXTINGFORMHHS-419

1. Detailed procedures and instructions for completing Form **HHS-419** are contained in General Administrative Manual (**GAM**) Chapter **1-90** and Exhibit 1-90-B.
2. **The** employee's supervisor (assisted by the administrative officer) is responsible for obtaining appropriate clearances for employees separating or transferring from their units, and will initiate Form HHS-419 by **filling** in Part A, items 1-7, when informed about the pending separation or transfer of an employee. When physically possible, the Form HHS-419 will be **hand-carried** to those officials from whom clearance is **necessary**. **For** locations which are distant from the clearance offices, the supervisor may obtain telephone clearances when deemed appropriate. Telephone **clearances** must be annotated with the name of the official contacted, status of **each item, and date of clearance**.
3. The clearance officials who are responsible for the items listed in Part B, items S-14, shall secure, when applicable, the return of issued items and forms, check and initial the clearance action they take. They will **describe** on a separate continuation sheet items for which clearance is not granted along with recommendations for immediate actions. (Continuation sheet(s) must be attached to Form XHS-419).
4. If the employee is indebted to the Department, the supervisor shall take the following actions as applicable:
 - a. **Arrange** for settlement/resolution of the employee's indebtedness to the Department prior to separation or transfer.
 - b. If the employee is separating from the Department and has not repaid his/her indebtedness prior to separation, see **GAM 1-90-30A.3a** for required procedures.
 - c. If the employee is transferring within HI-IS or to another Federal Agency and has not resolved **his/her** indebtedness prior to transfer, see **GAM 1-90-30A.3b** and 3c for required procedures.
5. After all items in Part B have been cleared or resolved and the employee has signed and dated the certification block in item 15 (if the employee is unable or refuses to sign, the supervisor will note this in item 15) and the supervisor has signed and dated the **certification** block in item 16, a copy of the Form **HHS-419** will be provided to the employee.
6. The completed Form **HHS-419** and all continuation sheets shall be retained in the administrative officer's **files** for one year or for one year after any indebtedness is recovered, whichever is longer. An information copy will be forwarded to the Servicing Personnel Office.

**INSTRUCTIONS FOR COMPLETION OF FORM HHS-419,
CLEARANCE OF EMPLOYEES FOR SEPARATION OR TRANSFER**

PART A, ITEMS 1-7 **IDENTIFICATION INFORMATION:** Enter information on employee separating or transferring.

PART B, ITEMS 8-14 CLEARANCES: Clearances must be obtained from each of the offices below. The employee's supervisor will place a check mark in the N/A column if a specific clearance item is not applicable. Once cleared, the clearing office will place a check mark in the "Cleared" column. Items which are not cleared will be marked with a check mark in the "Not Cleared" column; the reason for not clearing must be explained on a separate continuation sheet. For any items lost by the employee, a signed statement from the employee explaining the loss must also be attached to the Form **HHS-419**.

8. **SUPERVISOR/ADMINISTRATIVE OFFICER** The employee's immediate supervisor, with assistance from the organization's administrative officer, is responsible for ensuring that the items listed below are accomplished:
 - a. **ADP Security** Cancel employee's access to BBS ADP systems, databases, networks (local and wide area), data centers, etc. All employee ADP related identification codes, computer passwords and account numbers will be changed or deleted on all systems, networks, etc., prior to or simultaneous with the transfer or separation of the employee. (See **GAM 1-90-30A.7.**)
 - b. **Advanced Leave,** If annual or sick leave has been advanced to an employee and not earned by the time of separation or transfer, the employee is generally obligated to repay the advanced leave. (See **HHS Personnel Manual Instruction 630-1-30J.**)
 - c. **Building Pass** The BBS issued building pass must be returned. If the pass was returned in advance of leaving and a temporary pass was issued, the temporary pass must be returned to the supervisor.
 - d. **Identification Cards** All government issued identification cards such as the FEMA Special Facility Identification Card, credentials and badges must be returned.
 - e. **Keys** All office/desk keys must be returned to the employee's supervisor.

- f. Rotor Vehicle Operator Identification Card An employee who has a Motor Vehicle Operator Identification Card (SF-46) must surrender it when separating or transferring. (See HHS Personnel Manual Instruction 930-1-100.)
- g. Official Files/Records The employee's supervisor is responsible for ensuring that all pertinent files and records in the possession of the employee are returned and retained by the organization for the periods prescribed in the appropriate records disposal schedule.
9. FINANCE It is the responsibility of the cognizant organization (e.g., finance/accounting office or administrative services) to ensure that outstanding employee indebtedness is settled or resolved as follows (Reference: Debt Collection Act of 1982 as implemented by 45 CFR Part 30):
- a. Accountable Forms Any controlled form such as a Government Bill of Lading (GBL) or other documents or **papers**, i.e. blank third party draft stock or Government Transportation Requests (GTR). The issuing office is responsible for ensuring, for those employees responsible for safeguarding these forms, that there is a proper accounting for all forms. (See Departmental Travel Manual Chapter 4-10.)
- b. Credit Cards Any commercial or Government credit card provided directly to an employee or obtained by an employee through a Government assistance contract for use in official Government business. Types of cards include:
- 0 U.S. Government Credit Card
 - 0 Credit card for use while on official Government travel (currently the Diners Card)
 - 0 Small Purchase Credit Card
 - 0 Telephone Credit Card

Employees separating or transferring to a different "CAN"/organization must turn in all Government credit cards to the issuing office. Credit cards issued in the employee's name will be destroyed in the presence of the employee and the account cancelled by the issuing office. (For locations distant from the issuing office, the supervisor will collect the card(s), notify the issuing office, and send the card(s) to the issuing office.)

- c. Employee Emergency Payment Funds provided to an employee when payment for hours already worked was not received by the employee.

HHS Finance Offices may issue an Employee Emergency Payment to temporarily replace a salary payment inadvertently not processed, lost, stolen, etc. The Finance Office is responsible for ensuring that repayment is accomplished within thirty (30) days of the date the Emergency Employee Payment is issued. (See Departmental Accounting Manual Chapters **10-30** and **10-41.**)

- d. Jury Fees Jury fees paid to an employee which represent other than reimbursement for commuting expenses must be collected from the employee.
- e. Relocation Allowances Allowances paid to an employee as a result of relocation from one duty station to another. Amounts determined to have been overpaid to employees must be repaid. (See Departmental Travel Manual Appendix B, Federal Travel -Regulation on Relocation Allowances.)
- f. Travel Advance Funds provided to employees, in advance, to pay for transportation, food, and lodging costs while on official business away from their normal duty station. An outstanding travel advance owed by a departing employee, and any outstanding travel vouchers which the employee has failed to submit, must be repaid and resolved prior to the **employee's** departure. (See Departmental Travel Manual Chapter **3-20.**)

10. PERSONNEL It is the responsibility of the Servicing Personnel Office (**SPO**) to appropriately review, clear and/or resolve the items listed below. If there is indebtedness for these items, the SPO will contact the appropriate office (**e.g.**, payroll, finance, etc.) if necessary to ascertain the amount of the debt and to determine whom the employee should contact to resolve the debt. The SPO must confirm that the indebtedness has been resolved before indicating "**Cleared**" on the Form HHS-419. (See **HHS** Personnel Manual Instruction **550-9.**)

- a. Debt Collections Certain employee debts are tracked by Payroll, including:
- o Health Benefits If an employee continued to receive health benefits during a period he or she

was in a non-pay status, the SPO must determine whether the Government was reimbursed for the health plan premiums for this period.

- o **Salary Overpayments** The SPO must determine if an indebtedness exists due to a salary overpayment to an employee.

b. **Completion of Employment Agreement**

When BBS has paid the travel and transportation expenses of an employee to a new duty station, the employee is generally obligated to continue in the employ of the Federal government for a specified period of time or to repay the expenses. (See BBS Personnel Manual Instructions 571-1 and 571-4).

Other employment incentive and/or allowance agreements may also require repayment when an employee separates prior to completion of the agreement (e.g., Physicians Comparability Allowance or overseas employee's vacation leave travel expenses). (See BBS Personnel Manual Instructions 595-1 or 301-1.)

c. **I s s u e a N o t i c e**

The SPO will ensure that BBS employees are given required notices/forms appropriate to the circumstances of their leaving (e.g., unemployment compensation, thrift savings plan, health benefits, life insurance, post-employment restrictions, executive financial disclosure, etc.). Some forms may require completion and return by the employee. Attention should be directed, in particular, to the following:

- o All separating employees must be given a copy of **GAM** Exhibit 1-90-D, Post-Employment Restrictions Applicable to Former Employees of the Department of Health and Human Services.
- o All separating employees must be given a copy of SF 8, Notice to Federal Employee About Unemployment Insurance.
- o Certain separating employees covered under the "Ethics in Government **Act**" (i.e., SES, PHS Commissioned Officer O-7 and above, Schedule C, Administrative Law Judges, and others as appropriate) must be given a copy of SF 278,

Executive Personnel Financial Disclosure Report.
They **are** required to complete and return the
SF 278 within thirty (30) **days** of separation.

- d. **Security Clearance** If the employee is vacating a sensitive position (Level 2, 3, or **4**), the Personnel Security Representative (PSR) of the organization **MUST** be notified. The PSR will need to debrief the employee if the employee **has a** security clearance (Top Secret, Secret, or Confidential) **and** the security clearance must be withdrawn. The PSR may also need to cancel an ongoing investigation. (See BBS Personnel Manual Instruction 731-1.)
- e. **Training in Outside Institutions** Training of more than 80 hours through a non-Government facility generally obligates an employee to continue in the employ of BBS for a specified period **of** time after completion of the training or to repay certain training expenses. (See Federal Personnel Manual Chapter 410.)
11. **CUSTODIAL OFFICER - BBS-Owned Equipment**
Employees issued typewriters, dictating/transcribing machines, laptop computers, or other items of BBS property must return this equipment to the custodial officer. (See **GAM 1-90-30A.4.**)
12. **LIBRARY** Departing employees must return all books, materials, etc. borrowed from the library.
13. **PARKING PERMIT** Parking permits listed in the name of the departing employee must be returned to the parking management office.
14. **OTHER** Enter in items 14a through 14e other clearance requirements not specified in items 8 through 13.

EMPLOYEE'S CERTIFICATION: Upon completion of the clearance procedures, the employee shall sign and date the certification block in item 15 of the **Form HHS-419**. (If the employee is unable or refuses to sign, the supervisor will note this in item 15.)

SUPERVISOR'S CERTIFICATION: Upon completion of the clearance procedures and the employee certification block in item 15, the employee's immediate supervisor shall sign and date the certification block in item 16 of the Form HHS-419.

DEPARTMENT OF HEALTH AND HUMAN SERVICES
SAMPLE **INSTALLMENT** REPAYMENT AGREEMENT FOR
TRANSFERRING **EMPLOYEE - NOT TO EXCEED ONE YEAR**

I _____, an employee of the Department of Health and Human Services, (Component Name) _____, acknowledge that as of _____, 19____, I am indebted to the Department in the amount of \$_____. The debt consists of \$_____ principal; and accrued late payment charges of \$_____ interest, \$_____ administrative costs, and \$_____ penalty. It arose as a result of my failure to repay the Department for (insert reason) _____

I hereby certify under penalty of perjury that I am financially unable to repay the debt in full in a single payment and request to be allowed to repay it in installments instead of having it offset from my salary or other funds that may be due me.

TERMS OF THE REPAYMENT AGREEMENT:

Repayment of \$_____ (existing principal and all accrued to date late payment charges) with financing interest of _____ percent (Private Consumer Rate in effect on date of agreement) in _____ equal payments of \$_____ payable on the dates listed below. Financing interest over the length of the agreement will amount to \$_____.

PAYMENT DUE DATES:

- | | | |
|-----|-------|--------|
| 1. | _____ | 19____ |
| 2. | _____ | 19____ |
| 3. | _____ | 19____ |
| 4. | _____ | 19____ |
| 5. | _____ | 19____ |
| 6. | _____ | 19____ |
| 7. | _____ | 19____ |
| a. | _____ | 19____ |
| 9. | _____ | 19____ |
| 10. | _____ | 19____ |
| 11. | _____ | 19____ |
| 12. | _____ | 19____ |

(OTHER SIDE IS **TO** BE COMPLETED)

Payments must be made out to the Department of Health and Human Services and be received by the Finance Office at the address noted below on or before the payment due date. Failure to pay any payment on time will result in this repayment agreement being declared in default. Without further notice, any amount owed at the time of default will be referred to your then current Agency for offset against your salary or other funds due to you.

DEPARTMENT OF **HEALTH** AND **HUMAN** SERVICES
(Insert mailing address)

I have read the above repayment agreement and I understand and agree to its terms and conditions as witnessed here by my signature.

Employee's Signature

Date

Current Home Address

City, State, Zip Code



FINANCE OFFICE APPROVAL:

I hereby approve the repayment of the above cited debt by installments.

Approving Official's Signature

Date

(Insert name and title of approving official)

(Insert location of approving official)

**POST-EMPLOYMENT RESTRICTIONS APPLICABLE TO FORMER
EMPLOYEES OF THE DEPARTMENT OF HEALTH AND HUMAN SERVICES
WHO TERMINATE ON OR BEFORE DECEMBER 31, 1990**

I. Restrictions Applicable to ALL Former Employees

All former employees are barred from ever representing another to the Federal government on any particular matter involving specific parties which they were personally and substantially involved in while a government employee. (18 U.S.C. Section 207(a)). Also, there is a two-year prohibition on representation on any such matter which was pending under the former employee's official responsibility during his or her final year of government service. (Section 207(b)(i)). The term "particular matter involving specific parties" includes matters such as grants, contracts, applications, lawsuits, and other matters in which specific named parties are or were involved. It does not include policy matters such as regulations which have general applicability to the outside world.

II. Restrictions Applicable ONLY to Former "Senior Employees"

In addition to the above restrictions, the Department's approximately 335 "Senior Employees" listed at 5 CFR Section 737.33 are also subject to the so-called "**cooling off**" period imposed by 18 U.S.C. Section **207(c)**. For one year after leaving government, a former senior employee may not represent another person or himself in attempting to influence his/her former agency on **any** matter (new or old) which is pending **before, or of** substantial interest to, his/her former agency. However, under Section 207(d)(2) former senior employees whose principal occupation or employment is with (1) a state and local government, or agency or instrumentality thereof, (2) an accredited, degree granting institution of higher education, or (3) a hospital or medical research organization defined under Section **501(c)(3)** of the Internal Revenue Code are exempted from the restrictions of Section 207(c). A second special prohibition in Section **207(b)(ii)** provides that for two years after leaving government, a former senior employee may not aid or assist in representation of a party by personal **presence** on any matter in which he or she was personally and substantially involved.

Please contact your Deputy Ethics Counselor or the Department's Designated Agency Ethics Official at (202) 245-7258 for more information.

July 1990

**POST-EMPLOYMENT RESTRICTIONS APPLICABLE TO FORMER
EMPLOYEES OF THE DEPARTMENT OF HEALTH AND HUMAN SERVICES
WHO TERMINATE ON OR AFTER JANUARY 1, 1991**

I. Restrictions Applicable to ALL Former Employees

All former employees are barred from ever representing another to the Federal government **on** any particular matter involving specific parties which they were personally and substantially involved in while a government employee. (18 U.S.C. Section 207(a)(1)). Also, there is a two-year prohibition on representation on any such matter which was pending under the **former** employee's official responsibility during his or her final year of government service. (Section 207(a)(2)). The term "particular matter involving specific parties" includes matters such as grants, contracts, applications, lawsuits, and other matters in which specific named parties are or were involved. It does not include policy matters such as regulations which have general applicability to the outside world. There are additional restrictions on employees who were involved in trade or treaty negotiations. (Section 207(b)).

IX. Restrictions Applicable ONLY to Former "Senior Employees"

In addition to the above restrictions, the Department's approximately 335 "Senior Employees" (i.e., all EL II-V's, everyone paid at a GS-17 or above, and all 0-7's and above) are also subject to the so-called "cooling off" period imposed by 18 U.S.C. Section 207(c). For one year after leaving government, a former senior employee may not represent another person in attempting to influence his/her former agency on any matter (new or old) which is pending before, or of substantial interest to, his/her former agency. The Secretary is also prohibited from lobbying anyone in HHS for one year and is further barred from lobbying Executive Level officials in the executive branch for one year. (Section 207(d)). However, under Section 207(j)(2) and (3), the restrictions in Sections 207(c) and (d) do not apply to employees whose principal occupation or employment is with (1) a state and local government, or agency or instrumentality thereof, (2) an accredited, degree granting institution of higher education, (3) a hospital or medical research organization defined under Section 501(c)(3) of the Internal Revenue Code, or (4) an international organization of which the United States is a member. All employees subject to the one year bans are also barred for one year from representing, aiding or advising a foreign government or foreign political party on a matter before any Federal agency. (Section 207(f)).

Please contact your Deputy Ethics Counselor or the Department's Designated Agency Ethics Official at (202) 245-7258 for more information.

CHAPTER 14.19
ADMINISTRATION POLICY AND PROCEDURE ON EXECUTIVE PRIVILEGE

1-119-00 Scope
10 Policy and Procedure

1-119-00 SCOPE

The President recently informed the **Chairman** of the Foreign Operations and **Government**, Information Subcommittee of the **House Committee on Government Operations** of the policy and procedure of the Administration with regard to claims of "executive privilege." The text of the President's statement is reproduced in 1-119-10.

1-119-10 POLICY AND PROCEDURE

The President sent a memorandum to the heads of Executive Departments and agencies "establishing a procedure to govern compliance with Congressional demands for information" as follows:

The policy of this Administration is to comply to the fullest extent possible with Congressional requests for information. While the Executive Branch has the responsibility of withholding certain information the disclosure of which would be incompatible with the public interest, this Administration will invoke this authority only in the most compelling circumstances and after a rigorous inquiry into the actual need for its exercise. For those reasons Executive privilege will not be used without specific Presidential approval. The following procedural steps will govern the invocation of Executive privilege:

1. If the head of an Executive department or agency (hereafter referred to as "department head") believes that compliance with a request for information from a Congressional agency addressed to his department or agency raises a substantial question as to the need for invoking Executive privilege, he should consult the Attorney General through the Office of Legal Counsel of the Department of Justice.

2. If the department head and the Attorney General agree, in accordance with the policy set forth above, that Executive privilege shall not be invoked in the circumstances, the information shall be released to the inquiring Congressional agency.

3. If the department head and the Attorney General agree that the circumstances justify the invocation of Executive privilege- or if either of them believes that the issue should be submitted to the President, the matter shall be transmitted to the Counsel to the President, who will advise the department head of the President's decision.

4. In the event of a Presidential decision to invoke Executive privilege, the department head should advise the Congressional agency that the claim of Executive privilege is being made with the specific approval of the President.

5. Pending a final determination of the matter, the department head should request the Congressional agency to hold its demand for the information in abeyance until such determination can be made. Care shall be taken to indicate that the purpose of this request is to protect the privilege pending the determination, and that the request does not constitute a claim of privilege.

RICHARD NIXON.



Subject: THE FREEDOM OF INFORMATION ACT

1-120-00	Scope
05	Policy
10	Responsibilities
15	Operating Guidelines
20	Requests from Congress
25	Relationship Between the FOIA and the Privacy Act
30	Sanctions
35	Administrative Deadlines
40	Department-wide Schedule of Fees
45	Annual Report to Congress

1-120-00 SCOPE

- A. **This chapter** sets forth the Department's policies, practices and procedures for **implementing and administering the Freedom of Information Act (FOIA)** as amended by P. L. 99-570. **Further guidance and details are contained in** the Department's implementing Public Information Regulation (45 **CFR, Part 5**), **as amended**.
- B. **The Freedom of Information Act** requires that all records and documents **in** the possession of **Federal** agencies be made available upon request for inspection **and/or** copying unless **the** records or documents fall within **one** or **more** of the nine specific exemptions identified in the Act.

1-120105 POLICY

- A. **The Department's** policy calls for the fullest responsible disclosure consistent with **those** requirements of confidentiality and administrative necessity **which are recognized in the Freedom of Information Act**. It is the practice of the **Department**, therefore, to **make** records available whenever it is **possible** to do so without violating the rights of individuals or organizations or **impeding** the **Department's** ability to perform its functions.
- B. **The Act** identifies nine specific exemptions **which** agencies may **employ** to **withhold** records.

1-120-10 RESPONSIBILITIES

- A. The Assistant Secretary for public Affairs is responsible for establishing, Departmental Freedom of Information Act policies, coordinating, monitoring, *compiling reports to Congress*, and providing training and technical assistance to Operating Divisions (OPDIVS).
- B. The Department's Freedom of Information Officer is responsible for recommending and implementing policies and procedures to ensure compliance with the requirements of the Act and coordinating consistent application throughout the Department.
- c. Only Freedom of Information Officers as listed below have the authority to release or deny records in response to FOIA requests and to charge, waive, or reduce fees for processing FOIA requests.
- D. Freedom of Information Officers
- | | |
|---|---|
| 1. Office of the Secretary
Family Support Administration
Office of Human Development Services | Director, FOIA/Privacy Act
Division, Office of Public
Affairs |
| 2. Public Health Service | |
| (a) Office of Assistant Secretary
for Health | FOIA Officer, PHS |
| (b) Agency for Health Care Policy
and Research | FOIA Officer, AHCPR |
| (c) Alcohol, Drug Abuse, and
Mental Health Administration | FOIA Officer, Office of
Communications & External
Affairs |
| (d) centers for Disease Control | Director, Office of public
Affairs |
| (e) Food and Drug Administration | Associate Commissioner for
Public Affairs |
| (f) Health Resources and Services
Administration | Associate Administrator
Office of Communications |
| (g) Indian Health Service | Director, Office of
Communications |
| (h) National Institutes of Health | Director, Office of
Communications |

HHS Chapter 1-120
General Administration Manual
HHS Transmittal 90.07 (10/31/90)

- 3. Social Security Administration **Director**
Office of Public Inquiries
- 4. Health Care Financing Administration **Director**, Office of Public
Affairs

E. A decision by one of these officials to deny a **request** for records or to refuse to waive fees may be appealed to the appropriate review authority as **follows**:

Review Authority

- 0 **Office of the Secretary** Assistant Secretary for
Public Affairs
- 0 Family **Support** Administration Assistant Secretary, **FSA**
- 0 **Office of Human Development** Services Assistant Secretary for
Human Development Services
- 0 **Public Health Service (all components)** Assistant Secretary for
Health
- 0 **Social Security Administration** **Commissioner**, SSA, or Designee
- 0 **Health Care Financing Administration** Administrator, **HCFA**

F. Before making a decision on an appeal of a denial, the designated review official will **consult** with the appropriate **Division** of the Office of the General **Counsel** to ensure that the rights **and** interests of all parties affected by the **request** are protected. Also, the **concurrence** of the Assistant Secretary for Public Affairs is **required** on all **appeal decisions, including those on fees**. When the review official **responds** to an appeal, that constitutes the Department's final action **on** the **request**.

1-120-15 OPERATING GUIDELINES

- A. A "**Freedom of Information request**" is any **request** for existing records, in the **control**, custody, or possession of the Department. **Some** requests for records may also be "Privacy Act requests." (See Section 1-120-20 below). **Requests** for "information" (as distinguished from **requests** for "**records**") or requests for **copies** of publications and other information materials **produced for public distribution** are not "**Freedom of Information requests**" and should be handled in **accordance** with established procedures for responding to public inquiries.
- B. **Oral** requests may be made to a **Freedom of Information** Officer whose staff will **put** in writing such requests. **This** is to ensure the requester's

rights as **provided** by the **FOIA** and the Department's regulations such as the right to appeal in the case when a denial is **made**.

- c. Even **though** requests for records do not **make** specific reference to the **Freedom** of Information Act or the Department's Public Information **Regulation**, they must be treated as **though they did**. Search, review, and copying fees may be charged to the requester in accordance with the provisions set forth in the Public Information **Regulation**.

D. Releasing Records

1. If all records responding to the request are to **be** released, **the** **FOI** Officer will **send one** of the two copies provided by the program office to the requester, together with a letter that informs the requester that:
 - (a) All records that fall within the scope of the request are enclosed (or will be sent at a later date):
 - (b) No deletions have been made and no records withheld; **and**
 - (c) An invoice for fees is enclosed for **allowable charges** or that the fees are waived.
2. If a **reasonable** search fails to locate the records, **the** requester will be notified in writing. Such a notice does not constitute a denial of access **to records**.

E. Withholding Records

When any deletion is **made** from records that will be released, or when any record is withheld, the **FOI** Officer making that decision, will notify the requester in writing and

1. **Describe** the deleted portions or withheld records in general **terms** only;
2. State the **FOIA** exemption **and** the provision of the Public Information Regulation that permits the withholding;
3. Enclose an invoice for fees for allowable **charges** or waive the fees;
4. **Explain** the requester's right to **appeal** the decision not to **comply** fully with the **request**, and identify the official to **whom** the apply should be sent:

5. **Maintain** appropriate **documentation** of records or portions withheld in case of an appeal.

F. Appeals

In the event of an appeal, the appropriate review official will:

1. Obtain the records from the **FOI Officer**:
2. **Conduct** an independent evaluation of the initial determination:
3. **Consult** with the **Office of General Counsel** and obtain **concurrence** of the Assistant Secretary for Public Affairs:
4. **Notify** the requester of this final agency decision and the right to seek judicial review:
5. **Prepare a description of** any records that are **to be** denied an appeal in sufficient detail to apprise the requester of the nature of **the documents** denied, if adequate **explanation has** not already been provided; and
6. **Maintain appropriate documentation** concerning the disposition of appeals.

(HHS regulations require **FOI appeals** files to be maintained for four (4) years after final **determination** by the agency, or three (3) years after final adjudication by courts, whichever is later.)

1-120-x) **REQUESTS FROM CONGRESS**

When a **FOIA** request is received from a **Member of Congress**, it should be first determined whether it is a duly authorized **request on behalf of Congress** through a legislative **committee** or **subcommittee**. If so, the request falls within subsection (c) of the **FOIA** and **only** a specially authorized claim of executive privilege **could** be **interposed** to justify **nondisclosure**. Any **FOIA** request submitted by the **chairman of a committee or subcommittee** on a subject within its jurisdiction **should** routinely fall into this category. If the request is **not** an official **committee** or subcommittee request, it should then be processed as a request from "**any person**" under the **FOIA**, but with particular regard for the consideration of congressional relations.

1-120-25 **RELATIONSHIP BETWEEN THE FOIA AND THE PRIVACY ACT**

- A. **The FOIA applies to all requests for records whether or not the records are maintained in a designated Privacy Act System of Records.**
- B. **The Privacy Act gives individuals the right of access to most records about themselves that are in a designated Privacy Act System of Records.**
- C. **If an individual requests access to a record concerning himself, retrieved by his/her name or personal identifier, and contained in a designated Privacy Act System of Records, the HHS employee receiving the request should mark it "PRIVACY ACT REQUEST" and route it without delay to the appropriate System Manager, as identified in the System notice.**
- D. **If a requester requests records concerning an individual other than himself and the records are contained in a designated Privacy Act System of Records, the request constitutes an FOI request. Unless disclosure is required by the FOIA, the Privacy Act prohibits disclosure of the records. The FOIA requires disclosure of records in a designated Privacy Act System of Records to a third party who requests them unless FOIA's Exemption 6 applies because "disclosure would constitute a clearly unwarranted invasion of personal privacy," or if any other FOIA exemption applies. In making a personal privacy determination, we will balance an individual's right to privacy against the public interest in disclosure of the records. Public interest in this context is limited to the kind of public interest for which Congress enacted the FOIA, i.e., to provide significant insight into an agency's performance of its statutory duties.**
- E. **If a requester mislabels a request, mistakenly saying it falls under one Act rather than the other, we will place it in the proper channels, and, in any event, we will apply the Act that provides the most information.**

1-120-30 **SANCTIONS**

The 1974 Amendments to the Freedom of Information Act empower a District Court to hear Freedom of Information cases and to determine whether or not an agency's personnel acted arbitrarily or capriciously in withholding requested records. If the court so finds, the Office of Special Counsel must initiate a proceeding promptly to determine whether disciplinary action is warranted against the responsible official(s) or employee(s). The Special Counsel's findings and recommendations are to be submitted to the appropriate

administrative authority of the agency and to **the** responsible official or **employee**. **The** administrative authority shall take **the** disciplinary action **recommended by the** Special Counsel. (5 U.S.C. 552(a)(4)(F))

1-120-35 ADMINISTRATIVE DEADLINES

- A. Determinations **on whether** records are **to be** released or withheld must be made and the requester notified within 10 working days of the date of receipt in the responsible FOI office. Extensions of time will not normally be granted. However, **the time limit may be** extended by written notice to the requester for not longer than an additional 10 working days **only** in unusual circumstances. **The term "unusual circumstances"** includes the need:
1. **To** search for and collect the **requested** records **from** field facilities or other establishments that are separate from the office processing the **request**;
 2. **To** search for, collect, and examine a voluminous **amount of** separate **and** distinct records which are involved in a single request;
 3. **For** consultation which shall be conducted with all practicable speed with another office or **agency having** a substantial interest in the determination of the request or **among** two or **more components** or the agency having substantial subject-matter interest.
 4. **To** conduct negotiations with submitters and requesters of information to determine the **nature and** extent of **non-disclosable** materials.
- B. If **such** extension is required, the requester will be notified in writing **with an explanation of why the extension was necessary and** the date by which a **determination will** be made. **Only** the officials designated in section 1-120-10 are authorized to extend the time limits **on** initial review.
- C. **Decisions on appeals must be** transmitted in writing within 20 working days **from** receipt **in** the office of the **appeal** official. **Extension** of the time limit may be **granted only** for the number of days not used to extend the initial determination period up to a maximum of 10 days. **Such extension may be granted only for the reasons** previously stated.
- D. Failure to **meet** either of these deadlines entitles the requester to **consider** his administrative remedies as **exhausted** and to seek **immediate** judicial review.

1-120-40 DEPARTMENT-WIDE SCHEDULE OF FEES

- A. A detailed schedule of fees for **processing FOIA** requests is set forth in the **Public Information Regulation 45 CFR Subpart E**. The officials responsible for making initial determinations **shown** in Section 1-120-10 **shall also determine whether** fees are to be charged or **waived in responding to requests** for records. If a fee is to be assessed, the responsible **FOI Officer will determine the** actual or estimated **charge** for **providing** the record to the requester. There is no charge for processing an **FOIA** request when the cost of collection **would** exceed the amount of the fee.
- B. **The Anti-Drug Abuse Act of 1986 (P.L. 99-570)** amended the **Freedom of Information Act** by **establishing** three categories of requesters and the **incremental charges** that can be assessed against them:
1. Fees are limited to reasonable standard **charges** for **document search, duplication and review** when records are requested for **commercial** use:
 2. **Fees are limited to standard charges for document duplication only when the request is made by an educational or noncommercial scientific institution whose purpose is scholarly or scientific research; or a representative of the news media; and**
 3. **For any request not described in (1) and (2) above, fees are limited to reasonable standard charges for document search and duplication.**
- C. **Fee schedules are limited to only the direct costs of search, review and duplication. Review costs** are limited to time spent during the **initial examination of a document to determine** whether the **document must be disclosed. Review costs** cannot include time spent in **resolving** issues of law or policy.
- D. **No fee may be charged** to requester in **the subsections (2) and (3) above**
- 0 If **the cost of routine collection and processing of the fee are likely to equal or exceed the amount of the fee; or**
 - 0 **For the first two hours of search or for the first one hundred pages of duplication.**
- E. **Fees will be paid by check, money order or credit card payable to the "U.S. Department of Health and Human Services" or to the unit as directed in the billing invoice.**

- F. Advance **payment** may not **be** required of a requester unless the requester has failed to pay fees for an earlier request in a timely fashion or **the FOI Officer has determined that the fee will exceed \$250.**
- G. Documents must be provided without charge or at a reduced charge if disclosure of **the information** is in the public interest because it is likely to contribute significantly to public understanding of the **operations** or activities of the Department and is not primarily in the **commercial** interest of the requester.
- H. **Requesters who have been denied a fee waiver or reduction may appeal to one of the reviewing authorities specified in 1-120-10.**

1-12045 ANNUAL REPORT TO CONGRESS

- A. **The 1974 amendments to the Freedom of Information Act require that the Department submit an annual report on or before March 1 of each calendar year to the Speaker of the House and to the President of the Senate for referral to the appropriate committees of the Congress. The report should include:**
1. The number of determinations not to **comply** with requests for records **and the reasons for each determination;**
 2. The number of appeals and **the reasons** for the action taken on each **appeal** that results in a denial of **information;**
 3. **The names and titles or positions of each person responsible for the denial of records requested under this section and the number of instances of participation for each;**
 4. **The result of each proceeding involving the sanction provision of the 1974 amendments, including a report of the disciplinary action taken against the officer or employee who was primarily responsible for improperly withholding records, or an explanation of why disciplinary action was not taken;**
 5. A copy of **every rule** made in connection with the Freedom of Information Act:
 6. A copy of the fee schedule and the total **amount** of fees collected for making records available: and

7. **Such** other information as indicates efforts to properly administer the **Freedom** of Information Act. The **Department's Freedom** of Information Officer will coordinate the **compilation** of data to **be** included in the annual report to **Congress and** will issue instructions **to** public affairs officials **on** format and procedures.
- B. Each FOIA official responsible for making** initial determinations on **Freedom** of Information requests will **complete** and forward to the **Department's Freedom of Information** Officer on an annual basis a **Freedom of Information Act Report.**

AGENCY:

REPORTING PERIOD:

(From) _____ (To) _____

DATE OF REQUEST	REQUESTOR OR APPELLANT	DOCUMENT(S) REQUESTED	ACTION OFFICE	INTERIM RESPONSE DATE	RESPONSE DATE	ACTION IF A DENIAL (CITATION IF A DENIAL)	APPEAL DATE	INTERIM APPEAL RESPONSE DATE	FINAL APPEAL RESPONSE DATE	NATURE OF APPEAL RESPONSE (Approved, Denied)
8/17/73	Jo J. Doe Arbrey at Law 13 Blank Ave. La Angeles, CA 90009	Audit Report: LA County Schools	OCR		8/27/73	Denied: 5 USC 552 b)(4) & 45 CFR Sec. 5.73	9/15/73	9/28/73	10/20/73	Denied
8/20/73	Ja Smith Natl Student Lobby 17 K St, NW Wa DC 20006	Copy of letter from Secretary to Dr. John Fox, CA State Supt. of Schools	ES		8/28/73	Granted				
8/21/73	DcG. Brown Fbflex Sysys. Inc 85 Choice Lane Norich, Conn. 00021	Copy of Contract MFP-000-73-HEW-06	OASAM	8/29/73	9/16/73	Partial Denial: 5 USC 552(b)(4) & 45 CFR Sec. 5.73				

3/4" 1 & 3/4" 3/4" 1 & 3/4" 3/4" 3/4" 3/4" 3/4" 3/4" 3/4" 1"

General Administration
ANNUAL REPORT TO CONGRESS
X1-120-3



CHAPTER 1-121

REVIEW PROCEDURES FOR AUDIO-VISUAL MATERIALS

- 1-121-00 Purpose
- 10 Scope
- 20 Responsibility
- 30 Clearance for Procurement
and Production

1-121-00 PURPOSE

This chapter sets forth procedures for the review and approval of all audio-visual materials funded under HEW grants or contracts and intended for use with the public.

1-121-10 SCOPE

- A. "Audio-visual materials" refers to motion pictures, videotape productions, slide shows, filmstrips, audio recordings, exhibitry or similar materials, as well as to the steps involved in procuring them, including design, layout, preparation of scripts, filming or taping, sound recording, editing, fabrication, or other activities.
- B. Audio-visual materials used or designed for use in the following situations would routinely be considered as intended for use with the public:
 - 1. broadcast on commercial, **CATV**, or educational public television facilities;
 - 2. showing in commerical movie houses;
 - 3. showing in public places (i.e., airports, waiting rooms, bus or railroad depots, vacation resort facilities, conventions, exhibit halls, etc.); and
 - 4. showing before civic associations, schools, clubs, fraternal organizations, **or** similar lay groups.
- C. Coverage under this procedure is modified **as** follows:
 - 1. audio-visual materials intended for use as a teaching tool in a classroom setting or as a training tool for professional groups will be reviewed only as to Department identification and proper procurement procedures; and

(1-121-10 continued)

2. captioned films for the deaf (films not originally produced for use with the deaf) shall be excluded from these regulations, except as regards proper Department identification.

1-121-20 RESPONSIBILITY

- A. The Office of the Assistant Secretary for Public Affairs (**ASPA**), Office of the Secretary, has primary responsibility for the review and approval of all audio-visual materials (except those produced in-house) purchased or made for use with those publics identified in 1-121-10 (SCOPE) above. This review is made to ensure that films acquired or produced with HEW funds contain proper Department identification, do not become a source of embarrassment to the Department, and assist the Department in the attainment of programmatic objectives.
- B. It is the responsibility of **ASPA** to receive, review, and approve (or disapprove) prior to the initiation of negotiations requests for the procurement of audio-visual materials intended for showing to the general public. **ASPA** will require review and clearance of projects at appropriate stages of production or procurement process.

1-121-30 CLEARANCE FOR PROCUREMENT AND PRODUCTION

- A. Follow the procedures specified in the HEW Procurement Manual, Subpart 3-4.5400 and the HEW Public Affairs Management System Manual, Subpart 75.1.3, except that Revised Form 524A (Request for Audiovisual Materials) is used in lieu of a memorandum, with the exception of procurement of exhibitry, which shall be submitted in a memorandum.
- B. **ASPA** reserves the right to review treatments, scripts, shooting outlines, story boards, layouts, etc., in specific instances. When such review is required, it will be identified at the time of clearance for procurement.
- c. Prior to submission to **ASPA**, HEW agencies proposing an audiovisual project will clear the proposal with appropriate authorities at the agency level in accordance with agency requirements.

Subject: MAJOR SYSTEM ACQUISITIONS

1-150-00 Purpose
10 Scope
20 Policy
30 Background
40 Definitions
50 General
60 Major Duties and Responsibilities
70 Training

Exhibit

1-150-A Office of Management and Budget (OMB) Circular No. A-109, dated April 5, 1976 - Major System Acquisitions

f-150-00 PURPOSE

This chapter prescribes Departmental policies, procedures and responsibilities for implementing the provisions of OMB Circular NO. A-109, Major Systems Acquisitions.

J-150-10 SCOPE

This chapter applies to all Departmental organizational elements and shall be used in conjunction with OMB Circular No. A-109 (See Exhibit 1-150-A) to obtain a comprehensive knowledge of the major system acquisitions concept.

J-150-20 POLICY

The Department shall adhere to the objectives and guidance stated in OMB Circular No. A-109 and this chapter to ensure the effectiveness and efficiency of the process of acquiring a major system.

f-150-30 BACKGROUND

OMB Circular No. A-109 (the Circular) establishes Government-wide policy pertaining to the acquisition of a major system and establishes specific policy and procedural requirements for implementation by Executive agencies and departments.

The Circular provides for:

- A. Top level management attention to the determination of Departmental mission needs and goals:
- B. An integrated systematic approach for establishing mission needs, and for budgeting, contracting, and managing programs;
- c. Improved opportunities for innovative private **sector** contributions to national needs: and
- D. Early communications with Congress and **OMB** in the acquisition process by relating major system acquisitions to Departmental mission needs and goals.

f-150-40 DEFINITIONS

- A. **Major System.** OMB Circular No. A-109 defines a major **system** as "**that** combination of elements that will function to produce the capabilities required to fulfill a mission need. The elements may include, for example, hardware, equipment, software, construction, or other improvements or real property." In addition, the Circular expresses the basic major system acquisition criteria in terms of programs that:
 - 1. Are directed at, and critical to, fulfilling a Departmental mission:
 - 2. Entail the allocation of relatively large resources; and
 - 3. Warrant special management attention.

The Department has established a dollar threshold of \$100 million (and above) to further define the parameters of a major system. Any proposed acquisition meeting these four criteria shall be considered a major system and **shall be** acquired through the application of the A-109 policy. The **Secretary** may also decide to apply the A-109 policy to any acquisition having an estimated system cost between \$60 million **and** \$100 million which meets the three basic OMB major system criteria. (See **1-150-60C2**).

- B. **Mission Need.** A mission need is described as the capability required to accomplish a Departmental mission or to effectively pursue a scientific, technological, or other opportunity related to a Departmental mission, including cost and schedule considerations. Mission needs may be identified through Departmental analyses or through studies directed by appropriate executive or legislative authorities.
- C. **Mission Need Statement.** A mission need statement explains the mission need by **stating the purpose** of the mission, capability, Departmental activities involved, time constraints, value or worth of meeting the need, relative priority, and operating constraints. The mission need statement expresses needs and program objectives in mission terms rather than in equipment terms to encourage innovation and competition in the private sector.

J-150-50 GENERAL

The Office of Management and Budget has emphasized that implementation of the A-109 policy will serve to shorten the acquisition cycle by providing a methodical or systematic approach to a logical sequence of acquisition events and involve top management in all stages of the acquisition process, from start to finish, allowing for continual control and monitoring of the system process.

The following briefly indicate the major steps encompassing a typical major system acquisition:

- A. Analyze mission.
- B. Evaluate and reconcile needs in context of mission, resources, and priorities.
- c. Determine mission need.
- D. Prepare mission need statement.
- E. Submit mission need statement to Secretary for approval.
- F. Submit mission need to Congress via budget process.

- G. Designate a Program Manager.
- Tailor an acquisition strategy and develop plans.
 - Develop solicitation for alternate system design concepts.
- H. Competitively explore alternate system design concepts by contract.
- I. Select competitive system design concepts to be advanced to a test/demonstration phase **or** obtain Secretarial authorization to proceed with the development of a noncompetitive (single concept) system.
- J.** Conduct competitive demonstrations.
- K.** Select concept(s) and enter into full scale development, test, evaluation, and initial implementation or production.
- L. Commit system to full implementation or production.

The need for the acquisition of a major system, or a system meeting the three basic OMB criteria (excluding the \$100 million dollar threshold) will be formally identified prior to the initial budget request review process and submitted to the Secretary for approval. The major system will be indicated in the budget request submitted to the Deputy Assistant Secretary, Budget during the initial budget review process. (See **1-150-60C2.**)

The mission need normally is communicated to OMB informally during the analysis and writing of the mission need statement.

After approval by the Secretary, the mission need is communicated to Congress during the budget process in accordance with OMB Circular Nos. A-10 and A-11.

Approval of the mission need statement begins the search for mission need solutions by approving authority to competitively explore alternative system design concepts by contract. This initial approval and the establishment of a

system acquisition program does not automatically mean that a new major system will eventually be acquired. Based on an approved need, designated Department activities may continue to analyze other optional means of satisfying the need in parallel with the contractual exploration of alternative systems which may, as development proceeds, **prove** unacceptable. This evaluation of options, including the alternative system design concepts, provides the basis for subsequent key decisions in the major system acquisition process.

A program manager should be designated and provided a charter for each major system acquisition program as soon as possible after the mission need has been approved. The program manager will be responsible for developing the acquisition strategy and plans and soliciting alternate system design concepts.

After prospective contractors have submitted offers based upon the solicitation and the offers evaluated by a panel of experts, multiple contracts are awarded to further competitively explore the alternative concepts, contractual efforts are evaluated, and the program manager recommends selected concepts for competitive demonstration.

The Secretary exercises the second key decision by committing the continued expenditure of resources to meet the mission need and selecting the proposed system concepts for demonstration and evaluation.

Competitive demonstrations are intended to verify that the chosen concepts are sound, perform in an operational **environment**, and provide a basis for selection of the system design concept(s) to be continued into full-scale development and initial implementation (or full implementation).

At the completion of the evaluation of the competitive system alternatives, the program manager updates the acquisition strategy and the anticipated cost and schedule data and forwards these items, along with the evaluation results and his recommendation, to the Secretary for the third key **decision**--selection of the system design concept(s) to enter into full scale development and initial implementation.

This phase should verify that the chosen system design concept(s) is sound and the risks are acceptable.

The final decision **reserved for the Secretary** is the **authorization of full** implementation of the major system needed to satisfy the mission need.

1-150-60 MAJOR DUTIES AND RESPONSIBILITIES

A. **Secretary.** The Secretary makes the initial determination **as** to which **programs will be** subject to the major system acquisition process. Once the program has been designated, the Secretary must be kept apprised **of** its progress, and therefore, shall make the four key decisions involved in a major system acquisition. They are:

1. Approval of mission need statement (Identification and definition of a specific mission need to be fulfilled, the relative priority assigned within the Department, and the general magnitude of resources that may be **invested**).
2. Selection of competitively derived system design concepts to be advanced to a test/demonstration phase or authorization to proceed with the development of a noncompetitive (single concept) system.
3. Commitment of a system to full-scale development and initial implementation of limited production.
4. Commitment of a system to full implementation or production.

In cases where more than one Operating Division (OPDIV), or Other major Departmental activity is involved in the acquisition of a major system, the Secretary will determine and assign the roles and responsibilities of each activity.

B. Acquisition Executive.

1. The Acquisition Executive is responsible for integrating and unifying the Department's major system acquisition management process and for monitoring the implementation **of** the A-109 **policy** and the practical applications under that policy.

2. The Acquisition Executive is not responsible for conducting the major system acquisition; that responsibility remains with the Departmental activity which has identified the requirement for the **major** system that will accomplish that activity's **mission** need.
3. The Departmental Acquisition Executive (DAE) is the Assistant Secretary for Management and Budget (ASMB). This appointment has been made by the Secretary because the ASMB is responsible for the primary functional areas pertinent to the major system acquisition process.
4. The DAE shall evaluate each of the four key decision recommendations prior to submission to the Secretary and shall be kept informed regarding all actions taken under a major system acquisition process.
5. In cases where more than one OPDIV or other major Departmental activity is involved in the acquisition of a **major** system, the DAE will make recommendations to the Secretary regarding the roles and responsibilities of each activity.

C. Heads of **OPDIV's**, Heads of OPDIV **Major** Elements, Assistant Secretaries, Heads of OS Staff Offices, Regional Directors, Heads of **OPDIV's**, heads of OPDIV major elements, assistant secretaries, heads of OS staff offices, and regional directors are responsible for:

1. Identifying mission needs;
2. Notifying the Secretary of major system, and possible **major system**, acquisitions. (Approximately three months prior to the initial budget **request** submission to the Deputy Assistant Secretary, Budget, a memorandum shall be prepared and submitted to the Secretary, through the DAE, identifying each proposed **major system** acquisition meeting the four criteria, each proposed **major** system acquisition meeting the three OMB criteria and having an approximate cost ranging between \$60 M and \$100 **M**, and each proposed acquisition not meeting one or more of the three OMB criteria but having an approximate cost ranging between \$60 **M** and \$100 M.

Each acquisition shall be ranked as to its priority in the overall budget plan. Justifications and rationale supporting the determination that each acquisition between \$60 **M** and \$100 **M** meets or fails to meet the major system acquisition criteria shall be included in the memorandum. The Secretary will approve or disapprove each acquisition, and a copy of the Secretary's determinations will be furnished the Deputy Assistant Secretary, Budget. Upon receipt of the Secretary's determination, the head of the OPDIV, etc. will add the approved acquisitions to the initial budget request submissions.)

3. Assisting the Secretary, through the DAE, in making the four key decisions:
4. Designating **a** program manager for each major system acquisition:
5. Developing the program manager's charter in coordination with the program manager, and providing it to the DAE for approval:
6. Ensuring the program manager fulfills the requisite responsibilities and discharges the duties in accordance with the Circular and this chapter;
7. Becoming familiar with the requirements of the Circular and this chapter and ensuring staffs become familiar with the requirements.
8. Implementing the requirements of the Circular and this chapter:
9. Adhering to all principles **and** requirements concerning major system acquisition policies and procedures:
10. Establishing and maintaining clear lines of authority, responsibility, and accountability **for** the management of each major system acquisition program: and
11. Abolishing and precluding management layering and the placement of excessive reporting requirements on program managers and contractors.

D. Deputy Assistant Secretary, Budget. The Deputy Assistant Secretary, Budget is responsible for:

1. Providing guidance to the heads of the **OPDIV's** etc. regarding the identification of major system acquisitions in all budget submissions;
2. Identifying major system acquisitions during budget reviews and indicating them to the Secretary during his review: and
3. Verifying that major system acquisitions are accurately reported and assigned a relative priority ranking in budget submissions, based upon the Secretary's approval determinations.

E. Program Manager.

1. A program manager is to be appointed for each major system acquisition.
2. The program manager must thoroughly understand what is involved in the major system, understand user needs and constraints, and possess requisite management skills and experience. The program manager is to be provided with budget guidance and a written charter outlining specific authorities, responsibilities, and accountabilities for accomplishing the program objectives. However, management layering will be minimal to preclude restricting the program manager. Necessary resources will be made available to the program manager to fulfill the mission need.
3. The program manager ideally should be a **multi-**disciplined, experienced manager with sufficient tenure and interest in the program to provide continuity with full personal accountability for action taken. The organization and management level of the program manager should be consistent with the importance and scope of the program. A basic knowledge of past experience with the particular program area is a highly desirable prerequisite for the program manager.

4. The program manager is to be provided with a charter to **serve** as a form of a contract between the program manager and the Department (OPDIV). This charter, which is developed specifically for each major system acquisition program, sets forth the scope, objectives, activities, organization and composition of the program manager's major system acquisition team, responsibilities, and the method of operations. Line and staff levels and lines of **authority** and accountability should be identified. All program objectives should be stated in mission need terms and the manner of presentation should not preclude any viable alternative solutions.
5. An initial responsibility of the program manager should be to recruit a staff or identify a team with the requisite skills and experience to manage the assigned project. Since acquisition personnel play a vital role in the A-109 process, they should be included at the earliest practicable point.
6. One of the program manager's first tasks will be to develop an acquisition strategy and plan. This will require that the program manager's team think through the acquisition process and the myriad of individual considerations involved. Based upon this review and evaluation, the factors must be integrated and blended **to** achieve the program objective(s) in an economical, effective, and efficient manner. In developing a system acquisition strategy, considerable thought should be given to specific program goals and objectives. The approach should not be constrained by past routine practices or follow a "schoolbook" solution--the acquisition strategy is to be tailored to the mission need.
7. The strategy should form the basis for the program manager's system acquisition plan. The plan should be used to communicate with higher authority, the management team, and industry. The plan also should provide the means of measuring accomplishments and risks and handling contingencies as the program progresses. At program initiation, it is neither possible nor desirable to address all considerations in detail. It is possible and desirable, however, to examine and **schedule** when decisions on each

consideration can and must be made throughout the acquisition process, that is, to develop and report milestones. Also, there should be a means of refining the strategy and plan as the program proceeds.

8. The program manager is responsible for preparing, and submitting to the DAE through established management channels, the acquisition strategy, the acquisition **plan**, and the key **decision** analyses, findings, and recommendations. When developing the acquisition plan, the program manager shall provide for a schedule to report pertinent milestones throughout the system acquisition process to indicate progress and interrelationships with the objectives of the Circular. These milestone reports shall also be submitted to the DAE for review.

1-150-70 TRAINING

Training needs will be identified as the Department becomes involved with the application of the major system acquisition policy. Program managers and other personnel to be directly involved shall be required to attend formal training sessions sponsored by the Federal government.





EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

April 5, 1976

CIRCULAR HO. A-109

TO THE HEADS OF EXECUTIVE DEPARTMENTS AND ESTABLISHMENTS

SUBJECT: Major System Acquisitions

1. Purpose. Circular establishes policies, to be followed by executive branch agencies in the acquisition of major systems.

2. Background. The acquisition of major systems by the Federal Government constitutes one of the most crucial and expensive activities performed to meet national needs. Its impact is critical on technology, on the Nation's economic and fiscal policies, and on the accomplishment of Government agency missions in such fields as defense, space, energy and transportation. For a number of years, OMB has been deeply concerned over the effectiveness of the management of major system acquisitions. The report of the Commission on Government Procurement recommended basic changes to improve the process of acquiring major systems. This Circular is based on executive branch consideration of the Commission's recommendations.

3. Responsibility. Each agency head has the responsibility to ensure that the provisions of this Circular are followed. This Circular provides administrative direction to heads of agencies and does not establish and shall not be construed to create any substantive or procedural basis for any person to challenge any agency action or inaction on the basis that such action was not in accordance with this Circular.

4. Coverage. This Circular covers and applies to:

a. Management of the acquisition of major systems, including: Analysis of agency missions. Determination of mission needs. Setting of program objectives. Determination of system requirements. System program planning. Budgeting and funding. Research. Engineering. Development. Testing and evaluation. Contracting. Production. Program and management control. Introduction

(Ho. A-109)

of the system into use or otherwise successful achievement of program objectives.

b. All programs for the acquisition of major systems even though:

(1) The system is one-of-a-kind.

(2) The agency's involvement in the system is limited to the development of demonstration hardware for optional use by the private sector rather than for the agency's own use.

5. Definitions. As used in this Circular:

a. Executive agency (hereinafter referred to as agency) means an executive department, and an independent establishment within the meaning of sections 101 and 104(1), respectively, of Title 5, United States Code.

b. Agency component means a major organizational subdivision of an agency. For example: The Army, Navy, Air Force, and Defense Supply Agency are agency components of the Department of Defense. The Federal Aviation Administration, Urban Mass Transportation Administration, and the Federal Highway Administration are agency components of the Department of Transportation.

c. Agency missions means those responsibilities for meeting national needs assigned to a specific agency.

d. Mission need means a required capability within an agency's overall purpose, including cost and schedule considerations.

e. Program objectives means the capability, cost and schedule goals being sought by the system acquisition program in response to a mission need.

f. Program means an organized set of activities directed toward a common purpose, objective, or goal undertaken or proposed by an agency in order to carry out responsibilities assigned to it.

g. System design concept means an idea expressed in terms of general performance, capabilities, and characteristics of hardware and software oriented either to

operate or to be operated as an integrated whole in meeting a mission need.

h. Major system means that combination of elements that will function together to produce the capabilities required to fulfill a mission need. The elements may include, for example, hardware, equipment, software, construction, or other improvements or real property. Major system acquisition programs are those programs that (1) are directed at and critical to fulfilling an agency mission, (2) entail the allocation of relatively large resources, and (3) warrant special management attention. Additional criteria and relative dollar thresholds for the determination of agency programs to be considered major systems under the purview of this Circular, may be established at the discretion of the agency head.

i. System acquisition process means the sequence of acquisition activities starting from the agency's reconciliation of its mission needs, with its capabilities, priorities and resources, and extending through the introduction of a system into operational use or the otherwise successful achievement of program objectives.

j. Life cycle cost means the sum total of the direct, indirect, recurring, nonrecurring, and other related costs incurred or estimated to be incurred, in the design, development, production, operation, maintenance and support of a major system over its anticipated useful life span.

6. General policy. The policies of this Circular are designed to assure the effectiveness and efficiency of the process of acquiring major systems. They are based on the General Policy that Federal agencies, when acquiring major systems, will:

a. Express needs and program objectives in mission terms and not equipment terms to encourage innovation and competition in creating, exploring, and developing alternative system design concepts.

b. Place emphasis on the initial activities of the system acquisition process to allow competitive exploration of alternative system design concepts in response to mission needs.

c. **Communicate** with Congress early in the **system** acquisition process by relating major system acquisition program to agency mission needs. This communication should follow the requirements of **Office of Management and Budget (OMB) Circular No. A-10 concerning** information related to budget estimates and related materials.

d. Establish **clear** lines of **authority**, responsibility, and accountability **for** management of major system acquisition programs. **Utilize appropriate** managerial levels in decisionmaking, and obtain **agency head** approval **at key** decision points in **the** evolution of **each acquisition** program.

e. Designate a **focal point** responsible for **integrating and unifying the** system acquisition management process and **monitoring** policy implementation.

f. **Rely on** private industry **in** accordance with the policy established by **OMB Circular No. A-76**.

7. **Major system acquisition management objectives.** Each major system should:

a. **Ensure** that each **major** system: Fulfills a **mission** need. **Operates effectively** in its **intended** environment. **Demonstrates a level** of performance and reliability that justifies **the allocation** of the **Nation's** limited resources for its acquisition and ownership.

b. Depend on, whenever **economically** beneficial, competition between similar or **offering system** design concepts **throughout the entire** requisition process.

c. Ensure **appropriate trade-off** among investment costs, ownership costs, schedules, and **performance characteristics**.

d. Provide strong checks and balances by **ensuring** **adequate system test and evaluation**. Conduct such tests and **evaluation** independent, where practicable, of **developer and user**.

e. Accomplish system acquisition **planning**, built on **analysis of agency** missions, which implies **appropriate resource allocation** resulting from **clear** articulation of **agency mission needs**.

5

f. Tailor an acquisition strategy for each program, as soon as the agency decides to solicit alternative system design concepts, that could lead to the acquisition of a new major system and refine the strategy as the program proceeds through the acquisition process. Encompass test and evaluation criteria and business management considerations in the strategy. The strategy could typically include:

- Contracting process as an important tool in the acquisition program.
- Scheduling of essential elements of the acquisition process.
- Demonstration, test, and evaluation criteria.
- Content of solicitations for proposals.
- Decisions on whom to solicit.
- Methods for obtaining and sustaining competition.
- Guidelines for the evaluation and acceptance or rejection of proposals.
- Goals for design-to-COST.
- Methods for projecting life cycle costs.
- Use of data rights.
- Use of warranties.
- Methods for analyzing and evaluating contractor and Government risks.
- Need for developing contractor incentives.
- Selection of the type of contract best suited for each stage in the acquisition process.
- Administration of contracts.

g. Maintain a capability to:

- Predict, review, assess, negotiate and monitor costs for system development, engineering, design, demonstration, test, production, operation and support (i.e., life cycle costs).
- Assess economic cost, schedule and performance experience against predictions, and provide such assessments for consideration by the agency head at key decision points.
- Make new assessments where significant costs, schedule or performance variances occur.
- Estimate life cycle costs during system design concept evaluation and selection, full-scale development, facility conversion, and production, to maintain appropriate trade-offs among investment costs, ownership costs, schedules, and performance.
- Use independent cost estimates, where feasible, for comparison purposes.

8. Management structure.

a. The head of each agency that acquires major systems will designate an acquisition executive to integrate and unify the management process for the agency's major system acquisitions and to monitor implementation of the policies and practices set forth in this Circular.

b. Each agency that acquires or is responsible for activities leading to the acquisition of major systems will

(No. A-109)

establish clear lines of authority, responsibility, and accountability for management of its major system acquisition programs.

c. Each agency should preclude management and placing nonessential reporting procedures and paperwork requirements on program managers and contractors.

d. A program manager will be designated for each of the agency's major system acquisition programs. This designation should be made when a decision is made to fulfill a mission need by pursuing alternative system design concepts. It is essential that the program manager have an understanding of user needs and constraints, familiarity with development principles and requisite management skills and experience. Ideally, management skills and experience would include: • Research and development • Operations • Engineering • Construction • Testing • Contracting • Prototyping and fabrication of complex systems • Production • Business • Budgeting • Finance. with satisfactory performance, the tenure of the program manager should be long enough to provide continuity and personal accountability.

e. Upon designation, the program manager should be given budget guidance and a written charter of his authority, responsibility, and accountability for accomplishing approved program objectives.

f. Agency technical management and Government laboratories should be considered for participation in agency mission analysis, evaluation of alternative system design concepts, and support of all development, test, and evaluation efforts.

g. Agencies are encouraged to work with each other to foster technology transfer, prevent unwarranted duplication of technological efforts, reduce system costs, promote standardization, and help create and maintain a competitive environment for an acquisition.

9. Key decisions. Technical and program decisions normally will be made at the level of the agency component or operating activity. However, the following four key decision points should be retained and made by the agency head:

a. Identification and definition of a specific mission need to be fulfilled, the relative priority assigned within the agency, and the general magnitude of resources that may be invested.

b. Selection of competitive system design concepts to be advanced to a test/demonstration phase or authorization to proceed with the development of a noncompetitive (single concept) system.

c. Commitment of a system to full-scale development and limited production.

d. Commitment of a system to full production.

10. Determination of mission needs.

8. Determination of mission need *should* be based on an analysis of an agency's mission reconciled with overall capabilities, priorities and resources. When analysis of an agency shows that a need for a new major system exists, such a need should not be defined in equipment terms, but should be defined in terms of the mission, purpose, capability, agency components involved, schedule and cost objectives, and operating constraints. A mission need may result from a deficiency in existing agency capabilities or the decision to establish new capabilities in response to a technologically feasible opportunity. Mission needs are independent of any particular system or technological solution.

b. Where an agency has more than one component involved, the agency will assign the roles and responsibilities of each component at the time of the first key decision. The agency may permit two or more agency components to sponsor competitive system design concepts in order to foster innovation and competition.

c. Agencies should, as required to satisfy mission responsibilities, contribute to the technology base, effectively utilizing both the private sector and Government laboratories and in-house technical centers, by conducting, supporting, or sponsoring: • Research • system design concept studies • Proof of concept work • Exploratory subsystem development • Tests and evaluations. Applied technology efforts oriented to system developments should be performed in response to approved mission needs.

11. Alternative systems.

a. Alternative system design concepts will be explored within the context of the agency's mission need and program objectives--with emphasis on generating innovation and competition from industry. Benefits to be derived should be optimized by competitive exploration of alternative system design concepts, and trade-offs of capability, schedule, and cost. Care must be exercised during the initial steps of the acquisition process not to conform mission needs or program objectives to any known systems or products that might foreclose consideration of alternatives.

b. Alternative system design concepts will be solicited from a broad base of qualified firms. In order to achieve the most practical system solution, emphasis will be placed on innovation and competition. To this end, participation of smaller and newer businesses should be encouraged. Concepts will be primarily solicited from private industry; and when beneficial to the Government, foreign technology, and equipment may be considered.

c. Federal laboratories, federally funded research and development centers, educational institutions, and other not-for-profit organizations may also be considered as sources for competitive system design concepts. Ideas, concepts, or technology developed by Government laboratories or at Government expense may be made available to private industry through the procurement process or through other established procedures. Industry proposals may be made on the basis of these ideas, concepts, and technology or on the basis of feasible alternatives which the proposer considers superior.

d. Research and development efforts should emphasize early competitive exploration of alternatives, as a relatively inexpensive insurance against premature or preordained choice of a system that may prove to be either more costly or less effective.

e. Requests for alternative system design concept proposals will explain the mission need, schedule, cost, capability objectives, and operating constraints. Each offeror will be free to propose his own technical approach, main design features, subsystems, and alternatives to schedule, cost, and capability goals. In the conceptual and

lest than full-scale development stages, contractors should not be restricted by detailed Government specifications and standards.

f. Selections from competing system design concept proposals will be based on a review by a team of experts, preferably from inside and outside the responsible component development organization. Such a team will consider: (1) Proposed system functions and performance capabilities to meet mission needs and program objectives, including resources required and benefits to be derived by trade-offs, where feasible, among technical performance, acquisition costs, ownership costs, time to develop and procure; and (2) The relevant accomplishment record of competitors.

g. During the uncertain period of identifying and exploring alternative system concepts, contracts covering relatively short time periods at planned dollar levels will be used. Timely technical reviews of alternative system design concepts will be made to effect the orderly elimination of those least attractive.

h. Contractors should be provided with operational test conditions, mission performance criteria, and life cycle cost factors that will be used by the agency in the evaluation and selection of the system(s) for full-scale development and production.

i. The participating contractors should be provided with relevant operational and support experience through the program manager, as necessary, in developing performance and other requirements for each alternative system design concept as tests and trade-offs are made.

j. Development of subsystems that are intended to be included in a major system acquisition program will be restricted to less than fully developed hardware (full-scale development) until the subsystem is identified as a part of a system candidate for full-scale development. Exceptions may be authorized by the agency head if the subsystems are long lead time items that fulfill a recognized generic need or if they have a high potential for common use among several existing or future systems.

12. Demonstrations.

a. Advancement to a competitive test/demonstration phase may be approved when the agency's mission need and program objectives are reaffirmed and when system design concepts are selected.

b. Major system acquisition programs will be structured and resources planned to demonstrate and evaluate competing alternative system design concepts that have been selected. Exceptions may be authorized by the agency head if demonstration is not feasible.

c. Development of a single system design concept that has not been competitively selected should be considered only if justified by factors such as urgency of need, of by the physical and financial impracticality of demonstrating alternatives. Proceeding with the development of a noncompetitive (single concept) system may be authorized by the agency head. Strong agency program management and technical direction should be used for systems that have been neither competitively selected nor demonstrated.

13. Full-scale development and production.

a. Full-scale development, including limited production, may be approved when the agency's mission need and program objectives are reaffirmed and competitive demonstration results verify that the chosen system design concept(s) is sound.

b. Full production may be approved when the agency's mission need and program objectives are reaffirmed and when system performance has been satisfactorily tested, independent of the agency development and user organizations, and evaluated in an environment that demonstrates expected operational conditions. Exceptions to independent testing may be authorized by the agency head under such circumstances as physical or financial impracticability or extreme urgency.

c. Selection of system(s) and contractor(s) for full-scale development and production is to be made on the basis of (1) system performance measured against current mission need and program objectives, (2) an evaluation of estimated acquisition and ownership costs, and (3) such factors as

contractor (s) demonstrated management, financial, and technical capabilities to meet program objectives.

d. The program manager will monitor system tests and contractor progress in fulfilling system performance, cost, and Schedule commitments. Significant actual vs forecast variances will be brought to the attention of the appropriate management authority for corrective action.

14. Budgeting and financing. Beginning with FY 1979 all agencies will, as part of the budget process, present budgets in terms of agency missions in consonance with Section 201 (i) of the Budget and Accounting Act, 1921, as added by Section 601 of the Congressional Budget Act of 1974, and in accordance with OMB Circular A-11. In so doing, the agencies are desired to separately identify research and development funding for: (1) The general technology base in support of an agency's overall missions, (2) The specific development effort; in support of alternative system design concepts to accomplish each mission need, and (3) Full-scale developments. Each agency should ensure that research and development is not undesirably duplicated across its missions.

15. Information to Congress.

8. Procedures for this purpose will be developed in conjunction with the Office of Management and Budget and the various committees of Congress having oversight responsibility for agency activities. Beginning with FY 1979 budget each agency will inform Congress in the normal budget process about agency missions, capabilities, deficiencies, and needs and objectives related to its programs, in consonance with Section 601(i) of the Congressional Budget Act of 1974,

b. Disclosure of the basis for an agency decision to proceed with a single system design concept without competitive selection and demonstration will be made to the congressional authorization and appropriation committees.

16. Implementation. All agencies will work closely with the Office of Management and Budget in resolving any implementation problem.

17. Submissions to Office of Management and Budget. Agencies will submit the following to OMB:

(No. A-109)

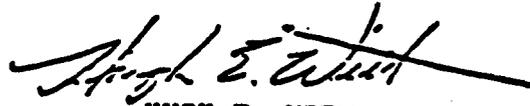
8. Policy directives, regulations, and guidelines as they are issued.

b. Within six months after the date of this Circular, a time-phased action plan for meeting the requirements of this Circular.

c. Periodically, the agency approved exceptions permitted under the provisions of this Circular.

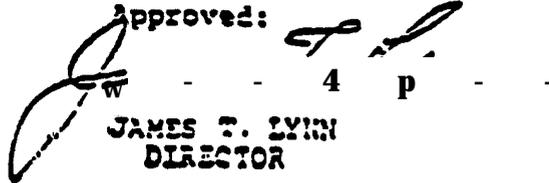
This information will be used by the OMB, in identifying major system acquisition trends and in monitoring implementations of this policy.

18. Inquiries. All questions or inquiries should be submitted to the OMB, Administrator for Federal Procurement Policy. Telephone number, area code, 202-395-4677.



HUGH E. WITT
ADMINISTRATOR FOR
FEDERAL PROCUREMENT POLICY

Approved:


- - - 4 p - - -
JAMES T. LYINN
DIRECTOR

CHAPTER **3-00**
THE FEDERAL REGISTER

- 3-00-00** Purpose
 - 10 The Federal Register
 - 20 Documents Published in the Federal Register
 - 30** Department and Agency Representatives to the Federal Register
 - 40** **Distribution of** Federal Register Publications

3-00-00 PURPOSE

This chapter provides **information on** the Federal Register and the documents which the Department and its agencies publish in the Federal Register. It also prescribes the **functions** of certain Department and agency officials who serve in specific capacities in relation to the Office of the Federal Register and the distribution of the Federal Register publications within the Department.

3-00-10 THE FEDERAL REGISTER

- A. ~~Purpose~~ Federal Register is the medium by which the Department and other Federal agencies legally inform the public about Federal programs, activities, and organizations and the **rules** and regulations applicable to these programs and activities. Publication of this information is generally required by law or regulation.
- B. Office of the Federal Register. The Office of the Federal Register, which is organizationally located in the National Archives and Records Service, General Services Administration, publishes the Federal Register. All documents to be published in the Federal Register must be filed with that Office.
- C. Code of Federal Regulations. The Code of Federal Regulations is the *companion* publication of the Federal Register. All **regulations published in the Federal Register are published in codified form in the Code of Federal Regulations.**

3-00-20 DOCUMENTS PUBLISHED IN THE FEDERAL REGISTER

- A. Documents Whose Publication is **Mandatory**
 - 1. All Presidential proclamations and Executive Orders in the numbered series and all other documents which the President wishes to have published.

(j-00-20 A. continued)

2. Documents which **have general** applicability and legal effect. They include every document which: (a) prescribes a penalty or a course of conduct, (b) confers a right, privilege, authority, or **immunity**, or (c) imposes an obligation; and which is relevant or applicable to the general public, the members of a class, or the persons of a locality, as distinguished from **named** individuals or organizations.
3. Documents or classes of documents whose publication is required by an act of Congress.
4. Documents whose **publication** is required by the Public Information Act of 1966, Public Law 90-23, 5 U.S.C. 552. (See Part 1, Section 5.13(a), Department Regulations under the Act, **Exhibit X1-120-1** of this Manual.)

B. Documents Whose Publication is Authorized

1. Documents which are of sufficient **public interest** to warrant publication. The organization which is responsible for the subject matter of such documents should make the initial determination that such documents should be published. The Director, Office of the Federal Register, has final authority over publication and **may** refuse to publish such documents.
2. Notification of expiration of a document which is codified and which has expired by its own *terms* or by operation of law. such notification is **encouraged** since it provides a service to the public.

C. Documents Which Are Not Published. News items and **comments** are not published in the Federal Register.

3-00-30 DEPARTMENT AND AGENCY REPRESENTATIVES TO THE FEDERAL REGISTER

- A. The Department and its agencies are required to designate certain officers **who** are to perform specific duties related to the Federal Register. These officers and their duties are as follows:

(3-00-30 A. continued)

1. Liaison Officers

- a. The Deputy General Counsel serves as the Department liaison officer and the Assistant General Counsel, Business and Administrative **Law** Division, serves as his principal alternate.
- b. Each agency head should designate a liaison officer **and one or more alternates for him and should provide** the Deputy General Counsel with their names and position titles.
- c. Each liaison officer:
 - (1) Represents his respective **organization** in all matters concerning: (a) submission of documents to the Office of the Federal Register, and (b) compliance with the provisions of Title 1, Chapter 1, Code of Federal Regulations.
 - (2) Refers documents which his organization sends directly to the Office of the Federal Register for **publication** to the appropriate **certifying** officer.
 - (3) Forwards such documents, together with a letter of transmittal if necessary, to the Director, Office of the Federal Register, for **publication**.
 - (4) **Maintains** a record of the documents forwarded directly to the **Office** of the Federal Register and the time-stamped copies received from that Office, and distributes these copies to appropriate officials.

2. Certifying Officers

- a. Each agency head should designate a certifying **officer** and deputy for each liaison **officer** he designates and should provide the Deputy General Counsel **with** their names and position titles.
- b. Each certifying officer certifies the true copies **of** those documents which his organization sends directly to the Office of the Federal Register for publication.

(3-00-30 A. continued)

3. Authorizing Officer

- a. The Chief, Legislative Materials Section, Communication Branch, Office of the Executive Officer, Office of the Secretary, serves as the authorizing officer for the Department.
- b. The authorizing officer provides the services listed in Section 3-00-40 below.

.B. In addition to the above-named officials, each agency as well as the Department is to have a regulations officer. The function of this official is described in Chapter 3-20. One person may serve as both the liaison officer and the regulations officer.

3-00-40 DISTRIBUTION OF FEDERAL REGISTER PUBLICATIONS

- A. The authorizing officer furnishes the Director, Office of the Federal Register, with a current mailing list of individuals and officers who are to receive the Federal Register and the Code of Federal Regulations. Individuals and offices who wish to receive either or both of these publications should submit a written request through the appropriate administrative office to the Chief, Legislative Materials Section, Office of the Secretary. Those who receive these publications are encouraged to circulate them among other concerned offices.
- B. The authorizing officer maintains and distributes, upon request, copies of the Handbook on Document Drafting. He also maintains a list of offices that have received the Handbook for distribution of revised editions.
- C. The authorizing officer, upon request, furnishes locator services on items which have appeared in the Federal Register, and advice on how to procure reprints of documents which have been published in the Federal Register.

CHAPTER 3-10

PROCESSING REQUIREMENTS APPLICABLE TO ALL FEDERAL REGISTER DOCUMENTS

3-10-00 Purpose
10 Processing Requirements

3-10-00 PURPOSE

This chapter sets forth general processing requirements which are applicable to all documents which the Department and its agencies publish in the Federal Register.

3-10-10 PROCESSING REQUIREMENTS

A. Drafting of Documents

1. Responsibility for Drafting. The operating agency or staff office responsible for the subject matter of a **document** to be published in the Federal Register is responsible for **drafting** the document in the prescribed format for publication in the Federal Register. Such format should also be used for draft copies of the document,
2. Assistance from the Office of the General Counsel. The Office of the General **Counsel** provides, upon request, legal advice and assistance in drafting documents. Agency personnel should consult with the division of the Office of **the** General Counsel which provides them with legal assistance.
3. Handbook on Document Drafting. The Handbook on Document Drafting, published by the Office of the Federal Register, contains detailed instructions on how to **draft documents** for publication in the Federal Register. It also contains statutory and regulatory provisions applicable to the Federal Register. The Handbook may be obtained from the Legislative Materials Section, Office of the **Executive** Officer, Office of the Secretary.
4. Workshop on Document Drafting. The Office of the Federal Register conducts, upon request, a workshop on drafting documents for publication in the **Federal** Register. Operating agencies or staff offices that wish to have the workshop conducted for **their employees should submit their** requests, in writing, to the Director, Office of **Management Systems**, Office of the Secretary.

(3-10-10 continued)

- B. **Preparation of Documents.** The operating agency or staff office responsible for drafting a document is responsible for preparing (typing) the document in final form for publication in the Federal Register. (See Chapter 3-15, Preparation of Federal Register Documents, for detailed instructions.)
- C. **Clearance of Documents.** Officials who review documents should indicate their concurrence by signing their surname on the yellow file box copy of the documents.
- D. **Signing Documents.** Officials who have authority to approve documents should sign their name in ink on the original document. Initials or impressed signatures may not be used.
- E. **Certification of Documents.** All copies of documents sent to the Office of the Federal Register for publication shall be certified as true copies of the original before they are sent.
- F. **Use of Department Seal.** The Department seal is not required for any document sent to the Office of the Federal Register for publication unless the Secretary or the Under Secretary directs that the document shall be impressed with the Department seal.
- G. **Number of Copies.** The Office of the Federal Register requires an original and two certified copies (or three certified copies if the document is printed or processed on both sides) of each document submitted for publication. If an agency desires to receive a date-stamped copy as evidence of submittal to the Federal Register, it should include an addressed return envelope for the purpose and the public inspection copy will be returned as soon as available. The Office of the General Counsel requires a yellow file copy of each document.
- H. **Transmittal of Documents to the Office of the Federal Register**
1. **Responsibility for Transmittal**
 - a. The Department liaison officer should transmit those documents signed and approved by the Secretary, the Under Secretary, or any authorized staff official in the Office of the Secretary.
 - b. Each agency liaison officer should transmit those documents signed and approved by the agency head or another authorized agency official.
 2. **Letter of Transmittal.** Letters of transmittal should be included only when special treatment of the documents is desired. The letters should state specifically what special treatment is desired. See Exhibit X3-10-1 for sample transmittal letter.

(3-10-10 continued)

- I. Release of Information From Documents Sent to the Office of the Federal Register. The Office of the Federal Register makes provision for public inspection of documents on the working day before they are published. **Documents** which are of a **confidential-administrative** nature until they are released shall not be made public by any employee of the Department without the Secretary's permission until the documents are made public by the Office of the Federal Register.
- J. Correction of Errors.
1. The operating agency or staff office responsible for the subject matter of a document published in the Federal Register is **also** responsible for the correction of errors which appear in the published document.
 2. If the error was in the original document submitted to the Office of the Federal Register, the agency or office should prepare a correction document. If the Secretary signed and approved the original document, the correction document should be prepared for the signature of the Assistant **Secretary for** Administration and Management or his designee. If an agency head or another agency official signed and approved the original, the correction document should be prepared for the signature of that official or his designee.
 3. If the error was made by the Office of the Federal Register, the agency or office should inform the liaison officer who sent the document to the Office of the Federal Register and he should inform that Office which will prepare and publish a correction document.
- K. Updating Federal Register Documents. The operating agency **or** staff office responsible for the subject matter of a **document** published in the Federal Register is responsible for keeping the document up-to-date.

LETTER OF TRANSMITTAL to the Director, Office of the Federal Register (to be used only when special treatment of document is desired).

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
Washington

The Director
Office of the Federal Register
National Archives and Records Service
General Services Administration
Washington, D. C.

Dear Sir:

Herewith are transmitted for **filing** and **publication** in the Federal Register the **original and** two certified copies of the **following** document:

(State, if the document is subject to codification, the Title of the Code of Federal Regulations **and** other code **numbers** and headings and the specific title of the **document**. If the document is not subject to codification, state the **name** of the **Department**, the **name** of the operating agency, and the title **of the** document.)

(State special treatment desired and the **reasons therefor**.)

Please return in the enclosed addressed **envelope, as** soon as available, the time-stamped copy used for public inspection.

Sincerely yours,

Federal Register Liaison Officer

Enclosures

PREPARATION OF FEDERAL REGISTER DOCUMENTS

3-15-00 Purpose
10 Instructions

3-15-00 **PURPOSE**

This chapter provides instructions on **how** to **type** documents which are to be published **in** the Federal Register.

3-15-10 **INSTRUCTIONS**

- A. Format. Type the document **on** white bond paper, 8 x **10½** inches. Leave a 1-inch margin at top, bottom, and right side; and a **1-½** inch margin at left side. **Indent** the first **line** of each paragraph five spaces. Double space the text, except for tables of sections and authority statements which appear in rules **and** regulations, lists of items, tabulations, **and** quoted matter which is set apart from regular text. These should be single spaced. (See Exhibit X3-15-1 for graphic view of **format**.)
- B. Style. Follow instructions of the latest issue of the U.S. Government Printing Office Style Manual for **punctuation**, capitalization, spelling, etc.
- C. Signature Page. **Always type some text on the signature page (which is the last page of the document and the page the approving official signs)**. Type the title of the official who is to sign the **document below** the line **on which he will** sign his **name**. For all documents prepared for the signature of the Assistant Secretary for **Administration**, DC ROT **TYPE THE TITLE** under the **signature** line. Type an underscored line for the signature, however. (See Exhibit X3-15-1 for sample of signature **page**.)
- D. Certification. Type on the bottom of each copy, as shown in Exhibit X3-15-1, the following words: Certified to be a **true** copy of the original. **Do not** type these words on the original.
- E. Number of Copies Required. Prepare copies of each document, as **follows**:
1. Original **and** two copies for the Office of the Federal Register.
 2. One copy for the Office of the General Counsel (**yellow** box file copy).

(3-15-10E continued)

3. One copy for the Office of the Secretary if the document is to go to **the** Office of the Secretary.
4. "One **copy** for **the** Division of **Management Planning**, Policy and Evaluation, Office of **the Assistant** Secretary for Administration **and Management**, if the **document pertains to organization or delegation of authority**, and is to go to the Office of the Secretary.

F. Marking of Copies

1. Type **the following information in the upper right hand corner of the original and copies:**
 - a. **Original and first two copies:** Office of the Federal Register.
 - b. **Third copy:** Office of the General Counsel official file copy.
 - c. **Fourth copy:** Secretary's reading file.
 - d. **Fifth copy:** Division of **Management Planning**, Policy and Evaluation, **OASAM (required only for notices of organization and delegations of authority)**.
 - e. **Agency copies: name, room number, and building of agency or office to which copier should be returned after approval.**

G. Summary Statements

1. **Documents prepared for publication in the Federal Register require submission of a summary statement highlighting the essence of the **effect** of the document (36 FR 5203, 3/18/71). See **Exhibit X3-15-2** for a sample **format**. **The statement should:**
 - a. List the Department and **agency**.
 - b. Summarize **the** principal subject of the document.
 - c. State any **important dates**, if known. **Otherwise leave** space for insertion.**

(3-15-10G continued)

2. Assignment of Responsibility for Affixing Dates to Summary Statements

- a. **Important dates** stated in the **summary statement** shall be completed by the operating agency **or Office** of the **Secretary** staff office, if known. If not known, leave space for insertion. Responsibility **for** affixing dates to **summary statements** shall be as follows:

<u>Type of Federal Register Document</u>	<u>Responsibility</u>
Agency general notices with application cut-off dates	Agency
Office of the Secretary general notices with cut-off dates	OS Staff Office
Agency notices of proposed rule making approved under delegated authority: Comment deadline	Agency Liaison Officer
Agency regulations approved under delegated authority: Postponed effective date Effective on publication	Agency Liaison Officer Office of the Federal Register
Department notices of proposed rule making: Comment deadline	Department Liaison Officer
Department regulations: Postponed effective date Effective on publication	Department Liaison Officer Office of the Federal Register

3. Number of Copies Required. Prepare copies of the **summary statement as follows:**

- a. Original and **one** copy for the Office of the Federal Register.
- b. One copy for the Office of the General Counsel files.

- H. Handbook on Document Drafting. The Handbook on Document Drafting, published by the Office of the **Federal Register**, is intended primarily for persons **who draft documents** for publication in the Federal Register. It also contains instructions **for the typist who prepares such documents. Typists may obtain the Handbook** from the Legislative Materials Section, Office of the Executive Officer, Office of the Secretary.

(Size: 8" x 10 1/2")

(Sample of First Page)

a
1"
↓

TITLE 45--PUBLIC WELFARE

CHAPTER I--OFFICE OF EDUCATION,
DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

PART 145--NATIONAL DEFENSE FOREIGN LANGUAGE FELLOWSHIPS

Pursuant to section 601(b) of title VI of the National Defense
Education Act of 1958, P. L. 85-864, as amended, 72 Stat. 1593, 20

← 1 1/2" → U.S.C. 511, the following regulations with respect to the "other ← 1" →
service of a public nature" provision of section 601(b) are hereby
adopted:

§ 145.1 Other Service of a Public Nature. (a) Section 601(b)
of title VI of the National Defense Education Act . . .

↑
1"
↓

(Sample of signature Page)

(where approval is required):

Dated: (fill in date)

(signature) _____
(title)

Approved: (fill in date)

(signature) _____
(title)*

(TYPE ON COPEs ONLY)

CERTIFIED TO BE A TRUE COPY OF THE ORIGINAL

*** For exception, see paragraph 3-15-10C.**

Two sample summary statements are shown below. Use the summary statement which is appropriate for the type of document being submitted.

1. Notice of Proposed Rule **Making**

SUMMARY STATEMENT

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of Education

LIBRARIANSHIP - HEW proposal on grants for training
in librarianship in colleges **and** universities - **comment**
periodends

2. **Regulations**

SUMMARY STATEMENT

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of **Education**

LIBRARIANSHIP - HEW regulations on grants for training
in librarianship in colleges and universities - **effective**

CHAPTER 3-20
DEPARTMENTAL PROCEDURES FOR WRITING REGULATIONS

Section 3-20-00	Purpose
10	Regulations Proposals
20	Regulations Review Panels
30	Different Procedures for Regulations of Varying Importance
40	Considerations in Developing Regulations
50	Secretarial Guidance on Issues
60	Public Participation
70	State and Local Government Participation
80	Division of Responsibilities

Exhibit X3-20-1	Regulations Proposal Format
2	Regulation Action Memorandum Format
3	Regulations Development Process

3-20-00 PURPOSE

This chapter provides policies and procedures for the development and review of regulations.

3-20-10 REGULATIONS PROPOSALS

Each principal operating component (POC) will prepare a regulations proposal for submission to its Regulation Review Panel (see **3-20-20**) covering each regulation the POC plans to draft. (If appropriate, a regulations proposal can cover more than **one** set of regulations.) The proposal will set out the following **information**:

- * The need for the regulation;
- * The significance of the regulation, by category ("technical," "policy significant," "major");
- * The schedule on which the POC intends to develop the regulation;
- * The name of the person in the POC with the responsibility (and the authority) to assign drafting responsibility, to resolve policy and procedural conflicts within the POC, and to oversee timely preparation of the regulation;
- * A statement of which major interest groups will be affected by or interested in the regulation, and the POC's plan for involving these groups and the public in the development of the regulation;

- * A listing of the other offices in the **Department affected** by or with special responsibility for the program being regulated.
- * A statement whether and on what schedule an issue paper will be prepared for the Under Secretary/Secretary, with a brief description (without extended discussion) of the key policy issues involved in the regulations, and a brief statement whether contending views and alternative approaches exist, that will affect the development of the regulations.

A format for the regulations proposal is shown as Exhibit X3-20-1.

The POC will submit each such **proposal** to the Regulations Management Unit, Executive Secretariat (ES), within 45 days of any event that requires the development of new regulations (enactment of a new statute or amendments, court orders, new policy decisions, public petitions for rulemaking, etc.). In the case of new legislation, **POCs** should submit regulations proposals well in advance of this deadline -- generally even before the legislation is finally enacted.

The ES will forward the proposals to the appropriate Regulations Review Panel. Proposals submitted later than 45 days after the precipitating event must be submitted to the Under Secretary/Secretary for approval with an explanation for the delay.

No work on regulations should occur anywhere in the Department unless covered by a regulations proposal. A short one-paragraph **precis** of each regulations proposal will be published in the Federal Register, and each regulations proposal will be available to the public on request.

3-20-20 REGULATIONS REVIEW PANELS

Standing Regulations Review Panels are established for each of the principal operating components: ED, PHS, HCFA, SSA, and HDS. Ad hoc panels for OCR and OS will be convened as necessary. The Panels will provide a one-time, careful review of regulations proposals at the very start of the development process in order to tailor appropriately the procedures by which the regulation will be written and developed. The regulations panel for each POC will meet regularly (once a week, once every two weeks, or once a month) depending on workload. Panels will consider regulations proposals no later than 15 days after receipt by ES.

A. Role and Responsibilities

The purposes of the panel are procedural and are:

- * To review the need for regulations, to secure agreement on schedules, and to review the major elements in each **POC's** plan for developing a regulation;

- * To establish the need for continuing coordination with other **POCs** and with particular staff offices during policy discussions and drafting of the regulation;
- * To **review** and establish the need for Secretarial policy guidance on issues involved in the proposed regulations;
- * To permit (and indeed require) the expression of views by OS staff offices early in the process rather than the sudden surfacing of dissents after the POC has completed an arduous drafting process.

Specifically, each regulations proposal submitted to a review panel will contain recommendations from the POC on all of the major procedural decisions involved in establishing a plan to draft a regulation. The panel will discuss and evaluate the recommendations of the POC and concur or non-concur in the **POC's** recommendations. Any disagreement between the **POC** and the panel will be surfaced for decision by the Under Secretary or Secretary.

The panels will review each regulations proposal to consider the **POC's** recommendations on the following:

1. Whether or not the proposed regulation is necessary;
2. Classification of the regulation -- based on its importance -- into one of three categories (technical, policy significant, major) to determine
 - a. the need for early Secretarial involvement, and
 - b. the extent of clearances to be required later in the process;
3. Placement of "technical" rules into an accelerated development and approval process;
4. The schedule for developing each regulation including -- for policy significant and major regulations -- the preparation and presentation of an issue paper to the Secretary before rules are drafted;
5. The plan for intra-Departmental coordination in developing an issue paper, if needed, and in writing the regulation;
6. The plan for, and timing of, meaningful participation by affected interest groups, public interest organizations, and the public;
7. The need for other government consultations (congressional, Executive, State, local) regarding regulatory policies.

B. Membership

The Executive Secretary (or one of his principal policy deputies) will chair each regulations review panel. The head of each WC or his or her representatives along with all other appropriate staff designated by the POC (which may vary for different regulations) will be represented on the panel. The panel will also have permanent members (at the Deputy Assistant Secretary level who can speak for the head of the staff office) from each of the following: Legislation, Planning and Evaluation, Management and **Budget, Public Affairs, and Civil Rights.** The Deputy General Counsel for Regulation Review and the appropriate Assistant General Counsel for each POC will also be members of the panel. The Head of the Regulations Management Unit in the Executive Secretariat will provide staff support to the panel and will participate in the panel's work. In addition to permanent members, selected participation in the panel meetings by the Deputy Under Secretary for Intergovernmental Affairs, the Office of the Inspector General, the Assistant Secretary for Personnel Administration, and other **POCs** will be facilitated on appropriate regulations by the Executive Secretariat.

Each Staff Assistant Secretary must, therefore, designate either a Deputy Assistant Secretary or a senior official with supervisory responsibilities as his/her representative to each of the five Regulations Review Panels. These representatives must be designated in writing and the Staff Assistant Secretary must certify that the designated individuals have the authority to commit the staff office to final positions on issues brought before the panels. If a designated representative is unable to attend a panel meeting, he/she may send a representative but the representative will have no official voice or vote in the panel's deliberations.

3-20-30 DIFFERENT PROCEDURES FOR REGULATIONS OF VARYING IMPORTANCE

Departmental procedures will distinguish between minor, more technical regulations and major ones that deserve more intensive careful handling. Each regulation will be classified as "major," "policy significant," or "technical." Different clearance procedures, different policy review procedures, different time schedules, and different management techniques will apply for each classification. .

The format for transmitting regulations to the Secretary is shown as Exhibit X3-20-2. A flow chart generally describing the regulation development process, without specific reference to the three types of regulations described below, is shown as Exhibit X3-20-3.

A. Major Regulations

"**Major**" regulations (no more than 15-20 a year) will represent the regulations that are most extensive and complex and that will have the most widespread impact on the country. The classification will

depend primarily on a judgment that the Department will need to devote very substantial time and effort to developing the regulations. The regulations to implement Section 504 of the Rehabilitation Act of 1973 provide an excellent illustration of this type of regulation.

Regulations of this magnitude will require the designation of a project manager to take responsibility for moving the regulation through the drafting and clearance processes. The appropriate **POC** will nominate the project manager for the Secretary's approval. The manager will report to the Secretary on the progress in developing the regulation. But the substantive responsibility for setting policy and ultimately for producing the regulation in a timely fashion remains with the POC. Although the precise procedures for developing these regulations will largely rest within the discretion of the project manager, the following elements should be uniform:

- * The regulation will go through both an **NOI** and NPRM stage before moving to final regulations;
- * A thorough issues paper will be prepared by the responsible POC, with participation by all affected offices within the Department;
- * The project manager will have the responsibility and authority to resolve all disputes of a procedural nature, to refer quickly all disputes of a substantive nature to the appropriate decision-making level, to break procedural bottlenecks, and to request resources.
- * The project manager will be responsible for ensuring all needed coordination among affected **offices** within the Department in drafting the regulations and for expediting formal clearance throughout the Department in cooperation with ES.

B. Technical Rules

At the other end of the spectrum from major regulations, "technical" rules (those reflecting no policy change, affecting small numbers of institutions/recipients or small amounts of money, or involving narrow and precise changes in a specific regulation) will follow a tightly streamlined procedure.

The POC will be given no more than 60 days to complete drafting. No NOI will be prepared, and the regulation will automatically be prepared as an NPRM, with a 30-day comment period. No OS staff clearances will be sought when the WC delivers the NPRM to ES unless requested at the Panel meeting. ES will circulate weekly to all offices a list of all "technical" rules received that week, and will provide review copies on request. Clearances with other WCs will be sought only when ES believes it appropriate if the other POC was not

present or was not invited to attend the Regulations Review Panel meeting at which the regulation was considered. One week after being placed on this list, the rule will move forward to the Under Secretary/Secretary for action.

Within 20 days following the close of the comment period, the POC will be responsible for forwarding a final rule to ES. In the absence of significant public comment, the final rule will not be circulated for clearance and will automatically be forwarded to the Secretary for signature. Substantial public comment will dictate additional procedures to be agreed upon by the POC, GC, and ES.

For this procedure to work, careful and full analysis of the regulations proposal at the Panel meeting will be required.

C. Policy Significant Rules

Between the major rules and the technical rules lies the category of "policy significant" regulations. The importance and significance of these regulations will vary substantially, and the POC's latitude to tailor the development schedule to the requirements of the regulation will be substantial.

The POCs should present regulations proposals for this category of regulations that identify in detail the extent of the development process the POC believes appropriate for the regulation in question. Choices will be available to the POC in most areas:

- * the schedule for development;
- * the need for an NOI;
- * the need for coordination with other offices;
- * the extent of public participation;
- * the issues that need to be identified for Secretarial guidance;
- * the length of the comment period(s).

Staff offices and other POCs will be encouraged to provide advice at the Panel meeting and to "opt out" of further clearance for regulations that do not significantly affect their work. Staff offices will be asked to justify the raising of new issues in the clearance process if the questions were not raised either at the Panel meeting or when an issues paper was developed. Staff offices and other POCs have a responsibility to raise problems directly with the POC that produced a regulation before submitting written comments to ES to ensure that a serious disagreement exists. The Executive Secretariat will not make lengthy efforts to negotiate compromise. Policy differences between offices will be **sharpened** for prompt presentation for decision to the Under Secretary/Secretary.

D. Limited Delegations of Authority

The Under Secretary may delegate authority to publish Notices of Intent, on a case-by-case basis, where the **POCs** and the Panel recommend such a delegation. For technical regulations, the Under Secretary may delegate authority, on a case-by-case basis, to publish **NPRMs**, where the **POC** and the Panel recommend such a delegation. In such cases, a preamble to the NOI or NPRM will clearly state that the notice has not been reviewed by the Under Secretary or the Secretary and is being published on the authority of the POC.

3-20-40 CONSIDERATIONS IN DEVELOPING REGULATIONS

A. Legislative

1. Does the regulation meet the intent of Congress as reflected by the formal and informal activities preceding enactment of legislation (hearings, conferences, Floor debate, etc.)?
2. What formal or informal discussion of these regulations has taken place with the Congress regarding either content or timing?
3. Which, if any, of the policies reflected in the regulation are supported or opposed by key Congressmen and/or Hill staff?
4. Will any special congressional notification be required of the Secretary/Under Secretary or any other officer of the Department if the regulation is approved or disapproved?

B. Civil Rights

1. Are the necessary prohibitions against discrimination incorporated into the regulation?
2. Do the regulations provide appropriate operational and administrative requirements to assure both equal access and non-discrimination?
3. If the regulation discusses eligibility criteria for funding and/or services, do these criteria contribute to or detract from the promotion of equal opportunity?
4. Do the program policies in the regulation encourage compliance with civil rights statutes, including incentives for the promotion of equal opportunity?

C. Intergovernmental Affairs

1. If the program being regulated relies upon State and/or local provision of services, does the regulation allow a State or local government to deliver services effectively?

2. HOW well do the policies reflected in the regulation correspond to any State policies or programs in the same service area?
3. What is the current or anticipated reaction of State and local governments to the policies contained in the regulation?
4. How adequate are the **POC's** plans to consult with State and local governments in drafting the regulation?
5. Are there any specific individuals and/or organizations whose advice ought to be sought in drafting or reviewing the regulatory policies before they are subject to Secretarial decision?

D. Public Affairs

1. Is the regulation written simply so that it may be understood by both recipients and beneficiaries?
2. What public affairs activity has taken place or will be required to ensure that appropriate publics are informed and that the Secretary's action in approving or disapproving the regulation is accurately conveyed?
3. What has been the media coverage or reaction to the policies proposed in the regulation and what are the **anticipated media** reactions to adopting the policies?
4. What is the anticipated "public" reaction to the policies contained in the regulation if they are approved or disapproved?
5. Is the substance of the regulation clearly explained to the public in the press release and does the press release reach the appropriate audiences?
6. If a Final regulation, have the public comments been accurately and fairly treated in the preamble to the regulation?

E. Management and Budget

1. Are current or **projected budget** changes for the program (**increases**, decreases, zero budget) taken into account in the policies contained in the regulation?
2. What is the estimated cost-benefit of the policies reflected in the regulation?
3. **Will** the procedures described by the regulation contribute to sound management of the program?
4. Are procedures described compatible with other Federal administrative requirements?

5. What reaction, if any, will the appropriations committees in Congress have to the approval or disapproval of the regulation?
6. What plans does the Department have for managing the implementation of the requirements set forth in the regulation?
7. Are these plans compatible with the Department's management and personnel policies?
8. What is the present or anticipated reaction of OMB to the policies contained in the regulation?

F. Planning and Evaluation

1. Are the policies reflected in the regulations consistent with Administration policies or initiatives?
2. In what way do the policies and procedures required by the regulation allow for coordination with other Federal, State, local, or private sector programs servicing similar populations or will they impede Federal program coordination?
3. How do the regulations contribute to, or detract from, achievements of the Department's long-range plans and objectives?
4. Are the policies or procedures in the regulation based on the results of research or studies conducted either inside or outside the Department?
5. If the regulation amends existing program requirements, do the proposed amendments reflect the results of prior program evaluation?
6. Is the Department prepared to evaluate the impact of the regulation once implemented?
7. Do the regulations contain unnecessary planning requirements for State or local governments? Are necessary planning requirements properly related to similar requirements in related programs?
8. 'Has the analysis of economic impact (formerly inflation impact) been properly performed, pursuant to Executive Orders 11829 and **11921**?
9. Do the regulations require some form of evaluation, monitoring or reporting? Are these requirements 'adequate and necessary?

G. Legal

1. Does the regulation meet the President's requirements of clarity, timeliness, and identification of those responsible for its preparation?

2. What litigation, if any, affects the policies or procedures contained in the regulation? Has the probable impact of approval or disapproval of the regulation on pending litigation been considered?
3. Are there any outstanding issues or questions about whether the regulation as drafted is legally sufficient?
4. Are there any policy and legal issues that have not been resolved? What legal and policy alternatives are available to the Department in the resolution of them? Does their resolution require major study or documentation?
5. What major and minor risks are being assumed by the Department as a result of the form and/or content of the regulation?
6. How does the regulation contribute to the Department's regulations recodification initiative?
7. If a Final regulation, have the public comments been accurately and fairly treated in the preamble of the regulation?

3-20-50 SECRETARIAL GUIDANCE ON ISSUES

For major and policy significant regulations, issues identified early -- either in the proposal to regulate or, more frequently, in a separate issues paper -- will be forwarded to the Executive Secretariat for presentation to the Under Secretary/Secretary. The development process will not stop while awaiting policy guidance, however. If guidance is to be provided, ES will either transmit the guidance in writing based on the issue paper, schedule a meeting, or request additional written materials.

3-20-60 PUBLIC PARTICIPATION

The **POCs** must make new efforts to strengthen the Department's communication with the public in the development of regulations. Without the continued involvement of the providers and consumers of HEW-funded services, State and local governments, industry, academia, public interest organizations, and others in the evolution of HEW policies, those policies will neither be responsive to **ongressional** intent nor to national needs.

The new regulations procedures seek faster development of regulations. More rapid preparation of regulations must not be at the expense of more extensive and more effective consultation with the public and affected interest groups. And the Department must not rely solely on publication of **NOIs** and **NPRMs** in the Federal Register to generate public comment.

The General Counsel and the Office of the Assistant Secretary for Public Affairs, through membership on each agency regulations panel, will have the specific responsibility to review whether the regulations proposal provides appropriate and meaningful public participation in the development of each regulation.

A short summary of each regulations proposal will be published in the Federal Register immediately after it has been reviewed by a Regulations Review Panel to inform the public that the Department will be preparing particular sets of regulations. The full proposal will be available to the public on request. In addition, the Department will attempt every six months to publish a list of the major regulations it projects will be undertaken in the ensuing six months.

In short, the methods for achieving public participation in the development of major regulations and many policy significant regulations will be expanded not only to include use of Federal Register Notices of Intent and Notices of Proposed Rulemaking, but also specially designed activity to reach appropriate audiences with appropriate information.

This Department will utilize not only general public hearings during the **NOI** and NPRM comment period as a means of achieving public participation, but it will also take the initiative to contact individuals and organizations (both providers and recipients) who are most affected by our policies.

3-20-70 STATE AND **LOCAL** GOVERNMENT PARTICIPATION

A special effort will be made to strengthen the Department's consultation with state and local governments in the development of regulations that govern their actions.

3-20-80 DIVISION OF RESPONSIBILITIES

A. Principal Operating Components

Agency heads will continue to be responsible for deciding on the need for regulations, for recommending the appropriate process for drafting of each regulation, and for the actual drafting. WCS will be responsible for coordinating the development of issue papers for Secretarial review, but will be required to **reflect the** views (as dissenting or concurring) in that paper of other line and staff offices that either the POC or the Review Panel identifies as an interested party,

B. Staff Assistant Secretaries

The role of staff Assistant Secretaries has been modified from one of clearance at the end of the process, to that of participation in early phases of regulations development. The opportunity for staff from these offices to participate in issue identification and regulations drafting has been increased,,. thereby expanding the over-all pool of available talent focusing on regulations development.

The Executive Secretariat has, in consultation with the staff offices, identified specific issues relevant to the special expertise and responsibility of each staff office. (See Section 3-20-40.) The Secretary has reviewed and approved these areas of responsibility.

Staff **offices** will focus on these issues in their participation on regulations panels, and each office will provide written responses to these **questions** for each regulation circulated by ES for clearance.

C. Office of the General Counsel

The Office of the General Counsel will:

1. Review thoroughly and skeptically the need for regulations.
2. Participate in the writing of regulations. The extent of GC participation in writing may vary from agency to agency. GC may review program drafts of regulations and make changes in them, or draft regulations from program specification, or draft regulations without program specifications, or serve on drafting teams. The ideal is to have a single drafting process to avoid extensive passing of drafts back and forth between GC and the program.
3. Identify the extent of the legal need to write regulations.
4. Raise and comment on policy issues and assure that the policy and legal alternatives are fully presented.
5. Examine regulations for **legal** sufficiency, simplicity, clarity and brevity; assure adequate public participation and **openness** of the process.

D. Executive Secretariat

The Executive Secretariat is responsible for implementing the revised procedures for rule development and assisting the **POCs** to see that the system achieves the objectives of timeliness, coordination, and early Secretarial involvement.

The Executive Secretariat will oversee the scheduling of regulations development, monitor compliance with these schedules, chair the regulations panels, and clear regulatory documents with appropriate line and staff offices. The Secretariat will continue to perform quality control to ensure the completeness of staff work submitted to the Secretary. The Regulations Management Unit within the Secretariat will **serve as** the principal staff for each regulations panel.

REGULATIONS PROPOSAL
FORMAT

3. Summary

Short (100 words) **summary** of **regulations** proposal -- Program involved, substance of proposed regulation, **etc.** with **name**, address, telephone number of individual the Public can contact for information. (This information **will appear** in the Federal Register. This summary should **appear** on a separate page and be signed by the **POC** Head and dated.)

2. General Program Description

summarize briefly the **general program** to be affected by the proposed regulation:

- * Overall program purpose
- * Statutory Base
- * Fiscal History (a **chronology** of authorization and appropriations for the past three **fiscal** Years)

3. Basis of Regulation

Why must a regulation be developed? What prompted the **development** of this proposal to regulate (new or amended statute, court order, policy decision, POC **decision**, public petition, etc.)?

4. Regulatory Provisions

Briefly describe what the **regulation** will do.

5. Major Issues

What, if any, are the **anticipated** issues that **will have** to be resolved before the regulation is finalized?

6. External Expectations and Views

summarize the known views or expectations Of major constituencies -- providers, **recipients**, **state/local** governments, Congress. and/or other executive agencies **on** the issues described above. Indicate the anticipated level Of controversy in resolving issues.

7. Cost Implications

Briefly describe the anticipated. costs of implementing the proposed regulation on the Federal government, **State/** local **governments**, and/or the private **sector**.

REGULATIONS PROPOSAL FORMAT (Continued)

3. Classification

Based upon 6 and 7 above, how would the POC classify this regulation?

Major _____ Policy Significant _____ Technical _____

9. Schedule

Based upon its classification, indicate which steps the POC proposes to complete for the development of the regulation and the anticipated dates for completion of each step:

Issue Paper to the Secretary Date to OS:
(Required for "major," optional
for "policy significant")

Notice of Intent Date to OS:
(Required for "major," optional
for "policy significant")

Notice of Proposed Rulemaking Date to OS:

Final Regulation Date to OS:

10. Coordination

Describe the POC's plan to coordinate preparation of issue papers and/or regulation documents with other offices in the Department. List all offices to be included for each step of the process.

11. Public Participation

Describe the POC's plans to seek public involvement in the development of the regulation, including anticipated mailings, public hearings, publications, special meetings. Identify what particular individuals or groups the POC will attempt to involve through its outreach activities and how those activities will be conducted.

12. POC Designee

Provide the name, title, address and phone number of the individual designated by the POC head with the responsibility for developing the regulation and authority to speak for the POC head.

MEMORANDUM

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

OFFICE OF THE SECRETARY

Exhibit X3-20-2

GENERAL ADMINISTRATION

HEW TN-78.1 (2/1/78)

DATE:

TO : The Secretary

FROM : Submitting Agency

SUBJECT: Regulation Action Memorandum **Format**

1. Program Description

Summarize the program to be affected by the proposed regulation:

- ° Program Purpose
- ° Statutory Basis
- ° Fiscal History
- ° Administrative Experience

2. Provisions of the Regulation

What **does** this regulation propose to do and how will it contribute to meeting the specific goals and objectives of the program in terms of:

- ° Services provided beneficiaries
- ° The achievement of program goals and objectives **in** a more cost/beneficial way
- ° The improvement of service delivery **systems** (Federal, State, and local administration)

3. cost Implications

Briefly describe the anticipated costs of implementing the proposed regulation on the Federal government, State/local governments, and/or the private sector.

4. Public Participation

Describe the nature and scope of Department activities to involve both the general and specialized publics in the **development** of this regulation.

5. Non-Selected Options

For major issues contained in the regulation, what other approaches were considered but not selected? Why were the approaches considered less effective than those written into the regulation?

Regulation Action Memorandum Format (Continued)

6. Consequences of Disapproval

What would happen if the regulation was not approved?

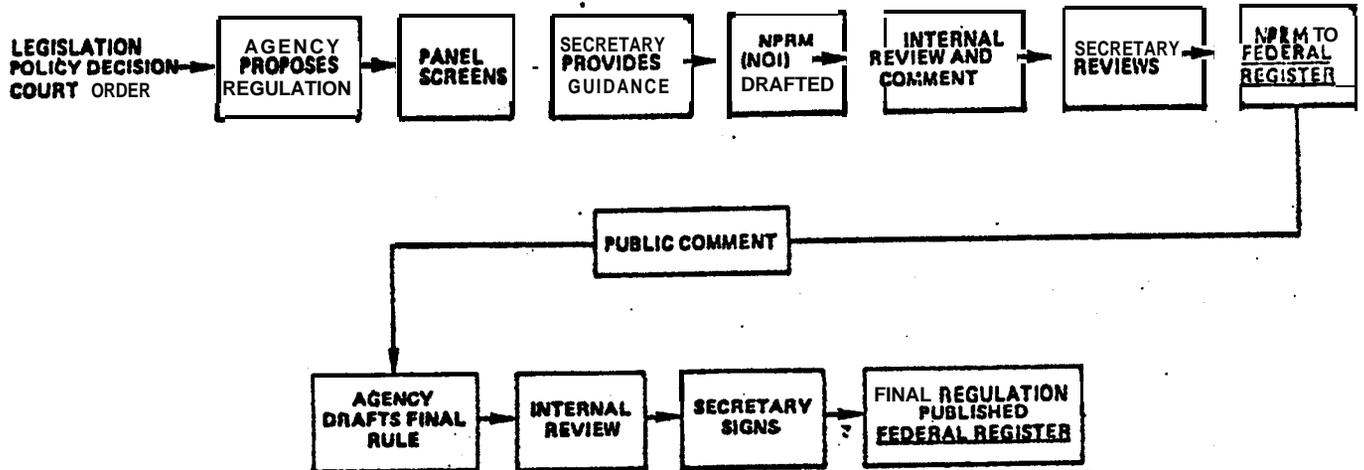
7. Expectations

Summarize the views and expectations of Congress, other executive agencies and interest groups concerning the proposed regulation.

8. Urgency

Describe any internal or external factors that would require some action to be taken on the proposed regulation within a specific time period (statutory deadline, court order, funding cycle).

REGULATIONS DEVELOPMENT PROCESS



GENERAL INFORMATION

4-00-10 Delegation

20 Statutory Provisions Under Which Claims Are Made
By Or Against the Department

4-00-10 DELEGATIONA. **The Department Claims Officer**

Section Z-300-40 of the Organization Manual, issued by the Secretary of Health, Education, and Welfare, establishes the position of Department Claims Officer, and vests in him, as designee of the Secretary for the purpose, the Secretary's authority to dispose of claims. It 8180 grants the Claims Officer authority to (a) prescribe rules, regulations, procedures, etc., for investigating, collecting, evidence, reporting, processing and otherwise handling within the Department claims or situations out of which claims or suits by or against the United States may arise; (b) arrange for the maintenance and control of the necessary files and records; (c) direct and coordinate the activities of the operating agencies and offices of the Department in carrying out the provisions of the section; and (d) report to the Secretary accident trends, practices and procedures and other circumstances which may indicate the need for administrative action.

B. **Responsibilities**

It is the duty of the Claims Officer to safeguard the interests of the Federal Government by allowing only meritorious claims and, by taking the necessary administrative action, to obtain collection of claims due the Government. He is also charged with the responsibility of protecting the rights of private citizens by promptly and expeditiously settling claims in a fair and just manner. In order to carry out these duties and responsibilities the Claims Officer requires the cooperation of every unit of the Department and of every officer and employee in order that a prompt, thorough, and efficient investigation will be made into every situation governed by these instructions and an adequate report made.

(2/16/68)

Supersedes Ch 4-00, TN-136

**4-00-20 STATUTORY PROVISIONS UNDER WHICH CLAIMS ARE MADE
BY OR AGAINST THE DEPARTMENT****A. Claims Against the Department****1. Federal Tort Claims Acts**

Under the Federal Tort **Claims Act** (28 U.S.C. §§ 2671-2680), the **Government** may be liable for property **damage** or loss or personal injury **caused** by the **negligence of its employees** in the performance of official duties. See Chapter 4-20 of this Manual. **This Act** is implemented by **Department Tort Claims Regulations** (45 **CFR** Part 35). See Chapter 4-20 of this Manual.

2. Small Claims Act

This Act (42 Stat. 1066, 31 U.S.C. §215) was repealed by the Federal Tort **Claims Act** (60 Stat. §846, 28 U.S.C. 5424(a), 8/2/46) only with respect to **domestic** claims.

The **Government** is **still** liable under this Act for any claim not in excess of \$1000 for damages or loss of privately owned property caused by the negligence of any officer or employee of the **Government** acting within the **scope of his employment** in a foreign country. The claim must be filed within one year from the date of accrual. The amount determined to be due shall then be certified to Congress as a legal claim for payment.

The Federal Tort Claims Procedures relating to investigations and reports should be followed where applicable in processing **claims** under this Act.

3. Military Personnel and Civilian Employees' Claims Act

Under this Act, 31 U.S.C. §§ 240-242, military personnel and civilian **employees may make** claims against the **Government** for **damage** to or **loss** of personal property which are incurred incident to service or employment. See Chapter 4-35 of this **Manual**.

4. Personnel Claims

42 U.S.C. § 227 (5509 of the PUS Act) and 24 U.S.C. §185 provide, inter alia, for **availability** of appropriations **to reimburse** officers and employees of the Public **Health Service** and St. **Elizabeths** Hospital, respectively, subject to regulations of the Secretary, for the cost of repair or replacement of **personal** belongings **damaged** or destroyed by patients while such **personnel** are engaged in the **performance** of their **official** duties.

Claims under **these** Acts may be processed in conformity with the **procedures** outlined in Chapter 4-35 of this Manual with regard to claim under the Military Personnel and Civilian Employees' **Claims Act**, to the extent applicable.

(4-00-20 continued)

B. Claims By the Department

1. Federal Claims Collection Act of 1966

This Act, 31 U.S.C. §§ 951-953, **authorizes** the head of an agency, **pursuant** to regulations **issued** by him and in conformity with standards **set** forth in the joint regulations of the General Accounting Office and the Department of Justice (4 **CFR** Chapter **II**, Parts **101-105**), to collect, compromise, and terminate claims of the United States **in** an amount not to exceed \$20,000. The **Department** Regulations appear in 43 CFR Subtitle A, Part **30**.

CHAPTER 4-10

T A G F E D E R A L T O R T C L A I M S A C T

4-10-10 Administrative Adjustment of Claims

- 20 Disposition by Federal Agency as Prerequisite; Evidence**
- 30 Time Within Which to Make Claim**
- 40 Attorney Fees**
- 50 Exclusiveness of Remedy**
- 60 Exceptions**

4-10-10 ADMINISTRATIVE ADJUSTMENT OF CLAIMS

28 U.S.C. §2672 provides as follows:

"Administrative adjustment of claim

"The head of each Federal agency or his designee, in accordance with regulations prescribed by the Attorney General, may consider, ascertain, adjust, determine, compromise, and settle any claim for money damages against the United States for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the agency while acting within the scope of his office or employment, under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred: Provided, That any award, compromise, or settlement in excess of \$25,000 shall be effected only with the prior written approval of the Attorney General or his designee.

"Subject to the provisions of this title relating to civil actions on tort claims against the United States, any such award, compromise, settlement, or determination shall be final and conclusive on all officers of the Government, except when procured by means of fraud.

"Any award, compromise, or settlement, in an amount of \$2,500 or less made pursuant to this section shall be paid by the head of the Federal agency concerned out of appropriations available to that agency. Payment of any award, compromise, or settlement in an amount in excess of \$2,500 made pursuant to section 2677 of this title shall be paid in a manner similar to judgments and compromises in like causes and appropriations or funds available for the payment of such judgments and compromises are hereby made available for the payment of awards, compromises, or settlements under this chapter.*"

4-10-20 DISPOSITION BY FEDERAL AGENCY AS PREREQUISITE; EVIDENCE

28 U.S.C. §2675 provides as follows:

- (a) An action shall not be instituted upon a claim against the United States for money damages for injury or death caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment, unless the claimant shall have first presented the claim to the appropriate Federal agency and his claim shall have been finally denied by the agency in writing and sent by certified or registered mail. The failure of an agency to make final disposition of a claim within six months after it is filed shall, at the option of the claimant any time thereafter, be deemed a final denial of the claim for purposes of this section. The provisions of this subsection shall not apply to such claims as may be asserted under the Federal Rules of Civil Procedure by third party complaint, cross-claim, or counterclaim.
- (b) Action under this section shall not be instituted for any sum in excess of the amount of the claim presented to the Federal agency, except where the increased amount is based upon newly discovered evidence not reasonably discoverable at the time of presenting the claim to the Federal agency, or upon allegation and proof of intervening facts, relating to the amount of the claim.

4-10-30 TIME WITHIN WHICH TO MAKE CLAIM

28 U.S.C. 52401(b) provides as follows:

- "(b) A tort claim against the United States shall be forever barred unless it is presented in writing to the appropriate Federal agency within two years after such claim accrues or unless action is begun within six months after the date of mailing, by certified or registered mail, of notice of final denial of the claim by the agency to which it was presented."

4-10-40 ATTORNEY FEES

28 U.S.C. §2678 provides as follows:

'Attorney fees: penalty

"No attorney shall charge, demand, receive, or collect for services rendered, fees in excess of 25 per centum of any judgment rendered pursuant to section 1346(b) of this title or any settlement made pursuant to section 2677 of this title, or in excess of 20 per centum of any award, compromise, or settlement made pursuant to section 2672 of this title."

4-10-50 EXCLUSIVENESS OF REMEDY

28 U.S.C. §2679 provides as follows:

- (a) The authority of any Federal agency to sue and be sued in its own name shall not be construed to authorize suits against such Federal agency on claim which are cognizable under section 1346(b) of this title, and the remedies provided by this title in such cases shall be exclusive.
- (b) The remedy against the United States provided by sections 1346(b) and 2672 of this title for injury or loss of property or personal injury or death, resulting from the operation by any employee of the Government of any motor vehicle while acting within the scope of his office or employment, shall hereafter be exclusive of any other civil action or proceeding by reason of the same subject matter against the employee of his estate whose act or omission gave rise to the claim.
- (c) The Attorney General shall defend any civil action or proceeding brought in any court against any employee of the Government or his estate for any such damage or injury. The employee against whom such civil action or proceeding is brought shall deliver within such time after date of service or knowledge of service as determined by the Attorney General, all process served upon him or an attested true copy thereof to his immediate superior or to whomever was designated by the head of his department to receive such papers and such person shall promptly furnish copies of the pleadings and process therein to the United States attorney for the district embracing the place wherein the proceeding is brought, to the Attorney General, and to the head of his employing Federal agency,
- (d) Upon a certification by the Attorney General that the defendant employee was acting within the scope of his employment at the time of the incident out of which the suit arose, any such civil action or proceeding commenced in a State court shall be removed without bond at any time before trial by the Attorney General to the district court of the United States for the district and division embracing the place wherein it is pending and the proceedings deemed a tort action brought against the United States under the provisions of this title and all references thereto. Should a United States district court determine on a hearing on a motion to remand held before a trial on the merits that the case so removed is one in which a remedy by suit within the meaning of subsection (b) of this section is not available against the United States, the case shall be remanded to the State court.
- (e) The Attorney General may compromise or settle any claim asserted in such civil action or proceeding in the manner provided in section 2677, and with the same effect.

4-10-60 **EXCEPTIONS**

28 U.S.C. §2680 provides in part as follows:

The provisions of this Chapter and **section 1346(b)** of this title shall not apply to •

- "(a) Any claim based upon an act or omission of an employee of the Government, exercising due care, in the execution of a statute or regulation, whether or not such statute or regulation be valid, or based upon the exercise or performance or the failure to exercise or perform a discretionary function or duty on the part of a Federal agency or an employee of the Government, whether or not the discretion involved be • based.
- "(b) * * * *.
- "(c) Any claim arising in respect to the assessment or collection of any tax or customs duty, or the detention of any goods or merchandise by any officer of customs or excise or any other law-enforcement officer.
- "(d) Any claim for which a remedy is provided by sections 741-752, 781-790 of Title 46, relating to claims or suits in admiralty against the United States.
- "(e) * * * *.
- "(f) Any claim for damages caused by the imposition or establishment of a quarantine by the United States.
- "(g) * * * *.
- "(h) Any claim arising out of • assault, battery, false imprisonment, false arrest, malicious prosecution, abuse of process, libel, slander, misrepresentations, deceit, or interference with contract rights.
- "(i) * * * *.
- "(j) Any claim arising out of the combatant activities of the military or naval forces, or the Coast Guard, during time of war.
- "(k) Any claim arising in a foreign country.
- "(l) * * * *.
- "(m) * * * *."

CHAPTER 4-20
REGULATIONS

4-20-10 REGULATIONS

The **following** regulations (32 **FR** 197 of October 11, 1967) govern the **presentation** and **processing** of tort **claims** asserted **against** the **Government** based upon activities of **officers** and **employees** of the Department of **Health, Education, and Welfare**.

Title 45 • PUBLIC WELFARE

Subtitle A • Department of **Health, Education, and Welfare**,
General Administration

Part 35 • Tort Claims Against
the Government

Subpart A • General

Sec.

35.1 Scope of regulations.

Subpart B • Procedure

- 35.2 **Administrative** claim; when presented; place of filing.
- 35.3 Administrative claim; who may file.
- 35.4 Administrative claims; evidence and information to be submitted.
- 35.5 **Investigation; examination, and determination of claims.**
- 35.6 Final denial of claim.
- 35.7 **Payment of approved claims.**
- 35.8 **Release.**
- 35.9 Penalties.
- 35.10 Limitation on Department's authority.

AUTHORITY: The **provisions** of this Part 35 **issued** under Sec. 1(a), 80 Stat. 306, 28 U.S.C. 2672; 28 **CFR** Part 14.

Subpart A - General

535.1 Scope of regulations.

These regulations shall apply only to claims asserted under the Federal **Tort Claims Act, as amended**, 28 U.S.C. §§ 2671-2680, accruing on or after January 18, 1967, for **money** damages against the United **States** for **damage** to or loss of property or personal injury or death caused by the negligent or wrongful act or **omission** of any employee of the Department of **Health, Education and Welfare** while acting within the scope of his office or employment.

(4-20-10 continued)

Subpart B - Procedures

§35.2 Administrative claim; when presented; place of filing.

(a) For **purposes** of these **regulations**, a **claim** shall be deemed to have been presented when the **Department of Health, Education, and Welfare** receives, at a place **designated in paragraph (c)** of this section, an executed Standard Form **95** or other written **notification** of an **incident** accompanied by a claim for **money damages in a sum** certain for **damage** 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 Department** but which **was mistakenly** addressed to or filed with **another Federal agency**, shall be **deemed** to be presented to **the Department** as of **the date** that the claim is received by **the Department**. A claim **mistakenly** addressed to or **filed** with the **Department** shall **forthwith be transferred** to the **appropriate Federal agency**, if ascertainable, or **returned** to the claimant.

(b) A claim presented in compliance with paragraph (a) of this section may be **amended** by **the** claimant at any **time** prior to final action by the **Department Claims Officer** or prior to the **exercise** of the claimant's option to bring **suit under 28 U.S.C. 2675(a)**. **Amendments** shall be **submitted** in writing and signed by **the claimant** or his duly authorized agent or legal representative. **Upon the timely filing of an amendment to a pending claim**, the Department shall have **six months** in which to make a final disposition of the claim as **amended** and the claimant's option under 28 U.S.C. 2675(a) shall **not accrue** until six months after the filing of an **amendment**.

(c) **Forms** may be **obtained** and claims **may** be filed with the office, local, regional, or headquarters, of the **constituent organization** having jurisdiction over the employee involved in the **accident or** Incident, or with **the Department of Health, Education, and Welfare Claims Officer**, Washington, D. C. 20201.

§35.3 Administrative claim; who may file.

(a) A claim for injury to or loss of property may be presented by the owner of the property interest **which is** the subject of the claim, his duly authorized agent, or **his** legal **representative**.

(b) A claim for personal injury may be **presented** by the injured person, his duly **authorized** agent, or his 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**. **Whenever an insurer presents**

(4-20-10 continued)

8 claim • sserti8g the rights of a subrogee, he shall present with his claim appropriate evidence that he has the rights Of 8 subrogee.

(e) A claim presented by an agent or leg81 representative shall be presented in the name Of the claimant, be signed by the 8geBt or leg81 representative, show the title OR legal capacity of the person signing, and be accompanied by evidence of his authority to present 8 claim on behalf Of the claimant 88 agent, executor, administrator, parent, guardian, or other representative.

§35.4 Administrative claims: evidence and information to be submitted.

(8) Death. In support of a claim based on death, the claimant may be required to submit the following evidence or information:

(1) An authenticated death certificate or other competent evidence showing cause of death, date of death, and age of the decedent.

(2) Decedent's employment or occupation at time of death, including his monthly or yearly salary or earnings (if any), and the duration of his last employment or occupation.

(3) Full names, addresses, birth dates, kinship, and marital status of the decedent's survivors, including identification of those survivors who were dependent for support upon the decedent at the time of his death.

(4) Degree of support afforded by the decedent to each survivor dependent upon him for support at the time of his death.

(5) Decedent's general physical and mental condition before death.

(6) Itemized bills for medical and burial expenses incurred by reason of the incident causing death, or itemized receipts of payments for such expenses.

(7) If damages for pain and suffering prior to death are claimed, 8 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 8 bearing on the responsibility of the United States for the death or the damages claimed. .

(4-20-10 continued)

(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 or designated by the Department or the constituent organization. A copy of the report of the examining physician shall be made available to the claimant upon the claimant's written request provided that claimant has, upon request, furnished the report referred to in the first sentence of this subparagraph and he has made or agrees to make available to the Department or the operating agency any other physician's reports previously or thereafter made of the physical or mental condition which is the subject matter of his claim.

(2) Itemized bills for medical, dental, and hospital expenses incurred, or itemized receipts of payment for such expenses.

(3) If the prognosis reveals the necessity for future treatment, a statement of expected duration of and expenses for such treatment.

(4) If a claim is made for loss of time from employment, a written statement from his employer showing the 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 bearing on the responsibility of the United States for the person injured or the damages claimed.

(c) **Property damage.** In support of a claim for damage to or loss of property, real or personal, the claimant may be required to submit the following evidence or information:

(1) Proof of ownership.

(2) A detailed statement of the amount claimed with respect to each item of property.

(3) An itemized receipt of payment for necessary repairs or itemized written estimates of the cost of such repairs.

(4-20-10 continued)

(4) A statement listing date of purchase, purchase price, market value of t&e property of date of damage, and salvage value, where repair is not economical.

(5) Any other evidence or information which may have bearing either on the responsibility of the United States for the injury to or loss of property or the damages claimed.

(d) Time limit. All evidence required to be submitted by this section shall be furnished by the claimant within a reasonable time. Failure of a claimant to furnish evidence necessary to a determination of his claim within three months after a request therefor has been mailed to his last known address may be deemed an abandonment of the claim. The claim may be thereupon disallowed.

§35.5 Investigation, examination, and determination of claims.

When a claim is received, the constituent agency out of whose activities the claim arose shall make such investigation as may be necessary or appropriate for a determination of the validity of the claim and thereafter shall forward the claim, together with all pertinent material, and a recommendation based on the merits of the case, with regard to allowance or disallowance of the claim, to the Department Claims Officer to whom authority has been delegated to adjust, determine, compromise and settle all claims hereunder.

§35.6 Final denial of claim.

(a) Final denial of an administrative claim shall be in writing and sent to the claimant, his attorney, or legal representative by certified or registered mail. The notification of final denial may include a statement of the reasons for the denial and shall include a statement that, if the claimant is dissatisfied with the Department's action, he may file suit in an appropriate United States District Court not later than six months after the date of mailing of the notification.

(b) Prior to the commencement of suit and prior to the expiration of the 6-month period after the date of mailing, by certified or registered mail of notice of final denial of the claim as provided in 28 U.S.C. 2401(b), a claimant, his duly authorized agent, or legal representative, may file a written request with the Department for reconsideration of a final denial of a claim under paragraph (a) of this section. Upon the timely filing of a request for reconsideration the Department shall have 6 months from the date of filing in which to make a final disposition of the claim and the claimant's option under 28 U.S.C. 2675(a) to bring suit shall not accrue until 6 months after the filing of a request for reconsideration. Final Department action on a request for reconsideration shall be effected in accordance with the provisions of paragraph (a).

(4-20-10 continued)

§35.7 Payment of approved claims.

(8) Upon allowance of his claim, claimant or his duly authorized agent shall sign the voucher for payment, Standard Form 1145, before payment is made.

(b) When the claimant is represented by an attorney, the voucher for payment (SF 1145) shall designate both the claimant and his attorney as "payees." The check shall be delivered to the attorney whose address shall appear on the voucher.

§33.8 Release.

Acceptance by the claimant, his agent or legal representative, of any award, compromise or settlement made hereunder, shall be final and conclusive on the claimant, his agent or legal representative and any other person on whose behalf or for whose benefit the claim has been presented, and shall constitute a complete release of any claim against the United States and against any employee of the Government whose act or omission gave rise to the claim, by reason of the same subject matter.

135.9 Penalties.

A person who files a false claim or makes a false or fraudulent statement in a claim against the United States may be liable to a fine of not more than \$10,000 or to imprisonment of not more than 5 years, or both (18 U.S.C. 287, 1001), and, in addition; to a forfeiture of \$2,000 and a penalty of double the loss or damage sustained by the United States (31 U.S.C. 231).

§35.10 Limitation on Department's authority.

(8) An award, compromise or settlement of a claim hereunder in excess of \$25,000 shall be effected only with the prior written approval of the Attorney General or his designee. For the purposes of this paragraph, a principal claim and any derivative or subrogated claim shall be treated as a single claim.

(b) An administrative claim may be adjusted, determined, compromised or settled hereunder only after consultation with the Department of Justice when, in the opinion of the Department:

- (1) a new precedent or a new point of law is involved; or
- (2) a question of policy is or may be involved; or

(4-20-10 continued)

(3) the **United States** is **or may** be entitled to **indemnity** or contribution from a third **party** and the **Department is** unable to adjust the third **party** claim; or

(4) the **compromise** of a particular claim, **as a particular** **utter, 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 **•** **adjudicated, determined,** compromised or **settled** only after **consultation with** the **Department** of Justice **when it is learned that the** United States or an employee, **agent** or **cost plus** contractor of the United States is **involved** in litigation based on a claim **arising** out of the **same** incident or **transaction.**



CHAPTER 4-30

PROCEDURE

- 4-30-10 Investigations
 - 20 Transmittal to **Claims** Officer
 - 30 Notice of **Commencement** of Legal Proceedings
 - 40 **Issuance** of **Instructions** by **Constituent** Organization⁸
 - 50** The Department Claims Officer
 - 60 Final Action on Claims
 - 70 Form⁸ • Tort **Claims**

4-30-10 INVESTIGATIONS

- A. An **immediate** investigation must **be** made by the appropriate office, local, regional **or** headquarter⁸ whenever:
 - 1. private property is damaged, destroyed, or lost or when anyone suffer⁸ personal injury or death as a result of an incident involving the Department of Health, Education, and Welfare or an officer or employee of the Department or any **person** detailed to or serving the Department;
 - 2. a claim or **suit** for damage **is** filed **pursuant** to the Act, if no **previous** investigation ha⁸ been made;
 - 3. **requested** by the Claims Officer.
- B. Responsibility for investigations
 - 1. Responsibility for conducting prompt and thorough investigations shall **rest** with the head **of** the operating agency or the Office **of** Field Coordination or the Director **of** Administrative **Services** under **whose jurisdiction** the officer or employee involved in the accident, or the **Government** property damaged, **is assigned**.
 - 2. **At least** out employee **shall be designated by** the **responsible** officer a⁸ an Investigating Officer in **each station** or office, local, regional **or** headquarters who **shall** be charged with the duty **of investigating** accidents and incidents occurring within the jurisdiction of hi⁸ office or **station**.
- C. Manner of Conducting Investigations

Every employtt involved in an accident or incident **shall make a complete and** accurate report which shall be transmitted to the **Investigating Officer** before the **close** Of **business for the following** work day.

The **Investigating** Officer, upon receipt of notice of an accident, claim, or **suit**, shall **promptly** interview and obtain *complete*, signed

(4-30-U-X continued)

statements from all witnesses, visit the scene of the accident or incident to obtain first hand information and do what is necessary to **conduct** a thorough investigation including the following, whenever possible:

1. interview the employee involved to **determine** whether the information *furnished* in his report is both complete and accurate;
2. interview and obtain **complete** signed **statements** on Standard Form 94 (Revised) **from** all other persons who witnessed the accident or incident or who have information pertinent thereto. Each such statement should contain the Post Office address • and the witnessed signature of the witness. If the witness declines to sign a **statement**, the Investigating Officer shall prepare a **statement** covering the information given by the witness and indicate the **reasons why** the witness **refused** to give such **information** in writing. When the Investigating Officer has reason to believe any statement obtained is biased or untrue, he shall attach thereto a written **statement** setting forth the reasons for his opinion, which shall **become** part of the file. See item 12 herein;
3. if a motor vehicle accident occurred through the negligence of one other than the **Government** driver, obtain photographs pertinent to the accident, if practicable; and attach thereto a signed statement of the photographer showing the time, place, view, and other pertinent data;
4. in case of damage to **Government** property, obtain two signed estimates of the cost of repair. If property is lost, damaged beyond **economical** repair, or destroyed, two signed estimates should be obtained as to the property's value before the accident or incident and its salvage value, if any;
5. where a claim for damage, loss, or destruction of private property has been filed, the claimant shall submit at least two signed estimates from disinterested qualified persons of the cost of repairing the private property. If a claim for personal injury or death has been or appears likely to be filed, signed reports **from** attending physicians, hospitals, etc., should be obtained as well as an exact copy of the death certificate, and coroner's report, if any. The head of the constituent organization may, in his **discretion**, and as provided herein, arrange for a medical **examination** of the injured claimant. The facilities and personnel of the United States Public Health Service should be used when practicable.
6. obtain a copy of any police report and other official investigation or COURT action;
7. obtain a copy or extract of any pertinent local laws, ordinances or regulations;

(4-30-10C continued)

8. where an accident occurs in a building leased by the Government involving a person not employed by the Government, either a copy of the lease should be obtained or information on whether or not the provisions of the lease impose the responsibility for maintenance and upkeep of the building upon the lessor or the lessee.
9. prepare a diagram of the scene of the accident or incident showing all pertinent physical facts, with particular reference in vehicular accidents to distances in feet within points of impact and points where danger was first observed or point where vehicle's motion ceased, width of streets, skid marks, etc.
10. prepare a statement setting forth the nature of the duties of the employees involved in the accident or incident, and containing all facts tending to indicate whether the employees involved in the accident or incident were acting at the time within the scope of their employment or line of duty (GSA OF 26);
11. Completely fill out the Accident Report (HEW 516).
12. If the investigator wishes to note in the file his own personal comments, opinions, or recommendations regarding the accident **or** incident, he should record them in a memorandum separate and apart from the official, investigative report.

4-30-20 TRANSMITTAL TO CLAIMS OFFICER

A. Notice of Accident

Notice of the happening of every accident or incident that is required to be investigated pursuant to **4-30-10** above, shall be transmitted without delay by sending a copy of Form HEW 516 through the head of the constituent organization involved, or his designee, to the Claims Officer (See Part 18 of the Department Safety Management Manual). The investigation file shall be retained until the investigation is completed and the claim is filed.

B. If a Claim has been Filed

After a claim has been filed, the head of the constituent organization concerned, or his designee, upon completion of his investigation shall send the complete investigation file to the Claims Officer, including his recommendation as to disposition. If he recommends allowance of claim, the amount he recommends should be stated and **supported** by the evidence, and a completed voucher (SF-1145) shall be submitted with the file.

(4-30-20 continued)

C. If Damage to Government Vehicle is Involved

1. Where the **circumstances** of the accident or incident indicate that a claim may be filed **against** the **Government** by a third party, no determination **shall** be made regarding the negligence of a **Government** employee in connection with causing damage to **Government** property. This is **especially true where** a **Government** vehicle **is** involved in an accident. Such a determination regarding negligence **shall** be **made** only by the Department Claims Officer.
2. If the **Government** may have **lost** or **gained** a third party **arising from** an accident or incident in which a claim **is** made against **the Government** under **this** Chapter, any collection action taken **shall** be in accordance with the Claim Collection Act and the regulations and procedure⁸ issued thereunder.

D. If Suit has been Instituted Against the Government

The report **should** be **transmitted** through the head of **the** constituent **organization** or his designee to the **Department** Claim⁸ Officer.

4-30-30 NOTICE OF COMMENCEMENT OF LEGAL PROCEEDINGS

A. Suit⁸ Based on Cause of Action or Claim Arising Prior to January 18, 1967

1. **Where the claim is** over \$2500, claimant's sole **remedy** is to file suit. **The procedure herein is** to be followed so that the Department of Justice may **assume** defense of the action.

B. Suit Based on Cause of Action or Claim Arising on or After January 18, 1967

1. Regardless **of** the amount of the claim, claimant must **first** file an administrative claim against the **Government**. Suit may thereafter be filed only within six months after the date of mailing, by certified or registered mail, of Notice of Final Denial of the claim. Failure of the **Government** to **make** final disposition of **the** claim-within **six** month⁸ after **it** is filed, may, at the option of the claimant, be **deemed** a final denial of the **claim** for the **purpose** of bringing suit.

The procedure herein is to be followed in order that the Department of **Justice** may **assume** **defense** of the action or, in the alternative, file a Motion to **Dismiss** the Action in those **cases where** the claimant failed to **first** file an **administrative** claim which had been subsequently denied.

(4-30-30 continued)

C. Suits Involving Operation of Motor Vehicles (28 U.S.C. 2679)**1. Responsibility of the Employee Sued**

Any employee of this Department who gains whom a law suit is brought for damage to property, or for personal injury or death, or who receives information that such action will be brought against him on account of the employee's operation of a motor vehicle in the scope of his Federal employment, shall immediately advise his superior in person, by telephone or telegraph, as appropriate, and shall deliver to him, as soon as possible, all pleadings or other documents served upon the employee.

2. Responsibility of the Supervisor

- a. The employee's supervisor shall immediately advise the agency designee (the official designated for the purposes of 28 U.S.C. §2679, as shown in Exhibit X4-30-1) and forward all documents to him with any other pertinent information.
- b. The supervisor of a defendant-employee who dies subsequent to the motor vehicle accident shall inform the employee's personal representative of the provisions of 28 U.S.C. §2679 and appropriate Department procedures.

3. Responsibility of the Agency Designee

- a. The agency designee shall promptly, upon receipt of information concerning the commencement of such action or proceeding, forward such information, and shall submit, as soon as practicable, one copy of all pleadings and proceedings to each of the following:
- (1) the United States Attorney for the District embracing the place wherein the action or proceeding is brought (see Exhibit X-40-30-2);
 - (2) the Chief of the Tort Section, Civil Division, Department of Justice, Washington, D.C. 20530;
 - (3) the Department Claims Officer, Office of General Counsel, Department of Health, Education, and Welfare, Washington, D.C. 20201. (May be sent through regular tort claim reporting channels.)
- b. The designated official shall also submit to the above listed offices as soon as possible a report containing all data bearing upon the question whether the employee involved was acting within the scope of his office or employment with the Federal Government at the time of the

(4-30-30b continued)

automobile accident out of which the suit arose. The report must contain information on:

- (1) the nature of the driver's duties;
- (2) his authorized destination at the time of the accident ;
- (3) whether he had departed from any authorized route or disobeyed any instructions;
- (4) whether he was engaged in the furtherance of his own personal interests in any way; and
- (5) any other relevant data.

D. Suits Not Involving Operation of Motor Vehicle by HEW Employee

1. Any officer, employee or other person detailed to or serving this Department (or his personal representative, if the action is brought against his estate) against whom a suit or legal action of either civil or criminal nature is commenced, on account of such person within the scope of his Federal employment or who receives information that such action will be brought against him, shall advise his immediate supervisor as soon as possible after receiving information of such action or proceedings.
2. The immediate supervisor by telegraph or long distance telephone (if necessary) shall inform the head of the operating agency or his designee of this matter. The latter shall transmit this information immediately to the Department Claims Officer. The notification must be received by the Department Claims Officer before the close of business of the first working day immediately following initial receipt of suit information by officer or employee concerned.
3. The Department of Justice, or a United States Attorney normally shall not be contacted, except as directed by the Office of the General Counsel. Further investigation may be requested either by the United States Attorney or the Office of the General Counsel.
4. In the event there is not time to follow the normal procedure, a local official of the Department may request a United States Attorney to furnish counsel and representation. The Department Claims Officer should be notified immediately of such requests.

493040 **ISSUANCE OF INSTRUCTIONS BY CONSTITUTENT ORGANIZATIONS**

The head of each constituent organization is authorized to prescribe necessary **instructions** approved by the **Claims** Officer, not **inconsistent** herewith, to **implement** the foregoing. Such **instructions shall also** include a direction to all **personnel**, when **requested**, to cooperate with and assist the United States Attorney in **prosecuting** and defending **suits** by or against the United States or its employees arising out of accidents or **incidents**, investigation of which is required by 4-30-10 supra. **Copies** of all such **instructions** shall be filed with the Department Claims Officer.

4-30-50 **THE DEPARTMENT CLAIMS OFFICER**A. Determination

The Department Claims Officer will make a determination on an **administrative** claim **against** the **Government** after the case has been reviewed with respect to applicable law by the **Division** of **Business** and **Administrative Law** of the Office of **General Counsel**.

B. Referral to Department of Justice

When **Department** of Justice approval or **consultation is** required under §35.10 of the Regulations of this Department or the advice of the Department of **Justice** is **otherwise** to be requested, the referral or request of the **Department shall** be in writing and directed to the **Assistant Attorney General, Civil Division, Department** of Justice, and **must** contain (a) a short and **concise statement** of the facts and of the reasons for the referral or request, (b) copies of relevant portions of the claim file, and (c) a **statement** of the **recommendations** or views of the constituent agency involved. Such referrals or requests to the Department of **Justice** shall be **made** by the **Department Claims Officer** and **may be** made at any **time** after **presentation** of a claim to the Department.

4-30-60 **FINAL ACTION ON CLAIMS**A. Allowed Claims

1. When a claim **is** approved by the Department **Claims** Officer, he will certify the voucher for **payment**. (In case of subrogation, the voucher will be **made** payable jointly to both **subrogee** and subrogor. If **claimant is represented** by an attorney he will be jointed as co-payee.)
2. He will **return** the file to the appropriate **Claims** Office from which it had been received.
3. The Claims Office **shall** obtain a signed release **from** the claimant on the voucher and then forward it to the appropriate **fiscal** officer for payment. (See Voucher Audit Manual Chapter 4-80-70.)

(4-30-60A continued)

4. After payment of the claim a copy of the voucher shall be furnished to the **Department** Claims Officer.
5. The original file is to be retained by the appropriate Claims Office.

B. Claims Denied

The appropriate Claims Office shall mail the notice **of denial** of claim to the claimant or his legal representative by certified or registered mail, stating the reasons **therefor** and advising of his right to file suit. (§35.6 of the Department Tort Claims Regulations.)

4-30-70 FORMS - TORT CLAIMS

- A. The following standard forms are required to be completed promptly after every accident:
 1. Operator's Report of Motor Vehicle Accident (Standard Form 91, Revised) is to be prepared at the time and on the scene of the accident insofar as possible regardless of the extent of injury or damage. Blank forms are to be carried in each Government operated motor vehicle.
 2. Data Bearing Upon Scope of Employment of Motor Vehicle Operator (Optional Form 26).
 3. Statement of Witness (Standard Form 94, Revised) for every type of accident.
 4. Accident Report (HEW 516) for every type of accident. The Department Claims Officer will also receive a copy of this report as his preliminary notice of the occurrence of the accident (See **4-30-20A**).
 5. Claim for Damage or Injury (Standard Form 95, Revised) is to be prepared by or on behalf of the claimant after he has determined the extent of his injury or **damage** sustained as a result of the alleged negligence of the Federal employee.

DESIGNEES FOR PURPOSES OF P.L. 87-258
(28 U.S.C. 2679); SUITS INVOLVING
OPERATION OF **MOTOR** VEHICLES

This exhibit indicates by position title the designees, and their areas of responsibility, for purposes of performing the duties listed in Paragraph **4-30-30** of this Chapter, to **comply** with the requirements of P.L. 87-258 (28 U.S.C. 2679) **and** the Department of Justice regulations 28 Code of Federal Regulations 15.1.

AREA OF RESPONSIBILITYDESIGNEEHeadquarters

All employees of the Department stationed in the District of Columbia except employees of the Public Health Service

Department Claims Officer,
Deputy General Counsel

Food and Drug Administration

Employees assigned to Field Districts

District Director

Regional Offices

Employees located in or assigned to respective regional offices

Regional Attorney for Regions I, II, III, IV, V, VII, VIII, and IX

Assistant Regional Attorney for Region VI

Public Health Service

Public Health Service Claims Officer
7915 **Eastern** Avenue, Silver Spring,
Maryland 20910. Phone: Area Code
301 **495-5427** (with authority to
designate additional persons);
except **for Saint Elizabeths Hospital**
whose designee is the Chief,
Administrative **Services**.

AREA OF RESPONSIBILITY**DESIGNEE**Social Security Administration**Tort Claims Officer**

District Offices

District **Manager** or Acting
District Manager

Payment Centers

Investigating Officer or
Acting **Investigating** OfficerBPCU**FCU Examiners**Respective FCU Regional
Representatives**BHA**Rearing Examiners in Regions: **II,**
III, IV, v, VII, IX**Respective** Regional Hearing
Representative

Region I

Region 11 Regional Hearing
Representative

Region VIII

Region VI Regional Rearing
Representative

<u>DISTRICT</u>	<u>HEADQUARTERS</u>	<u>PHONE</u>
ALABAMA		
Northern	354 Post Office Building 5th Avenue 6 19th Street Birmingham (35202)	FTS-205- 325-3721
Middle	302 Post Office 6 Courthouse Building or Post Office Box 197 Montgomery (36101)	FTS-205- 263-7388
Southern	311 Federal Building Mobile (36602)	FTS-205- 433-3245
ALASKA	Federal Building 4th & G Streets Anchorage (99501)	Dial 100 277-1491
ARIZONA	5000 Federal Building 230 N. First Avenue Phoenix (85025)	FTS-602- 261-3131
ARKANSAS		
Eastern	Post Office & Courthouse 600 W. Capitol Little Rock (72203)	FTS-501- 372.5342
Western	Post Office & Federal Building Rogers Avenue & 6th Street Fort Smith (72901)	FTS-501- 782-3406
CALIFORNIA		
Northern	16th Floor Federal Building & U.S. Courthouse 450 Golden Gate Avenue San Francisco (94102)	FTS-415- 556-2309
Central	600 U.S. Courthouse 312 N. Spring Street Los Angeles (90012)	FTS-213- 688-2434
CANAL ZONE	Post Office Box 716 District Courthouse Herrick 6 Colombia Roads Balboa	Dial Opr. Balboa 2697 & 2792
COLORADO	Post Office Box 1776 Denver (80201)	FTS-303- 297-4184

<u>DISTRICT</u>	<u>HEADQUARTERS</u>	<u>PHONE</u>
CONNECTICUT	Federal Building 450 Main Street Hartford (06103)	FTS-203- 244-2570
DELAWARE	200 Federal Building 11th & Market Streets Wilmington (19801)	FTS-302- 654-6345
DISTRICT OF COLUMBIA	3600 District Court Building Washington, D.C. (20001)	FTS-202- 783-6511 or 187-2070
FLORIDA Northern	Box 1308 U.S. Post Office & Courthouse Building 110 E. Park Avenue Tallahassee (32301)	FTS-904- 377-4217
Middle	Post Office Building 611 Florida Avenue Tampa (33601)	FTS-813- 228-7146
Southern	U.S. Post Office & Courthouse Building 300 N.E. First Avenue Miami (33101)	FTS-305- 350-5255-56
GEORGIA Northern	402 Old Post Office Building 56 Forsyth Street, N.W. Atlanta (30301)	FTS-404- 526-6606
Middle	303 Federal Building Mulberry & 3rd Streets Macon (31202)	FTS-912- 743-2235
Southern	309 Post Office Building Bull 6 York Streets Savannah (31402)	FTS-912- 232-4261
GUAM	Post Office Box Z Agana (96910)	Dial Opr. 72-6445 & 72-6458
HAWAII	320 Federal Post Office Building Richard & Merchants Streets Honolulu (96809)	Dial Opr. 58831 Ext. 760

<u>DISTRICT</u>	<u>HEADQUARTERS</u>	<u>PHONE</u>
IDAHO	217 Post Office Building 8th 6 Jefferson Boise (83701)	FTS-208- 342-2211
ILLINOIS	1500 New U.S. Courthouse 219 S. Dearborn Street Chicago (60604)	FTS-312- 828-5333
Eastern	Post Office Building 750 Missouri Avenue East St. Louis (62202)	FTS-618 274-2361
Southern	Post Office Box 375 600 E. Monroe Street Springfield (62705)	FTS-217- 525-4450
INDIANA	U.S. Post Office & Courthouse	FTS-219-
Northern	1300 S. Harrison Street Fort Wayne (46801)	422-6121 6122
Southern	246 Federal Building Ohio & Meridian Streets Indianapolis (46204)	FTS-317- 633-7581
IOWA		
Northern	327 Post Office Building & Courthouse 6th & Douglas Streets Sioux City (51102)	
Southern	202 U.S. Courthouse Des Moines (50300)	
KANSAS	Post Office Building 5th Street & Kansas Avenue Topeka (66601)	
KENTUCKY		
Eastern	326 Federal Building Limestone & Barr Streets Lexington (40501)	
Western	211 Federal Building 6th 6 Broadway Louisville (40202)	

<u>DISTRICT</u>	<u>HEADQUARTERS</u>	<u>PHONE</u>
LOUISIANA Eastern	509 St. Louis Street New Orleans (70130)	FTS-504- 527-2921
Western	U.S. Courthouse & Post Office 424 Texas Street Shreveport (71102)	FTS-318 425-6641
MAINE	Federal Courthouse 156 Federal Street Portland (04112)	FTS-207 775-3258
MARYLAND	409 Post Office Building Calvert & Fayette Streets Baltimore (21202)	FTS-301- 962-3361
MASSACHUSETTS	1107 Post Office & Courthouse Building Devonshire Street Boston (02109)	FTS-617 223-3258
MICHIGAN Eastern	813 Federal Building Detroit (48226)	FTS-31- 226-3100
Western	313 Federal Building 135-37 Ionia Avenue, N.W. Grand Rapids (49502)	FTS-616- 456-2404
MINNESOTA	596 U.S. Courthouse 4th 6 Marquette Avenue Minneapolis (55401)	FTS-612- 334-2681
MISSISSIPPI Northern	Post Office Building 106 S. Lamar Oxford (38655)	Dial 100 601-234- 3351
Southern	U.S. Post Office & Courthouse Capitol & S.W. Streets Jackson (39205)	FTS-601- 948-2562
MISSOURI Eastern	U.S. Courthouse & Customhouse 1114 Market Street St. Louis (63101)	FTS-314- 622.4205

<u>DISTRICT</u>	<u>HEADQUARTERS</u>	<u>PHONE</u>
MISSOURI - Cont'd Western	549 U.S. Courthouse 811 Grand Avenue Kansas City (64106)	FTS-816- 374-3124
MONTANA	Federal Building 400 N. Main Street Butte (59701)	FTS-406- 723-3316
NEBRASKA	Federal Building 215 N. 17th Street Omaha (68101)	FTS-402- 221-4774
NEVADA	U.S. Post Office & Courthouse 301 Stewart Street Las Vegas (89101)	Dial 100 FTS-702- 382-5696
NEW HAMPSHIRE	Post Office Building Capitol & State Streets Concord (03302)	FTS-603- 224-7735
NEW JERSEY	Post Office Building Federal Square Newark (07102)	FTS-201- 645-2155
NEW MEXICO	U.S. Courthouse & Office Building 500 Gold Avenue, S.W. Albuquerque (87103)	FTS-505- 247-2901
NEW YORK Northern	Federal Post Office Building 445 Broadway Albany (12207)	FTS-518- 472-5522
Southern	U.S. Courthouse Foley Square New York (10007)	FTS-212- 264-6118
Eastern	U.S. Courthouse & Federal Building 225 Washington Street Brooklyn (11201)	FTS-212- 596-5600
Western	502 U.S. Courthouse Niagara Square Buffalo (14202)	FTS-716- 842-3484

<u>DISTRICT</u>	<u>HEADQUARTERS</u>	<u>PHONE</u>
NORTH CAROLINA		
Eastern	303 Post Office Building 300 Fayetteville Street Raleigh (27602)	FTS-919- 828-9143
Middle	Federal Building Post Office & Courthouse 324 W. Market Street Greensboro (27401)	FTS-919- 275-9351
Western	310 U.S. Courthouse & Post Office Building Post & Otis Streets Asheville (28802)	FTS-704- 254.0655
NORTH DAKOTA	705 - First Avenue North Fargo (58103)	FTS-701- 237-5293
OHIO		
Northern	400 Federal Building Public Square Cleveland (44114)	FTS-216- 522-4380
Southern	U.S. Post Office & Courthouse 85 Marconi Boulevard Columbus (43216)	FTS-614- 469-5715
OKLAHOMA		
Northern	406 U.S. District Court, Federal Building 3rd & Boulder Streets Tulsa (74103)	FTS-918- 584-7161(opr' LU 4-7161 Ext. 463 & LU 5-1987
Eastern	333 Federal Building 5th 6 Broadway Streets Muskogee (74402)	FTS-918- 683-3471
Western	4th Floor (Post Office Box 778) 200 N.W. 4th Street Federal Building & New Courthouse Oklahoma City (73102)	FTS-405- 236-2623
OREGON	U.S. Courthouse S.W. Broadway & Main Streets Portland (97207)	FTS-503- 226-351

<u>DISTRICT</u>	<u>HEADQUARTERS</u>	<u>PHONE</u>
PENNSYLVANIA		
Eastern	U.S. Courthouse 9th & Chestnut Streets Philadelphia (19107)	FTS-215- 597-3311 (opr) WA 2-5850
Middle	424 U.S. Courthouse 6 Post Office Building Washington Avenue & Linden Street Scranton (18501)	FTS-717- 344-7297
Western	633 U.S. Post Office & Courthouse 7th Avenue & Grant Street Pittsburgh (15219)	FTS-412- 644-3500
PUERTO RICO	U.S. Courthouse & Post Office Building Conercio Street San Juan (00904)	Opr. 722- 1550
RHODE ISLAND	U.S. District Court, Federal Building Kennedy Plaza Providence (02901)	FTS-401- 528-4311
SOUTH CAROLINA		
Eastern	U.S. Courthouse Laurel & Assembly Streets Columbia (29201)	FTS-803- 253-3451 (opr)
Western	Federal Building 300 E. Washington Street Greenville (29603)	FTS-803- 232-4326
SOUTH DAKOTA	211 Federal Building & U.S. Courthouse Phillips Avenue 6 12th Street Sioux Falls (57102)	FTS-605- 336-2256
TENNESSEE		
Eastern	U.S. Courthouse & Post Office Building Chattanooga (37402)	FTS-615- 266-3211
Middle	879 U.S. Courthouse 801 Broadway Nashville (37203)	FTS-615- 242-5791

<u>DISTRICT</u>	<u>HEADQUARTERS</u>	<u>PHONE</u>
TENNESSEE • Cont'd		
Western	1058 Federal Building 167 N. Main Street Memphis (38101)	FTS-901- 534-3311
TEXAS		
Northern	U.S. Courthouse 10th at Lamar Fort Worth (76102)	FTS-817- 334-3291
Southern	12000 U.S. Courthouse 515 Rusk Avenue Houston (77061)	FTS-713- 228-4765
Eastern	Post Office Box 1049 & U.S. Courthouse W. Ferguson Street Tyler (75701)	100-214- LY 2-1472 or LY 4-7756
Western	U.S. Courthouse Post Office Box 1301 615 Houston Street San Antonio (78206)	FTS-512- 225-4221
UTAH	U.S. Post Office & Courthouse 350 s. Main Salt Lake City (84101)	FTS-801- 524-5685
VERMONT	Federal Building 151 West Street Rutland (05702)	100-802- PR 3-9133
VIRGIN ISLANDS	District Court Building Annex, Charlotte Amalie Post Office Box 1441 St. Thomas (00801)	OPR. 774-1430
VIRGINIA		
Eastern	U.S. Post Office Building Main Street Richmond (23210)	703-649- 3611 opr. MI 44097
Western	Post Office Building 2d Street at Church Avenue Roanoke (24008)	FTS-703- 343-6384
WASHINGTON		
Eastern	334 Federal Building W. 904 Riverside Spokane (99210)	FTS-5- 838-3601

<u>DISTRICT</u>	<u>HEADQUARTERS</u>	<u>PHONE</u>
WASHINGTON • Cont'd Western	U.S. Courthouse 1010 5th Avenue Seattle (98104)	FTS-206- 583-4735
WEST VIRGINIA Northern	Federal Building Post Office Box 591 1125-1141 Chapline Wheeling (26003)	FTS-304- 343-1042
Southern	U.S. Courthouse 500 Quarrier Street Huntington (25701)	P-m-304- 343-6181
WISCONSIN Eastern	390 Federal Building 517 E. Wisconsin Avenue Milwaukee (53202)	FTS-414- 272-3381
Western	241 Federal Building 215 Monona Avenue Madison (53701)	FTS-608- 256-4658
WYOMING	2141 U.S. Post Office & Courthouse 2120 Capitol Avenue Post Office Box 668 Cheyenne (82001)	FTS-307- 778-2367

CHAPTER 4-35

CLAIMS

4-35-00	Scope
10	Definitions
20	Claimants
30	Types of Claims Payable
40	Claims Generally Not Payable
50	Computation of Award
60	Claims Involving Carriers or Insurers
70	Claims Procedures
80	Reimbursement Procedure

4-35-00

SCOPE

This Chapter provides policies and procedures for handling claims not in excess of \$15,000 under the Military Personnel and Civilian Employees' Claims Act of 1964 (31 U.S.C. 240-243) for damage to or loss of property of employees of the Department. The loss must be incident to employment and the employee must be free of negligence in connection with the loss. Nothing in this Chapter shall be construed to bar other types of claims heretofore payable under other statutory authority such as, but not limited to, the Federal Tort Claims Act (28 U.S.C. 2671-2680).

4-35-10

DEFINITIONS

- A. Claim. "Claim" means any claim filed by or on behalf of an employee for damage to or loss of such employee's personal property incident to his employment.
- B. Employee. An "employee" means any officer or employee of this **Department**, including but not limited to officers of the Public Health Service.
- C. Damage or loss. "Damage or loss" includes total or partial destruction, capture or abandonment under the circumstances set forth in Section 4-35-30 of this Chapter.

(4-35-10 continued)

3. Quarters. "Quarters" means living quarters or any place of employment, **including** but not limited to offices, storerooms, warehouses, garages, hospitals, **etc.**, where an employee is assigned by competent authority to perform duties within the scope of his employment.
- E. Department. "Department" means the Department of Health, Education, and Welfare.

4-35-20

CLAIMANTS

Claims under the Military Personnel and Civilian Employee's Claims Act may be presented by:

- A. An employee.
- B. The authorized agent of an employee entitled to submit a claim, but only if the employee is alive at the time of the submission of the claim and evidence of authority is submitted.
- C. The survivor of an employee, regardless of whether the claim arose before, concurrent with, or after the employee's death. Survivors claims will be considered in the following order:
1. Spouse
 2. Children
 3. Parents
 4. Brothers and sisters
- D. A former employee or his survivors, but the claim must be for damage or loss to property which occurred prior to separation from the Department.

4-35-30

TYPES OF CLAIMS PAYABLE

A claim is payable: .

1. In an amount not to exceed **\$15,000.00.**
- 2.** If presented in writing within two **years** after it accrues.
3. If it did not arise in whole or in part by the negligent or wrongful act of the claimant or his/her agent or employee.

Provided that the damage or loss occurred under the following circumstances:

A. In Government Quarters

Where property is damaged or lost by fire, flood, hurricane, theft, or other serious occurrence while located at:

1. Quarters which have been assigned or provided by the Government.
2. Quarters outside the United States whether assigned by the Government or not. Exception - A civilian employee outside the U.S. who is a local inhabitant is only covered by this Act if quarters are assigned by the Government.
3. Any warehouse, office, hospital, baggage loading area or **cther** place designated by superior authority for the reception of the property.

B. Transportation Losses

Damage or loss of personal property, including baggage and household effects, while being transported by a carrier, an agent or agency of the Government, or private conveyance, is payable only if the property is shipped under orders or in connection with travel under orders.

C. Miscellaneous

Claims for damage to or loss of property may also be allowed when caused by:

1. Marine and air disaster, enemy action, and other extraordinary risks incurred incident to the performance of official duties by the claimant.
2. Property used for the benefit of the Government at the direction or request of superior authority.

(4-35-30 continued)

3. Money deposited with other employees acting within the scope of their employment and at the direction of superior authority, which was not applied as directed by the owner, nor returned to him. Money which is stolen from an employee whose duties require him to carry it is also covered by this Act.
4. Theft but only if it is determined as a result of positive evidence that: the claimant exercised due care in the protection of his property and, there was a larceny, burglary or housebreaking.
5. Certain other meritorious claims in exceptional cases may be allowed by the Department Claims Officer or his delegate.

4-35-40

CLAIMS GENERALLY NOT PAYABLE

Damage to or loss of personal property must be incident to employment. Generally claims are not payable for personal property if the Department Claims Officer or authorized delegate determines that its possession was not reasonable, useful, or proper under the existing circumstances, or where damage to or loss of property was caused in whole or in part by any negligent or wrongful act on the part of the claimant, his agent or his employee.

Claims shall not be allowed for the following specific types of property:

- A. Money or currency (except as provided in Section 4-35-30 C.3 above); intangible property such as bankbooks, checks, money orders, baggage checks, warehouse receipts, bills of lading, promissory notes, stock certificates, bonds, etc.
- B. Worn-out or unserviceable property.
- C. Easily pilferable articles such as jewelry, cameras, watches, and binoculars when they are shipped with household goods or by ordinary means or as unaccompanied baggage at normal or released valuation. (This does not apply to checked property or property in personal custody of the claimant or his agent provided proper security measures have been taken.)

'4-35-40 continued)

- D. Wearing apparel being worn at the time of damage or loss, except in the circumstances listed in 4-35-30 C.1 and 2.
- E. Property owned by the United States, except such property belong to an agency other than the Department for which the claimant is responsible.
- F. Claims for damage or loss of motor vehicles except when they are being shipped or transferred due to an employee's permanent change of station. Other exceptional cases may be considered for payment by the Department Claims Officer or authorized delegate.
- G. Losses of insurers and other subrogees.
- H. Losses which have been recovered or are recoverable from an insurer, carrier or other subrogee.
- I. Losses which have been recovered or are recoverable pursuant to contract.
- J. Property normally used for business or profit.
- K. Claims for fees paid to obtain estimates of repair to support a claim under this Act. However, if the Department Claims Officer or authorized delegate determines that the claimant could not have obtained an estimate without paying the fee, it may be payable provided that the estimate clearly shows that the estimate fee will not be deducted from the costs of repair.
- L. Claims for property acquired, possessed, or transported in violation of laws or regulations issued by or applying to DHEW or to its employees. (This does not apply to limitations imposed on weights of shipments of household effects.)
- M. Claims under \$10.00.

(4-35-40 continued)

- N. Claims which are otherwise within the provisions of this section shall not be disapproved for the sole reason that the property was not in the possession of the claimant at the time of its damage or loss or for the reason that the claimant was not the legal owner of the property. Borrowed property may be the subject of a claim if its possession was reasonable, useful, or necessary to the claimant.

4-35-50

COMPUTATION OF AWARD

A. Cost of Property as a Basis

The amount awarded on any item of property shall not exceed the adjusted cost of the item based upon the cost of replacing it with a similar one of the same quality minus the appropriate depreciation rate (explained below). The amount normally payable on property damaged beyond economical repair shall not exceed its depreciated value. If the cost of repairs is less than the depreciated value it shall be considered economically repairable and the costs of repairs shall be the amount payable.

B. Depreciation

Depreciation in value of an item shall be determined by considering the type of article involved, its replacement cost, condition when lost or damaged beyond economical repair, and the time elapsed between the date of acquisition and the date of accrual of the claim. Exhibit X4-35-2 to this Chapter contains a schedule of depreciation to be used for determining the estimated life of various classes of items.

4-35-60

CLAIMS INVOLVING CARRIERS OR INSURERSA. Claim against Carrier

1. Whenever property is damaged, lost, or destroyed while being shipped pursuant to authorized travel orders, the owner shall file a written claim for **reimbursement** against the carrier at once. **[See Exhibit X4-35-1: Demand on Carrier - Format] Innoeventshallitbepresentedlater than within nine months from the date delivery .** was or should have been made according to the terms of the bill of lading or contract. It shall be filed before or concurrent with submitting a claim against the Government under these regulations.
2. The demand shall be made against the responsible carrier. If more than one bill of lading or contract was issued, a separate demand shall be made against the last carrier on each such document, unless claimant knows which carrier was in possession of the property when the damage or loss occurred.

B. Claim against Insurer

Whenever property which is damaged, lost, or destroyed incident to the claimant's service is insured in whole or in part, the claimant shall make demand in writing against the insurer for reimbursement under the terms and conditions of the insurance coverage. Such demand shall be made within the time limit provided in the policy, and prior to or concurrent with the filing of the claim against the Government.

C. Assistance in Presenting Claims to Carrier and Insurer

1. The Department Claims Officer, authorized delegate, or the appropriate Claims Investigating Officer (4-35-70.B below) shall assist the claimant in the preparation of the claim against the carrier or insurer.

(4-35-60 continued)

2. If no action is taken by the carrier or insurer on his claim, the claimant is required to advise the Department Claims Officer or authorized delegate, and upon request, to furnish the Department Claims Officer or authorized delegate with all correspondence, documents, and other evidence pertinent to the matter.
3. All reimbursements to the claimant in settlement of his claim by the carrier or insurer shall be made payable to the claimant and addressed to him. In this event, the appropriate Claims Officer shall be notified immediately.

D. Failure to Make Demand on Carrier or Insurer

Failure to make timely demand on a carrier or insurer or to make all reasonable efforts to collect the amount recoverable from the carrier or insurer may result in reducing the amount recoverable from the Government. The maximum amount which would have been recoverable from the carrier or insurer had the claim been timely made or diligently prosecuted shall be deducted. No deduction shall be made however, where the circumstances of the claimant's service prevented him from making the claim against the carrier or insurer or the evidence indicates a demand was impracticable or would have been futile.

E. Claims against the Government

1. Concurrent with or immediately following the submission of the claim against the carrier or insurer, or both, the claimant must submit his claim against the Government.
2. He shall certify in his claim that he has or has not gained any recovery from a carrier or insurer, and enclose all correspondence pertinent to his claim **against** the carrier or insurer.

35-60 continued)

F. Assignment of Right against the Carrier or Insurer

Where claimant has asserted his rights against the carrier or insurer in a timely manner, and has not received payment from the carrier, and the Government issues a voucher in payment to claimant, the voucher shall contain his assignment to the United States of all his right, title and interest in any claim he may have against any carrier, insurer, or other party arising out of the incident on which the claim against the United States is based. He shall also, upon request, furnish such evidence as may be required to enable the United States to enforce the claim.

G. Recoveries from Carrier or Insurer

After payment of his claim by the United States the claimant shall, if he receives any payment from a carrier or insurer, reimburse the United States to the extent of the payment received from the United States.

4-35-70

CLAIMS PROCEDURES

A. Department Claims Officer

1. The Assistant General Counsel, Business and Administrative Law Division, Office of the General Counsel, is designated as the Department Claims Officer for claims arising under this Part. Full redelegations were made to the Deputy Assistant General Counsel and to the Chief, Litigation and Claims Branch in this Division. Central responsibility for this function is vested in the Litigation and Claims Branch.

(4-35-70 continued)

2. Redelegations were made to Regional Attorneys within the ten Regions to adjudicate claims not in excess of \$2500 arising from activities of employees under the appointing authority of the respective Regional Directors except claims by employees of PHS, including Commissioned Corps personnel, and the Social Security Administration.
3. Redlegation was made to the Public Health Service Claims Officer to adjudicate claims not in excess of \$2500 arising from activities of employees of the Public Health Service, including Commissioned Corps personnel.
4. Redlegation was made to the Social Security Administration Claims Officer to adjudicate claims not in excess of \$2500 arising from activities of employees under the appointing authority of the Commissioner of the **Social Security** Administration.

B. Claims Investigating Officers

The head of each Principal Operating Component and the Assistant **Secretary**, Management and Budget or their designees, shall each designate at least one employee in each of its stations or offices, as applicable, who shall act as and who shall be referred to herein as the Claims Investigating Officer.

C. Filing and Investigating Claims

When an incident has occurred resulting in loss of or damage to personal property, the claimant shall promptly submit his claim (as below) in duplicate on Form **HEW-481**, Employee Claim for Loss or Damage to Personal Property (Exhibit X4-35-3). However, any written communication shall be considered as a proper claim if it makes a demand for a sum certain for \$15,000 or less, sets forth the facts and

(4-35-70 continued)

circumstances in detail, contains substantially the same information required by the claim form, and if signed by the claimant or by his duly authorized agent. The local claims investigating officer shall assist claimant as to forms needed in the preparation of a claim. The completed forms shall be submitted by the claimant to his immediate supervisor or directly to the local claims investigating **officer**, depending on local arrangements. Upon receipt of the claim, the local claims investigating officer will immediately:

1. Investigate as completely as is practicable the nature and circumstances of the occurrence causing the loss or damage of the claimant's property;
2. Ascertain the extent of loss or damage to claimant's property;
3. Prepare a statement describing the occurrence in detail and setting forth the results of the investigation on Form HEW-482, Report of Damage or Loss, (Exhibit X4-35-4) together with a statement whether the claim satisfied the requirements of this Chapter with particular reference to whether the claim is within the purview of Sections **4-35-20** and **4-35-30** of this Chapter;
4. Forward the claim and related papers to the Chief, Litigation and Claims Branch, Regional Attorney, or Claims Officer within ten days. The Regional Attorney or appropriate Claims Officer will adjudicate all claims within existing delegation of authority from the Department Claims Officer.

In the case of a claim in excess of Regional Attorneys' or Claims Officers' authority that official shall submit forms and statements to the Department Claims Officer together with the original signed copy of the claimant's Form HEW-481, Employee Claim for Loss or Damage to Personal Property, all of the claimant's

(i-35-70 continued)

supporting papers attached hereto, and any papers or documents generated by or because of the investigation by the local claims investigating officer.

D. Evidence Required in Support of a Claim for Damage or Loss to the **Property**

A claimant shall submit together with his Form HEW-481, all other pertinent evidence, such as:

1. Not less than two itemized signed estimates or **statements** by competent bidders or persons concerning the costs of repairs; or, in the alternative, an itemized bill of repair for damaged property which has been repaired;
2. If the property is not economically repairable or is totally lost or destroyed, proof of this fact and of its market value before and after the loss. In most instances, the purchase price and date of acquisition of the property should be satisfactory;
3. Proof of ownership or right to recover for the damage. Other evidence may be required by the Department Claims Officer.

E. Time Limits for Filing of Claims and Reports

1. Limit for filing claims -- A claim shall be allowed under this part only if it is presented in writing within two years after its accrual. If the claim accrues in time of war or in time of armed conflict in which any armed forces of the United States is engaged or if such a war or armed conflict intervenes within two years after it accrues, and if good cause is shown, the claim shall be presented not later than two years after that cause ceases to exist, or two years

(4-35-70 continued)

after the war or armed conflict is terminated, whichever is earlier. For the purposes of this section, the dates of beginning and ending of an armed conflict are the dates established by concurrent resolution of Congress or by a determination of the President.

2. The claim and all evidence required **to be** submitted by the claimant under this **chapter** shall be submitted **within** a reasonable time after the damage or loss of the property. Failure of the claimant to furnish evidence as required by this section within six months after a request therefore may be deemed an abandonment of his claim which may thereupon be disallowed.

F. Approval of Claims

Claims submitted under this Chapter shall be approved or denied in whole or in part only by the Department Claims Officer or authorized delegates **within their** respective authority.

G. Signatures

The claim and all other papers requiring the signature of the claimant shall be signed by the claimant personally or by a duly authorized agent or legal representative. 18 U.S.C. 287 imposes a fine of not more than \$10,000 and imprisonment for not more than 5 years, or both, for presenting false claims against the Government. 18 U.S.C. 1001 imposes a fine of \$10,000 and imprisonment for not more than 5 years, or both, for making false or fraudulent statements or representations in connection with making claims against the Government. A civil penalty of forfeiture of \$2,000 plus double the amount of damages sustained by the United States is provided for presenting false or fraudulent claims. (See 31 U.S.C. 231.)

(4-35-70 continued)

All information relating to the presentation of a false or fraudulent claim shall be forwarded to the Chief, Litigation and Claims Branch for submission to the Department of Justice. The Department of Justice has the responsibility for determining whether or not legal action is warranted in such cases.

H. Reconsideration of Action

The actions of ~~the~~ Department Claims Officer and ~~authorized~~ delegates within their respective authority in ~~disapproving~~ a claim in whole or in part shall be ~~final~~ and conclusive for all purposes. No ~~appeal~~ is provided to the Secretary of ~~Health,~~ Education, and Welfare, or to any other Government agency.

However, a claim may be reconsidered. Requests for reconsideration or appeal shall be referred to the Chief, Litigation and Claims Branch together with evidence showing errors or irregularities in the submission or settlement of the claim or new evidence which was not previously available. Requests for such reconsideration or review must be submitted in writing within 60 days after the date of mailing of the notification of disapproval or partial approval of a claim.

If, upon reconsideration, it is determined that a further amount is due the claimant, a supplemental voucher will be prepared which will show the check and voucher numbers of the initial payment, and indicate that the amount thereof is in addition to the previous payment.

35-80

REIMBURSEMENT PROCEDUREA. Reimbursement in Cash

Claims approved in whole or part shall be vouchered by the Department Claims Officer or authorized delegate on Form HEW-483, Voucher for Payment and Release. These vouchers shall be mailed to the claimant by the authorized delegate with instructions to sign where indicated and to return the signed voucher, the authorized delegate will transmit it to the finance office in the agency employing the claimant to have the Treasury Department issue a check to the claimant in the sum allowed.

B. Reimbursement in Kind

Whenever a claim cognizable under these regulations includes property of a type which is available for gratuitous replacement in kind from Government stocks, the Department Claims Officer or authorized delegates may initiate action to secure such replacement in kind.

If replacement in kind is effected by such action, any claim for the property so replaced will be considered settled for all purposes. If replacement in kind is not effected, or if only a part of the property lost or damaged **is** replaced in kind, the claimant will be allowed monetary compensation for those claimed items not replaced or replaced at his own expense. The claim will include statements or other evidence to establish that any claimed items, appropriate for gratuitous issue, have not been and will not be replaced in kind.

C. Funds paid for settlement of claims made and allowed under this Chapter **shall be** made from appropriations of the office employing the claimant.

(Date)

(Name of Carrier)

(Address)

GENTLEMEN: Claim is presented by the undersigned for _____

in connection with a shipment from _____

(Loss or damage)

(Consignor)

(City, town or station)

, to

(Consignee)

(City, town or station)

under _____ No. _____

(Bill of lading, contract, or baggage check)

dated _____, issued by _____

covering shipment of _____

(Household goods, footlocker, flight bag, etc.)

described as follows:

Description of container (or of article if uncreated)	Approximate Weight (pounds)	Nature and Extent of damage	Amount Claimed
--	-----------------------------------	-----------------------------------	-------------------

Total amount of claim _____

Remarks: _____

Please mail all correspondence in regard to this claim to the undersigned in care of:

Claims Investigating Officer
(Office and Address at Which Claim Was Filed)
Attn: Department Claims Officer

Signature of Claimant

General Discussion: Use in connection with **4-35-50B**. An item less than 6 months old will not be depreciated. This includes items to which a flat rate depreciation is applied. When only the year of purchase is shown, use the month of June to compute depreciation. The depreciation rates have been developed to adjust the value of property in consideration of average wear and should be applicable to most **claims**. In some claims, where property is determined through personal inspection to have been subjected to either more or less than average wear, an appropriate adjustment in the standard depreciation rate may be made. Any such adjustment must be fully explained in the file. Similarly, the strict adherence to a maximum allowance may in a given claim create injustice. Consequently, the Department Claims Officer and authorized delegates have reserved the right to waive such allowance limitation upon proper application.

Item	Depreciation (%)			Comment
	Per Year	Flat Rate	Max-imum	
1. Adding machines, calculators	5		75	
2. Air conditioners	5		75	Maximum payment--\$750 per item.
3. Antiques				Maximum payment--\$3,000 per claim See Note 1.
4. Aquariums	5		75	
5. Artificial flowers and fruit		25		
6. Automobiles	Varies			Use local used car retail value.
7. Automobile batteries	30		75	Compute depreciation on length of use/guaranty period ratio; otherwise, use 30%.
8. Automobile convertible tops, seat and floor coverings	20		75	
9. Automobile paint jobs	15		75	Complete paint jobs only; minor jobs--no depreciation.
10. Automobile radios and accessories	10		75	
11. Automobile tires	30		75	Compute applicable depreciation on basis of miles used/30,000 miles, or mileage guarantee period ratio if mileage is known. Otherwise, use 30%.
12. Baby bassinets and carriages	10	75	75	See Furniture, Item 65.
13. Bags, clothes and shoes (fabric or plastic)	20		75	
14. Barbecue grills (include Hibachi Pots)	10		75	
15. Barber equipment (electric razors, clippers, shears, scissors)	10		75	See Item 58.
16. Baskets and hampers				
a. Wicker or Plastic	20		75	
b. Metal	10		75	
17. Bathroom scales	10		75	

Item	Depreciation (%)		Comment
	Per Year	Flat Maximum	
18. Bedding (includes mattresses, box springs, pillows, comforters, quilts and blankets, except electric)	5	75	See Blankets (electric), Item 22. See Linens, Item 82, for quilts.
19. Bedspreads	20	75	Heirloom or crocheted maximum payable-\$250.
20. Bicycles	10	75	
21. Binoculars, microscopes, telescopes, etc.	5	50	
22. Blankets (electric)	10	75	
23. Blinds (Venetian)	5	75	See Item 55, Drapes, for curtain rods, drapery rods, etc.
24. Boats	Varies		Use local used boat retail value.
25. Boating equipment and supplies	20	75	Maximum payment-\$500. Exclusive of outboard motors, see Item 93.
26. Bookends	10		
27. Books (bibles, classics, current encyclopedias, professional texts and similar works, and cookbooks).	25		Maximum payment-\$1500 per claim for all books. Does not include lecture notes and theses, see Item 123.
28. Books (current fiction and all noncurrent works, other than classics)	50		See Item 27.
29. Boxes (jewelry, cigarette, collar, music, etc.)	5	75	
30. Bric-a-Brac (all types)	10		
31. Brief cases	5	75	
32. Brushes (hair, clothes, etc.)	20	75	
33. Camel saddles (footstools)	5	75	
34. Cameras			Maximum payment is \$350 per item and \$750 per claim. See Item 102.
a. Inexpensive (\$50 or less)	10	75	
b. Expensive (more than \$50)	5	75	
35. Cards (greeting) includes Christmas and other religious cards	50		If boxes unopened or unused, no depreciation.
36. Cards (playing)	25		Same rule as Item 35.
37. Card tables	10	50	

Item	Depreciation (%)		Comment
	Per Year	Flat Max-imum	
58. Chess sets	25		If ivory, precious metal, or hand-carved wood, reduce to 10% flat rate.
39. Chests (fee. picnic, etc.)	10	7s	
40. China (fine)			Maximum payment-\$1000 per claim. No depreciation on replacement price. See Crockery, Item 47.
41. Clothing (men's, women's and children, includes fur coats, stoles, capes, hats, collars, etc.)	30-1st yr; 10-each succeeding yr	75	See Note 12. See Wedding Gowns, Item 140. If commercial pressing is required to restore wrinkled clothing to a wearable or usable condition, the reasonable cost thereof will be paid.
42. Clocks			Maximum payment on Grandfather and Grandmother clocks only is \$1000 per claim unless collection. Depreciate Grandfather and Grandmother clocks at maximum of 50%, and other expensive clocks at 73% maximum. See Collections, Item 43. See Note 1, if antique.
a. Inexpensive (\$25 or less)	10	75	
b. Expensive (Over \$25)	5	Varies	
43. Collections (coin and stamp, electric trains, firearms and ammunition, bottles, phonograph records, tape recordings, sporting equipment, tools, etc.)	US& rate if indicated for individual items elsewhere on this exhibit; otherwise, use 10% rate		Maximum payment is \$750 for single collection, and \$1500 for either combination of collection or collection belonging to the whole family. The \$1500 maximum also includes Hobbies. However, do not place reasonable recreational items in the collection or hobby category unless the quantity clearly indicates a collection or hobby. Examples: set of golf clubs, two tennis racquets, etc., are not the quantity that comprise a collection or hobby. see Note 9. Items of Substantial Value.
Lb. Comforters		75	
45. Compasses	5	50	
46. Cosmetics (includes perfume, toilet articles, medicines, soap, etc.)	50		If claimant indicates "unused or unopened", no depreciation.
47. Crockery (includes dishes, glassware, pottery, plastic ware, etc.)	10	75	Does not include fine china or crystal. See Items 40 and 48.
48. Crystal			Maximum payment is \$1000 per claim.
49. Curtains	26	75	See Item 55, Drapes, for depreciation on curtain rods.
50. Decorations (Christmas, birthday, etc.)	25		
51. Dental equipment and instruments	10		
52. Dentures	5	75	When replacement in kind cannot be effected.

Item	Depreciation (%)		Comment
	Per Year	Flat Rate Max-imum	
53. Desk and writing implements (pen and pencil sets, desk sets, fountain pens, etc.)	10	75	
54. Dishes	10	75	See Crockery, Item 47.
55. Drapes	10	75	
Draperies and curtain rods and related hardware	5	75	See Item 23.
56. Drawing, mapping, sketching and professional equipment	5	50	See Dental Equipment, Item 51, Medical Equipment, Item 59, and Books (Professional), Item 27.
57. Dryers (clothes, hair, etc.)	10	75	
58. Electrical and gas appliances			
a. (toasters, blenders, mixers, grills, small radios, irons, blankets, hair dryers, heating pads, percolators, sterilizers, heaters, razors and shavers, scissors, waffle irons, fans, pencil sharpeners, portable phonographs, etc.)	10	75	
b. (stoves, air conditioners, console radio/phonograph, tape recorders, sewing machines, vacuum cleaners, refrigerators, freezers, typewriters, etc.)	5	75	Maximum payment-\$750 per item. For Hi-Fi and Stereo Systems, see Item 74.
c. Television sets and picture tubes, washers, dryers	10	75	If part of a home entertainment center which also includes a TV, a maximum of \$1750 is permitted.
d. Dishwashers	10	75	See Note 2 on internal damage.
59. Elephants, ceramic		10	Maximum payment-\$75 each with maximum of 4.
60. Eyeglasses (includes contact lens)	5	75	When replacement in kind from Government not available.
61. Figurines		20	For objects of art, see Item 95. Apply collection maximum if quantity indicates collection, Item 43.
52. Firearms	5	50	If the current market value for a similarly used gun is higher, award that amount. Apply collection maximum if quantity indicates collection, see Item 43.
63. Flashlights	20	75	
64. Foodstuffs			\$100 maximum payment for foodstuffs in shipment-nonperishable only; reasonable payment for foodstuffs • quarters or shipped to remote area.

Item	Depreciation (%)		c o - t
	Per Year	Flat Maximum Rate	
65. Furniture			
a. Fine (expensive solid woods)	2	75	Apply 2% depreciation only when price and brand name verify classification of "expensive."
b. Ordinary	5	75	Majority of furniture falls into this category.
c. Infants (lawn and patio)	10	75	See Note 3.
66. Furs			Maximum payment is \$750 per item, and \$1500 per claim. For depreciation rate, see Item 41.
67. Game equipment (poker chips, chess and checker sets, etc.)		25	For chess sets, see Item 38 for special rule.
68. Garden equipment (all implements for upkeep of lawns and yards)	10	75	See Item 65 for lawn furniture.
69. Glassware (includes pyrex)	10	75	See Crockery, Item 47.
70. Hairpieces			See Wigs, Item 141.
71. Baskets (wicker or plastic)	10	75	
72. Handbags and purses (leather or fabric)	20	75	
73. Hearing aids	5	75	When replacement in kind from Government is not available.
74. Hi-Fi and stereo systems	5	75	Maximum payment-\$1500 per claim. For non-hi-fi or non-stereo systems, see Item 58 for individual listings.
75. Hobbies			Maximum payment-\$1500. See Collections, Item 43.
76. Irons (electric)	10	75	See Appliances, Item 58.
77. Jewelry			
a. Costume (\$50 or less per item)	10	75	Maximum payment-\$250 per claim if lost in transportation; \$500 per claim under other circumstances.
b. Expensive (over \$50 per item).		10	Maximum payment-\$500 per item: \$1000 per claim. (See Note 9, Items of Substantial Value).
78. Kitchen utensils			
a. Pots, pans, knives, heavy aluminum, copper, cast iron, stainless steel, corningware, etc.	5	50	All long lasting kitchen tools should be considered in the 5% = 50% category. Items such as potato peelers, ice picks, cake cooling racks, cookie sheets, bowl scrapers, and items described in the advertisements as "kitchen gadgets" should be considered in the 20% = 75% category.
b. Other items	20	75	
79. Lamps (includes sunlamps)	5	75	
so. Lampshades	20	75	This applies only when shades are claimed separately. However, if shades are made of glass of any type, apply 5% per year depreciation.

Item	Depreciation (%)		Comment
	Per Year	Maximum	
81. Lawn mowers	10	75	See Garden Equipment, Item 68.
82. Linens			
a. Fine (expensive)	5	75	Maximum payment-\$250 for handmade or manufactured crocheted spreads, quilts or tablecloths. Apply this maximum per item only when value is established. Otherwise, award reasonable replacement as for other fine linens.
b. Ordinary (household items such as sheets, pillowcases, towels, bath mats, spreads, tablecloths, etc.)	20	75	Most linens should fall in this category.
83. Lighters (cigar, cigarette, etc.)	20	75	
84. Lighting supplies (chandeliers, globe domes, electric candlesticks or candelabra, etc.)	5	50	Payable only when the items belong to the claimant and have not lost their character as personal property by being affixed to real property.
85. Lithograph prints		10	
86. Luggage (all types including footlockers)	5	75	
87. Material (includes yard goods and yarn)		10	
88. Mattresses (includes box springs)	5	75	See gadding, Item 18.
89. Medical equipment and instruments		10	See Dental Equipment, Item 51.
90. Memorabilia (includes snapshots, snapshot albums, baby album, scrapbooks, souvenir album, emblems, award plaques, trophies, movie film, photographic slides)			Maximum payment-\$500 per claim (except where volume indicates hobby). Exclude scenic slides and wedding albums from memorabilia. Use \$.18 per slide as rule of thumb cost of slide. Collection Rule (see Item 43) • apply if quantity indicates a hobby. See Item 139, for wedding albums.
91. Mirrors (includes frames)	5	75	Mirrors which are integral parts of furniture items depreciate at the same rate as those items.
92. Mobile homes	Varies		Use local wed mobile home retail value.
93. Motors (outboard)	20	75	Use depreciation factor only if local used motor retail value is not obtainable.
94. Musical instruments			
a. Pianos and organs	5	75	Maximum payment-\$1750 per item.
b. All Other Instruments			Maximum payment-\$1000 per claim.
1. Under \$50	20	75	
2. \$50 to \$250	10	75	
3. Over \$250	5	75	

Item	Depreciation (%)		Comment
	Per Flat Year Rate	Max- imum	
95. Objects of art (rare artistic items of sculpture, etc.)	10		Maximum payment-\$350 per item; \$1000 per claim. Does not include figurines. See Items 61 and 96.
96. Paintings and pictures (includes frames) paintings include hand painted or hand reproduced pictures, etchings, photographic portraits, litho -graphic prints, etc.	10		Maximum payment-\$350 per item; \$1250 per claim. No depreciation will be taken on paintings having a value in 'excess of \$350 each.
97. Pen and pencil sets	10	75	If sterling silver, no depreciation.
98. Percolators {other than electric)	10	75	See Appliances. Item 58.
99. Personal memorabilia			See Memorabilia, Item 90.
100. Phonographs (concole or portable)			See Appliances, Item 58.
101. Phonograph records	50		See Recordings, Item 110 and Collections, Item 43.
102. Phonographic equipment (cameras, projectors, lens, screens, etc.)			Maximum payment-\$350 per item; \$750 per claim. See Items 34.
a. Inexpensive (\$50 or less)	10	75	
b. Expensive (more than \$50)	5	75	See Note 9, Items of Substantial Value.
103. Pillows	5	75	See Bedding, Item 18.
104. Pipes (smoking) includes pouches	20	7s	
105. Pots and pans	Varies	Varies	See Kitchen Utensils, Item 78.
106. Professional equipment	Varies		See Items 27, 51, 56, and 89. If not Dental or Medical equipment or instruments, apply 5% -75% depreciation.
107. Quilts	5	75	See Bedding, Item 18.
108. Radios	Varies	75	See Appliances, Item 58.
109. Razors (other than electric)	5	75'	For electric razors, see Item 58.
110. Recordings, (tape) including tapes in automobile	25		Maximum payment-\$60 for tapes in automobile. See Items 43 and 75.
111. Refrigerators	5	75	See Item 58.
112. Rugs			
a. Under \$100	10	75	Maximum payment-\$1000 per item.
b. \$100 to \$999	5	75	
c. \$1000 or over	2	75	

Item	Depreciation (%)		Comment
	Per Year	Flat Rate Maximum	
113. Schrenck (German)	2	75	Maximum payment-\$1000 per item.
114. Screens (fireplace and room divider)	5	75	
115. Scissors, shears, etc. (other than electric)	5	75	For Electric, see Item 58.
116. Sewing machines (other than electric)	5	75	For Electric, see Item 58.
117. Silverware			
a. Silverplate and stainless steel flatware and holloware (includes pewter, copperware, bronzeware)	5	75	Consider fine pewter in same category sterling silver
b. Sterling silver flatware and holloware	2		Maximum payment-\$2000 per claim. No depreciation price of sterling silver.
118. Slipcovers	10	75	
119. Sporting Equipment (includes uniforms and riding togs, bowling balls, golf sets, badminton sets, croquet sets, tennis racquets, etc.)	10	75	
120. Sporting supplies (baseballs, footballs, golf balls, tennis balls, volleyballs, basketballs, etc.)	50		If boxes of golf balls and canisters of tennis balls are unopened or unused, no depreciation.
121. Stationery	50		If boxes unopened or unused, no depreciation.
122. Stenotype machines	5	75	
123. Theses and lecture notes			Out-of-pocket expenses only.
124. Tools (all types)			
a. Manual	5	50	Maximum payment-\$1000 per claim. See Items 43 and 75. See Note 11 Craftsman-Type tools.
b. Power	5	75	
c. Tools shipped in automobile-includes related emergency equipment, e.g., flares, tow rope, battery jumper cable, trouble lights, fire extinguisher, first aid kit, etc.			Maximum payment-\$50 per claim.
125. Toys (includes all children's playtoys and games; does not include electric trains, bicycles, tricycles, wagons).	50		Maximum payment-\$500.

Item	Depreciation (%)		Comment
	Per Flat Year Rate	Max- imum	
126. Trailers (house, boat, etc.)	Varies		See Items 25 or 92, as appropriate.
127. Trains (electric)	10	75	See Items 43 and 75, if appropriate.
128. Tricycles	20	75	
129. TV trays	10	75	
130. Typewriters	5	75	
131. Umbrellas	20	75	
132. Vacuum cleaners	5	75	See Item 58.
133. Vases	5	75	If china, crystal or sterling silver, see those categories. If other expensive material, use rules for china, etc., categories.
134. wagons (children's)	20	75	
135. Washers	10	75	See Item 58.
136. Wastebaskets			
a. Metal	10	75	
b. Plastic	20	75	
137. Watches			Maximum payment-\$150 per item. See Note 9 if over \$100.
a. \$50 or less	10	75	
b. More than \$50	5	75	
138. Waterbeds	20	75	
139. Wedding albums			Maximum payment-\$250 per claim.
140. Wedding gowns	10	75	Maximum payment-9250 per claim.
141. Wigs (includes hairpieces)			
a. Under \$100	20	75	Maximum payment-\$500 per claim.
b. \$100 - \$250	10	75	
c. Over \$250	5	75	

NOTE 1. ANTIQUES :

If the value of antiques exceeds \$3,000 and some or all of the antiques serve a utilitarian purpose (e.g. furniture), a claim for those antique items which serve a utilitarian purpose may be allowed in excess of \$3,000 but the amount allowed shall be limited to the reasonable cost of a replacement item which will serve a similar utilitarian purpose. In making such calculations, items which are primarily of decorative or artistic value and serve no utilitarian purpose other than satisfying personal taste shall first be listed so that the exception may be applied to permit some reasonable compensation for antique items which do serve a utilitarian purpose. Since there is usually a wide variance of opinion as to antique value, unassailable evidence of the same must be presented to justify payment. In order to qualify prima facie as an antique, an item must be, according to the U.S. Customs Service, at least 100 years old. For items newer than that, independent evidence will have to be presented or be available to prove that the item so qualifies. In respect to those items which qualify as antiques, the claimant may be compensated up to the generally recognized value of the items. In such instances, the claimant will be required to prove that the item possesses a demonstrably inherent value regardless of its purchase price, the place where it was purchased,

the prestige of the label it bears, or its **sentimental** or personal attraction. The mere fact that an isolated appraiser might be found who could assign a value to it in excess of its purchase price does not meet this burden of proof. In **the** absence of credible evidence of value, reimbursement should be limited to out-of-pocket loss, or the reasonable replacement price of a substantially similar substitute item.

NOTE 2. INTERNAL DAMAGE TO APPLIANCES **WHEN** NO EXTERNAL DAMAGE **TO** CABINET OR TRANSPORTATION CONTAINER IN EVIDENCE:

In these circumstances, consideration should be given to paying for such damage if there **is** evidence of rough handling of other items in the shipment; that the item is relatively new in comparison to its useful life; that the claimant is apparently honest based upon an examination of the entire claim; and/or the opinions of qualified repairmen. as to whether or not the damage was as a result of transit handling. With respect to color TV sets for which color realignment may be claimed, consider the charge for color realignment payable only **when it** is part of the cost to repair internal damage to the television set or when the cabinet of the set has external damage that was not present at the time of pickup, thereby indicating rough handling.

NOTE 3. REUPHOLSTERING:

In the event partial damage to a matching set requires reupholstering of the entire set because matching material to reupholster the damaged portion is not available, the cost to reupholster the entire set, less depreciation, may be paid. This includes replacing chair seats. **HOWEVER**, there must be a measurable decrease in the value of the complete set due to the inability to match the materials before this rule is employed. Consideration should be given to diminution in value of the damaged items if the damage is merely minor. An example of this is a three-inch tear in the back of a sofa which can be repaired by reweaving but not to the extent that the repair isn't visible under scrutiny: This rule is not applicable to recovering mattresses, box springs, etc., which do not lose their intended use merely because the coverings do not match. In considering the award to be made for the cost of reupholstering, use the per year rate of depreciation indicated for the furniture, i.e., ordinary or fine, for the fabric. Labor charges, if itemized separately, will not be included in depreciation computation. If labor charges are **unitemized**, 50% of the total amount of the repair estimate will be considered to be labor charges.

NOTE 4. LEGEND OF ABBREVIATIONS:

In order to maintain uniformity, the **following** list of abbreviations should be indicated in the **"Remarks"** section of the *claim form* to describe **the** intention of the **Examiner:**

- AC - Amount claimed.
- AGC - Agreed cost of repairs **in lieu** of estimate.
- BX = PX or - **Replacement** price through local exchange retail store (rate
PACX = EES of depreciation. if applicable, to be included).
- CR - Amount paid by carrier prior to settlement of this claim entered on this line
 and deducted **from total amount** allowed.
- D - Depreciation computed. preceded by appropriate percentage, i.e., 20% D.
- DV - Depreciated value awarded - cost **of** repairs exceeds depreciated value of item.
- ER - Estimate of Repair (add exhibit **number** of repair estimate).
- EX - Exhibit (include appropriate exhibit designation, e.g., **Ex G**).
- FR - Flat rate depreciation, preceded by appropriate percentage, i.e., 25% **FR**.
- F&R - Fair and reasonable award.
- M/A - **Maximum** allowable.
- N/P - Not payable (appropriate rule **for** basing denial should be included, e.g., Rule 3, Table
6-2, **AFM 112-1**).

- PED ■ Preexisting damage (percentage to be indicated, e.g., 30% PED).
- PF - Purchase Price.
- RC - Reasonable replacement cost applied (rate of depreciation, if applicable, to be included in block).
- SV/N** ■ Salvage value - beyond economical/reasonable repair; no salvage value; turn-in not required.
- SV/T** ■ Salvage value with turn required (amount of salvage value to be entered).

NOTE 5. DEPRECIATION WHILE IN STORAGE:

No depreciation will be taken for substantiated periods of storage of property regardless of the type of property.

NOTE 6. DEPRECIATION:

To compute yearly depreciation, the following yardstick should be used.

6 - 17 months = 1 year
 18 - 29 months = 2 years, etc.
 (increments of 11 months will be counted as one year, up to 173 months. For items 174 months or over in age, depreciation is 75% (maximum)). When dates of purchase are listed, for example, as 'between 1966 and 1970,' use the median date, i.e., 1968 to compute depreciation.

NOTE 7. REPAIRABLE ITEMS:

The amount allowable for repairs may not exceed the depreciated replacement value of an item.

NOTE 8. EXPENSIVE ITEMS - REASONABLE SUBSTITUTE PRICES:

This does not relate to items of extraordinary value. It pertains to items of everyday use, household furnishings, wearing apparel, and the like, which serve a utilitarian purpose, even though the items are expensive. A fixed award cannot be set as the amount allowed will vary with the type of article. The award should be just and not arrived at by considering only low-priced or popular-priced substitutes. Rule 6c as well as Rule 3c, Table 6-3, AFM 112-1 should be employed when arriving at a suitable award. This is especially important in the areas of fine furniture as opposed to ordinary furniture.

NOTE 9. ITEMS OF SUBSTANTIAL VALUE:

Easily pilferable items usually worn or carried costing over \$100 are considered of substantial value. Nonexclusive examples of items fitting this category are Watches, Jewelry (Pins, Rings, Earrings, Bracelets, Locketts, Pendants, Necklaces, Tie Clips, Cuff Links, Belt Buckles, Identification Bracelets and Artistic Charms) Ornate Cigarette Cases and Compacts, and Small Coin and Stamp Collections.

NOTE 10. ITEMS OF EXTRADORDINARY VALUE:

An item of extraordinary value may be defined as one which, because of exceptional qualities of workmanship or design, the high value of the materials it contains, or its association with a past event or period, or historical figure, possesses a value far beyond the usual value of an item of like nature. The term "item of extraordinary value" normally should be limited to items which primarily serve an artistic or decorative purpose, or which are collectors' items.

NOTE 11. CRAFTSMAN (SEARS) AND OTHER LIFETIME GUARANTEED TOOLS:

Do not deduct for depreciation on tools which are covered by such guarantees. Catalogs reflect items covered by such guarantees.

NOTE 12. CLOTHING:

The following maximums are suggested maximums only: female service member or female adult dependent - \$2000; male service member or male adult dependent - \$1500; school-age child - \$500; pre-school child - \$250. They

are to be employed when the approving authority must reach a determination of what is considered 'reasonable, useful or proper' in the attendant circumstances. Therefore, they must be viewed as 'guidance' primarily and flexible if the evidence justifies the possession of clothing of a value which exceeds the suggested maximums.

CHAPTER 4-40

WAIVER OF OVERPAYMENT OF PAY

- 4-40-00 Purpose
 - 10 Delegation
 - 20 The Act
 - 30 Regulations and Instructions

4-40-00 PURPOSE

This legislation (**P.L. 90-616; 5 U.S.C. §5584**) was enacted on October 21, 1968 to authorize a systematic procedure for the Comptroller General or the head of an executive agency to waive, in certain cases, claims of the United States arising out of erroneous payments of pay on or after July 1, 1960 to civilian employees of executive agencies, the collection of which would be against equity and good conscience **and not in** the best interests of the United States.

4-40-10 DELEGATION

The Secretary has delegated his authority under the Act to the Department Claims Officer.

4-40-20 THE ACT

§5584. Claims for overpayment of pay

(a) A claim of the United States against a person arising out of an erroneous **payment** of pay, on or after July 1, 1960, to an employee of an executive agency, the collection of **which** would be against equity and good conscience and not in the best interest of the United States, may be waived in whole or part by-

(1) **the** Comptroller General of the United States; or

(2) the **head of** the executive agency when-

(A) the claim is in an amount aggregating not more than \$500;

(B) the claim is not the subject of an exception made by the Comptroller General in the account of **any** accountable official; and

(C) the waiver is made in accordance with standards which the Comptroller General shall prescribe.

(b) The Comptroller General or the head of the executive agency, as the case may be, may not exercise his authority under this section to waive any claim--

(4-40-20 continued)

(1) **if, in** his opinion, there exists, in connection with the claim, an indication of fraud, misrepresentation, fault, or lack of good faith on the part of the employee or any other person having an interest in obtaining a waiver of the claim; or

(2) after the expiration of three years **immediately following** the date on which the erroneous payment of pay was discovered or three years **immediately following** the effective date of this section, whichever is later.

(c) A person who has repaid to the **United States** all or part of the amount of a claim, with respect to which a waiver is granted under this section, is entitled, to the extent of the waiver, to refund, by the employing agency at the time of the erroneous payment, of the amount repaid to the United States, if he applies to that employing agency for that refund within two years following the effective date of the waiver. The employing agency shall pay that refund in accordance with this section.

(d) In the audit and settlement of the accounts of any accountable official, full credit shall be given for any amounts with respect to which collection by the United States is waived under this section.

(e) An erroneous **payment, the** collection of which is waived under this section, is deemed a valid payment for all purposes.

(f) This section does not affect any authority under any other statute to litigate, settle, compromise, or waive any claim of the **United States**."

4-40-30 REGULATIONS AND INSTRUCTIONS

A. The Comptroller **General**, issued Regulations on December 26, 1968 providing Standards for Waiver of Claims for Erroneous **Payment** of Pay (4 **CFR**, Ch. I, Subchapter G, Parts 91-93). See Department Personnel Manual, Exhibit X550-8-1.

B. Instructions.

Department procedures for requesting waivers are published in the Department Personnel Manual, Instruction **550-8**.

CHAPTER 4-50

THE FEDERAL CLAIMS **COLLECTION** ACT OF 1966

4-50-00	Purpose of the Act
10	The Act
20	Statute of Limitations

4-50-00 PURPOSE OF THE ACT

The Federal Claims Collection Act (31 U.S.C. **951-953**) was enacted July 19, 1966 and **became** effective January 15, 1967. The purpose of the Act is to authorize **the** Federal agencies to collect, compromise, **terminate**, or suspend collection action **on** claims for money or property arising from their activities.

4-50-10 THE ACT

§ 951. Definitions

In this chapter-

(a) "agency" means any department, office, **commission**, board, service, Government corporation, instrumentality, or other establishment or body in either the executive or legislative branch of the Federal Government;

(b) "head of an agency" includes, where applicable, commission, board, or other group of individuals having the **decision-**making responsibility for the agency.

§ 952. Collection and compromise--Agency collection; rules and regulations

(a) The head of an agency or his designee, pursuant to regulations prescribed by him and in conformity with such standards **as** may be promulgated jointly by the Attorney General and the Comptroller General, shall attempt collection of all claims of the United States for money or property arising out of the activities of, or referred to, his agency.

Compromise of claims; termination of collection action; rules and regulations; \$20,000 limitation

(b) With respect to such claims of the United States that **have** not been referred to another agency, including the General Accounting Office, for further collection action and that do not exceed \$20,000, exclusive of interest, the head of an agency or his designee, pursuant to regulations prescribed by him and in conformity with such standards as may be promulgated jointly by the Attorney General and the Comptroller General, may (1) compromise any such claim, or (2) cause collection action on any

(4-50-10 continued)

such claim to be terminated or suspended where it appears that **no** person liable on the claim has the present or prospective financial ability to pay any significant sum thereon or that the cost of collecting the claim **is** likely to exceed the amount of recovery. The Comptroller General or his designee shall have the foregoing authority with respect to claims referred to the General Accounting Office by another agency for further collection action. The head of an agency or his designee shall not exercise the foregoing authority with respect to a claim as to which there is an indication of fraud, the presentation of a false **claim, or** misrepresentation on the part of the debtor or any other party having an interest in the claim, or a claim based in whole or in part on conduct in violation of the antitrust laws; nor shall the head of an agency, other than the Comptroller General of the United States, have authority to compromise a claim that arises from an exception made by the General Accounting Office in the account of an accountable officer.

Conclusiveness effect of compromise; fraud, misrepresentation, false claims, mutual mistake of fact

(c) A compromise effected pursuant to authority conferred by subsection (b) of this section shall be final and conclusive on the debtor and on all officials, agencies, and courts of the United States, except if procured by fraud, misrepresentation, **the** presentation of a false claim, or mutual mistake of fact. No **accountant** officer shall be liable for any amount paid **or** for the value of property lost, damaged, or destroyed, where the recovery of such **amount or** value may not be had because of a compromise with a person primarily responsible under subsection (b).

§ 953. Existing agency authority to litigate, settle, compromise, or close claims

Nothing in this chapter shall increase or diminish the existing authority of the head of an agency to litigate claims, or diminish his existing authority to settle, compromise, **or** close **claims**.

4-50-20

STATUTE OF LIMITATIONS

The Statute of Limitations is a relevant consideration in all claims collection. It is therefore important to bear in mind pertinent provisions of 28 **U.S.C.** 2415 and 2416, which are as follows:

§ 2415. Time for **commencing** actions brought by the United States

(a) Subject to **the provisions** of section 2416 of this title, and except as otherwise provided by Congress, every action for money **damages** brought by the **United** States or an officer or agency

thereof which is founded upon any contract express or implied in law **or** fact, **shall** be barred unless the complaint is filed within six years after the right of action accrues or within one year after final decisions have been rendered in applicable administrative proceedings required by contract or by law, whichever is later: Provided, That in the event of later partial payment or written acknowledgment of debt, the right of action shall be deemed to accrue again at the time of each such payment or acknowledgment.

(b) . . .

(c) . . .

(d) Subject to the provisions of section 2416 of this title and except as otherwise provided by Congress, every action for the **recovery** of money erroneously paid to or on behalf of any civilian employee of any agency of the United States or to or on behalf of any member or dependent of any member of the uniformed services of the United States, incident to the employment or services of such employee **or** member, shall be barred unless the complaint is filed within six years after the right of action accrues: Provided, That in the event of later partial payment or written acknowledgment of debt, the right of action shall be deemed to accrue again at the time of each such payment or acknowledgment.

(e) In the event that any action to which this section applies is timely brought and is thereafter dismissed without prejudice, the action may be **recommenced** within one year after such dismissal, regardless of whether the action would **otherwise** then be barred by this section. In any action so recommenced the defendant shall not be barred from interposing any claim which would not have been barred in the original action.

(f) The provisions of this section shall not prevent the assertion, in an action against the United States or an officer or agency thereof, of any claim of the United States or an officer or agency thereof against an opposing party, a co-party, or a third party that arises out of the transaction or occurrence that is the subject matter of the opposing party's claim. A claim of the United States or an officer or agency thereof that does not arise out of the transaction or occurrence that is the subject matter of the opposing party's claim may, if time-barred, be asserted only by way of offset and may be allowed in an amount not to exceed the amount of the opposing party's recovery.

(g) Any right of action subject to the provisions of this section which accrued prior to the date of enactment of this Act **shall, for** purposes of this section, be deemed to have accrued on the date of enactment of this Act.

(h) . . .

(4-50-20 continued)

**§ 2416. Time for commencing actions brought by the United States--
Exclusions**

For the purpose of computing the limitations periods established in section 2415, there shall be excluded all periods during which--

(a) the defendant or the **res** is outside the **United States, its territories and possessions, the District of Columbia, or the Commonwealth of Puerto Rico; or**

(b) the defendant is exempt from legal process because of infancy, mental incapacity, diplomatic immunity, **or** for any other reason; or

(c) facts material to the right of action are not known and reasonably could not be known by an official **of the** United States charged with the responsibility to act in the circumstances; **or**

(d) the United States is in a state of war declared pursuant to article **I**, section 8, of the Constitution **of the** United **States.**

CHAPTER 4-60

CLAIMS COLLECTION REGULATIONS

4-60-10 REGULATIONS

The following Department regulations (32 FR 241, December 14, 1967, 33 F.R. 17292, November 22, 1968, 36 F.R. 3816, February 27, 1971) implement the Federal Claims Collection Act of 1966.

Title 45 • PUBLIC WELFARE
Subtitle A • Department of Health,
Education, and Welfare
General Administration

Part 30 • CLAIMS COLLECTION

Part 30 of Title 45 of the Code of Federal Regulations is added to read as follows:

Sec.

- 30.1 Incorporation by reference.
- 30.2 Scope of regulations.
- 30.3 Delegation of authority.

AUTHORITY: The provisions of this Part 30 issued under sec. 3, Federal Claims Collection Act of 1966, Public Law 89-508, 80 Stat. 309, 31 U.S.C. 951-953; Joint Regulations of GAO and Department of Justice, 4 CFR Ch. II Parts 101-105; Statement of Organization and Delegation of Authority of the Department as amended, 31 F.R. 16375.

§ 30.1 Incorporation by reference.

The regulations of this part incorporate herein and supplement as necessary for Department operation all provisions of the Joint Regulations issued by the Comptroller General of the United States and the Attorney General of the United States under section 3 of the Federal Claims Collection Act of 1966, which prescribes standards for administrative collection of civil claims by the Government as well as compromise, suspension, or termination of agency collection action, with respect to claims not exceeding \$20,000 exclusive of interest, and the referral to the General Accounting Office, and to the Department of Justice for litigation, of civil claims by the Government.

§ 30.2 Scope of regulations.

The standards set forth in this chapter are not applicable where standards are prescribed under statutes other than the Federal Claims Collection Act of 1966, for compromise or termination of collection action, or waiver in whole or in part of claims thereunder.

(4-60-10 continued)

§ 30.3 Delegation of Authority.

- (a) The Secretary delegated to the Department Claims Officer the authority to perform the duties vested in him by the Federal Claims Collection Act of 1966 (31 U.S.C. 951-953) as amended, except with respect to erroneous payments under Titles II and XVIII of the Social Security Act.
- (b) The Department Claims Officer shall compromise, suspend, or terminate claims referred to him after administrative collection efforts have been exhausted in accordance with the provisions of this part.
- (c) The appropriate office, local, regional or headquarters, shall take all necessary administrative action required under the Act and Joint Regulations, except that, with respect to claims of \$800 or more, no compromise of a claim shall be effected, nor collection action suspended or terminated without the prior approval of the Department Claims Officer, or the following specific delegates:
1. The Deputy Assistant General Counsel, Business and Administrative Law Division, Office of General Counsel.
 2. The Chief, Litigation and Claims Branch, Business and Administrative Law Division, Office of General Counsel.
 3. The Regional Attorneys except with respect to claims arising out of activities of the Public Health Service.

Title 4 - Code of Federal Regulations
Chapter II, Parts 101-105

§ 101.1

Title 4—Accounts

PART 101—SCOPE OF STANDARDS

- Sec.
101.1 Prescription of standards.
101.2 Omissions not a defense.
101.3 Fraud, antitrust, and tax claims excluded.
101.4 Compromise, waiver, or disposition under other statutes not precluded.
101.5 Conversion claims.
101.6 Subdivision of claims not authorized.
101.7 Required administrative proceedings.
101.8 Referral for litigation.

AUTHORITY: Sec. 3, CC Stat. 309; 31 U.S.C. 952.

SOURCE: 31 FR 13381, Oct. 15, 1966, unless otherwise noted.

§ 101.1 Prescription of standards.

The regulations in this chapter, issued jointly by the Comptroller General of the United States and the Attorney General of the United States under section 3 of the Federal Claims Collection Act of 1966, 80 Stat. 309, prescribe standards for the administrative collection, compromise, termination of agency collection, and the referral of agency collection, and the referral to the General Accounting Office, and to the Department of Justice for litigation, of civil claims by the Federal Government for money or property. Additional guidance is contained in Title 4 of the General Accounting Office Manual for Guidance of Federal Agencies. Regulations prescribed by the head of an agency pursuant to section 3 of the Federal Claims Collection Act of 1966 will be reviewed by the General Accounting Office as part of its audit of the agency's activities.

144 FR 22701, Apr. 17, 1979

§ 101.2 Omissions not a defense.

The standards set forth in this chapter shall apply to the administrative handling of civil claims of the Federal Government for money or property but the failure of an agency to comply with any provision of this chapter shall not be available as a defense to any debtor.

§ 101.3 Fraud, antitrust, and tax claims excluded.

The standards set forth in this chapter do not apply to the handling of any claim as to which there is an indi-

cation of fraud, the presentation of a false claim, or misrepresentation on the part of the debtor or any other party having an interest in the claim, or to any claim based in whole or in part on conduct in violation of the antitrust laws. Only the Department of Justice has authority to compromise or terminate collection action on such claims. However, matters submitted to the Department of Justice for consideration without compliance with the regulations in this chapter because there is an indication of fraud, the presentation of a false claim, or misrepresentation on the part of the debtor or any other party having an interest in the claim, may be returned to the agency forwarding them for further handling in accordance with the regulations in this chapter if it is determined that action based upon the alleged fraud, false claim, or misrepresentation is not warranted. Tax claims, as to which differing exemptions, administrative consideration, enforcement considerations, and statutes apply, are also excluded from the coverage of this chapter.

§ 101.4 Compromise, waiver, or disposition under other statutes not precluded.

Nothing contained in this chapter is intended to preclude agency disposition of any claim under statutes other than the Federal Claims Collection Act of 1966, 80 Stat. 308, providing for the compromise, termination of collection action, or waiver in whole or in part of such a claim. See, e.g., "The Federal Medical Care Recovery Act," 76 Stat. 593, 42 U.S.C. 2851, et seq., and applicable regulations, 28 CFR 43.1, et seq. The standards set forth in this chapter should be followed in the disposition of civil claims by the Federal Government by compromise or termination of collection action (other than by waiver pursuant to statutory authority) under statutes other than the Federal Claims Collection Act of 1966, 80 Stat. 308, to the extent such other statutes or authorized regulations issued pursuant thereto do not establish standards governing such matters.

Chapter II—Federal Claims Collection Standards

§ 102.2

§ 101.5 Conversion claims.

The instructions contained in this chapter are directed primarily to the recovery of money on behalf of the Government and the circumstances in which Government claims may be disposed of for less than the full amount claimed. Nothing contained in this chapter is intended, however, to deter an agency from demanding the return of specific property or from demanding, in the alternative, either the return of property or the payment of its value.

§ 101.6 Subdivision of claims not authorized.

A debtor's liability arising from a particular transaction or contract shall be considered as a single claim in determining whether the claim is one of less than \$20,000, exclusive of interest, for the purpose of compromise or termination of collection action. Such a claim may not be subdivided to avoid the monetary ceiling established by the Federal Claims Collection Act of 1966, 80 Stat. 308.

§ 101.7 Required administrative proceedings.

Nothing contained in this chapter is intended to require an agency to omit or foreclose administrative proceedings required by contract or by law.

§ 101.8 Referral for litigation.

As used in this chapter referral for litigation means referral to the Department of Justice for appropriate legal proceedings, unless the agency concerned has statutory authority for handling its own litigation.

PART 102—STANDARDS FOR THE ADMINISTRATIVE COLLECTION OF CLAIMS

Sec.

102.1 Aggressive agency collection action.

102.2 Demand for payment.

102.3 Collection by offset.

102.4 Reporting delinquent debts to commercial credit bureaus.

102.5 Personal interview with debtor.

102.6 Contact with debtor's employing agency.

102.7 Suspension or revocation of license or eligibility.

Sec.

102.8 Liquidation of collateral.

102.9 Collection in installments.

102.10 Exploration of compromise.

102.11 Interest.

102.12 Analysis of costs.

102.13 Documentation of administrative collection action.

102.14 Automation.

102.15 Prevention of overpayments, delinquencies, and defaults.

102.18 Additional administrative collection action.

AUTHORITY: Sec. 3, 80 Stat. 309, 31 U.S.C. 952.

§ 102.1 Aggressive agency collection action.

The head of an agency or his designee shall take aggressive action, on a timely basis with effective followup, to collect all claims of the United States for money or property arising out of the activities of, or referred to, his agency in accordance with the standards set forth in this chapter. However, nothing contained in this chapter is intended to require the General Accounting Office or the Department of Justice to duplicate collection actions previously undertaken by any other agency.

131 FR 13381, Oct. 15, 1985]

§ 102.2 Demand for payment.

Appropriate written demands shall be made upon a debtor of the United States in terms which inform the debtor of the consequences of his failure to cooperate. In the initial notification, the debtor should be informed of the basis for the indebtedness, the applicable requirements or penalties for charging interest and reporting delinquent debts to commercial credit bureaus, and the date by which the payment is to be made (date due). The date due should be specified and, normally, should be not more than 30 days from the date of the initial notification. Three progressively stronger written demands at not more than 30-day intervals will normally be made unless a response to the first or second demand indicates that further demand would be futile and the debtor's response does not require rebuttal. Further exceptions may be made where it is necessary to protect the Government's interests (e.g., the statute of

§ 102.3

limitations (28 U.S.C. 2415)). Agencies should respond promptly to communications from the debtor. Agencies should advise debtors who dispute the debt to furnish available evidence to support their contentions.

[44 FR 22702, Apr. 17, 1979]

§ 102.3 Collection by offset.

Collections by offset will be undertaken administratively on claims which are liquidated or certain in amount in every instance in which this is feasible. Collections by offset from persons receiving pay or compensation from the Federal Government shall be effected over a period not greater than the period during which such pay or compensation is to be received. See 5 U.S.C. 5514. Collection by offset against a judgment obtained by the debtor against the United States shall be accomplished in accordance with the Act of March 3, 1875, 18 Stat. 481, as amended, 31 U.S.C. 227. Appropriate use should be made of the cooperative efforts of other agencies in effecting collections by offset, including utilization of the Army Holdup List, and all agencies are enjoined to cooperate in this endeavor.

[31 FR 13352, Oct. 15, 1986]

§ 102.4 Reporting delinquent debts to commercial credit bureaus.

Agencies shall develop and implement procedures for reporting delinquent debts to commercial credit bureaus. In the absence of a different rule prescribed by statute, contract, or regulation, a debt is considered delinquent if not paid by the date due specified in the initial notification, unless satisfactory payment arrangements are made by the date due. Agency procedures for reporting delinquent debts to credit bureaus must give due regard to compliance with the Privacy Act of 1974, as amended, 5 U.S.C. 552a, which includes the following requirements: (a) Promulgate a "routine use" for the disclosure; (b) keep an accounting for disclosures and make them available to the debtor; (c) provide the credit bureaus with corrections and notations of disagreement by the debtor; and (d) make reasonable efforts to assure that the information to be re-

Title 4—Accounts

ported is accurate, complete, timely, and relevant. Prior to exercising the option of reporting delinquent debts to commercial credit bureaus, agencies should send a demand letter advising the debtor that such reporting will take place within a specified period of time unless the debtor makes satisfactory payment arrangements or demonstrates some basis on which the debt is legitimately disputed.

[44 FR 22702, Apr. 17, 1979]

§ 102.5 Personal interview with debtor.

Agencies will undertake personal interviews with their debtors when this is feasible, having regard for the amounts involved and the proximity of agency representatives to such debtors.

[31 FR 13381, Oct. 15, 1966. Redesignated at 44 FR 22702, Apr. 17, 1979]

§ 102.6 Contact with debtor's employing agency.

When a debtor is employed by the Federal Government or is a member of the military establishment or the Coast Guard, and collection by offset cannot be accomplished in accordance with 5 U.S.C. 5514, the employing agency will be contacted for the purpose of arranging with the debtor for payment of the indebtedness by allotment or otherwise in accordance with section 206 of Executive Order 11222 of May 8, 1965, 3 CFR, 1965 Supp., p. 130 (30 FR 8469).

[31 FR 13381, Oct. 15, 1966. Redesignated at 44 FR 22702, Apr. 17, 1979]

§ 102.7 Suspension or revocation of license or eligibility.

Agencies seeking the collection of statutory penalties, forfeitures, or debts provided for as an enforcement aid or for compelling compliance will give serious consideration to the suspension or revocation of licenses or other privileges for any inexcusable, prolonged or repeated failure of a debtor to pay such a claim and the debtor will be so advised. Any agency making, guaranteeing, insuring, acquiring, or participating in loans will give serious consideration to suspending or disqualifying any lender, contractor, broker, borrower or other

Chapter II—Federal Claims Collection Standards

§ 152.11

debtor from doing further business with it or engaging in programs sponsored by it if such a debtor fails to pay its debts to the Government within a reasonable time and the debtor will be so advised. The failure of any surety to honor its obligations in accordance with 6 U.S.C. 11 is to be reported to the Treasury Department at once. Notification that a surety's certificate of authority to do business with the Federal Government has been revoked or forfeited by the Treasury Department will be forwarded by that Department to all interested agencies.

[31 FR 13331, Oct. 15, 1966. Redesignated at 44 FR 22702, Apr. 17, 1979]

§ 102.3 Liquidation of collateral.

Agencies holding security or collateral which may be liquidated and the proceeds applied on debts due it through the exercise of a power of sale in the security instrument or a non-judicial foreclosure should do so by such procedures if the debtor fails to pay his debt within a reasonable time after demand, unless the cost of disposing of the collateral will be disproportionate to its value or special circumstances require judicial foreclosure. Collection from other sources, including liquidation of security or collateral, is not a prerequisite to requiring payment by a surety or insurance concern unless such action is expressly required by statute or contract.

[31 FR 13381, Oct. 15, 1966. Redesignated at 44 FR 22702, Apr. 17, 1979]

3 102.9 Collection in installments.

Claims, with interest in accordance with § 102.10 should be collected in full in one lump sum whenever this is possible. However, if the debtor is financially unable to pay the indebtedness in one lump sum, payment may be accepted in regular installments. The size and frequency of such installment payments should bear a reasonable relation to the size of the debt and the debtor's ability to pay. If possible the installment payments should be sufficient in size and frequency to liquidate the Government's claim in not more than 3 years. Installment Payment of less than \$10 per month should be accepted in only the most

unusual circumstances. An agency holding an unsecured claim for administrative collection should attempt to obtain an executed confess-judgment note, comparable to the Department of Justice form USA-70a, from a debtor when the total amount of the deferred installments will exceed \$750. Such notes may be sought when an unsecured obligation of a lesser amount is involved. Security for deferred payments, other than a confess-judgment note, may be accepted in appropriate cases. An agency may accept installment payments notwithstanding the refusal of a debtor to execute a confess-judgment note or to give other security, at the agency's option.

[31 FR 13381, Oct. 15, 1966. Redesignated at 44 FR 22702, Apr. 17, 1979]

§ 102.10 Exploration of compromise.

Agencies will attempt to effect compromises (preferably during the course of personal interviews), of claims of \$20,000 or less exclusive of interest, in accordance with the standards set forth in Part 103 of this chapter in all cases in which it can be ascertained that the debtor's financial ability will not permit payment of the claim in full, or in which the litigative risks or the costs of litigation dictate such action.

[31 FR 13381, Oct. 15, 1966. Redesignated at 44 FR 22702, Apr. 17, 1979]

§ 102.11 Interest.

In the absence of a different rule prescribed by statute, contract, or regulation, interest should be charged on delinquent debts and debts being paid in installments in conformity with the Treasury Fiscal Requirements Manual. When a debt is paid in installments, the installment payments will first be applied to the payment of accrued interest and then to principal, in accordance with the so-called "U.S. Rule," unless a different rule is prescribed by statute, contract, or regulation. Prejudgment interest should not be demanded or collected on civil penalty and forfeiture claims unless the statute under which the claim arises authorizes the collection of such interest. See *Rodgers v. United States*, 332 U.S. 371.

[44 FR 22702, Apr. 17, 1979]

§ 102.12

§ 102.12 Analysis of costs.

Agency collection procedures should provide for periodic comparison of costs incurred and amounts collected. Data on costs and corresponding recovery rates for debt of different types and in various dollar ranges should be used to compare the cost effectiveness of alternative collection techniques. establish guidelines with respect to the points at which costs of further collection efforts are likely to exceed recoveries. assist in evaluating offers in compromise, and establish minimum debt amounts below which collection efforts need not be taken. Cost and recovery data should also be useful in justifying adequate resources for an effective collection program.

144 FR 22702, Apr. 17, 1979

§ 102.13 Documentation of administrative collection action.

All administrative collection action should be documented and the bases for compromise, or for termination or suspension of collection action, should be set out in detail. Such documentation should be retained in the appropriate claims file.

131 FR 13381, Oct. 15, 1966. Redesignated at 44 FR 22702, Apr. 17, 1979

§ 102.14 Automation.

Agencies should automate their debt collection operations to the extent it is cost effective and feasible.

144 FR 22702, Apr. 17, 1979

§ 102.15 Prevention of overpayments, delinquencies, and defaults.

Agencies should establish procedures to identify the causes of overpayments, delinquencies, and defaults and the corrective actions needed. One action that should be considered is the reporting of debts or loans, when first established, to commercial credit bureaus.

144 FR 22702, Apr. 17, 1979

§ 102.16 Additional administrative collection action.

Nothing contained in this chapter is intended to preclude the utilization of

Title 4—Accounts

any other administrative remedy which may be available.

131 FR 13381, Oct. 15, 1966. Redesignated at 44 FR 22702, Apr. 17, 1979

PART 103—STANDARDS FOR THE COMPROMISE OF CLAIMS

Sec.

103.1 scope and application.

103.2 Inability to pay.

103.3 Litigative probabilities.

103.4 Cost of collecting claim.

103.5 Enforcement policy.

103.6 Joint and several liability.

103.7 Settlement for a combination of reasons.

103.8 Further review of compromise offers.

103.9 Restrictions.

AUTHORITY: sec. 3 80 stat. 309; 31 U.S.C. 952.

SOURCE: 31 FR 13382, Oct. 15, 1966, unless otherwise noted.

§ 103.1 Scope and application.

The standards set forth in this part apply to the compromise of claims, pursuant to section 3(b) of the Federal Claims Collection Act of 1966, 80 Stat. 309, which do not exceed \$20,000 exclusive of interest. The head of an agency or his designee may exercise such compromise authority with respect to claims for money or property arising out of the activities of his agency prior to the referral of such claims to the General Accounting Office or to the Department of Justice for litigation. The Comptroller General or his designee may exercise such compromise authority with respect to claims referred to the General Accounting Office prior to their further referral for litigation. Only the Comptroller General or his designee may effect the compromise of a claim that arises out of an exception made by the General Accounting Office in the account of an accountable officer, including a claim against the payee, prior to its referral by that Office for litigation.

§ 103.2 Inability to pay.

A claim may be compromised pursuant to this part if the Government cannot collect the full amount because of (a) the debtor's inability to pay the full amount within a reasonable time.

Chapter II—Federal Claims Collection Standards

§ 103.3

or (b) the refusal of the debtor to pay the claim in full and the Government's inability to enforce collection in full within a reasonable time by enforced collection proceedings. In determining the debtor's inability to pay the following factors, among others, may be considered: Age and health of the debtor; present and potential income; inheritance prospects; the possibility that assets have been concealed or improperly transferred by the debtor; the availability of assets or income which may be realized upon by enforced collection proceedings. The agency will give consideration to the applicable exemptions available to the debtor under State and Federal law in determining the Government's ability to enforce collection. Uncertainty as to the price which collateral or other property will bring at forced sale may properly be considered in determining the Government's ability to enforce collection. A compromise effected under this section should be for an amount which bears a reasonable relation to the amount which can be recovered by enforced collection procedures, having regard for the exemptions available to the debtor and the time which collection will take. Compromises payable in installments are to be discouraged. However, if payment of a compromise by installments is necessary, an agreement for the reinstatement of the prior indebtedness sums paid thereon and acceleration of the balance due upon default in the payment of any installment should be obtained, together with security in the manner set forth in 102.8 of this chapter, in every case in which this is possible. If the agency's files do not contain reasonably up-to-date credit information as a basis for assessing a compromise proposal such information may be obtained from the individual debtor by obtaining a statement executed under penalty of perjury showing the debtor's assets and liabilities, income and expense. Forms such as Department of Justice form DJ-35 may be used for this purpose. Similar data may be obtained from corporate debtors by resort to balance sheets and such additional data as seems required.

§ 103.3 Litigative probabilities.

A claim may be compromised pursuant to this part if there is a real doubt concerning the Government's ability to prove its case in court for the full amount claimed either because of the legal issues involved or a bona fide dispute as to the facts. The amount accepted in compromise in such cases should fairly reflect the probability of prevailing on the legal question involved, the probabilities with respect to full or partial recovery of a judgment having due regard to the availability of witnesses and other evidentiary support for the Government claim, and related pragmatic considerations. Proportionate weight should be given to the probable amount of court costs which may be assessed against the Government if it is unsuccessful in litigation, having regard for the litigative risks involved. Cf. 28 U.S.C. 2412, as amended by Pub. L. 89-507, 80 Stat. 308.

§ 103.4 Cost of collecting claim.

A claim may be compromised pursuant to this part if the cost of collecting the claim does not justify the enforced collection of the full amount. The amount accepted in compromise in such cases may reflect an appropriate discount for the administrative and litigative costs of collection having regard for the time which it will take to effect collection. Cost of collecting may be a substantial factor in the settlement of small claims. The cost of collecting claims normally will not carry great weight in the settlement of large claims.

§ 103.5 Enforcement policy.

Statutory penalties, forfeitures, or debts established as an aid to enforcement and to compel compliance may be compromised pursuant to this part if the agency's enforcement policy in terms of deterrence and securing compliance, both present and future, will be adequately served by acceptance of the sum to be agreed upon. Mere accidental or technical violations may be dealt with less severely than willful and substantial violations.

§ 133.6

§ 103.6 Joint and several liability.

When two or more debtors are **jointly and severally liable** collection action will not be withheld against one such debtor until the other or others pay their proportionate share. The agency should not attempt to allocate the burden of paying such claims as between the debtors but should proceed to liquidate the indebtedness as quickly as possible. Care should be taken that compromise with one such debtor does not **release** the agency's claim against the remaining debtors. The amount of a compromise with one such debtor shall not be considered a precedent or as morally binding in determining the amount which will be required from other debtors jointly and severally liable on the claim.

§ 103.7 Settlement for a combination of reasons.

A claim may be compromised for one or for more than one of the reasons authorized in this part.

§ 103.8 Further review of compromise offers.

If an agency holds a debtor's firm written offer of compromise which is substantial in amount and the agency is uncertain as to whether the offer should be accepted, it may refer the offer, the supporting data, and particulars concerning the claim to the General Accounting Office or to the Department of Justice. The General Accounting Office or the Department of Justice may act upon such an offer or return it to the agency with instructions or advice.

§ 103.9 Restrictions.

Neither a percentage of a debtor's profits nor stock in a debtor corporation will be accepted in compromise of a claim. In negotiating a compromise with a business concern consideration should be given to requiring a waiver of the tax-loss-carry-forward and tax-loss-carry-back rights of the debtor.

Title 4—Accounts

PART 104—STANDARDS FOR SUSPENDING OR TERMINATING COLLECTION ACTION

Sec.

104.1 Scope and application.

104.2 Suspension of collection activity.

104.3 Termination of collection activity.

104.4 Transfer of claims.

AUTHORITY: Sec. 3, 80 Stat. 309; 31 U.S.C. 952.

SOURCE: 31 FR 13383, Oct. 15, 1966, unless otherwise noted.

§ 104.1 Scope and application.

The standards set forth in this part apply to the suspension or termination of collection action pursuant to section 3(b) of the Federal Claims Collection Act of 1966, 80 Stat. 309, on claims which do not exceed \$20,000 exclusive of interest. The head of an agency or his designee may suspend or terminate collection action under this part with respect to claims for money or property arising out of activities of his agency prior to the referral of such claims to the General Accounting Office or to the Department of Justice for litigation. The Comptroller General or his designee may exercise such authority with respect to claims referred to the General Accounting Office prior to their further referral for litigation.

§ 104.2 Suspension of collection activity.

Collection action may be suspended temporarily on a claim when the debtor cannot be located after diligent effort and there is reason to believe that future collection action may be sufficiently productive to justify periodic review and action on the claim having consideration for its size and the amount which may be realized thereon. The following sources may be of assistance in locating missing debtors: Telephone directories; city directories; postmasters; drivers' license records; automobile title and license records; state and local governmental agencies; district directors of Internal Revenue; other Federal agencies; employers, relatives, friends; credit agency skip locate reports; and credit bureaus. Suspension as to a particular debtor should not defer the early liquidation of security for the debt.

Chapter II—Federal Claims Collection Standards

Part 105

Every reasonable effort should be made to locate missing debtors sufficiently in advance of the bar of the applicable statute of limitations, such as 31 U.S.C. 505, 80 Stat. 304, to permit filing of suit if such action is warranted. If the missing debtor has confessed-judgment note and is unable to pay, referral of the note for the judgment should not be debarred because of his missing status. Collection action may be suspended temporarily on a claim when the debtor has no substantial equity in the claim and is unable to make payments on the Government's claim or effect collection thereof at the time but the prospects justify retention of the claim for periodic review and (a) the applicable statute of limitations has been tolled or started anew or (b) future collection effected by offset notwithstanding the statute of limitations.

3383, Oct. 15, 1966, as amended at 702, Apr. 17, 1979]

Termination of collection activity.

The head of an agency or his designee may terminate collection activity on a claim under the agency's file on the closed under the following conditions:

Inability to collect any substantial amount. Collection action may be terminated on a claim when it becomes clear that the Government cannot collect or enforce collection of a significant sum from the debtor because of due regard for the judicial economy available to the Government, the debtor's future financial prospects, the exemptions available to the debtor under State and Federal law. In terminating the debtor's inability to pay, the following factors, among others, may be considered: Age and income of the debtor; present and potential income; inheritance prospects; possibility that assets have been liquidated or improperly transferred to the debtor; the availability of assets which may be realized upon enforced collection proceedings.

Inability to locate debtor. Collection action may be terminated on a claim when the debtor cannot be located, there is no security remaining in the claim, and the debtor is liquidated, the applicable statute

of limitations has run, and the prospects of collecting by offset notwithstanding the bar of the statute of limitations is too remote to justify retention of the claim.

(c) Cost will exceed recovery. Collection action may be terminated on a claim when it is likely that the cost of further collection action will exceed the amount recoverable thereby.

(d) Claim legally without merit. Collection action should be terminated on a claim whenever it is determined that the claim is legally without merit.

(e) Claim cannot be substantiated by evidence. Collection action should be terminated when it is determined that the evidence necessary to prove the claim cannot be produced or the necessary witnesses are unavailable and efforts to induce voluntary payment are unavailing.

§ 104.4 Transfer of claims.

When an agency has doubt as to whether collection action should be suspended or terminated on a claim it may refer the claim to the General Accounting Office for advice. When a significant enforcement policy is involved in reducing a statutory penalty or forfeiture to judgment, or recovery of a judgment is a prerequisite to the imposition of administrative sanctions, such as the suspension or revocation of a license or the privilege of participating in a Government sponsored program an agency may refer such a claim for litigation even though termination of collection activity might otherwise be given consideration under § 104.3 (a) or (c). Claims on which an agency holds a judgment by assignment or otherwise will be referred to the Department of Justice for further action if renewal of the judgment lien or enforced collection proceedings are justified under the criteria discussed in this part, unless the agency concerned has statutory authority for handling its own litigation.

PART 105—REFERRALS TO GAO OR FOR LITIGATION

- Sec.
105.1 Prompt referral.
105.1 Current address of debtor.
105.3 Credit data.

§ 105.1

- Sec.
105.4 Report of prior collection actions.
105.5 Preservation of evidence.
105.6 Minimum amount of referrals to the
Department of Justice.
105.7 Referrals to GAO.

AUTHORITY: Sec. 3, 80 Stat. 309; 31 U.S.C. 951.

SOURCE: 31 FR 13384, Oct. 15, 1966, unless otherwise noted

§ 105.1 Prompt referral.

Claims on which collection action has been taken in accordance with Part 102 of this chapter and which cannot be compromised, or on which collection action cannot be suspended or terminated, in accordance with Parts 103 and 104 of this chapter, will be referred to the General Accounting Office in accordance with R.S. 236, as amended, 31 U.S.C. 71, or to the Department of Justice, if the agency concerned has been granted an except on from referrals to the General Accounting Office. Such referrals should be made as early as possible consistent with aggressive agency collection action and the observance of the regulations contained in this chapter and in any event well within the time limited for bringing a timely suit against the debtor.

§ 105.2 Current address of debtor.

Referrals to the General Accounting Office, and to the Department of Justice for litigation, will be accompanied by the current address of the debtor or the name and address of the agent for a corporation upon whom service may be made. Reasonable and appropriate steps will be taken to locate missing parties in all cases. Referrals to the General Accounting Office, and referrals to the Department of Justice for the institution of foreclosure or other proceedings, in which the current address of any party is unknown will be accompanied by a listing of the prior known addresses of such a party and a statement of the steps taken to locate him.

§ 105.3 Credit data. --

(a) Claims referred to the General Accounting Office, and to the Department of Justice for litigation, will be accompanied by reasonably current

Title 4—Accounts

credit data indicating that there is a reasonable prospect of effecting enforced collections from the debtor, having due regard for the exemptions available to the debtor under State and Federal law and the judicial remedies available to the Government.

(b) Such credit data may take the form of (1) a commercial credit report, (2) an agency investigative report showing the debtor's assets and liabilities and his income and expenses, (3) the individual debtor's own financial statement executed under penalty of perjury reflecting his assets and liabilities and his income and expenses, or (4) an audited balance sheet of a corporate debtor.

(c) Such credit data may be omitted if (1) a surety bond is available in an amount sufficient to satisfy the claim in full, (2) the forced sale value of the security available for application to the Government's claim is sufficient to satisfy its claim in full, (3) the referring agency wishes to liquidate loan collateral through judicial foreclosure but does not desire a deficiency judgment, (4) the debtor is in bankruptcy or receivership, or (5) the debtor's liability to the Government is fully covered by insurance, in which case the agency will furnish such information as it can develop concerning the identity and address of the insurer and the type and amount of insurance coverage.

§ 105.4 Report of prior collection actions.

A checklist or brief summary of the actions previously taken to collect or compromise a claim will be forwarded with the claim upon its referral to the General Accounting Office or to the Department of Justice. If any of the administrative collection actions enumerated in Part 102 of this chapter have been omitted, the reason for their omission will be given with the referral. The General Accounting Office and the Department of Justice may return or retain claims at their option when there is insufficient justification for the omission of one or more of the administrative collection actions enumerated in Part 102 of this chapter.

Chapter II—Federal Claims Collection Standards

§ 105.7

§ 105.5 Preservation of evidence.

Care **will** be taken to preserve all files, records and exhibits on **claims** referred or **to** be referred **to** the General Accounting Office, or to the Department of Justice for litigation.

§ 105.6 Minimum amount of **referrals** to the Department of Justice.

Agencies will not refer claims of less than 5600, exclusive of Interest for litigation unless **(a)** referral is important to a significant enforcement policy or **(b)** the debtor has not only *the clear* ability to pay the claim **but** the Gov-

ernment can effectively enforce payment having due regard **to** the **exemptions** available to the debtor under State or Federal **Law** and **the** judicial remedies available **to** the **Government**.

(42 FR 38891, Aug. 1, 1977)

§ 305.7 Referrals to GAO.

Referrals of **claims** to the General Accounting Office **will** be in accordance with **instructions**, including **monetary limitations**, contained in the **General Accounting Office Policy and Procedures Manual** for the **Guidance** of Federal **Agencies**.

Subject: CLAIMS COLLECTION PROCEDURES

- 4-70-00 Summary
- 4-70-10 What Debts Are Covered
- 4-70-20 What Debt Claims Are Not Covered; Exhaustion Requirement
- 4-70-30 How Debts Arise
- 4-70-40 Prevent Debt Collection Problems
- 4-70-50 Designate a Claims Collection Officer
- 4-70-60 How to Collect Debts
- 4-70-70 How to Compromise Claims
- 4-70-80 How to Suspend Collection Action
- 4-70-90 How to End Collection Action
- 4-70-100 How to Refer Claims to the General Accounting Office or to the Department of Justice
- 4-70-110 Delegation of Authority Required Under the Federal Claims Collection Act
- 4-70-120 Delegations of Authority by the Secretary Under the Federal Claims Collection Act
- 4-70-130 Further Delegations of Authority by Department Claims Officer
- Exhibit 4-70-A - Instructions for Reporting Uncollectible Claims to the General Accounting Office and the Department of Justice

4-50-00 SUMMARY

The provisions of this part implement for the Department and its principal operating components the Federal Claims Collection Standards issued by the General Accounting Office and the Department of Justice. Whether a debt exists is generally a program question to be determined under the law and policy applicable to the activity under which the debt arises. The procedures govern the way the Department collects a debt; how the Department compromises, suspends or terminates debt collection of \$20,000 or less (exclusive of interest) under written delegations of authority from the Secretary; and how a defaulted debt claim and an uncollectible claim over \$20,000 are referred to GAO and the Department of Justice for litigation. The instructions below apply unless otherwise specified in a statute, regulations, contract or agreement. Advice on how to implement the Act and these provisions is available from the Department Claims Officer and delegates (see 4-70-130).

4-70-10 WHAT DEBTS ARE COVERED

The procedures apply to a debt owing to the Government through this Department and its principal operating components in the form of money or property. The debtor may be an individual or corporation or another Government entity. The debt is one which remains due **after exhausting** all remedies available to the Government for **collection**, settlement or waiver under the specific statutes or regulations applicable to the programs in which the **debt** arises.

4-70-20 WHAT DEBT CLAIMS ARE NOT COVERED: EXHAUSTION REQUIREMENT

- A. The following types of debt claims are not covered by these procedures:
1. A claim arising from an **exception made** by the GAO in the account of an accountable officer, including a claim against the payee (GAO will provide guidance in such cases). Only **the** Comptroller General or his designee may compromise such **claim**.
 2. A **claim** related to fraud, **a** false claim, misrepresentation, or criminal activity. The claim should be referred promptly to the Office of the Inspector General, which may refer it to the Criminal Division of the Department of **Justice**. The Department of Justice will return the claim for collection, suspension or termination under this chapter if it determines that criminal action is not warranted.
- B. As a general rule, these standards should not be used until all statutory and other administrative procedures applicable to a particular debt are exhausted. For example:
1. Claims under the Federal Medical Care Recovery Act (42 U.S.C. 2651-2653; 28 CFR 43).
 2. Claims under the Waiver of Overpayment of Pay Act (5 U.S.C. 5584; 4 CFR 91-93; 5 U.S.C. 5514; HHS Personnel Manual Instructions 550-8 and 550-9).

3. Claims under the various statutes authorizing student loans **and** scholarships.
4. Claims **involved** in cases pending **before** the Contract Appeals Board or Grants Appeals Board (see 45 CFR 16). However, nothing precludes negotiation and settlement under these standards of claims pending before the Boards.

4-70-30 HOW DEBTS ARISE

A debt is any **property** or money owed to the Department. A debt arises when a **person** or organization such as a **Departmental** employee, a **person** with a student loan or fellowship, a grantee or **party** to a cooperative agreement (both referred to here as "**assistees**"), or a contractor, **receives** something of **value** from the Department and fails to fulfill the resulting obligation to the **Department**. Examples are: an **employee** who obtains travel allowance money and is not **entitled** to it, or doesn't use it as authorized, or has some left over; an **employee** who is erroneously overpaid and knows or should know that it is a mistake and has exhausted administrative remedies trying to obtain a waiver of the debt; an **assiste** which improperly obtains funds from more than one agency to perform identical research; an **assiste** which uses funds for **purposes** not **allowed** under the grant or cooperative agreement; an **assiste** which defaults in performing the research or other project for which it received assistance; and a contractor which fails to perform the services or supply materials according to specifications in the contract. Generally, the debt is disputed by the **debtor**, and there may be other procedures which must be completed before collection action can be initiated (see 4-70-20).

4-70-40 PREVENT DEBT COLLECTION PROBLEMS

- A. Each principal operating component should **prevent** collection problems. For example, to the extent feasible, before **approving** an initial application or renewing a contract, grant or agreement, the principal operating **component** should make sure the applicable regulations are **followed**; investigate the integrity and **responsibility** of the **assiste** or contractor; investigate the current financial soundness of the **recipient**; find out whether the **recipient** owes money to the Government (by

certification where appropriate); check whether the recipient is in default on payment or performance; and require prospective awardees to disclose whether any present officers of the corporation were ever employed or connected in an official capacity with a corporation which defaulted on a debt to the Government.

- B. Each principal operating component may request that each prospective assistee or contractor furnish with its submission its employer identification number, the name of each corporate officer, his/her social security number, home and office addresses, as well as the name, current address, and social security number of each officer authorized to accept: service of process involving any legal action against the corporation. However, the principal operating component must by law advise the applicant that this information is relevant and necessary to accomplish the purposes of the Federal Claims Collection Act and that furnishing this information is voluntary (5 U.S.C. 552a(e); PL 93-579 §7).
- C. Each principal operating component shall promptly notify the Departmental Federal Assistance Financing Branch (of DFAPS) or other appropriate payments or finance office, when it learns of default, change of ownership, bankruptcy of the debtor, or has other reason to believe continued payments to the debtor would be contrary to good judgment.
- D. The principal operating component, its finance office or DFAPS should commence immediate collection action as outlined below. A debt owed by an employee, contractor or grantee should be reported to all offices and agencies which may be able to set off the debt against funds due to the debtor. If all reasonable efforts to collect or resolve the debt are not successful, referral to the Claims Collection Officer should not be delayed.

d-70-50 DESIGNATE A **CLAIMS** COLLECTION OFFICER

The head of each principal operating component should designate an officer to be responsible for the administrative collection of debts (the Claims Collection Officer (CCO)). The CCO shall take prompt and aggressive action to collect all debts.

4-70-63 HOW TO COLLECT DEBTS

- A. Do not delay collection efforts since delay often reduces the likelihood of collection. Collection procedures should not be overloaded with unnecessary internal clearance or review requirements.
- B. Send the first request for payment to the debtor telling the debtor how much is owed the Government, and the following:
1. The basis for the indebtedness, and the rules that apply.
 2. That payment is due within 30 days from the date of the initial request for payment. Thirty days notice generally is a reasonable time. A principal operating component may determine, however, that particular circumstances warrant earlier or later payment.
 3. That interest charges will be added starting on a specified date which is generally within 30 days from the date of the initial request for payment (see C below for percent of interest).
- C. Send no more than three progressively stronger demand letters, unless circumstances indicate this is useless (for example, where the debtor explicitly refuses to pay, or clearly cannot pay) and alternative remedies would better protect the Government's interest. Demand letters should be sent by certified mail, return receipt requested. A prompt response should be made to any communication from the debtor. Alternative remedies include promptly filing suit in the case of an imminent statutory bar (28 U.S.C. 2415); attaching property in case of imminent departure of debtor or removal of assets or dissolution of corporation; and filing a claim in bankruptcy. If alternative remedies are contemplated, contact your servicing division of the Office of General Counsel or the Department Claims Officer.
- D. Where feasible, the CCO will offset a debt against pay or compensation due the debtor from the same principal operating component or elsewhere in the Government. Examples of funds against which offset can be made are:

1. Current **pay** of an employee (with respect to travel expenses, overpayment of pay or benefits).
 2. Continuing entitlements to the **same** benefits originally overpaid.
 3. Civil service retirement annuities or contributions.
 4. Lump sum leave **payments**, severance pay of Federal **employees**.
 5. Amounts due indebted contractors and judgments obtained against the United **States**.
 6. Grant payments.
- E. if the principal operating component holds security or collateral, the **CCO** has several options:
1. **Where** there is a surety or insurance company, the **CCO** should demand payment from **that** company unless sale of **collateral** is expressly required 'by statute or contract.
 2. The **CCO** may also sell the collateral and apply it to the debt as provided in the security instrument unless the cost of sale is excessive compared to the value of the collateral or special circumstances require judicial foreclosure.
 3. Proceeds remaining after **payment** of the debt and the costs of collection must be paid over to the debtor.
- F. If a debtor cannot pay the debt in a single payment, the **CCO** may negotiate installment **payments**.
1. The **CCO** should obtain satisfactory evidence of the debtors inability to pay in a single payment. The agreement for installment payments should provide for repayment within the shortest period possible, generally not to exceed three years. All installment **payment plans** should **include** interest. If the payment plan exceeds six months, every effort should be made to reduce the agreement to writing signed by the debtor and obtain security.

2. Use an automated billing system for all payment plans where feasible.
 3. Apply installment payments first to accrued interest and then to principal. When an installment payment is past due, the entire debt should become due and payable, with interest.
- G. Repayment agreements should stipulate interest for late payments.
1. If a debt is to be paid in one lump sum, a late charge should be assessed at the current prevailing rate prescribed in Part 5 of the Treasury Fiscal Requirements Manual.
 2. Liability for interest or a late charge commences when the debtor is in default on payment. Generally, this is 30 days from the initial request for payment unless the debtor makes satisfactory arrangements to pay by the due date. If the debtor disputes the validity of the debt, the interest or late charge should be assessed pending resolution of the dispute. If the debtor was correct, appropriate adjustment should be made.
 3. If a debt is paid in installments, the interest rate should be the rate published in the Treasury Department's monthly "Schedule of Certified Interest Rates with Range of Maturities."

4-70-70 HOW TO COMPROMISE CLAIMS

- A. If the CCO finds that collection in full is unlikely, the CCO should try to settle the case. Claims may be compromised:
1. When there is a bona fide dispute as to the facts or the law. The amount accepted in compromise should fairly reflect the probability of full or partial recovery in the event of litigation based upon expected testimony of witnesses, the adequacy of evidence supporting the Government's claim and other practical considerations.

2. When the cost of further collection efforts or litigation is likely to exceed the difference between the proposed compromise amount and the full amount of the claim. This criterion carries greater weight when small claims are involved.
 3. When the debtor cannot pay the full amount within a reasonable time. In determining the debtor's inability to pay, the following factors, among others, may be considered:
 - a. Age and health of debtor.
 - b. Present and potential income.
 - c. Inheritance prospects.
 - d. Possibility that assets have been concealed or improperly transferred by the debtor.
 - e. Availability of assets or income. If the CCO's file does not contain reasonably up-to-date credit information as a basis for evaluating a compromise proposal, the CCC should try to obtain credit information from such sources as credit bureaus, a verified statement from the individual debtor and in the case of a corporate debtor, balance sheets and profit and loss statements.
- B. Discourage installment payments of a compromised amount. If installment payment is necessary based on reasonably current credit information, the CCO should enter into a compromise agreement which should provide that on default the full amount of the debt, less payments made, shall become due and payable with interest. Obtain security where possible.
- C. Where there is joint and several liability for a debt, the CCO shall collect the debt as quickly as possible without allocating the burden as between debtors. A compromise with one debtor shall neither release the remaining debtors, nor determine the amount required from the other debtors jointly and severally liable on the claim: .

4-70-80 HOW TO SUSPEND COLLECTION ACTION

- A. In the event that the whereabouts of the debtor or the debtor's assets are unknown, the CCO may need to suspend collection action. Diligent efforts should be pursued to locate the missing debtor. The following sources should be utilized: telephone directories, city directories, postmasters, drivers license records, automobile title and license records, state and local government agencies, District Directors of Internal Revenue, Social Security Administration, other Federal agencies, employees, relative, friends, and credit agency skip locator reports.
- B. The CCO should make sure all efforts listed above to collect or compromise a debt have been exhausted. Collection action may be suspended temporarily where the future prospects of the debtor to repay look good or where future offset is possible. Wherever feasible, the CCO should obtain written acknowledgement of the debt, a partial payment, or a judgment to forestall application of the statute of limitations which is generally six years. The CCO should develop a system to be sure that suspended claims will always be reviewed periodically.

d-70-90 HOW TO END COLLECTION ACTION

The official who has written delegation of authority to do so may terminate collection action on claims of \$20,000 or less when it becomes clear that one or more of the following circumstances is present:

- A. The Government, cannot collect any significant sum from the debtor and will not in the future be able to collect from the debtor, taking into account the judicial remedies available, the debtor's present and future prospects, the debtor's exemptions under State and Federal law, the age and health of the debtor, inheritance prospects present and potential income and possibly concealed or illegally transferred assets.
- B. The debt is discharged in bankruptcy.

- C. The debtor has died. An effort should be made to ascertain whether the decedent left an estate, through inquiries to relatives, representatives, or clerks of probate courts. Debts should not be reported, regardless of amount, when positive evidence shows the decedent left no estate. If decedent left an estate GAO will file the formal proof of claim. (See 70.1, **GAO Claims Manual** for details on how to report to GAO.)
- D. The corporate debtor has **been dissolved** and there are no corporate assets or security and the whereabouts of the officers and directors are unknown.
- E. The debt is barred by the statutes of limitations (28 U.S.C. 2415, 2416) and there has been no partial payment or written **acknowledgment** of the debt and no prospect for collecting by offset.
- F. The cost of collecting will exceed recovery.
- G. The claim is legally without merit or cannot be substantiated by evidence.

4-70-100 HOW TO REFER CLAIMS TO THE GENERAL ACCOUNTING OFFICE OR TO THE DEPARTMENT OF JUSTICE

- A. The **CCO** shall refer a debt **claim** which is potentially collectible through legal action and which cannot be either collected after aggressive **collection** efforts, temporarily suspended, or terminated to **the General Accounting Office** or to the **Department** of Justice. The claim must be referred promptly. Generally no later than four months from the past due date. The **CCO** will clear such referral with **the Division** of the Office of the General **Counsel** serving that principal operating component.
- B. **When** you refer claims to GAO, GAO requires certain specific information, set forth in **Exhibit** 4-70-A.
- C. **The** General Accounting Office does not accept a referred claim for less than \$600 exclusive of interest **unless** a significant policy is involved or the debtor clearly has ability to pay **and** no reasonable basis for refusing to pay.

- D. The CCO shall **preserve** all records on **the** referred claim until **the** case is closed.

4-70-110 DELEGATION OF AUTHORITY REQUIRED UNDER THE
FEDERAL CLAIMS COLLECTION ACT

Only one who has **written delegated authority** (see §120 and §130) may approve a compromise, suspension, or termination of a claim and **then** only if the **claim** is \$20,000 or less. Resolution of claims over \$20,000 requires the concurrence of CAO.

4-70-120 DELEGATION OF AUTHORITY BY THE SECRETARY UNDER
THE FEDERAL CLAIMS COLLECTION ACT

- A. The Secretary has delegated to the Department Claims Officer, who is the Assistant General Counsel, Business and Administrative Law Division, the authority to perform the duties and exercise the **authority** vested in the Secretary by the Federal Claims Collection Act of 1965, 31 U.S.C. 951-953, as amended, to collect claims in any amount; to compromise, suspend or terminate collection action in claims of \$20,000 or less, **exclusive** of interest; and to issue rules and procedures for investigating, reporting and otherwise handling claims throughout the Department. (31 FR 16375, 12/14/66). The Department Claims Officer has **redelegated** this authority. As explained under B and C, there is a concurrent **delegation** of such authority **from the Secretary** to two principal operating components.
- B. The Secretary has delegated to the Commissioner of Social Security the authority vested in the Secretary under **the Federal Claims Collection Act** insofar as such authority relates to the mission of the **Social Administration** (33 FR 5836, 5843, 4/16/63).
- C. The Secretary has delegated to the **Administrator** of Health Care Financing Administration the authority vested in the Secretary under the Federal Claims Collection Act insofar as such authority relates to the mission of **the Health Care Financing Administration** (42 FR 57352, 11/2/77; 42 CFR 405.374).

4-70-130 FURTHER DELEGATION OF AUTHORITY BY THE DEPARTMENT
CLAIMS OFFICER

The authority of the Department Claims Officer is delegated to the following officials within the scope identified:

- A. The Deputy Assistant General Counsel, Business and Administrative Law Division, Office of the General Counsel (Department-wide).
- B. The Chief, Litigation and Claims Branch, Business and Administrative Law Division, Office of the General Counsel (Department-wide).
- C. The Regional Attorneys (Region-wide) except for claims relating to Titles II and XVIII of the Social Security Administration and the Public Health Service.
- D. The Assistant Secretary for Health, insofar as such authority relates to the mission of the Public Health Service.

**Appendix A - INSTRUCTIONS FOR REPORTING UNCOLLECTIBLE DEBT
CLAIMS TO GAO AND THE DEPARTMENT OF JUSTICE**

A. Contents of Administrative Reports

1. The debtor's full name and current address. If unknown, prior known addresses and a statement of the steps taken to locate the debtor.
2. The debtor's identifying number, if known.
3. The debtor's date of birth and social security number, if known. For business firms, the employer's identification number which corresponds to the social security number of an individual, shall be shown if obtainable.
4. All evidence necessary to support the Government's claim: a complete statement of relevant facts, including the date the debt first accrued, the date of partial payments, copies of correspondence which might acknowledge the debt, in order to determine whether the statute of limitation applies (28 U.S.C. 2415); computations explaining how the amount owed was arrived at; citations to applicable laws and regulations; copies of correspondence in which the debtor has questioned his liability and copies of the Government's responses.
5. If the debtor is currently employed by the Government or serving in the uniformed services, show the actions taken to recover the amount through the agency in which the debtor is employed or serving and the results.
6. A summary of actions taken to collect or compromise the indebtedness.
7. Reasonably current credit information obtained within the last six months.

B. Where Administrative Reports Should be Sent to GAO

Reports of administratively uncollectible debts shall be mailed to the following address: Claims Division, U.S. General Accounting Office, Washington, D.C. 20548.

HHS Exhibit 4-70-A,
General Administration Manual
HHS Transmittal 81.01 (2/6/81)

C. Where Administrative Reports Should be Sent to **Department** of Justice

When authorized to send reports of **administratively** uncollectible debts to the Department of Justice, they must be sent by the appropriate Office of the **General Counsel** to the Commercial Litigation Branch, **Safeway Building, 521** 12th Street, N.W., Washington, D.C. 20530.

Subject: RESPONSIBILITY AND PROCEDURES FOR REPORTING
MISCONDUCT AND CRIMINAL OFFENSES

5-10-00	Purpose
10	Definitions
20	General Policy
30	Procedures for Reporting Allegations of Improper Conduct
40	Procedures for Reporting Allegations of Criminal Offenses
50	Prohibition of Reprisals Against Employees for Providing Information

Exhibit 5-10-A Administrative Offenses

Exhibit 5-10-B Office of Investigations Field Offices

5-10-00 PURPOSE

This chapter sets forth Department of Health and Human Services (BBS) policies, procedures, and assignments of responsibility for reporting allegations of:

- A. Improper conduct not related to loyalty and security matters; and,
- B. Criminal offenses against the United States.

5-10-10 DEFINITIONS

- A. As used in this chapter, "improper conduct" include! the performance of one's assigned duties in a manner which contributes to abuse or waste of the taxpayers' money, which threatens the integrity of **HHS** programs and operations, which is contrary to the standards of conduct established by the appropriate authority, or which constitutes a prohibited personnel practice (see 5-10-50). The term does not include criminal violations of law.
- B. As used in this chapter, "criminal offenses" include, but are not limited to, bribery; fraud; perjury; conflict of interest; embezzlement; misuse of funds, equipment, and facilities; and other violations of law by Government officers and employees, grantees, contractors, and other persons doing business with the Department.

- C. As used in this chapter, "administrative offenses" are those incidents of improper conduct which can and should be handled directly by supervisors with the assistance of their servicing personnel office. A list of administrative offenses is shown in Exhibit 5-10-A.
- D. This chapter does not cover procedures for handling of matters related to loyalty and security, employee grievances, **equal** employment opportunity complaints, including sexual harassment complaints, classification appeals, or other matters for which a formal Governmentwide review system has been established by the Federal Government.

5-10-20 **GENERAL** POLICY

- A. In order to provide objective uniform procedures for the handling of allegations of wrongdoing covered by this chapter, it shall be the responsibility of the Office of Inspector General (OIG) to investigate allegations of wrongdoing reported to the **OIG** or to refer such allegations to the appropriate operating division (OPDIV), the appropriate staff division (STAFFDIV), to the Assistant Secretary for Personnel Administration (**ASPER**), to another law enforcement agency, or to another appropriate authority.
- B. Every employee, supervisor, and management official shall report any criminal offenses immediately to the OIG which he/she receives, unless it is clear to him/her that the allegation is frivolous and has no basis in fact.
- c. Every employee, supervisor, and management official shall cooperate with the OIG during the conduct of any investigation.
- D. Any employee who has authority to take, direct others to take, recommend, or approve any personnel action, shall not, with respect to such authority, take or threaten to take any action against any employee as a reprisal for making a complaint or disclosing information to a supervisor, management official, or the OIG, unless the complaint was made or the information was disclosed with the knowledge that it was false or with willful disregard for its truth or falsity.

5-10-30 PROCEDURES FOR REPORTING ALLEGATIONS OF IMPROPER
CONDUCT

A. Submission of Allegations

Allegations of improper conduct (non-criminal) should normally be submitted in writing by an employee to his/her supervisor, a higher management official within the employee's organization, or the OIG. Allegations should, **where** possible, be supported by any available documentation. Oral reports are, however, acceptable, and may be necessary if immediate action is required.

B. Reporting of Allegations

Supervisors and management officials shall report any allegations of improper conduct (non-criminal) received or observed to the next highest Department official within their organization. The head of each OPDIV or STAFFDIV shall insure that all allegations of improper conduct, other than those that are clearly frivolous and have no basis in fact, are either investigated by the responsible component within that agency **or** referred to the OIG for its consideration of the appropriate action to take.

C. Investigation of Allegations

1. Allegations of improper conduct (non-criminal) received by the OIG will be reviewed promptly and a decision made as to whether an investigation is warranted. Normally, the administrative offenses shown in Exhibit 5-10-A will be handled by the employee's supervisor. If an investigation is warranted, the OIG will determine whether the investigation is to be conducted by the OIG, by an OPDIV, STAFFDIV, by **ASPER** or by other appropriate authority, based upon the following considerations:
 - a. An OPDIV or STAFFDIV may conduct a non-criminal investigation within its own organization when the OIG determines that the OPDIV or STAFFDIV will conduct the investigation in a fair and impartial manner.
 - b. The **ASPER** may conduct an investigation that the OIG determines involves prohibited personnel practices or non-criminal violations **of**

established standards of conduct. The **ASPER** may also conduct investigations of **cases** directly referred to the Department by the Office of Special Counsel (OSC).

- c. The OIG may conduct an investigation **of** any allegation of misconduct received from any source.
2. Whenever the OIG determines that there is unreasonable delay by an OPDIV or STAFFDIV in the handling of an allegation of improper conduct or that the head of the OPDIV or STAFFDIV took an inappropriate action in regard to the allegation, the OIG may assume responsibility for completing the investigation.

D. Action on Investigation Reports

1. Where an investigation is conducted by an OPDIV or STAFFDIV, the head of the OPDIV or STAFFDIV will proceed as he/she determines is necessary based upon the findings of the investigation. He/she will inform, where appropriate, the Inspector General (IG), the Secretary, or other Department officials of his/her findings. Such reports will be in writing.
2. Where an investigation is conducted by the OIG, the IG will determine if the findings of the investigation *require* additional action. Where appropriate, he/she will inform the head of the OPDIV or STAFFDIV, the Secretary, or other Department officials of his/her findings. Such reports will be *in* writing.
3. Where an investigation is conducted by **ASPER**, the Assistant Secretary will take whatever action he/she determines is necessary based upon the findings of the investigation, or will refer the findings to the appropriate authority for such action. Where appropriate, he/she will inform the IG, the Secretary, or other Department officials of his/her findings, and request further action be taken as warranted by the findings. Such reports will **be** in writing.

E. Record-Keeping

1. The OPDIV or STAFFDIV **head**, **ASPER**, or the IG shall also insure that a file is maintained on each investigation which is initiated. The investigation file shall contain complete documentary material showing in detail: the basis for the investigation, the extent of

the investigation, persons interviewed and information furnished, records reviewed and information obtained, and any other material pertinent to the investigation. The file shall also contain a record of the action taken. Files so maintained by an OPDIV or STAFFDIV, or **ASPER**, shall be **made** available to the OIG upon request.

2. Investigative files shall be retained by the office which conducted the investigation for a period of 10 years from the date of its completion.

5-10-40 PROCEDURES FOR REPORTING ALLEGATIONS OF CRIMINAL OFFENSES

A. **Cooperation** With the Attorney General

The Department will cooperate fully with the Attorney General (AG) and his/her staff in reporting, conducting, and assisting with investigations of alleged criminal offenses against the United States. Through the Deputy Inspector General for Investigations (**DIGI**), **OIG**, the Department will promptly report to the AG alleged violations of law by its employees and agents.

B. **Authority of Office of Investigations**

1. The **DIGI**, who heads the Office of Investigations (01), has been designated by the Secretary and the IG, as prescribed by Appendix 3 of title 5, United States Code, to:
 - a. Provide liaison for the Department with the AG and his/her staff on all investigative matters; and,
 - b. Conduct investigations of alleged cases of criminal wrongdoing by **HHS** employees, grantees, contractors, and other persons doing business with the Department.
2. The authority of 01 includes authority to undertake **or authorize** ~~other~~ to undertake such investigations without the ~~prior~~ approval of higher officials. The authority does not include investigations of matters **related** to loyalty and security, employee grievances, **equal** employment opportunity complaints, including sexual harassment, employee civil rights, tort claims, and similar administrative activities that are under the jurisdiction of other **HHS** offices.

C. **Reporting Violations of Title 18 U.S.C. (Criminal Offenses) by HHS Employees, Grantees, Contractors, and Others Doing Business with the Department**

1. Any **HHS** employee who has knowledge of possible criminal offenses against the United States by another **HHS** employee, grantee, contractor, or any other person doing business with the Department, shall immediately report such information directly to the OIG.
2. Supervisors shall immediately report any allegations or complaints of criminal offenses received, or observations of criminal conduct, directly to the OIG. The head of each OPDIV or STAFFDIV shall insure that no other action will be taken in regard to the subject of the complaint, without first consulting with **OIG**. The head of each OPDIV or STAFFDIV shall also insure that all such allegations which are received are referred to the OIG.
3. Allegations or complaints should normally be made in writing and include any available documentation. This method of reporting enables the **OIG** to make an informed decision on the handling of the alleged violation, once it is received. Oral reports, however, are acceptable if it is believed that immediate action is required by the OIG. The OI will determine if a written referral report will be required.
4. Ordinarily, allegations or complaints should be reported to the nearest OI field office. (See Exhibit 5-10-B for the listing and addresses of these offices.) However, when such allegations concern an **HHS** activity that is national in scope, involves senior **HHS** officials, or involves personnel of the OIG, they should be reported directly to the:

Deputy Inspector General for Investigations
Department of Health and Human Services
Room 5459, Wilbur **J.** Cohen Building
330 Independence Avenue, S.W.
Washington, D.C. 20201

5. When **OI** has reasonable grounds to believe an **HHS** officer or employee has committed a criminal offense, it shall promptly notify the United States Attorney for the district in which the alleged violation occurred; the Criminal Division, Department of Justice; or the Federal Bureau of Investigation (FBI).

D. Complaints by Private Citizens

Any person desiring to bring to the attention of OIG any complaint which he/she considers warrants such attention may write to the appropriate OI field office (as shown in Exhibit 5-10-B), or to:

Deputy Inspector General for Investigations
Department of Health and Human Services
Room 5459, Wilbur J. Cohen Building
330 Independence Avenue, S.W.
Washington, D.C. 20201

E. Administrative Actions

1. Allegations Regarding Employees

- a. Where prosecutive action has been declined and further investigation of the criminal aspects of an allegation will not be made, OI shall furnish to appropriate HHS officials, where administrative action may be appropriate, such information as is available, provided this transfer of information would not violate a defense classification, Rule 6(e) F.R.Cr.P., the Privacy Act or other laws.
- b. Where OI conducts an investigation and determines that the case involves issues which are the responsibility of an OPDIV or STAFFDIV, the case shall be referred to the appropriate OPDIV or STAFFDIV for further action. The Department official who takes final action shall report the final disposition of the case to OI, to complete the file in the matter.
- c. When a criminal investigation is ongoing and administrative action is being considered apart from the criminal investigation, the official considering the administrative action must consult with OI before implementing such action. The OI will assess what effect the proposed administrative action might have on the criminal investigation and advise the official accordingly.

2. Allegations Regarding Non-Employees

Whenever OI informs an HHS official that it has initiated an investigation of a grantee, contractor, an employee of a grantee or contractor, or an individual

doing business with the Department, the HHS official may wish to initiate administrative actions. This is a programmatic decision and must be made in the best interests of the Government and the individuals concerned. Program decisions to suspend, limit, or terminate funds must be made based upon facts available, impact on the program, potential loss to the Government, and judgment as to the validity of the allegation. Officials contemplating administrative action in a case being investigated criminally will consult with OI before taking such action, to determine what effect the action might have on such investigation.

3. Investigative Reports

Reports by the FBI are the property of the FBI and are loaned to the Department. Reports by OI are the property of OIG and are loaned to components of the Department for official use only. Neither the FBI nor OIG reports nor their contents may be distributed outside the component to which loaned. All reports of investigation must be returned to OI when the office receiving the reports has completed all action and has no further need to retain the reports. All OI and FBI reports should be stored in a secured file or safe while in the possession of the component.

F. Procedure for Requesting Investigative Assistance

Whenever the head of an OPDIV or STAFFDIV requires investigative assistance on suspected criminal activity related to his/her organization, he/she shall request the DIGI to provide such assistance. Regional officials and heads of HHS field installations shall send their requests for investigative assistance to the Regional Inspector General for Investigations (RIGI) for the area in which the investigation should be conducted. (See Exhibit 5-10-B.)

G. Office of Investigations Field Offices

The OI field offices perform the investigative services in the geographic areas indicated. Each field office is headed by a RIGI who is under the line direction of the Assistant Inspector General for Criminal Investigations. Communications should be addressed to the RIGI at the appropriate location listed in Exhibit 5-10-B. In a

situation that requires immediate action, 01 field offices may be contacted by telephone. The field office telephone numbers are also shown in Exhibit 5-10-B.

5-10-50 PROHIBITION OF REPRISALS AGAINST EMPLOYEES FOR PROVIDING INFORMATION

- A. Any employee who has authority to take, direct others to take, recommend, or approve any personnel action, shall not, with respect to such authority, take or threaten to take any action against any employee as a reprisal for making a complaint or providing any information pursuant to this chapter. If the complaint was made or the information was disclosed with the knowledge that it was false, or with willful disregard for its truth or falsity, any action taken against the employee based on those reasons would not constitute a reprisal action.
- B. No employee shall subject another employee to harassment nor take any action against that employee as a reprisal for making a complaint or providing any information pursuant to this chapter.
- C. Any employee who believes that he/she has been threatened with a personnel action or any other action, or who has been harassed or harmed by any action as a reprisal for having made a complaint or provided information pursuant to this chapter, may request the OIG to review his/her complaint about such reprisal. Whenever the OIG has reason to believe that the complaint may be true, it may, depending on the circumstances, decide to conduct the investigation or to refer the matter to OSC or **ASPER** for appropriate action. A more direct option an employee may exercise is filing a complaint with the OSC. The OSC has the ability to seek a stay **of** any agency personnel action from the Merit Systems Protection Board.

ADMINISTRATIVE OFFENSES

The improper conduct offenses listed below are considered administrative in nature. They should be handled directly by supervisors, with the assistance of members of the servicing personnel office staff. However, supervisors may also request the advice and assistance of their servicing 01 field office. (See Exhibit 5-10-B.)

Improper conduct offenses which are considered administrative in nature include:

- A. Leave abuse and other attendance-related offenses, such as tardiness and absence without leave.
- B. Offenses related to intoxicants or other substance abuse by an individual.
- c. Negligent performance of, or failure to attend to, duties.
- D. Insubordinate behavior and failure to follow instructions.
- E. Discourteous behavior and offensive or abusive conduct.
- F. Offenses related to fighting.
- G. Pailure to pay legitimate debts.
- H. Improper use of telephone or telephone charge card.
- I. Other minor infractions *of* a non-recurring nature.

OFFICE OF INVESTIGATIONS FIELD OFFICES

<u>Location & Jurisdiction</u>	<u>Address and Telephone Number</u>
<u>Boston</u> Connecticut Maine Massachusetts New Hampshire Rhode Island Vermont	Regional Inspector General for Investigations HHS/OIG/OI JFK Federal Building Room 2475 Boston, WA 02203 Telephone: (617) 565-2660
<u>New York</u> New Jersey New York Puerto Rico Virgin Islands	Regional Inspector General for Investigations HHS/OIG/OI Federal Building, Room 3900B 26 Federal Plaza New York, NY 10278 Telephone: (212) 264-1691
<u>Ph' adelphia</u> Delaware Maryland 1/ Pennsylvania Virginia 1/ West Virginia	Regional Inspector General for Investigations HHS/OIG/OI P.O. Box 8049 Philadelphia, PA 19101 Telephone: (215) 596-6796
<u>Atlanta</u> Alabama Florida Georgia Kentucky Mississippi 2/ North Carolina South Carolina Tennessee	Regional Inspector General for Investigations HHS/OIG/OI P.O. Box 2288 Atlanta, GA 30301 Telephone: (404) 331-2131
<u>Chicago</u> Illinois Indiana Iowa Michigan Minnesota Missouri Ohio Wisconsin	Regional Inspector General for Investigations HHS/OIG/OI P.O. Box 2197 Chicago, IL 60690 Telephone: (312) 353-2740

OFFICE OF INVESTIGATIONS FIELD OFFICES

<u>Location & Jurisdiction</u>	<u>Address and Telephone Number</u>
Dallas Arkansas Louisiana Mississippi 3/ New Mexico Oklahoma Texas	Regional Inspector General for Investigations HHS/OIG/OI Room 4E9 1100 Commerce Street Dallas, TX 75242 Telephone: (214) 767-8406
Denver Colorado Kansas Montana Nebraska North Dakota South Dakota Utah Wyoming	Regional Inspector General for Investigations HHS/OIG/OI Federal Office Building, Room 327 1961 Stout Street Denver, CO 80294-3538 Telephone: (303) 844-5621
San Francisco Alaska California 4/ Hawaii Idaho Nevada 4/ Oregon Washington American Samoa Guam Northern Marianas Trust Territory of the Pacific Islands Wake Island	Regional Inspector General for Investigations HHS/OIG/OI Room 174 50 United Nations Plaza San Francisco, CA 94102 Telephone: (415) 556-8880
Los Angeles Arizona California 5/ Nevada 5/	Regional Inspector General for Investigations HHS/OIG/OI 600 W. Santa Ana Boulevard, Suite 805 Santa Ana , CA 92701 Telephone: (714) 836-2372

OFFICE OF INVESTIGATIONS FIELD OFFICES

<u>Location & Jurisdiction</u>	<u>Address and Telephone Number</u>
Washington Washington, DC Maryland 6/ Virginia 6/	Regional Inspector General for Investigations HHS/OIG/OI 330 Independence Avenue, S.W. Room 5193 Cohen Building Washington, D.C. 20201 Telephone: (202) 619-1900

FOOTNOTE EXPLANATIONS

- 1 Except for areas listed for Washington Field Office.
- 2 Northern Federal Judicial District.
- 3 Southern Federal Judicial District.
- 4 Except for areas listed for Los Angeles Field Office.
- 5 California counties:
 - Imperial
 - Kern
 - Los Angeles
 - Orange
 - Riverside
 - San** Bernardino
 - San Diego
 - San Luis Obispo
 - Santa Barbara
 - Ventura
- Nevada county:
 - Clark
- 6 **Maryland** counties:
 - Montgomery
 - Prince** Georges
- Virginia counties:
 - Arlington
 - Fairfax
- Virginia cities:
 - Alexandria
 - Falls Church

CHAPTER 6-10

REGULATIONS AND PROCEDURES

6-10-00 Scope

6-10-10 Regulations (from Federal Register of 10/1/66)

6-10-20 Patent Policy Applicable to Cancer Chemotherapy
Industrial Research Contracts

6 - 1 0 -~~SCOPE~~

This Chapter contains:

1. Department regulations relating to inventions (a) made by Department employees, or (b) resulting from research grants, fellowship awards, or research contracts under programs administered by the Department; and
2. Department patent policy, approved 7/31/58 by the Secretary, establishing the limitations referred to in section 8.7 of the Department regulations for the negotiation of cancer chemotherapy industrial research contracts.

6-10-10 REGULATIONS

TITLE **45--PUBLIC WELFARE**

Subtitle A--Department of Health, Education,
and Welfare, General Administration

PART **6--INVENTIONS** AND PATENTS
(GENERAL)

PART **7--EMPLOYEE** INVENTIONS

PART **8--INVENTIONS** RESULTING FROM RE-
SEARCH GRANTS, **FELLOWSHIP** AWARDS,
AND CONTRACTS FOR RESEARCH

The following parts are Department rules and policies relating to inventions which are made by Department employees having a relation to their official duties or with some contribution from the Government or which arise from research or related activities assisted by grants or otherwise under programs administered by the Department.

PART 6 -- INVENTIONS AND PATENTS (GENERAL)

Sec.

6.0 General Policy.

6.1 Publication or patenting of inventions.

6.2 General Responsibility.

(6-10-10 cont'd)

- 6.3 Government-owned patents; licensing; dedication to the public.
c.4 Central records; confidentiality.

AUTHORITY: §§ 6.0 to 6.4 issued under Reorg. Plan No. 1 of 1953, 18 F.R. 2053, 3 CFR 1949-1953 Comp., p. 1022; E.O. 10096, 15 F.R. 391, 3 CFR 1949-1953 Comp., p. 292; E.O. 10830, 26 F.R. 2553, 3 CFR 1959-1963 Comp., p. 456.

§6.0 General Policy.

Inventions developed through the resources and activities of the Department are a potential resource of great value to the public health and welfare. It is the policy of the Department:

(a) To safeguard the public interest in inventions developed by Department employees, contractors and grantees with the aid of public funds and facilities;

(b) To encourage and recognize individual and cooperative achievement in research and investigations; and

(c) To establish a procedure, consistent with pertinent statutes, Executive Orders and general Government regulations, for the determination of rights and obligations relating to the patenting of inventions.

56.1 Publication or patenting of inventions.

It is the general policy of the Department that the results of Department research should be made widely, promptly and freely **available** to other research workers and to the public. This availability can generally be adequately preserved by the **dedication** of a Government-owned invention to the public. Determinations to file a domestic patent application on inventions in which the **Department** has an interest will be made **where** the circumstances indicate that this is desirable in the public interest, and if it is **practicable** to do so. Department determinations **not** to apply for a domestic patent **on** employee inventions are **subject to review** and approval by the Commissioner of Patents. Except where deemed **necessary** for protecting the patent claim, the fact **that** a **patent** application has been or may be filed will not require any departure from normal policy regarding the dissemination of the **results of** Department research.

§6.2 General Responsibility.

The Assistant Secretary (Health and Scientific Affairs) is responsible for the administration of the invention and patent program of the Department and the determination of rights in inventions and patents in which the Department has an interest.

- 10 continued)

§6.3 Licensing of Government-owned patents.

Licenses to practice inventions covered by patents and pending patent applications owned by the United States Government as represented by this Department will generally be royalty free, revocable and nonexclusive. They will normally be issued to all applicants and will generally contain **no** limitations or standards relating to the quality or testing of the products to be manufactured, sold, or distributed thereunder.

Where it appears however that the public interest will be served under the circumstances of the particular case by licenses which impose conditions, such as those relating to quality or testing of products, requirement of payment of royalties to the Government, etc., or by the issuance of limited exclusive licenses by the Assistant Secretary for Health and Scientific Affairs after notice and opportunity for hearing thereon. such licenses may be issued.

§6.4 Central records; confidentiality.

Central files and records shall be maintained of all inventions, patents, and licenses in which the Department has an interest, together with a record of all licenses issued by the Department under such patents. Invention reports required from employees or others for the purpose of obtaining determinations of ownership, and documents and information obtained for the purpose of prosecuting patent applications shall be confidential and shall be disclosed only as required for official purposes or with the **consent** of the inventor.

PART 7 -- EMPLOYEE INVENTIONS

Sec.

- 7.0 Who are employees.
- 7.1 Duty of employee to report inventions.
- 7.3 Determination as to domestic rights.
- 7.4 Option to acquire foreign rights.
- 7.7 Notice to **employee** of determination.
- 7.8 **Employee's** right of appeal.

AUTHORITY: §§ 7.0 to 7.8 issued under **Reorg.** Plan No. 1 of 1953, 18 F.R. 2053, 3 CFR 1949.1953 Comp., p. 1022; E.O. 10096, 15 F.R. 391, 3 CFR **1949-1953 Comp.**, p. 292; E.O. 10930, 26 P.R. 2583, 3 CFR 1959-1963 **Comp.**, p. 4%.

Q7.0 Who are employees.

As used in this part, the term "**Government** employee" means any officer or employee, civilian or military, except such part-time employees or part-time consultants as may be excluded **therefrom** by a determination made in writing by the head of the employee's office or constituent organization, pursuant to an exemption approved by the Commissioner of Patents that to include him or them-would be

(6-10-10 cont'd)

impracticable or inequitable, giving the reasons therefor. A person shall not be considered to be a part-time employee or part-time consultant for this purpose unless the terms of his employment contemplate that he shall work for less than the minimum number of hours per day, or less than a minimum number of days per week, or less than the minimum number of weeks per year, regularly required of full-time employees of his class.

§7.1 Duty of employee to report inventions.

Every Department employee is required to report to the Assistant Secretary (Health and Scientific Affairs) in accordance with the procedures established therefor, every invention made by him (whether or not jointly with others) which bears any relation to his official duties or which was made in whole or in any part during working hours, or with any contribution of Government facilities, equipment, material, funds, or information, or of time **or** services of other **Government** employees on official duty.

57.3 Determination as to domestic rights.

The determination of the ownership of the domestic right, title, and interest in and to an invention which is **or may** be patentable, made by a **Government** employee while under the administrative jurisdiction of the Department, **shall** be made in writing by the Assistant Secretary (Health and Scientific Affairs), in accordance with the provisions of Executive Order 10096 and **Government-wide** regulations issued thereunder by the Commissioner of Patents as follows:

(a) The Government as represented by the Assistant Secretary (Health and Scientific Affairs) shall obtain the entire domestic right, title and interest in and to all inventions made by any Government employee (1) during working hours, or (2) with a contribution by the Government of facilities, equipment, materials, funds, or information, or of time or services of other Government employees on official duty, or (3) which bear a direct relation to or are made in consequence of the official duties of the inventor.

(b) In any case where the contribution of the Government, as measured by any one **or more** of the criteria **set** forth in paragraph (a) of this section, to the invention is insufficient equitably to justify a requirement of assignment to the **Government** of the entire domestic right, title and interest in and to such invention, or in any case where the Government has insufficient interest in an invention to obtain the entire domestic right, title, and interest therein (although the Government could obtain same under paragraph (a) of this section), the Department, subject to the approval of the Commissioner, shall leave title to such invention in the employee, subject, however, to the reservation to the Government of a nonexclusive, irrevocable, royalty-free license in the invention with

(6-10-10 continued)

power to grant licenses for all governmental purposes, such reservation to appear, where practicable, in **any** patent, domestic or foreign, which may issue on such invention.

(c) In applying the provisions of paragraphs (a) and (b) of this section **to** the facts and **circumstances** relating to the making of **any** particular invention, it shall be presumed that an invention made by an employee who is employed or assigned (1) to **invent or** improve or perfect any art, machine, manufacture, or composition of matter, (2) to **conduct or** perform research, development work, **or** both, (3) to supervise, direct, coordinate, or review Government financed or conducted research, development work, or both, or (4) to act in a liaison capacity among governmental or nongovernmental agencies **or** individuals engaged in such work, falls **within** the provisions of paragraph (a) of this section, and it shall be presumed that any invention made by any other employee falls within the provisions of paragraph (b) of this section. Either presumption may be rebutted by a showing of the facts and circumstances and shall not preclude a determination that these facts and circumstances justify leaving the entire right, title and interest in and to the invention in the **Government** employee, subject to law.

(d) **In** any case wherein the Government neither (1) obtains the entire domestic right, title and interest in and to an invention pursuant to the provisions of paragraph (a) of this section, nor (2) **reserves** a nonexclusive, irrevocable, royalty-free license in the invention, with power to grant licenses for all governmental purposes, pursuant to the provisions **of** paragraph (b) of this section, the Government shall leave the entire right, title and interest in and to the invention in the Government employee, subject to law.

57.4 Option to acquire foreign rights.

In any case where it is determined that all domestic rights should be assigned to the **Government, it** shall further be determined, pursuant to Executive Order 9865 and **Government-wide** regulations issued thereunder, that the Government shall reserve an option to require the assignment of such rights in all or in any specified foreign countries. In case where the inventor is **not** required to assign the patent rights in any foreign country or countries to the Government or the Government fails **to** exercise its option within such period of time as may be provided by regulations issued by the **Commissioner** of Patents, **any** application for a patent which may be filed in such country or countries by the inventor or his assignee shall nevertheless be subject to a nonexclusive, irrevocable, royalty-free license to the Government for all governmental purposes, including the **power** to issue sublicenses for use in behalf of the Government and/or in furtherance of the foreign policies of the **Government.**

(6-10-10 cont'd) §7.7 Notice to employee of determination.

The employee-inventor shall be notified in writing of the Department's determination of the rights to his invention and of his right of appeal, if any. Notice need not be given if the employee stated in writing that he would agree to the determination of ownership which was in fact made.

§7.8 Employee's right of appeal.

An employee who is aggrieved by a determination of the Department may appeal to the Commissioner of **Patents**, pursuant to section 4(d) of Executive Order 10096, as amended by Executive Order 10930, and regulations issued **thereunder**, by filing a written appeal with the Commissioner, in duplicate, and a copy of the appeal with the Assistant Secretary (Health and Scientific Affairs), within 30 days (or such longer period as the Commissioner may, for good cause, fix in any case) after receiving written notice of such determination.

PART 8 -- INVENTIONS **RESULTING FROM RESEARCH GRANTS, FELLOWSHIP AWARDS, AND CONTRACTS FOR RESEARCH**

Sec.

- 8.0 Policy.
- 8.1 Conditions to be included in research grants.
- 8.2 Determination as to domestic rights.
- 8.3 Licenses to the **Government**.
- 8.4 Option to acquire foreign rights,
- 8.5 Fellowships.
- 8.6 Contracts for research.
- 8.7 **Cancer** chemotherapy industrial research contracts.

AUTHORITY: §§ 8.0 to 8.7 issued under Reorg. Plan No. 1 of 1953, 18 F.R. 2053, 3 CFR 1949-1953 Comp., p. 1022; 9.0. 10096, 15 F.R. 391, 3 CFR 1949-1953 Comp., p. 292; E.O. 10930, 25 F.R. 2583, 3 CFR 1959-1963 Comp, p. 456.

98.0 Policy.

(a) The **Department of Health, Education, and Welfare** each year is expending large sums in the form of grants for research. These grants are made **primarily** by the Public Health **Service** in carrying out its broad responsibility under the Public Health Service Act to promote and coordinate research in the field of health and to make available information concerning such research and its practical application. The scientific and technological advances attributable in varying degrees to this expenditure of public funds frequently include patentable inventions.

(6-10-10 continued)

(b) The Department, **as** a matter of policy, takes the position that the results of research supported by grants of public moneys should be utilized in the manner which would best **serve** the public interest. It is believed that the public interest will in general be best served if inventive advances resulting therefrom are made freely available to the Government, to science, to industry, and to the general public.

(c) On the other hand, in some cases it may be advisable to permit a utilization of the patent process in order to foster an adequate commercial development to make a new invention widely available. **Moreover**, it is recognized that inventions frequently arise in the course of research activities which also receive substantial support from other sources, as well as from the Federal grant. It would not be consistent with the cooperative nature of such activities to attribute a particular invention primarily to support received from any one source. In all these cases the Department has a responsibility to see that the public use of the fruits of the research will not be unduly restricted or denied.

(d) The following conditions have been adopted to govern the treatment of inventions made in these various types of situations. They are designed to afford suitable protection to the public interest while giving appropriate recognition to the legitimate interests of others who have contributed to the invention.

58.1 Conditions to be included in research grants.

Subject to legislative directives **or** Executive Orders providing otherwise, all grants in aid of research shall provide as a condition that any invention arising out of the activities assisted by the grant shall be promptly and fully reported, and shall provide, either

(a) That the ownership and manner of disposition of all rights in and to such invention shall be subject **to** determination by the Assistant Secretary (Health **and** Scientific Affairs), or

(b) That the ownership a&disposition of all domestic rights shall be left for determination by the grantee institution in accordance with the grantee's established policies and procedures, with such modifications as may be agreed upon and specified in the grant, provided the Assistant Secretary (Health and Scientific Affairs) finds that these are such as **to** assure that the invention will be made available without unreasonable restrictions or excessive royalties, and provided the Government shall receive a royalty-free license, with a right to issue sublicenses as provided in 08.3, under any patent applied **for or** obtained upon the invention.

(6-10-10 cont 'd) (c) **Wherever** practicable, any arrangement with the grantee pursuant to paragraph (b) of this section shall provide in accordance with Executive Order 9865 that there be reserved to the Government an option, for a period to be prescribed, to file foreign patent applications upon the invention.

E8.2 Determination as to domestic rights.

Rights in any invention not subject to disposition by the grantee pursuant to paragraph (b) of **§8.1** are for determination by the Assistant Secretary (Health and Scientific Affairs) as follows:

(a) **If** he finds that there is adequate assurance that the invention will either be effectively dedicated to the public, or that any patent which may be obtained thereunder will be generally available for royalty-free and nonexclusive licensing, the effectuation of these results may be left to the grantee.

(b) If he finds that the invention will thereby be **more** adequately and quickly developed for widest use and that there are satisfactory safeguards against unreasonable royalties and repressive practices, the invention may be assigned to a competent organization for development and administration for the term of the patent or such lesser period as may be deemed necessary.

(c) If he finds that the interest of another contributing Government agency is paramount to the interest of the Department of Health, Education, and Welfare, or when otherwise legally required or in the public interest, the invention may be left for disposition by that agency in accordance with its own policy.

(d) In all other cases, he shall require that all domestic rights in the invention shall be assigned to the United States unless he determines that the invention is of such doubtful importance or the Government's equity in the invention is so minor that protective measures, except as provided in 58.3, are not necessary in the public interest.

§8.3 Licenses to the Government.

Any arrangement or determination as to the disposition of rights in inventions pursuant to 68.1, 68.2, §8.5, or 58.6 shall require that there **be** reserved under any patent application or patent thereon, domestic or foreign, a nonexclusive, irrevocable, **royalty-free** license to the Government with power to sublicense for all governmental purposes.

58.4 Option to acquire foreign rights.

In any case where it is determined that all domestic rights should be assigned to the Government, there shall be reserved to the Government, pursuant to Executive Order 9865 and Government-wide

(6-10-10 continued)

regulations issued thereunder, an option to require the assignment of all rights in the invention in all or in any specified foreign countries. In any case where the inventor is not required to assign the patent rights in any foreign country or countries to the Government, or the Government fails to exercise its option within such period of time as **may** be provided by regulations issued by the Chairman of the Government Patents Board, any application for a patent which **may** be filed in such country or countries by the inventor or his assignee shall nevertheless be subject to a nonexclusive, irrevocable, royalty-free license to the Government for **all** governmental purposes, including the power to sublicense for all governmental purposes.

58.5 Fellowships.

In the discretion of the **Assistant** Secretary (Health and Scientific Affairs), the **award** of a fellowship to a person not a **Government** employee may provide for the reporting of any invention made during the term thereof, and for its disposition in accordance with the provisions of paragraph (a) of **§8.1**, or for its disposition by the institution at which the research was performed in accordance with its established policies, if applicable to such an invention, which meet the requirements of **paragraph** (b) of such section.

§8.6 Contracts for research.

(a) Contracts for research, with other than nonprofit institutions, shall provide that any invention first conceived or actually reduced to practice in the course of the performance of the contract shall be promptly and fully reported to the Assistant Secretary (Health and Scientific Affairs), for determination by him as to the **manner of** disposition of all rights in and to such invention, including the right to require assignment of **all** rights to the United States or dedication to the public. In the exercise of this power he will be guided by the policy specified in 58.2 with respect to grants.

(b) Contracts for research with nonprofit institutions shall contain provisions as in paragraph (8) of this section except that, if it is determined that the institution's policies and procedures are acceptable as meeting the requirements of **§8.1(b)** with respect to grants, the contract may provide, **with** such special stipulations in the contract as **may** be deemed necessary in the public interest, for leaving the ownership and disposition of all domestic rights for determination by the contracting institution in **accordance** with such policies and procedures.

§8.7 Cancer chemotherapy industrial research contracts.

Notwithstanding the provisions of **§8.6**, the Surgeon General in the negotiation of contracts with other than nonprofit organizations for the cancer chemotherapy research program shall be subject only to such limitations and alternatives as the Assistant Secretary (Health and Scientific Affairs) may approve for such **program**.

(6-10-10 continued)

§8.8 Screening of compounds generated under DHEW grants and awards

(a) General Policy

(1) Chemical compounds having **potential** medicinal and other utilities are often synthesized or identified during the course of research financed under DHEW research grants and awards. Reporting, filing patent applications on, and determining ownership in inventions relating to such compounds pose problems which require special attention, **After** a compound has been synthesized, it generally will not constitute a patentable invention under the patent laws of **the** United States until a specific utility for the compound has been established. It is the policy of the Department that all compounds synthesized or identified during the course of grant-supported research should be adequately screened and tested in Government or nongovernment facilities in order that **all** possible utilities may be ascertained and that any promising **compounds** may be fully developed for widest possible use. The Department encourages the utilization, whenever appropriate, of the screening services of the Cancer Chemotherapy National Service Center and the Walter Reed **Army** Institute of Research.

(2) It is the policy of the Department notwithstanding anything to the contrary under patent law of the United States or requirements of U.S. Patent Office practice, to acquire no ownership rights to inventions claiming novel methods of using compounds, where such use inventions are first conceived and reduced to practice solely by the screening or testing organization without the use of grant funds.

(b) Screening performed with use of grant funds

Where nongovernmental facilities are utilized for screening services to be performed and paid for by the *grantee* (as used in this section, the term "grantee" refers to awardees in addition to grantee institutions) with grant funds, the grantee shall obtain an agreement with the screening organization providing that the screener shall promptly report to the grantee the details of any positive findings of utility for the compound and that all invention rights relating to the **compound** and its utility shall, as between the grantee and the screener, vest in the grantee. Upon receipt of such report of positive findings, the grantee shall promptly forward copies to DHEW. Ownership of all invention rights to **the compound** or reported utilities shall be subject to the disposition by the Assistant Secretary (Health and Scientific Affairs) as provided by the terms of the grant or award in accordance with Section 8.2, except that **where** the **grantee** institution has entered into an Institutional **Patent** Agreement with the Department pursuant to Section **8.1(b)** above, **ownership** of the invention **rights shall** be in accordance with the-terms of that Agreement.

(c) Screening performed without the use of grant funds

Where screening is to be performed at nongovernmental facilities without the use of grant funds, the grantee may proceed to have compounds screened under one of the following arrangements:

(6-10-10 continued)

(1) Institutional Patent Agreement -- Where the grantee institution has entered into an Institutional Patent Agreement with the Department under Section 8.1(b) of the Department Patent Regulations, the grantee shall enter into an agreement with the screener which shall be consistent with, and will permit the grantee to fully comply with its obligations under such Institutional Patent Agreement. The agreement with the screener shall, as a minimum, provide that ownership of patent rights to inventions resulting from the screening process shall vest, depending on the law of inventorship, in the grantee, the screener, or both, except that such agreement may leave to screening or testing organizations ownership rights to inventions claiming novel methods of using compounds, where such use inventions are first conceived and reduced to practice solely by the screening or testing organization without the use of grant awards. The grantee shall administer all invention rights to the compound and all other invention rights vested in the grantee in accordance with the terms of the Institutional Patent Agreement.

(2) Patent Agreements for Screening -- Where an Institutional Patent Agreement is not in effect, the grantee shall enter into an agreement with a screener to govern disposition of rights to inventions resulting from the screening. Such agreements shall be in the form prescribed by or as may be approved by the Department and shall be consistent with the policy set forth in (a).

(3) Determination of Invention Rights Prior to Screening -- Where a grantee has not entered into an Institutional Patent Agreement, it may, prior to making arrangements for screening, petition the Assistant Secretary (Health and Scientific Affairs) requesting a determination that invention rights pertaining to an identified compound be assigned to the grantee for administration, pursuant to the provisions of Section 8.2(b) above. Determinations under Section 8.2(b) normally permit the grantee to grant exclusive licenses for a limited period of time. Such petition must demonstrate that an assignment is required in order to achieve effective screening of the compound and any resulting inventions will thereby be more adequately and quickly developed for widest use.

6-10-20 PATENT POLICY APPLICABLE TO CANCER
CHEMOTHERAPY INDUSTRIAL RESEARCH CONTRACTS

A. General

1. The cancer chemotherapy **program** of the Public Health Service is **an** intensified effort, with special appropriations made available **tier** a Congressional directive, to explore exhaustively **and** rapidly the potentialities of chemical compounds in the control of cancer. **Because** of the peculiar exigencies of this program **and in order** that the resources of **pharmaceutical and chemical firms** may be brought to bear with a **minimum** of delay, certain exceptions to **general Department** policy will be **permitted** in the negotiation of industrial contracts for this program,
2. Industrial research contracts for this program may **contain** either:
 - a. the **standard** patent clauses, reserving to the Surgeon **General** the right to determine the disposition of inventions arising **from** the performance of the contract or, in lieu of such **right**,
 - b. **standard** alternative clauses leaving **the** right to patent **and** exploit such inventions with the contractor, subject to **certain** limitations deemed **necessary** to **protect the** public's **interest** in the **results** of the contracted research.
3. Department policy **concerning the negotiation and** operation of the alternative **clauses**:
 - a. **Contract negotiations**: The **alternatives indicated** will be made available in the **negotiations** with all contracting companies without discrimination.
 - b. **Public interest**: The operation of these **alternative clauses** **will** be closely reviewed to assure that the **following basic Objectives** are maintained in the public **interest**:
 - (1) The availability of **information** concerning the results of **research and** the right, without **undue** delay, to **make** disclosures to the **extent essential** to serve **the research** **n e e d** ;
 - (2) **The** availability for development and use of health **purposes, on reasonable terms, of inventions** arising from **the research** contract, **whether actual development and production is** to be mad⁸ by the **contractor** himself or by others; **and**

(6-10-20.A3 continued)

(3) Sustained concentration on the anti-cancer objective of all **resources mobilized** for the purposes of the contract.

c. Contractor's interests: The Surgeon General or his representatives shall maintain close consultations with **the** contractor concerning questions affecting **the** public need for **the** products of inventions which are subject to the limitations prescribed in **the** alternative clauses for the protection of the public **interest** with respect to their supply, price, and quality. The objective of these consultations **shall be** to promote a mutual awareness of such matters in **order** to assure to the contractor (**under** his right to exploit **the** invention) an opportunity on his own initiative to take such actions regarding **them** as he believes would be in his **and** in the public interest.

B. Contracts for research--Rights left to contractor. When the **contract** is for research (**including contracts** for product **development necessary for purposes** of research; to be performed **by** the company (with or without provision for subcontracting), **the** contract, as an **alternative** to the **standard patent** clauses, **may** provide for leaving to the contractor the right to **patent and** exploit any invention conceived or first actually reduced to practice **in** the course of **the** performance of **the** contract subject, however, to the **following** limitations which are deemed necessary to protect the public interest:

1. Reporting. Agreement that the contractor will report promptly to **the** Surgeon General any such invention **and** will also report **promptly** the **filing** of any domestic or foreign patent application thereon or his election not to **file** such application. **Invention** Report shall be required **after** the conception or first actual reduction to practice **of** each **invention** that reasonably appears to be patentable **and**, in any **event**, as soon as any **evidence** of utility has been developed (whether in a health or other field of **use**).

2. Disclosure. Reservation to the Surgeon **General** of the right to make disclosure of the invention, whenever he deems it in **the** public interest, after **taking** into consideration a reasonable opportunity to the contractor to protect such rights as **he may** have in **the** invention. The contract **may** specify that such **dis-**
closure shall not in any case, without the consent of the contractor, **be** made in less than six months **from** the **time** the **Surgeon General determines** the **invention was** or should **have** been reported.

(6-10-20B continued)

3. License to the Government. Reservation to the Government of an irrevocable, nonexclusive, royalty-free license to practice or cause to be practiced, by or for the Government throughout the world, each subject invention (whether patented or unpatented) in the manufacture, use **or** disposition according to law of any article or material or in the use of any **method** or process.
4. Failure to meet health needs.
- a, In recognition of the **Government's** investment and the public interest in the results of contracted research, agreement that whenever, subsequent to the contractor's filing of a patent application for any invention conceived or first actually **reduced** to practice in the course of the performance of a contract, the **Surgeon General**, after obtaining and **considering** the advice of such **advisory** bodies or consultants as he deems appropriate and competent, has **ground** to believe that such invention, whether related to a product, process, **or** otherwise, is at such stage of development that if it were more **generally** available it would meet a health need **and** that the public interest **-1/-** requires the invention to be available for health purposes to others than the contractor **and** his licensees, he shall so notify the contractor, giving **reasons therefor, and request** him, within a time specified, to take appropriate steps to meet the public need, which may **include** the issuance of licenses to additional manufacturers of the contractor's own selection. (Such requests shall be supplementary to such informal consultations between the **Surgeon General** or his representative and the contractor as have taken place in accordance with the provisions of section **A.3c** above.)
- b. **If, upon expiration of the time** specified, or such extension thereof as approved **by the Surgeon General**, the Surgeon General find^s that the contractor has failed to take appropriate steps adequate to **meet** the public need, he shall notify the contractor, with reasons therefor, that at the **end** of 90 days from such notice he will exercise the rights specified below. If within 20 days of receipt of such notice the contractor fails to **file** a written request for a hearing as provided below, the Surgeon General shall upon expiration of the above **90-day period** have the right:

1/ With respect to supply, quality, or price

(6-10-20.B4 continued)

- (1) to dedicate to the public all rights in the invention ~~2/~~ or;
- (2) to issue (~~under or~~ in anticipation of the issuance of any such patent) nonexclusive, royalty-free licenses (for practice of the invention for ~~any~~ health purpose) on a **nondiscriminatory** basis to all qualified applicants to use, manufacture and **sell** **embodiments** of the **invention** for any health purpose. ~~2/~~

c. If, within 20 days of **receipt** of notice, the contractor files such request for a hearing, the **Surgeon** General, or a **representative** or representatives designated by him for this purpose, shall afford the contractor a reasonable opportunity to be heard, to be represented by counsel, to present any pertinent information **and** argument, **and** to rebut any other information to be considered in reaching a **decision**. The **findings** by the Surgeon General or such representative(s) shall **be in** writing, **shall** be based solely **on** the material presented at the hearing, **and** shall be final **and binding** on the contractor. **If** the Surgeon General's decision based on these findings be that the contractor has not met the public need **and** that public dedication or additional **licensing** by the Surgeon General is necessary in the public interest, he may so dedicate or license, effective at the **end** of the above-provided **90-day** period or at the conclusion of the hearing, whichever **is** later.

5. Contractor's determination not to patent--Failure to pursue application. **Agreement** that in the event the contractor elects, within a period (not to exceed six months after the invention **was** or **should** have been **reported**) specified in the contract, not to file a patent application on the invention, **or, having** elected to file thereafter fails to file **and** diligently prosecute a patent application, the Surgeon General, when he deems it **necessary** in order to protect the availability of the invention for health purposes, **shall** have the right to **require** the assignment to the Government of all domestic rights therein except for the **reservation** of a nonexclusive royalty-free license to the contractor.

~~2/~~ **Such** dedication to be effective against the contractor **and** any persons claiming from him upon filing by the Surgeon General with the Commissioner of Patents of notice of **same**.

~~2/~~ **Either** one or both of these alternatives shall be **specified** in the contract.

(6-10-20B continued)

6. **Foreign Rights.** Similarly, agreement that **if** the contractor fails to file, or elects not to file, foreign patent applications which the Surgeon General determines are necessary to protect the availability of the invention for health purposes in other countries, the Surgeon General may require the assignment of the foreign rights.
7. **Renegotiation on new leads.** (Such a provision not **mandatory**). The contract may provide that if, in the course of the performance of the contract, the contractor identifies any new **lead** which it wishes to develop at its own expense, without utilisation of facilities financed **by** the Government, the Surgeon General may, when he deems it consistent with advancement of the research purposes of the Government, renegotiate the application of the patent provisions of the contract to such new lead. Any modification of the terms of the contract shall be upon such consideration (**which may** be used to reduce the obligation of the Government **under** the contract) as the Surgeon General may deem equitable **under** the circumstances, after taking into **consideration** the extent of the investment of the Government in relation to the probable cost of further development.

C. Contracting with suppliers for screening and testing only.

1. **When** a **company** furnishes, for controlled screening and testing only, **compounds** or products not otherwise available to the Service **and** in which the **company** has a proprietary Interest, the contract may provide that all rights in the compound or product shall remain in the company, It may additionally provide for confidentiality of the results for a limited **period** after the completion of the screening process **and** the report of the results **by** the Service to the supplier. Such period, as **to** results deemed significant for the **re-**searchpurpose, **shall** not exceed 12 **months**.
2. When the screening and testing of **compounds** obtained from the supplier **under** such a contract is carried out **by** an outside laboratory, the contract of the **Service** with the laboratory will contain provisions to safeguard the rights of the **supplier** under its contract with the **Service**.

(6-10-20 continued)

- D. Inventions by Federal Employees. Inventions made by Federal employees or **by** Federal employees jointly with others, are subject to determination **under** applicable **Executive Orders and** Department regulations. Appropriate reference to this requirement will be made **in connection** with contracts with suppliers of chemical **compounds** for use in research to **be conducted** by the **Service, and** contracts for research **and** development in which Federal employees may in **any** way participate.
- E. Background patents or rights. Nothing in this policy statement shall be **deemed** to limit the authority of the Surgeon General to negotiate for a license or other rights **under** existing patents or involving the use of patented or **unpatented compounds** or processes, as he may **deem** necessary for the effective prosecution of the cancer chemotherapy **program.**



CHAPTER 6-30

CRITERIA FOR PATENTING OR ~~PUBLICATION~~---PROOF OF INVENTION

6-30-00 Purpose

- 10 General Assumptions
- 20 Determination as to Patentability
- 30 Inventions of Trivial Value or **Significance**
- 40 Inventions of Substantial Value or **Significance**
- 50 Publication as an Alternative to **Patenting**---
"Printed" Publication
- 60 Notebooks and Original Records--Evidence of Invention

6-30-00 PURPOSE

This chapter **provides** supplementary **criteria** for **Department** personnel **who** are charged with responsibility for making recommendations as to the patenting or **publication** of **inventions** **in** which the Department has an interest (45C.F.R. 7.5). **It** is issued, **with** the approval of the Department Patents Board, pursuant to Department **Regulations** (45 C.F.R. 6.5).

6-30-10 GENERAL ASSUMPTIONS

- A. The Department's interest in inventions is almost the reverse of that which generally prompts a private patent application. Its **concern** is not to withhold the **invention** **from** the public or to charge royalties for its use but to assure the availability of the invention to all (45 C.F.R. 6.2). This assurance with respect to an invention may be lost if an individual claiming priority of invention files a patent application.
- B. The Department therefore does have an interest, **and under Executive Order 10096** it has an obligation, to take appropriate defensive action, to protect the interest of **the** Government **and** the public against potential adverse claims. Such action may take the form of initiating a patent application or by full disclosure through publication.
- C. **Since** not all inventions **are** of sufficient importance to **warrant** the labor and **expense** of patenting, and since the Department does not itself **maintain** staff or facilities for such purpose, the need for patenting and the resources available for handling a patent **application** need to be **weighed** carefully **before** a determination as **to** patenting is **made**.

6-30-20 DETERMINATION AS TO PATENTABILITY

- A. No **recommendation as** to patenting should in any case be made **unless** it is first determined that the invention may be patentable.

(6-30-20 continued)

3. The determination as to whether the invention **"may be patentable"** should identify the **originality** of concept, as well as the **elements** of novelty **and** usefulness, **believed** to be present in the **invention**. This is for the reason that, **even though** an invention is **"new and useful"** it is **not patentable "if the differences** between the **subject matter** sought to be **patented and** the prior art are such that the subject matter as a whole **would have been obvious** at the time the **invention was made to a person having ordinary skill in the art** to which the subject matter **pertains."** (35 U.S.C. 103)
- C. **Whether it is determined** that the invention **may or may not be patentable**, the basis for the conclusions reached should be **indicated in** the determination. For example, a written report on **these points by** research workers who **have familiarity** with the art in the particular field is valuable, because it **may indicate** that the **invention** has been **fully anticipated**. **In any event**, the report itself **will constitute** a record bearing on the relation of the **invention to** the prior art, **and so may serve a protective purpose**.
- D. The **determination** should set forth fully the **dates of conception and of reduction to practice (or of the successful test or performance)** of the **invention, and of any prior disclosure** (speeches, writings, printed **publication, etc.**) or use thereof. These are **important because the invention will not be patentable if at the time of the determination it has been for more than one year either--**
1. **described in a printed publication in this country or abroad; or**
 2. **in public use or on sale in this country (35 U.S.C 102(b)).**

6-30-30 INVENTIONS OF TRIVIAL VALUE OR SIGNIFICANCE

- A. Unless **"useful"** to **some** degree, the invention **will not be patentable**.
- B. **Even though** the invention is possibly **patentable, it may be recommended** that title be left with the inventor, **pursuant to section 7.3 (b) of the Department Regulations on grounds of "insufficient interest,"** subject to license to the **Government under any patent which may be secured**.
- C. Government **"interest"** has two aspects. First, the Government has an interest as a potential user of the invention in its own operation **or as a purchaser of products embodying** the invention. Second, it has **an interest (particularly strong in the field of research) of preserving for the public the products of its work and investment. Ordinarily, therefore, a recommendation of dedication to the public by publication rather than a finding of insufficient interest is appropriate in the case of all but patently trivial gadgets in which there has been no substantial investment of Government time or facilities,** .
- D. **Determinations of "insufficient interest"** are subject to review by the Chairman of the **Government Patents Board**.

6-30-40 INVENTIONS OF SUBSTANTIAL VALUE OR SIGNIFICANCE

- A. In general patenting should not **be recommended** when printed publication of a technically adequate description can **be**, or has been, arranged, or **disclosure** to or use by others can be, or has been, arranged under safeguards which will assure the availability of proofs **as** to time of conception, reduction to practice, **and** disclosure. (A person is not entitled to a patent if "the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the **applicant for patent.**" 35 U.S.C. 102 (a).) Certainly patenting should not in the absence of unusual **justification be recommended** if the one year period which may elapse between a printed publication and the filing of an application has almost elapsed.
- B. Patenting, however, is appropriately **recommended when--**
1. it is deemed advisable, in the case of an invention of high **potential** significance to the public health, safety, **or welfare**, to obtain maximum **assurance** against potential rival claims by establishing priority of invention **and** diligence in reducing to practice; or
 2. it is deemed advisable, for **reasons** of health or safety, to retain control (beyond that afforded under the Federal Food, Drug, and Cosmetic Act, as **amended**, or the Public Health Service Act, as amended, or other Federal control legislation) of the invention itself, with legal authority to impose restrictive **conditions** on its use; or
 3. other Federal agencies have such interest in the invention that they would **be** prepared to prosecute the patent application.
- C.
1. Filing may be especially important as a **protective device** when there is likely to be a considerable lag between conception **and** actual reduction to practice **and** the invention is in a highly competitive field or when the invention is a **basic** one likely to **constitute** a key to subsequent advances in the art.
 2. The filing of a patent application may be of great practical **importance** in case of competing claims because the **Commissioner** of Patents is **under** a duty to give notice and have questions of priority determined **by** a board of patent interferences whenever an application is made which would seem to interfere with any **pending** application or any unexpired patent. (35 U.S.C. 135)
 3. **"In** determining priority of invention there shall be considered not only the respective dates of a conception and reduction to practice of the invention, but **also** the reasonable diligence of one who was first to conceive and last to reduce to practice, for a time prior to conception **by** the other." (35 U.S.C. 102 (g))

(6-30-400continued)

4. If a patent has **issued**, the filing of an allowable application is **regarded** in **litigation** involving priority or "invention as a constructive reduction to practice and as evidence that **the** inventor **made** his invention at least as early as **the** date of filing,
- D. The inventor's interest, as a matter of **prestige and** professional reputation, in having a patent issued in his name does not justify a **recommendation** for a patent application to **be** prosecuted at the **expense** Of the **Government**.
- E. In order that **final determinations** as to ownership may not be delayed **pending resolution of the question** of patenting, **the** operating agency may make a determination to patent contingent upon the availability of **timely** arrangements for the prosecution of a patent **appli cation**, with reliance, in the **event** that these **are** not **feasible**, upon publication to protect the public interest.

6-30-50 PUBLICATION AS AN ALTERNATIVE TO PATENTING"PRINTED" PUBLICATION

- A. Publication, to be **effective** as an anticipation, requires a full disclosure setting forth the essential elements of the invention, and the manner of making and using it.
- B. **Such** publication may be mad8 in a technical journal **or** digest, in a publication of **the** operating agency (e.g., Public **Health Reports**, Social Security Bulletin) or in any other printed publication.
- c. Additionally, the Office of Technical **Services** in the Department of **Commerce**, through **the** monthly publication of "**U. S. Government Research Reports**", provides a means of achieving technical "**publica-tion**" as **well** as a **means** of disseminating papers which disclose the results of research. Original **reports filed** with the Office of Technical Cervices are deposited in the Library of **Congress** and copies may be ordered from the Library in photocopy or **microfilm**. In addition, Office of Technical Services is prepared to distribute stock copies of **scientific** research reports **for government** agencies. Listing in "**Research Reports**", **together** with **the** deposit of a type-written or other copy in an appropriate Federal library, **and** published announcement of a means provided for duplication of copies for the public have been held to constitute 'printed **publication**' under 35 U.S.C. 102(b). An operating agency wishing to avail **itself** Of this channel should communicate with **the Chief, Technology** Division, Office Of Technical **Services**, Department of **Commerce**.

6-30-60 NOTEBOOKS AND ORIGINAL RECORDS-EVIDENCE OF INVENTION

- A. **Whether** or not a patent application is filed, written records, **and** particularly original **records**, properly dated, are important evidence of invention both as to **completeness** and the time when **made**. **When** these exist they may be used defensively to prevent the issuance of a patent on an invention subsequently conceived, or to contest the validity of **a** patent which **may** have been **granted** to **some** other **person**. **For** such purpose, the conception should be recorded, **with indication** of the date of **conception**, **and immediately corroborated** by **communication** to a competent **witness** who may be asked to read **and** initial **the record**, indicating the date of his initialing. **Reduction** to practice **should** be **corroborated by** a witness who observes the actual test or **performance**. Accurate dating is an **essential** factor in such **records**.
- B. The operating agency, to the extent deemed consistent with good research practice, should require of its research workers the making and preservation of records which will serve a **probative purpose**. This is especially **desirable in** the case **of developments** failing within section **6-30-40.B1**.

Subject: PHYSICAL SECURITY POLICY

7-00-00 Definition and Purpose
10 Policy
20 Scope and Applicability
30 Authority
40 Responsibilities
50 Awareness, Education and Training
60 Administration

7-00-00 DEFINITION AND PURPOSE

Physical security is that part of "security" that applies physical measures for the protection of personnel, facilities, materials, equipment, and documents against threats other than overt military action. It is, therefore, the purpose of this policy to provide guidance to DHHS officials regarding the required functional aspects of physical security for the buildings and facilities used by DHHS organizational elements.

7-00-1 0 POLICY

The policy of this Department is to have a strong and cost-effective physical security program to protect employees and property on a Departmentwide basis.

7-00-20 SCOPE AND APPLICABILITY

Chapters in this manual series on physical security contain information as follows:

- o Chapter 7-00 defines the departmental Physical Security Policy, and prescribes responsibilities for administration of the program.
- o Chapter 7-01 delineates the scope of physical security in terms of exterior and interior physical security matters.

- o Chapter 7-02 provides emphasis on the provision of evacuation plans for physically handicapped employees and visitors.

7-00-30 AUTHORITY

Title 18, Section 301, United States Code; and Federal Property Management Regulations, 41CFR 101-20.5. HHS GAM Chapter 6-30, (Computer) Physical Security.

7-00-40 RESPONSIBILITIES

- A. The Secretary of HHS has delegated the responsibility for physical security throughout the department to the Assistant Secretary for Management and Budget.
- B. The Assistant Secretary for Management and Budget (through the Deputy Assistant Secretary for Management and Acquisition) is responsible for:
 - o Prescribing physical security policies for all internal DHHS physical security activities.
 - o Overseeing the Department's Physical Security Program.
 - o Conducting periodic inquiries and/or inspections regarding the status of Physical Security Programs in OPDIVs, Regional Offices, in OS headquarters and at specific DHHS facilities and installations.
- C. The heads of Operating Divisions (OPDIVs), Regional Directors and the OS headquarters manager are responsible and accountable for the following:
 - o Developing and updating documentation to supplement this departmental policy to include policies, procedures and/or technical handbooks as appropriate for activities and facilities under their jurisdiction.
 - o Appointing collateral duty Physical Security Coordinators at all appropriate organizational levels to assist *in* carrying out this responsibility.

- 0 Insuring that the scope of the Physical Security Program under their control addresses all matters as described in Chapters 7-00 through 7-02 of this manual.
- 0 Insuring that particular emphasis is given at the individual installation and/or building level for the development and use of procedures for employee/occupant evacuation to include specific emphasis on instructions for evacuation of handicapped employees.
- 0 Providing the training necessary to insure that the procedures developed can be carried out in a professional manner. (see 7-00-50)
- 0 Insuring that administration of the Physical Security Program will include those matters specified in 7-00-60.
- 0 Insuring that on-site physical security measures in individual buildings are handled using the following guidelines:
 - . In buildings owned or leased by HHS, or owned or leased by GSA and exclusively used by DHHS, or owned by GSA and operated by **DHHS** under a delegation of authority from GSA, the senior **DHHS** official with space management responsibility has the assignment to implement this policy as it relates to space under his/her jurisdiction and control. Where two or more **DHHS** organizational elements occupy the same building or facility and each have space management responsibilities over portions of the building, these officials will share implementation responsibility and issue a single or mutually compatible directive covering **DHHS** employees occupying the building or facility. The lead in developing physical security plans and directives in such situation will rest with the HHS element having the most affected employees at the building/facility/campus.
 - . In buildings or facilities that are not totally occupied by **DHHS** and are controlled

by other government agencies (such as GSA) or non-government organizations or individuals, the DHHS policy will be applied within the space being utilized exclusively for DHHS activities. If there is an agreement with the other occupants or the owner of a facility, HHS officials, are authorized to jointly issue implementing directives.

Determining what data elements/records and procedures are necessary for employee-badging programs and insuring compliance with the provisions of the Privacy Act of 1974. This includes publication in the Federal Register of appropriate Privacy Act systems of records notices.

- D. Other Federal agencies have related security responsibilities as follows:
- o Federal Protective Service (FPS). This organization is responsible for the protection of life and property in "public buildings" as defined by the Federal Property and Administrative Services Act of 1949. Consistent with economy and good management, FPS will protect GSA owned and leased space under its jurisdiction to provide safe working conditions for occupant agencies. GSA will provide occupants and property with reasonable safeguards against injury, loss or damage due to fire, accident, theft, natural disaster, demonstrations, or civil disorders. The FPS contracts with private guard services to augment their own staff. A small number of investigators are employed by the FPS to enforce Federal laws. For additional guidance see FPMR 101-20.103.
 - o Federal Bureau of Investigation (FBI). The FBI investigates all allegations of violations of Federal laws with the exception of those concerning matters which by legislative enactment or other direction are within the investigative jurisdiction of another Federal or local agency. Included

within the range of responsibilities for the FBI are investigations relative to the theft of Government property, and crimes on government installations.

- 0 Drug Enforcement Administration (DEA). The DEA of the U.S. Department of Justice has the primary responsibility of enforcing Federal laws and statutes relating to narcotic drugs, marijuana, depressants, stimulants and other controlled drugs. It assists and cooperates with State and local law enforcement agencies and regulates the legal trade in narcotics and dangerous drugs.
- 0 United States Secret Service (USSS). The USSS of the Department of the Treasury has responsibility for the protection of the President and Vice-President of the United States, members of their immediate family, Heads of State of Foreign Governments, Presidential Candidates and other Federal Officials designated for such protection by the President. In addition, the Secret Service has the authority for the investigation of crimes relating to the counterfeit of currency and other Treasury obligations, the theft, forgery or illegal possession of U.S. Savings Bonds and U.S. Treasury checks.
- 0 Postal Inspection Service (PIS). The PIS of the United States Postal Service is responsible for criminal investigations dealing with the postal establishment. This includes mail fraud and protection of mail and postal property. Within DHHS, this includes misuse of the Department's official mailing privilege by employees for personal matters.

E. Other aspects of **"security"** are assigned within DHHS as follows:

- 0 The Assistant Secretary for Management and Budget is responsible for establishing and implementing **telecommunications** and ADP security programs.
- 0 The Assistant Secretary for Personnel Administration is responsible for establishing and implementing personnel and information security programs.
- 0 The Security and Protection Branch of the Immediate Office of the Secretary provides protective services for the Secretary in the Washington-Baltimore area. On request, field personnel from the Office of the Inspector

General will assist by providing intelligence information of a security nature and by establishing and maintaining local law enforcement liaison contacts necessary for the personal protection of the Secretary in areas outside the Washington-Baltimore area.

7-00-50 AWARENESS, EDUCATION AND TRAINING

It is essential that all responsible departmental officials take appropriate actions to insure a high level of physical security awareness by all employees at all times. This effort will include but not be limited to various forms of education and training.

7-00-60 ADMINISTRATION

- A. All OPDIVs, Regional Offices, and the appropriate OS headquarters management official will submit an abbreviated annual report on the Physical Security Programs of their respective organizations and areas of responsibility due on December 31 of each year. The reporting period will be defined as the fiscal year.

The report will be directed to the office specified in 7-00-60C below. The report will contain a general description of the Physical Security Program of the organization, the name of the Physical Security Coordinator, a list of all applicable OPDIV, Regional Office, or headquarters element physical security policy documentation and/or procedures - excluding specific building evacuation plans. Significant events occurring within the past year relating to the Physical Security Program will be described.

- B. By way of reference, DHHS officials designing a Physical Security Program are encouraged to obtain a copy of the GSA Internal Physical Security Handbook, PMS P 5930.1, or a later edition if available.
- C. The organization within the Office of the Secretary responsible for physical security policy is the Division of Special Programs Coordination in the Office of Management Operations in the Office of the Deputy Assistant Secretary for Management and Acquisition. Questions, suggestions or comments may be directed or called to that office at the address listed below:

Division of Special Programs Coordination
330 Independence Avenue, S.W.- Room# 4700
Washington, D.C. 20201
Telephone (202) 245-7426 or FTS 245-7426

Subject: EXTERIOR AND INTERIOR PHYSICAL SECURITY MEASURES

7-01-00	Definition and Scope
10	Purpose
20	Responsibilities
30	Exterior Physical Security Measures
40	Interior Physical Security Measures
50	Employee Badging

7-01-00 DEFINITION AND SCOPE

As defined in chapter 7-00, physical security is that part of "security" that applies physical measures for the protection of personnel, facilities, materials, equipment, and documents against threats other than overt military action. This chapter delineates matters for consideration in addressing the exterior and interior security of buildings and facilities.

7-01-10 PURPOSE

The purpose of this chapter is to identify the steps necessary for determining exterior and interior protection requirements to prevent and/or control loss or damage to **DHHS** facilities, injury to DHHS employees, and to enhance the security of equipment, materials and documents.

7-01-20 RESPONSIBILITIES

Chapter 7-00 specifies the Physical Security Program responsibilities for officials of **DHHS**. This chapter does not add to those responsibilities but rather delineates in more detail the considerations that must be addressed by Physical Security Coordinators.

7-01-30 EXTERIOR PHYSICAL SECURITY MEASURES

Physical security surveys to determine the degree of protection required must be conducted for each DHHS facility/installation. The result of a survey may eventually become the Facility/Installation Security Plan. It is not feasible or necessary for each location to have the same degree of

protection. Some of the considerations for determining the degree of protection required are as follows:

- A. The value of that which is to be protected and the impact of its potential loss are significant factors.
- B. The need for guard patrolling of a facility or installation must be determined as an integral part of an overall plan. This protection method is costly. Automatic security and fire detection systems designed for continuous operation generally offer a higher degree of protection at less cost. The need for guards to protect against theft, intrusion and vandalism and to control admittance of personnel during or after normal business hours are key issues to be considered.
- C. Fire protection considerations are important. Statistically, most fires occur while a building is occupied. An effective fire prevention program should be a part of the Safety and Occupational Health Program covering each building. Facility-related fire protection features are normally the responsibility of the office charged with building and space management. Refer to the **HHS Safety Management Manual**, OSHA Standards and NFPA Codes for additional guidance to provide adequate fire protection for HHS facilities and buildings. It is also **recommended** that the local fire department be contacted for fire safety surveys and building familiarization.
- D. The matter of protecting critical or sensitive areas needs careful study. Major computer sites, **telecommunications** facilities and life support equipment such as power, water, gas and HVAC components need special protection. Consideration must be given to restricting access to these types of sites.
- E. Consideration must be given to installation and use of protective lighting which can discourage unauthorized entry or inappropriate activity outside a building.
- F. Consideration **should** be given to alarm systems as a means of communicating a warning of potential or present danger. Systems are available to protect against vandalism, burglary, fire and smoke and to control entry and exit.
- G. Consideration must be given to having the appropriate level of building entry control. Options should be studied for their cost-effectiveness. One or more of the following

means can be utilized:

- o Closing of all except absolutely necessary entrances.
- o Staffing of entrances with security guards or receptionists.
- o Controlling access through badging of employees and visitors. (See 7-01-50).
- o Controlling access through special locking and/or electronic or computerized recognition devices.
- o Inspecting packages and other materials entering or leaving the building.

7-01-40 INTERIOR PHYSICAL SECURITY MEASURES

The Facility/Installation Security Plan must address measures for interior physical security. Some of the considerations for determining the degree of protection necessary involve the following:

- A. Various special areas within a building will require **special** access controls such as special badging, special locking systems, etc. An analysis of the degree of protection required versus the cost of the protection must be made.
- B. Special steps must be taken for the protection of government checks, savings bonds, etc.
- C. Special protection must be given for controlled substances, dangerous drugs, narcotics, small arms, ammunition, dangerous chemicals and laboratory substances, etc.
- D. Consideration must be given to designing a key control system if key locks are one of the elements of a physical security system.
- E. Special physical security measures must be taken for locations where various types of classified documents are stored and/or used by staff. For these programs it is possible to get security consulting assistance from the Federal Emergency Management Agency. The provision of paper shredding equipment and the proper handling of waste shredded paper may become a factor.

- F. It may be necessary to install adequate lighting and/or intrusion detection systems in very sensitive areas.
- G. It will be necessary to develop and publish an Emergency Evacuation Plan for each building/facility. The plan must be definitive on a number of issues related to effective evacuation made necessary due to fire, bomb threat, or other disturbance. Special emphasis in these plans will be given to provisions for the evacuation of the handicapped.
- H. Consideration should be given to the possibility or necessity of x-raying incoming mail/packages as a part of mail handling security.

7-01-50 EMPLOYEE BADGING

- A. OPDIV, Regional and OS Headquarters policies issued in accordance with paragraph 7-00-40C of this manual will include directives for issuance of ID badges. This chapter does not speak to the necessity or issuance of identification papers or devices that are not also to be used for physical security purposes.
- B. Although OPDIVs, Regional and OS Headquarters are required to issue directives relating to ID/badging cards, it may not be necessary to make it mandatory that an ID/badging mechanism be used for all facilities or all employees. Rather, the application of ID/badging cards within the overall physical security plan is optional at the discretion of the OPDIV Head, Regional Director and OS Headquarters Manager. The responsible official may determine that other forms of physical security entry control are more cost-effective.
- C. All ID/badging systems used for physical security purposes within the Department are required to conform to the policy in this chapter no later than the beginning of fiscal year 1992. HHS Regional Offices and OS Headquarters elements will conform to this policy no later than the beginning of fiscal year 1991.
- D. When it is determined that a form of ID/badging cards is to be used either alone or as part of a more comprehensive employee identification and/or physical security system, the HHS Form 576 (Rev. 06/01/87) is the sole form authorized for use within the Department. Use of all other forms is to be discontinued by the dates mandated in paragraph 7-01-50A

above. With respect to the application of this form:

- o The form may be obtained in various background/print colors for general coding purposes though specific background/print colors will not be assigned to specific organizational elements. The cards may be ordered with provisions for magnetic strips and other forms of "reader" identification. The cards may also be ordered so as to be affixed via adhesive to other security/entry cards or devices.
- o The application of the form may be customized with respect to actual detailed design of locally added color sections, coding schemes, label data elements, etc.
- o Use of the color of solid red or blue labels on the standard light blue background on the front of the HHS Form 576 panel will be restricted on a Departmentwide basis to selected senior Departmental officials as assigned by the Division of Buildings Management and Telecommunication in the Office of the Secretary. Colors and other distinguishing design features selected by OPDIV Heads, Regional Directors, and the OS Headquarters Manager to customize their ID badges will be registered prior to the submission of an order for their customized version of the existing HHS Form 576 that heretofore was provided with only a standard light blue color background on the front panel. Similarly, other distinguishable features on the front of the HHS Form 576 that should be considered when custom designing and identified for registration purposes are:
 - o Badge background color
 - o Picture background design and color
 - o Border design and color
 - o Organization designation print on the front label

Registration and clearance for use of a customized HHS Form 576 will rest with the:

Division of Special Programs Coordination (DSPC)
Office of Management and Operations
Department of Health and Human Services
330 Independence Ave., S. W. - Room 4700
Washington, D. C. 20201
Telephone (202) 245-7426 or FTS 245-7426

- o The HHS Form 576 will be procured and the **distribution** controlled for the entire Department on a centralized basis by the Division of Administrative Services within the Office of the Secretary. The mailing address is the same as for DSPC. The telephone number is 245-6333.
- E. OPDIV, Regional and OS Headquarters policies issued regarding ID/badging systems will insure the following:
- o Badge/ID will be issued and controlled in such a way as to have a mandatory expiration time period not to exceed **five years**;
 - o Storage, distribution and utilization or blank copies of HHS **Form** 576 will be controlled at all levels throughout the organization to insure that blank forms do not fall into the hands of unauthorized personnel;
 - o Processing procedures for all personnel leaving employment or ending other relations (such as contract) with the organization will insure that badges are collected and destroyed. Physical Security Coordinators will insure that appropriate logs and controls are in place to insure compliance with this provision;
 - o **Departmentwide** acceptance of all badges issued on the HHS Form 576 for entry into general office space of any **HHS** organization where there are no unique or special security requirements.
- F. All HHS organizational elements are encouraged to **make** maximum use of "cross-servicing" arrangements with established administrative elements for issuance and control of badges so as to promote efficiency in administration of the system. (Example: OPDIV field elements may elect to have the Regional Office, Division of Administrative

Services provide badge/cards for their employees). This policy is not meant to imply that all field elements within any given region must use a single ID system; rather, OPDIV field elements will follow the badging/policy of their respective OPDIVs. Within a regional office proper, however, a single system will be utilized in accordance with the OS badging/ID policy.

- G. After issuance of an identification badge, in areas where there is any degree of physical security sensitivity or in buildings where it is necessary to have employees show their ID/badge, the ID badge must be worn visibly at all times by all employees. The visible wearing of badges by all employees under such circumstances is a significant deterrent to unauthorized entry and access to work areas.

Subject: BUILDING EVACUATION PLANS FOR THE HANDICAPPED

7-02-00	Purpose
10	Scope and Applicability
20	Authority
30	Responsibilities
40	Occupant Evacuation Plans
50	Evacuation Plans for the Handicapped
60	References

7-02-00 PURPOSE

This chapter emphasizes the policy regarding the urgency of good planning and constant readiness for the evacuation of all employee/occupants from DHHS facilities. This chapter places special emphasis on positive planning and orderly action to safeguard handicapped employees during such an emergency.

7-02-10 SCOPE AND APPLICABILITY

This chapter identifies the essential elements of an "Occupant Emergency Plan" and a "Plan for the Evacuation of Handicapped." Both of these plans are required for every DHHS facility so that employee/occupants can help themselves evacuate DHHS facilities in an organized manner to prevent or minimize injury, loss of life and property damage. Provisions of this chapter apply to all employees, contract personnel, visitors, etc. who occupy any facility utilized by DHHS, with special emphasis on meeting the needs of handicapped persons.

7-02-20 AUTHORITY

Public Law 91-596, December 29, 1970 as amended, "The Occupational Safety and Health Act," 29CFR 1910.38 "Employee Emergency Plans," and FPMR 101-20.504-4 "Physical Protection."

7-02-30 RESPONSIBILITIES

DHHS officials identified in paragraph 7-00-40C will develop and publish an Occupant Evacuation Plan to identify the specific procedures for the evacuation of all employees and other occupants from each DHHS facility. Additionally, said officials will develop and publish a separate plan for each DHHS facility regarding the evacuation of handicapped employees to address their specific needs during various emergencies. This Handicapped Evacuation Plan will be a supplement or companion document for the basic Occupant Evacuation Plan.

7-02-40 OCCUPANT EVACUATION PLANS

Each DHHS facility or DHHS controlled block of space in a building not controlled by DHHS will have a published "Occupant Evacuation Plan." As a minimum, this plan will address the following issues:

- A. Basic information regarding the plan to include its purpose, applicability (i.e., what buildings), authorities, background, effective date of the plan and responsibilities of officials.
- B. Description of actions necessary to activate or initiate the plan and organizational response to an emergency.
- C. Provisions for quarterly review of the plan (with dates specified). Provision for conduct of tests of the evacuation plan no less than twice a year.
- D. Listing of an emergency call list for both during and after-duty hour emergencies.
- E. A sufficient description of the building or space involved in the plan to provide familiarity to employees with key features of the building.
- F. Detailed evacuation instructions to include:
 - o Persons authorized to order evacuation.
 - o Evacuation signals and means of evacuation.
 - o Relocation site(s) for personnel.
 - o Dealing with suspicious object situations.
 - o Building re-entry procedures.
 - o Establishment and functions of an "Emergency Command Center Team" which will consist of (minimally) the Designated Safety and Health Official (i.e., local safety officer), local Physical Security Coordinator, Handicapped Monitor, and any damage control and/or medical coordinators deemed necessary.

- 0 Provisions for a "Damage Control Team with preplanned procedures for obtaining the services of technical advisors.
- 0 Plans for the provision of occupant emergency services such as operation of a "command center" and the running of appropriate communications to include maintaining of a list of all occupant emergency organization members, provision for communications equipment and a contingency plan for the use of "runners" in place of normal communication.
- 0 Specific plans for handling each type of possible emergency including fire, bomb explosion, bomb threat, hazardous material leak (gas, etc.), suspicious packages, medical or first aid emergencies, natural disaster and demonstrations or acts of civil disobedience.
- 0 Appropriate cross references will be made to the companion plan to be entitled "Handicapped Evacuation Plan" (which is required as a companion document for every Occupant Evacuation Plan.

7-02-50 HANDICAPPED EVACUATION PLANS

The "Handicapped Evacuation Plan" document will be written as a "supplement" or "companion" document to the basic Occupant Evacuation Plan. This plan need not repeat everything contained in the basic Occupant Evacuation Plan but must contain and highlight material specifically detailing procedures for evacuation of handicapped employees and visitors. As a minimum, this plan will address the following matters unique and special regarding evacuation of handicapped personnel:

- A. Designation of a **Handicapped Evacuation** Monitor whose duties are to insure the adequacy of the plan and the readiness of personnel to carry out the plan.
- B. Assignment and training of primary and secondary Handicapped Assistants to all seriously handicapped persons. These monitors will assist the handicapped to safe haven (a place outside the building or to a protected area in the building.)

- C. Establishment of detailed procedures for Handicapped Assistants regarding evacuation of their assigned person.
- D. Establishment of emergency elevator procedures for the aid of handicapped persons if such is technically possible.
- E. Establishment of stairwell clearance procedures.
- F. Training and orientation of all supervisors and managers regarding the special procedures for evacuation of the handicapped.
- G. Establishment of a procedure to insure that handicapped visitors in the building are assisted in a manner similar to that for handicapped employees.
- H. Maintenance of a current list of handicapped persons and their assigned workstation location within the building. Handicapped Assistants for each handicapped person will be identified.

7-02-60 REFERENCES

A sample "Occupant Evacuation Plan" and related "Handicapped Evacuation Plan" may be obtained from the Division of Buildings Management and Telecommunications in the Office of the Secretary in Washington, DC. This line organization is responsible for building evacuation of the Humphrey Building and has prepared plans conforming to this policy. This office may be reached by writing:

Division of Buildings Management and
Telecommunications
Office of Management and Operations
Department of Health and Human Services
330 Independence Avenue, S.W. Roomt 1081
Washington, D.C. 20201
Telephone (202)245-7621 or PTS 245-7621

CHAPTER 8-13
REGIONAL MANAGEMENT REVIEW PROGRAM

8-13-10	Purpose
20	Policy
30	Definition and Scope
40	Responsibilities
50	Methodology
60	Timing and Scheduling Reviews
70	Follow-up of Reviews

8-13-10 PURPOSE

This directive establishes a Regional Management Review Program in the Department of Health, Education, and Welfare as one means of improving the quality and effectiveness of regional operations.

8-13-20 POLICY

Management reviews of regional offices will be conducted on a cyclical basis by teams established by and reporting to the Under Secretary. Each regional office will be reviewed at least once every two years.

8-13-30 DEFINITION AND SCOPE

A Regional Management Review is an objective appraisal of the effectiveness and quality of administration of a **DHEW** Regional Office conducted under the direction of the Under Secretary. Its purpose is to identify opportunities for improving the way in which the regions carry out their assigned responsibilities. The Review will include an examination of functions and organizations under the direct management of the Regional **Director** and such other field activities and organizations as may have a significant impact on how the Regional Director discharges his responsibilities or on regional office management and coordination. Special attention will be given to the adequacy with which the various responsibilities assigned the Regional Director are being discharged and to the identification of obstacles to effective field management which warrant the attention of, or action by, the headquarters of the Department.

8-13-40 RESPONSIBILITIESA. Under Secretary

The Under Secretary will designate for each Management Review a Team Leader who will report directly to the Under Secretary. The Team Leader will be responsible for planning of the review, its conduct, and the preparation of a team report with findings and recommendations. The Executive Assistant to the Under Secretary will assist the Under Secretary and the Team Leaders in the establishment of the teams and the arrangements for their support.

B. OS Staff Offices

The Heads of OS offices will provide members to serve on Regional Management Review Teams and will supply such information and such developmental and evaluation support as **may be** required in carrying out the Regional Management Review Program.

C. Regional Directors

Regional Directors will assure that regional staff are informed of the purposes of the management reviews and that information is made available as requested. They will also make certain that during the survey field officials are available for consultation with team members, and that relevant documents are promptly supplied. They will also be responsible for regional actions needed to implement recommendations approved by the Under Secretary.

D. Agency Heads

Agency heads will provide members of the evaluation teams as requested and will insure cooperation with, and support of, the Regional Management Review Program at all organizational levels.

8-13-50 METHODOLOGYA. Team Composition

Each management review team will be specifically **appointed** by the Under Secretary to conduct the appraisal of field management in a designated regional office. Each team member will be chosen by the Under Secretary on the basis of ability to contribute effectively to the review. Team members will ordinarily be chosen from such offices as that of the Deputy Under Secretary for Regional Affairs, the Assistant Secretary for Administration and Management, the Assistant Secretary for Planning and Evaluation, and the Assistant Secretary, Comptroller. Staff from other DHEW offices, the agencies and regions other than that being evaluated will also be included by the Under Secretary as needed. All Team Members will view themselves as representatives of the Under Secretary while they are engaged in their regional evaluation assignment. Changes in Team Membership will be made after each evaluation but each team will contain members who have had experience in a previous review. In some instances a Team Member may serve through several management reviews to help ensure continuity.

B. Planning the Reviews

The initial review team will develop checklists, questionnaires and other review materials to facilitate the conduct of organized, effective reviews. The initial plan and materials will be considered by the Departmental Management Council prior to the first management review. Review materials, subsequently, will be updated and revised on the basis of experience and requirements. Before going to the region each team will touch base with appropriate Washington officials to identify problems, incidents and situations which warrant special **attention** during the on-site phase of the review. Regional information needed by the review team will be requested from the Regional Director to be submitted either prior to the on-site review or to be made available to the team on its arrival.

C. Conduct of Review

The team will proceed with the review by conducting interviews in the region with regional officials including regional representatives of the **agencies**. Contact would be made with officials of **state and** local governments and other Federal agencies, as appropriate. Documents relating to important or difficult problems being handled in the region will be examined.

The on-site review will be carefully designed to afford regional officials the opportunity to identify and document problems beyond the direct control of the Regional Director and which will, therefore, require action by headquarters officials. Inadequacies in follow-through on **decentralization**, staffing and funding problems, difficulties with particular headquarters offices will be explored from the regional perspective. The Regional Director should be given every opportunity to highlight actions that should be taken to improve the quality of regional administration.

D. Reporting

Upon completion of the on-site review, the review **team** will develop a preliminary assessment of the **management** of the region and will develop tentative recommendations. These findings and conclusions **will** be informally discussed with the Regional **Director**. A written report will be completed in Washington and will be submitted to the Under Secretary with copies to the Regional Director and members of the Departmental Management Council. The report will receive such further distribution as the Under Secretary may direct. The report will be a **team** product and will not indicate the views or contributions of the individual members.

8-13-60 TIMING AND SCHEDULING REVIEWS

After the Under Secretary has notified the Regional Director of the plan to conduct a review of a designated region, the Team Leader, in collaboration with the Executive Assistant to the Under Secretary and the Deputy Under Secretary for Regional Affairs will develop the review schedule and will inform all concerned in a timely manner. It is anticipated that each regional office will be scheduled in **advance** and will normally require about five weeks of survey team time. Two weeks will ordinarily be allocated to preparations in the Washington Headquarters. This phase will include consulting with officials in the Washington area and reviewing information developed by the Regional Director and submitted for pre-on-site review.

It is estimated that about two weeks will be needed for the on-site review, the roughing out of findings and recommendations and the post-review discussion **with** the Regional Director, but the actual time spent in a region may vary considerably from one evaluation to another. An additional week will be allocated to report preparation and to the briefing of the Under Secretary and/or **other** officials. The Under Secretary, after securing such additional comments and suggestions from Departmental officials as he may find helpful, **will** take action on the **report recommendations** and will fix responsibility for their implementation.

8-13-70 FOLLOW-UP OF REVIEWS

The success of the Regional Management Review Program is directly dependent on taking positive action on the approved recommendations. The responsibility for follow-up rests with the Office of the Under Secretary.

Action offices and the regions will be informed of decisions made by the Under Secretary, who will establish a follow-up system to ensure timely action is scheduled and taken on each approved recommendation. The Executive Assistant will keep a record of progress made in the implementation of recommendation.

Subject: HHS METRIC PROGRAM

8-25-00	Purpose
10	scope
20	Background
30	Definitions
40	Policy
50	Procedures
60	Acquisition Guidelines
70	Major Duties and Responsibilities
80	Reporting Requirements
90	Exceptions

8-25-00 PURPOSE

This chapter prescribes Departmental policies, procedures, and responsibilities for implementing the provisions of Public Law 94-168, as amended, the "Metric Conversion Act of 1975," (Title 15, United States Code, Sections 205a through **205K**).

8-25-10 SCOPE

This chapter applies to each Operating Division (**OPDIV**) of the Department and the Office of the Secretary (OS).

8-25-20 BACKGROUND

- A. Public Law 94-168, the "Metric Conversion Act of **1975**," (Title 15, United States Code, Sections 205a through **205k**) states that the policy of the United States shall be to coordinate and plan the increasing **use** of the metric **system** in the United States.
- B. Section 5164 of the "Omnibus Trade and Competitiveness Act of 1988," Public Law 100-418, amended the Metric Conversion Act of 1975 to provide:
 1. That the metric system of measurement is the preferred system of weights and **measures** for United States trade and commerce;

2. That each Federal agency shall, by a date certain and to the extent economically feasible by the end of Fiscal Year 1992, use the metric system of measurement in its procurements, grants, and other business-related activities (unless metric **usage is** impractical or would have an adverse **impact** on the market share of U.S. firms); and
 3. That agencies shall **seek out ways** to increase understanding of the metric system of measurement through educational information and guidance and in Government publications.
- c. Executive Order 12770, Metric Usage in Federal Government Programs, establishes governmentwide procedures for implementing the Metric Conversion Act of 1975.
- D. Title 15, Code of Federal Regulations, "Metric Conversion Policy for Federal Agencies," Part 19, Subpart B, published **by** the Department of Commerce, provides guidance to Federal agencies in changing to the **use** of the metric **system** of measurement.
- E. Federal Standard 3768, "Preferred Metric Units for General Use By The Federal Government," January 27, 1993, lists preferred metric units recommended for **use** throughout the Federal Government.

8-25-30 DEFINITIONS

- A. Metric System of Measurement. The International **System** of Units (**or** SI from the French "**Le Systeme International d'Unites**") as established by the General Conference on Weights and Measures in 1960, and as interpreted or modified for the United states by the Secretary of Commerce. The units are listed in Federal Standard 3768.
- B. Hard Metric. The replacement of a standard inch-pound size with an accepted metric size for a particular purpose. An example of size substitution might **be:** selling or packaging liquids **by** the liter instead of by the pint or quart (as for soft drinks), or instead of **by** the gallon (as for gasoline).

- C. Soft Metric. The result of a mathematical conversion of inch-pound measurements to metric equivalents for a particular purpose. The physical characteristics are not changed.
- D. Inch-Pound Units. Units based upon the yard and the pound commonly used in the United States and **defined** by the National Institute of Standards and Technology. (Units having the same names in other countries may differ in magnitude).
- E. Dual Systems. The use of both inch-pound and metric systems. For example, an item is designed, produced, and described in inch-pound values with soft metric values also shown for information or comparison purposes.
- F. Hybrid Systems. The use of both inch-pound and hard metric values in specifications, standards, supplies, and services; e.g., an engine with internal parts in metric dimensions and external fittings or attachments in inch-pound dimensions.

8-25-40 POLICY

It is the policy of the Department to support Federal transition to the metric system and to use the metric system of measurement in all procurements, grants, and other business related activities unless such use is **impracticable** or is likely to cause significant inefficiencies or loss of markets to United States firms.

8-25-50 PROCEDURES

- A. Each OPDIV and OS will:
 - 1. Encourage industry in the change to the metric system by acquiring commercially available metric products and services that meet the functional requirements of HHS, so long as competition is maintained.
 - 2. Make training opportunities available as necessary to increase employee awareness and understanding of metric system conversion.
 - 3. Participate on Government/industry subcommittees and working panels and groups.

4. Develop specifications and standards for procurements in metric when metric is the accepted industry system. Commercially developed metric specifications and internationally developed voluntary standards using metric will be adopted whenever possible.
 5. Specify and accept bulk (loose, unpackaged) materials in metric units, unless the use of such units is incompatible with existing systems. Procure measuring devices, shop, and laboratory equipment in metric or dual units of measurement when possible.
 6. Charge metric conversion costs to normal OPDIV and/or OS operating expenses. However, these costs are to be identified to the extent feasible. This includes the cost of metric aids, tools, equipment, and training.
 7. Use metric units of measurement in technical reports, studies, publications, and position papers (except those dealing with dimensions in inch-pound units). Inch-pound units may be cited in parentheses.
 8. Coordinate all metric conversion efforts which are likely to involve major public affairs activity with the Office of the Assistant Secretary for Public Affairs.
- B. **OPDIVs** and OS may retain the measurement units in which a system **is** originally designed for the life of the system, unless conversion is necessary or advantageous.

8-25-60 ACQUISITION GUIDELINES

A. Basic Requirements

1. The metric system of measurement, or a dual system stating both metric and inch-pound units, will be used in all procurement documents where measurements are required, including purchase descriptions, specifications, and standards, unless one of the exceptions provided for in Section 8-25-90 is applicable.

2. The requesting official is responsible for documenting and signing any decision not to use metric measurements.
3. Documentation for decisions not to use metric measurements must identify the specific exception which applies and explain the reasons for its applicability.

B. Metric Decision Points in the Acquisition Process

1. Advance Planning

- (a) HHSAR 307.104-1 requires development of an acquisition planning document for all new negotiated acquisitions which are expected to exceed \$100,000. The acquisition plan is to be developed jointly by the project officer and the contract negotiator. As part of this process, **acquisition** plans should be reviewed to determine applicability of metric measurements.
- (b) A key decision point concerning use of metric measurement in advance acquisition planning is the description of work to be done. Whether a specification, purchase description or statement of work is used (**HHSAR 307.105-3**), this point is a critical one for the program or project officer to determine the suitability of metric usage in the contract.

2. Small Purchases

Small purchase acquisition methods (HHSAR 313.104) are designed to acquire defined, off-the-shelf, standard supplies, equipment or services which may be awarded on the basis of a fixed price quote. Attempts should be made to obtain such items in metric measurements when available, economically feasible and practical to meet program/project needs. The unavailability of items in metric from required sources of supply, such as mandatory GSA schedules, is sufficient justification for non-metric purchase and a statement to that effect should be included in the purchase file.

3. Requests For Contract (RFC)

Program offices are responsible for preparing the RFC when planning for contracts estimated to exceed the small purchase threshold (**HHSAR** 315.70). If a decision regarding the use of metric measurements has not already been made and documented in the advance planning process, the RFC is another point in the contracting process where a decision by the program office regarding the impact of use of metric units must be made based on program requirements.

4. Requests For Proposals (RFP)/Quotations (RFQ)/
Invitation For Bids (IFB)

Unless the official contract file contains a written justification for not using metric measurements in accordance with the exceptions permitted by this chapter, **RFPs**, **RFQs** or **IFBs** prepared by the contracting officer, for either equipment, materials or services which are measurement sensitive, must use metric measurements.

Any deviations from this requirement, based on exceptions permitted by this chapter, must be documented in the official contract file.

c. Responsibilities of Contracting Officers

1. The Contracting Officer is responsible for ensuring that metric measurements are used throughout the acquisition process, including all solicitation and contract documents. If metric measurement is not used, the Contracting Officer must ensure that the file contains appropriate justification.
2. The Contracting officer should provide the requesting office information concerning qualified sources capable of satisfying the requested items or services in metric measurements and any potential impact on competition.
3. AS a part **of** the file documentation process, the **CO**ntracting.Officer must review the requesting office's decision regarding metric use and determine if any exceptions to metric use meet the requirements of this chapter.

8-25-70 MAJOR DUTIES AND RESPONSIBILITIES

- A. Assistant Secretary for Management and Budget. The Assistant Secretary for Management and Budget (**ASMB**) is responsible for:
1. Ensuring HHS-wide implementation of the "Metric Conversion Act of **1975**," as amended, by September 30, 1992;
 2. Establishing HHS policy for the application and use of the metric system of measurement; and
 3. Appointing an HHS Metric Executive to carry out the responsibilities set forth in Executive Order 12770, and to chair the HHS Metric Transition Steering Committee (**MTSC**).
 4. Approving exceptions to the HHS Metric Program in accordance with Section 8-25-90.
- B. Deputy Assistant Secretary for Budget, ASMB. The Deputy Assistant Secretary for Budget, ASMB, is responsible for collecting necessary data from **OPDIVs** and OS, preparing the annual report to the Congress on metric implementation actions, and ensuring that the report is included in the annual budget as required by Title 15, United States Code, Sections j-1.
- C. Director, Office of Management, U.S. Public Health Service. The Director, Office of Management, is responsible for:
1. Providing technical advice and guidance to OPDIVs and OS regarding Federal requirements for the use of the metric system of measurement;
 2. Serving as the HHS Metric Executive;
 3. Representing HHS on the Federal Interagency Committee on Metric Policy (**ICMP**);
 4. Appointing an HHS representative to serve on the Metrication Operating Committee (**MOC**) of the ICMP, its Steering Group, and the HHS MTSC; and
 5. Ensuring appropriate HHS representation on **MOC** subcommittees.

- D. Heads of OPDIVs. Heads of OPDIVs are responsible for:
1. Ensuring organizational implementation of the "Metric Conversion Act of **1975,**" as amended;
 2. Designating an organizational element to manage metric conversion activities;
 3. Designating an individual as the Metric coordinator for their OPDIV who will also serve on the HHS **MTSC;**
 4. Ensuring that personnel are provided education on the metric system, and training, as needed, in specific metric practices and uses; and
 5. Identifying Federal legislation, regulations, and procedures that unduly restrict **use** of the metric **system,** and where applicable, initiating action to eliminate those restrictions and ease transition to the metric system.
- E. HHS Metric Transition Steering Committee. Members of the HHS MTSC are responsible for planning and coordinating transition to the metric system, and advising their respective OPDIVs on matters relating to metrication.

8-25-80 REPORTING REQUIREMENTS

Each OPDIV shall submit to the Director, Office of Management, PHS, for transmittal to the Deputy Assistant Secretary for Budget, ASMB, by December 1 of each year, a report which includes:

- A. Significant metric accomplishments;
- B. Significant problems encountered in **metric** conversion;
- C. Any recommendations regarding HHS Metric Program policy or activities, including actions planned for the current and future fiscal years to further implement the metric **system:** and
- D. Other relevant information (e.g., information pertaining to metric conversion costs).

8-25-90 EXCEPTIONS

- A. Exceptions to the use of the metric **system** in procurement, grants, and other business related activities are permitted only to the extent that such use is impracticable or is likely to **cause** significant inefficiencies or loss of markets to United States firms.
- B. Exceptions to the HHS Metric Program, other than those stated above, require the approval of the Assistant Secretary for Management and Budget.

Sub j ect : CONFLICT RESOLUTION MECHANISM FOR INSPECTOR GENERAL
REPORTS

8-30-00 Purpose
10 The Four Steps of the Process
20 The Audit Resolution Council
30 Format for Submission of Cases at Step 3 of the Process

8-30-00 PURPOSE

This chapter describes the mechanism to be used to settle disagreements between an Operating Division (OPDIV) and the Office of the Inspector General (OIG) over an OIG report. The process begins on the date the report is issued, and ends no later than six months after that date, as prescribed in OMB Circular A-50. The mechanism is intended to encourage settlement at the lowest organizational level, nearest the program in question, but allows for escalation of the conflict through the Assistant Secretary for Management and Budget to the Under Secretary, if necessary. The Under Secretary makes the final decision.

8-30-10 THE FOUR STEPS OF THE PROCESS

- A. The conflict resolution mechanism applies to all OIG final internal reports on Departmental operations. Its purpose is to resolve serious disagreements between the Inspector General and an OPDIV on Office of Inspector General (OIG) findings within six months of issuance of the OIG report. It should be noted that separate resolution rules apply to external OIG reports on grantees and contractors (see the **HHS** Grants Administration Manual, Chapter 1-105). Resolution of "material **weakness**"/"non-conformance" problems reported in OIG reports will be resolved in accord with Departmental policy established under the Federal Managers Financial Integrity Act (FMFIA) program.
- B. The steps of the conflict resolution mechanism are as follows:
 1. **STEP 1**: The OPDIV staff shall state non-concurrence to the OIG. If the OIG agrees, resolution occurs. If the OIG does not agree **WITHIN SIXTY DAYS** after the date of the final OIG report, go to step 2.

2. **STEP 2:** An OPDIV representative of comparable rank shall meet with an official of the **OIG**. If agreement is reached, resolution occurs. If agreement is not reached **WITHIN NINETY DAYS** after the date of the final **OIG** report, go to step 3.
3. **STEP 3:** The **OIG** formally appeals to the Departmental Audit Follow-up Official, the **ASMB**. A copy of the appeal is given to the OPDIV. Both the **OIG** and the OPDIV furnish written positions to the **ASMB** within thirty days (see 8-30-30, below, for the prescribed format). If the **ASMB** achieves agreement or makes a decision which satisfies both sides, resolution occurs. If agreement is not achieved **WITHIN 135 DAYS AFTER** the date of the final **OIG** report, go to step 4.
4. **STEP 4:** The **IG**, the **ASMB**, or the OPDIV Read may request that the matter be taken up by the Audit Resolution Council (**ARC**) (see 8-30-20, below). The Council advises the Under Secretary, who makes the final decision **WITHIN 180 DAYS AFTER** the date of the final **OIG** report.

8-30-20 THE AUDIT RESOLUTION COUNCIL

- A. The Audit Resolution Council exercises executive-level oversight of, and advises the Under Secretary on, the Department's audit resolution and follow-up activities.
- B. The Council is chaired by the Under Secretary. Its members are the Assistant Secretary for **Management** and Budget, the Inspector General, the General Counsel, and any other official appointed by the Under Secretary.
- C. Staff support to the Council is provided by the **ASMB**.
- D. The Council will:
 1. Review and make recommendations to the Under Secretary on the resolution of internal **OIG** reports on Departmental operations on which an OPDIV has not made a management decision within six months of the issue date of the report:

2. Wake recommendations to the Under Secretary concerning the establishment or clarification of Department policy in matters arising from OIG reports;
 3. Recommend corrective action to the Under Secretary in cases where management has failed to carry out agreements made as a result of OIG reports.
- E. The Council will meet as required by step 4 of the conflict resolution mechanism (described above in 8-30-10, B.4). The Inspector General, the Assistant Secretary for Management and Budget, or an **OPDIV** head, may request a meeting of the council.

**8-30-30 FORMAT FOR SUBMISSION OF CASES TO THE
DEPARTMENTAL AUDIT FOLLOW-UP OFFICIAL UNDER
STEP3 OF THE PROCESS**

- A. After the OIG files a **formal** appeal to the Audit Follow-Up Official, the OIG and the OPDIV will each provide a summary of the case - not exceeding two pages - in the following format:
1. Title, IG number, and date of issuance of the report;
 2. List of IG findings and recommendations agreed to;
 3. List of IG findings and recommendations not agreed to;
 4. Statement of the issue and supporting arguments (in bullet form):
 5. Impact analysis including:
 - a. Budget and financial data quantifying the cost or savings to the Federal, State and Local Government, program or service providers, and program beneficiaries:

- b. Assessment of the benefits to be achieved and identification of who benefits:
 - c. Assessment of any adverse consequences from the recommendation and identification of who would be adversely affected:
 - d. Description of the results of previous reviews or decisions on **this issue** (budget, **policy, or** legislative reviews, etc.)
- B. Assessments of costs, **benefits** and adverse consequences should **be** quantified to the extent possible.
- c. **Basic** documents, such as the OIG report and related correspondence between the OIG and the OPDIV, should be referenced in the two page summary and attached to it.

Subject: REORGANIZATION PROCEDURES

8-60-00 **Purpose**
10 Reorganization Policies
20 Definition of Reorganization
30 Officials with Authority to Approve Reorganizations
40 Criteria for Organizations
50 Procedures for Obtaining Approval of Reorganizations
60 Implementation of Approved Reorganizations

8-60-A Criteria for Planning and Reviewing
Reorganization Proposals

8-60-B Guidelines for Preparing Notices on Reorganizations for
Publication in the Federal Register

8-60-00 PURPOSE

This chapter provides policy guidance **and** requirements applicable to reorganizations at **any** organizational level in the Department. It also outlines **procedures** -for submitting reorganization proposals that require the approval of the Secretary.

8-60-10 REORGANIZATION POLICIES

- A. **Legality.** No reorganization will be legally ineffect until **approved** in writing **by** the appropriate **HHS** official.
- B. **Statement of Organization and Functions.** Each approved organizational entity from the highest to the lowest organizational level shall have **a** current statement of organization and functions. As a minimum, the statement shall identify the entity's mission, organizational structure, functions, and reporting relationship to entities immediately above and below it in the organizational hierarchy. (See specific instructions regarding maintaining an organizational manual at **8-60-50C.2.**)
- C. **Employee Aureements.** Each request for reorganization should contain **a** statement **that the** requesting official has taken the appropriate action, if required by all applicable agreements, with employee bargaining units. The statement shall identify the action and the bargaining unit.
- D. **Administrative Code.** Each approved organizational entity shall be assigned an administrative code **as** prescribed by Chapter 8-69, General Administration Manual, **(GAM)**.

- E. Official Record. The official record of each reorganization shall be maintained by an office designated by the approving official.
- F. Informing the Public. Whenever a **reorganization** is significant or affects the public, the approving official shall have a Notice of the reorganization published in the Federal Register.
- G. Effective Date. Reorganizations shall become effective on the date they **are** approved unless otherwise noted in the approval document.

8-60-20 DEFINITION OF REORGANIZATION

For the purposes of this chapter, a reorganization is any change in organization which will result in one or **more** of the following actions:

- o Establishment, abolition, transfer, realignment, or consolidation of one or more organizational entity.
- o Addition, **abolition**, or transfer of a function or functions.
- o Change in the reporting relationship of an organizational entity.
- o Change in the official name of an organizational entity.

8-60-30 OFFICIALS WITH AUTHORITY TO APPROVE REORGANIZATIONS

- A. Approval by the Secretary. The Secretary approves any functional **transfers** or reorganizations which cross OPDIV lines and except **as** noted in B and C below, the Secretary approves the reorganizations for any unit that reports directly to one of the following officials: (See **8-60-50B** for procedures for **obtaining** approval of reorganizations requiring the Secretary's approvals).
1. The Secretary, Under Secretary, or an Assistant Secretary or equivalent (e.g., General Counsel, etc.)
 2. Administrator of Health Care Financing or an Associate Administrator
 3. Assistant Secretary for Health **or a** PHS Agency Head
 4. Assistant Secretary for Human Development Services or an OHDS Administration Head

5. Commissioner of Social Security or a Deputy Commissioner
6. Administrator, Family Support Administration or an Associate Administrator

B. Approval by Operating Division (OPDIV) Heads. (Excluding the Office of the Secretary -- See paragraph 8-60-30-c below.)

In general, each OPDIV Head has authority to approve reorganization of any unit which:

1. Does not report directly to any official cited in paragraph A above, or
2. Reports directly to the OPDIV Head provided that the unit has a staff complement of 15 or less FTEs and does not perform any program management function.

These general requirements are granted to each OPDIV Head by the Secretary through a delegation of authority memorandum. For information regarding the specific delegation of authority to an OPDIV Head, contact the Department Delegation of Authority Officer who is located in the Office of Management Programs, Office of Administrative and Management Services (OAMS). For further information regarding the delegation of authority function see GAM Chapters 100 and 101.

C. Approval by the Assistant Secretary for Management and Budget (ASMB). The ASMB has the authority to approve for the Office of the Secretary, except the Office of the Inspector General, the reorganization of any unit therein which:

1. Does not report directly to an official cited in paragraph A above, or
2. Reports directly to an Assistant Secretary or equivalent provided that the unit has a staff complement of 10 or less FTEs and performs only internal administrative or personal advisory functions directly for the Assistant Secretary or equivalent.

Note: The Office of the Inspector General will seek the advice and assistance of the **ASMB** in implementing reorganizations to conform with Departmental procedures.

8-60-40 CRITERIA FOR ORGANIZATIONS

Managers should observe the principles of sound organization in evaluating their current organizations to ascertain whether or not there is a need for organizational change and, if needed, for planning and implementing such change. These principles include:

- 0 Clear statement of mission and functions
- 0 Clear lines of authority and responsibility
- 0 Delegation of decision-making authority to the most effective level
- 0 Appropriate span of control
- 0 Separation of line and staff functions
- 0 Optimum use of resources
- 0 Appropriate reporting of activities and results

Exhibit 8-60-A contains additional criteria to consider in undertaking an organizational change.

8-60-50 PROCEDURES FOR OBTAINING APPROVAL OF REORGANIZATIONS

A. As stated in subsection **8-60-10A**, no reorganization can be legally implemented until the appropriate **HHS** official approves the reorganization in writing.

B. **Approval by the Secretary**

1. **Submission.** Reorganizations requiring the Secretary's approval **are** identified in subsection **8-60-30A**. Requests for this approval are to be submitted to the Secretary through the **ASMB**. Prior to making its submission, the requesting OPDIV or Staff Division (STAFF'DIV) is encouraged to discuss the proposed reorganization with **OAMS** in the Office of the Assistant Secretary for Management and Budget, OS. **OAMS** serves as the coordinating office for processing reorganization proposals submitted for the Secretary's approval.

2. Documentation... Each request for the Secretary's approval **shall** contain the following documents:
 - a. An Action Memorandum to the Secretary signed by the OPDIV or STAFFDIV Head. The Action Memorandum shall clearly identify: 1) the rationale for the reorganization and the benefits to be received; 2) an explanation of staffing implications regarding new Senior Executive Services or supervisory positions, changes in staffing requirements, and negotiations with bargaining units; and 3) a statement regarding the effect of the reorganization on the organizational units, programs or the public.
 - b. **A** Statement of Organization, Functions, and Delegations of Authority (in Federal Register format - see Exhibit 8-60-B). Include the official file copy of the statement.
 - c. Organizational charts of the current organization, and the proposed organization. Prepare these charts as described in this Chapter and in GAM Chapter 8-65.
3. Copies The requesting OPDIV or STAFFDIV shall submit eight copies of the reorganization proposal.
4. Coordination and Review. **OAMS** shall coordinate the review and evaluation of each reorganization proposal. It shall coordinate the proposal with the Office of the General Counsel, other appropriate OS staff offices and, if appropriate, other **OPDIVs**. Each reviewing office shall have 10 working days to complete its review and provide comments or concurrence to OAMS. **OAMS** shall negotiate differences between the reviewing offices and the requesting OPDIV or STAFFDIV, and shall attempt to resolve questions regarding the reorganization prior to sending the proposal to the ASMB.
5. Approval. The ASMB reviews and evaluates each reorganization proposal requiring the Secretary's approval and, together with a recommendation for approval or disapproval, forwards the proposal to the Secretary. The ASMB also informs the requesting OPDIV or STAFFDIV regarding the Secretary's decision.

6. Publication and Records

- a. All reorganizations approved by the Secretary must be published in the Federal Register.
- b. Whenever the Secretary approves a reorganization, OAMS shall have the Statement of Organization, Functions, and Delegation of Authority published in the Federal Register and this shall be the only type of reorganization maintained in the HHS Organization Manual.

C. Approval by OPDIV Heads:

Reorganizations requiring the approval of OPDIV Heads are identified in subsection 8-60-30B.

1. Federal Register Publication - All reorganizations approved by an OPDIV Head which are significant or affect the public must be published in the Federal Register.
2. OPDIV Organization Manual
 - a. Each OPDIV must maintain an OPDIV Organization Manual which, at a minimum, contains all reorganizations approved by the OPDIV Head. A copy of this manual must be submitted semi-annually (with the organizational charts) to the Office of Management Programs, OAMS. Each OPDIV shall also be responsible for providing HHS officials upon request, or the public with information on all organizational changes, other than those approved by the Secretary.

- b. Each OPDIV must designate an organizational unit **and** an individual to maintain an up-to-date **Organization Manual**. The name of the designee and his/her telephone number should be forwarded to OAMS.
- c. Each OPDIV shall observe the provisions of this Chapter. In addition, an OPDIV may establish other requirements and procedures for the approval of reorganizations.

D. **Approval by the Assistant Secretary for Management and Budget**

Reorganizations requiring the approval of the **ASMB** are identified in Subsection **8-60-30C**, and the procedures for submitting reorganization proposals to the ASMB are stated in the **GAM** Chapter OS: **8-60**.

8-60-60 IMPLEMENTATION OF REORGANIZATION'

- A. The official responsible for implementing a reorganization should, as a minimum, take the following actions:
 - 1. Announce the effective date of an approved reorganization to affected employees as soon as possible.
 - 2. Plan and implement the schedule for updating personnel and payroll records and position descriptions.
 - 3. Submit the appropriate Standard Administrative Code changes in accordance with the procedures outlined in Chapter 8-69, **GAM**.
 - 4. If appropriate, inform affected employees of the availability of housing, schools, and transportation in the new location.
 - 5. Identify the need for new or transfer of existing facilities and equipment. Develop specifications for needed material and service requirements well before the actual move. Also, insure that safety standards and requirements are met.

6. Plan for a continuous and orderly flow of work during the transition from the "old" to the "new" organization.
7. Announce the plan for the placement of personnel in current or new positions in the new organization, and the plan for placement of personnel that cannot be absorbed.

CRITERIA FOR PLANNING AND REVIEWING REORGANIZATION PROPOSALS

HHS officials should consider the **following points** in planning or reviewing reorganization proposals:

A. Legislation

With respect to addition, deletion, or transfer of functions because of a change in legislative requirements:

1. Identify the legislation in the request for reorganization.
2. Reflect adequately the legislative intent in the reorganization proposal.
3. Ensure that the proposed organizational change will assist the organization in accomplishing its mission.

B. Assignment of Functions

In the interest of improved organizational performance:

1. Have clear assignments of functions with no duplication, conflict, or overlap.
2. Establish responsibility for each specific function with an individual unit.
3. Group similar functions and separate dissimilar functions.
4. Encourage coordination but do not force an official to coordinate artificially with others to accomplish his/her tasks.
5. Simplify processes whenever possible to increase administrative efficiencies.

6. Provide for a manageable span of control for each manager and supervisor.
7. Reduce administrative costs by consolidating resources wherever possible.
8. Differentiate between staff and line functions and, where appropriate, place them in separate units.
9. Enable a unit to respond to a crisis or special initiative that relates to its functional responsibilities.

C. Organization Levels and Organization Nomenclatures

1. Keep the organization lean and simple--avoid unnecessary layering.
2. Refer to the Department's nomenclature standards. (See GAM Chapter 8-65.)

D. Delegation of Authority

1. Delegate decisionmaking authority to the lowest practical level.
2. If the reorganization requires new or revised delegations of authority, prepare delegation documents according to procedures prescribed in GAM Chapter 8-100.

E. Staff Resources

1. Explain all staff resources implications (e.g., new **supervisory** positions, new *SES* positions, changes in average grade, potential adverse actions, etc.), including changes in staffing requirements. Be certain that staffing is adequate, but not excessive, to perform each function.
2. Consider the **effect** of any adverse impact toward women, minorities, the aged, and/or handicapped employees.

F. Effect on Other Components

1. Consider the effect, if any, the proposed change will have on other Federal agencies, and identify proposed coordination activities, if any.

2. Consider the effect, if any, on other HHS components and/or the regional offices.
3. Consider changes that will **affect State** and local governments.

G. **Budget**

Detail changes in budget requirements for the agency and changes in the existing budget for salaries, space, cost of moving, etc.

H. **Personnel**

1. Identify **any** problems affecting employees, including the PBS Commissioned Corps, and proposed solutions.
2. Include consideration of employee rights:
 - a. Explain results of any discussion or agreements with employee bargaining units.
 - b. Explain the effects on grade levels.
 - c. Be aware **of**, and try to avoid, adverse effects on employees.
3. Include Administrative **Officers and/or Servicing Personnel** offices **as early as** possible in the planning process to provide you with instructions on how to eliminate positions, create new positions, **and prepare** positions descriptions.



GUIDELINES FOR PREPARING
NOTICES ON REORGANIZATION FOR PUBLICATION
IN THE **FEDERAL REGISTER**

A. Purpose

These guidelines state HHS standards for preparing **reorganization** Notices which the Department publishes in the **Federal Register**. The Notices are required for all reorganizations approved by the Secretary, OPDIV Heads, and for all other reorganizations which may have a significant impact on the public.

B. Heading - The heading of the Notice is to contain the following elements:

1. The accounting code of the organization that will bear the cost of printing and publishing the Notice in the **Federal Register**, The **code** is centered about one inch from the top of the page (size 8 **1/2" X 11"**).
2. The Department's name in all capital letters, centered two spaces below the accounting code.
3. The name of the OPDIV (or the Office of the Secretary) in initial capitals, centered two spaces below **the** Department's name.
4. **A** description of the type of reorganization or the name of the reorganized unit in all capitals, centered two spaces below the **OPDIV's** name.

(For example, if the Notice describes a general reorganization of an OPDIV organization, use the term GENERAL **REORGANIZATION**. If the Notice describes a more limited organization change, use the name of the affected unit (e.g., OFFICE OF _____, DIVISION OF _____ etc.).
Sometimes a Notice serves to correct errors in a previous published Notice; in such an instance, it should read: CORRECTION NOTICE.)

5. The term Statement of Organization, Functions, and Delegations of Authority in initial capitals, centered two spaces below the description.

C. Introduction

The introduction should open with a statement which relates the notice to previously published notice(s), if appropriate, by giving the ~~Federal Register~~ citation(s) of these notice(s). For example, if an OPDIV, such as the Office of Human Development Services, abolishes an office and replaces it with a new office, the opening statement would read: "This Notice amends Part D (Office of Human Department Services) by deleting Chapter DL (Office of Individual Assistance) (65 FR 10219, 6/17/76) and replacing it with a new Chapter DY (Office of Community Relations)."

Following this statement, the introduction should state briefly, in simple, non-technical terms, what the Notice is about. If the Notice treats a general reorganization, it should contain the highlights of the changes of that reorganization. If it deals with a more limited change, it should contain a summary statement of the change. If it is a Correction Notice, it should point out the previous error and state the correction.

The introduction should close with a statement similar to the following: "The new chapter reads as follows:" or "The revised statement is as follows:" or "The corrected statement reads as follows:" Generally, the introduction should not exceed a half page.

D. Official Functional Statement

The official functional statement must be compatible in form, content, and language to previously published statements. For example (to continue the sample introduction cited in Item 3):

DY Office of Community Relations

DY.00 Mission. (Give a brief statement of the mission, in terms of broad objectives, goals, etc., as stated in law, Presidential statement, Secretarial directive, or other legal source.)

DY.10 Organization. (Define the organization by stating the title of the head of the organization and the official to whom the head of the organization reports and by listing the major organizational components of the organization, as shown in this

example.) The Administration for Children, Youth and Families is headed **by an** Administrator, who reports to the Assistant Secretary for Human Development **Services**. The Office consists of the following:

Office of Planning and Management (DCA)

Head Start Bureau (DCB)

Children's Bureau (DCC)

DY.20 Functions. (State the principal functions, using one or two **sentences** to describe each function. Emphasize what is **done**--not how or why it is done.)

DY.30 Order of Succession. (Indicate who will succeed the head of the organization and under what conditions succession will occur. This information is generally not **necessary** for organizations two-levels below the OPDIV Head.)

DY.40 Delegations of Authority. Describe the program authorities that have been **delegated** to the head of the organization and the limitations (if any) on how these authorities **are exercised**. Note **that** this is a Notice of the delegation of authority. It does not constitute the formal instrument of delegation. The instrument of **delegation** is a memorandum of delegation. See **GAM** Chapter **8-100** for the procedures on delegations of authority.)

E. Approval Authority

The official who approves the reorganization is to sign the Federal Register Notice. The approval signature is to **appear** four spaces below the last line of the text of the Notice near the right margin. The date of approval will appear on the same line, to the left of the approval signature, near the left margin.

F. Federal Register Standards

HHS offices preparing Notices **are** to conform to the requirements of the Office of the Federal Register. In **summary**, they are as follows:

1. Double space the content of each Notice.
2. **Leave** one-inch margin on top, bottom, and each side.

3. Make sure that all of the text is legible.

For a more detailed listing of **Federal Register** requirements, consult the Document **Drafting Handbook** published by the Office of the Federal Register.

CHAPTER OS : 8-60
APPROVAL OF ORGANIZATION CHANGES
Within the Office of the Secretary

OS: 8-60-00 Purpose
10 Policy
20 Definitions
30 Approvals Required
40 Planning Organizational Change
50 Submitting Requests for
Organizational Change
60 Clearance and Approval
70 Publication of Functional Statement
80 Preparation of Functional Statements

OS:
8-60-00 PURPOSE

This chapter states the policy and procedure that officials in the Office of the Secretary are to follow to obtain approval of organizational change.

OS:
8-60-10 POLICY

The requirements of this chapter must be met before any organizational change within the Office of the Secretary can be effected.

OS:
8-60-20 DEFINITIONS

A. For the purposes of this chapter, these definitions **apply**:

- 1 Organizational Segment--any organization which meets each of these four conditions:
 - a. Is separately established as an organization entity by law, order, regulation, Secretarial authority, or delegated authority.
 - b. Has an approved organizational title.
 - c. Has an approved organizational code.
 - d. Has an assigned function or functions which are performed by full-time employees.

2. Organizational Change--any change which results in:
 - a. Establishment, abolition, transfer, realignment, **or** consolidation of an organizational segment.
 - b. Addition, abolition, transfer of a function or functions.
 - c. Change in the reporting relationships of an organizational segment.
 - d. Change in the name of an organizational segment.
3. Major Organization--any organization under **the direction and** supervision of an official who reports directly to the Secretary.

OS:

8-60-30 APPROVALS REQUIRED

- A. Organizational change within the Office of the Secretary requires the approval of these officials:
 1. Approval of the Secretary is required to effect change at the division level and above. (See Chapter 8-60 of this Manual for more information.)
 2. Approval of the Assistant Secretary for Administration and Management is required to effect change at the branch, section, and unit levels. Prior approval of the Assistant Secretary also is required before requests for organizational change are submitted to the Secretary.
 3. Approval of the head of a major organization is required before requests for organizational change are submitted to the Assistant Secretary for Administration and Management.
- B. These approvals are required even though approval of the change may have already been granted through the budgetary or other administrative process.

OS:

8-60-40 PLANNING ORGANIZATIONAL CHANGE

- A. Whenever officials wish to make a change in the organization under their direction and supervision, they should take these preliminary actions prior to preparing the official request-
1. Review the "Checklist for Planning Organization Changes," shown as Exhibit X8-60-1 in this Manual. Though the **checklist** was developed primarily for organizational changes approved by the Secretary, most of its items apply to all organizational changes.
 2. Consult with the Division of Management Policy and Directives, Office of Management Planning and Technology, which provides technical advice and assistance on effecting organization change.

OS:

8-60-50 SUBMITTING REQUESTS FOR ORGANIZATIONAL CHANGE

- A. Requests for organizational change should contain the following:
1. An Action Memorandum addressed to the final approving official (either the Secretary or the Assistant Secretary for Administration and Management). The memorandum should discuss the principal aspects and policy issues (if any) of the proposed change and should include:
 - a. A brief but complete statement of the proposed change and the circumstances which make it necessary or desirable.
 - b. A summary statement of the changes in function **or assignment** of functions the change will require.
 - c. A statement of justification of the proposed change in terms of the criteria of sound organization. (See Chapter 8-60 of this Manual for discussion of criteria of sound organization.)

2. A **functional** statement that reflects the proposed change.

B. Requests for organizational change should be forwarded to the Assistant Secretary for Administration and Management, ATTENTION: Division of Management Policy and Directives.

OS:
8-60-60 CLEARANCE AND APPROVAL

A. The Division of Management Policy and Directives will:

1. Clear the proposed organizational changes with appropriate officials in the Office of the Secretary, prepare its recommendation on the proposal, **and** forward the proposal to the Assistant Secretary for Administration and Management or to the Secretary through the Assistant Secretary for final decision.
2. Keep the originating office aware of any problems that **may arise** in the clearance process. Negotiate issues identified in the clearance process. Prepare issue papers for decision by higher officials.
3. Notify the originating office of the final decision.

OS:
8-60-70 PUBLICATION OF FUNCTIONAL STATEMENT

Upon approval of an organizational change, the Division of Management Policy and Directives will arrange for publication of the change in the Department-organization Manual and, if required the Federal Register.

OS:
8-60-80 PREPARATION OF FUNCTIONAL STATEMENTS

A. OS officials should follow these guides in preparing functional statements required by **paragraph OS: 8-60-50A2.**

1. Substantive Content

- a. Statements must have organizational titles that describe both the **organizational** level and the basic function of each organizational segment.
- b. Statements must be concise, yet provide sufficient information to permit someone not acquainted with the organization to understand the substance of work done, authority exercised, and significant relationships with other organizations.
- c. Statements must identify the functions assigned to an organizational segment but should not describe how those functions are implemented, unless such information is necessary to understand the mission or to differentiate the mission from that of some other organizational segment.
- d. Statements must be comprehensive enough to provide a traceable connection between related parts of functional statements of higher and lower levels.
- e. Statements for organizational segments on the same level of organization must be mutually exclusive by incorporating distinctions as to the nature of their activity, the subject of their activity, or their clientele.

2. Wording

- a. Statements are to have the organizational segments as their understood subject.
- b. Verbs are to be present, active, third person, and singular.
- c. Statements treating internal managerial functions may use "directs," "supervises," "administers," and similar terms to cover budgeting, selecting, personnel, general coordination, and other such internal managerial functions common to organizational segments.

- d. Verbs or verbal phrases which give an indefinite indication of the extent of involvement in carrying out a function--such as "handles," "contacts," "sees to"--are to be avoided.
- e. Adjectives indicating the degree to which some attribute is present or the extent of success achieved--such as "large," "difficult," "complicated," "involved," and "effective" --are to be avoided.
- f. Technical terminology is to be held to a minimum.

3. Organization Codes

All organizational segments down to the lowest element (i.e., unit) must have an organizational code. The code becomes an integral part of the organization title. Accordingly, proposals for organization change submitted for approval by the Assistant Secretary for Administration and Management and/or the Secretary should include the code in parentheses immediately following the title of each organizational segment of the proposed organization. See sample below.

Sample:

Division of Program Management (1N19075).

4. Technical Assistance

Functional statements have a definite format and style. The Division of Management Policy and Directives, upon request, will provide guidance in these areas and in questions relating to possible conflicts of functions or responsibilities of other elements of the Office of the Secretary.

Subject: ORGANIZATIONAL NOMENCLATURE

8-65-00 Purpose
10 Scope
20 Policies Applicable to Organizational Nomenclature
30 Commonly Used Organizational Terms
40 Standard Designations for Organizations and Heads of
Organizations
50 Exceptions to Standard Designations

8-65-00 PURPOSE

This Chapter prescribes the **organizational** nomenclature that HHS managers are to use in applying names to organizations under their direction and titles to heads of these organization units. It also defines organizational terms that are commonly used within the Department.

8-65-10 SCOPE

The provisions of this Chapter apply to all organizations of the Department.

8-65-20 POLICIES APPLICABLE TO ORGANIZATIONAL NOMENCLATURE

- A. The Secretary or other approving official must approve new or revised names of organizations and new or revised titles of heads of organizations before they can be officially used. Chapter **8-60** of the General Administration Manual cites these approving officials.
- B. Changes to organizational nomenclature are to be kept to a minimum since too frequent changes tend to be disruptive and costly. Requests for changes to organizational nomenclature should be made only when:
 1. New organizations are established within the Department.
 2. Major functions are added to an organization, transferred from one organization to another, or cancelled.

3. Major shifts in management occur (for example, functions and activities are centralized or combined within an organization).
 4. Unforeseen circumstances make a change in nomenclature necessary (for example, two organizations have the same name and this creates identification problems for the public).
- C. Organizational names and titles established by law or executive order **are to be used**, even though they may conflict with the nomenclature established by this chapter.
- D. Any organization whose nomenclature does not comply with the provisions of this **Chapter** may continue to use such nomenclature provided:
1. The nomenclature was established by law or executive **order, or**
 2. The nomenclature was in effect prior to the effective date of this Chapter.

8-65-30 COMMONLY USED ORGANIZATIONAL TERMS

The following terms are commonly used within the Department to describe a certain type or types of organizations:

- A. **Department.** **The Department** refers to the Department of Health **and Human Services.** **The Secretary,** the Under Secretary and their immediate offices, the Operating Divisions, the **Staff Divisions,** **and** the Regional Directors **and their offices** collectively are the Department.
- B. **Office of the Secretary** The Secretary, the Under Secretary and their immediate offices, the Staff Divisions, and the Regional Directors and their offices collectively are the Office of the Secretary.

C. Staff Division. A Staff Division is a major organization of the Office of the Secretary whose head reports directly to the Secretary. The current Staff Divisions of the Department are the:

- o Office of the General Counsel headed by the General Counsel
- o Office of the Assistant Secretary for Legislation headed by the Assistant Secretary for Legislation
- o Office **of** the Assistant Secretary for Planning and Evaluation headed by the **Assistant** Secretary for Planning and Evaluation
- o Office of Public Affairs headed by the Assistant Secretary for Public Affairs
- o Office of the Assistant Secretary for Personnel Administration headed by the Assistant Secretary **for** Personnel Administration
- o Office of the Assistant Secretary for Management and Budget headed by the Assistant Secretary for Management and Budget
- o Office of Inspector General headed by the Inspector General
- o Office for Civil Rights headed by the Director for Civil Rights
- o U.S. Office of Consumer Affairs headed by the Director. (The U.S. Office of Consumer Affairs is considered a Staff Division for administrative purposes only since **its** Director is a member of **the White** House Staff.)

The proper abbreviation for Staff Division is STAFFDIV.

D. Operating Division. An Operating Division is a major organization whose primary function is to direct and manage the substantive programs of the Department and whose head reports directly to the Secretary. The current Operating Divisions of the Department are the:

- 0 Public Health Services headed by the Assistant Secretary **for** Health
- 0 Social Security Administration headed by the Commissioner of Social Security
- 0 Office of Human Development Services headed by the **Assistant Secretary** for Human Development Services
- 0 Health Care Financing Administration headed by the Administrator
- 0 Family Support Administration headed by the Administrator

Though it is organizationally an official part of the Office of the Secretary, for the purposes of organizational nomenclature, the Office of Human Development Services is considered an Operating Division.

The proper abbreviation for Operating Division is OPDIV.

E. Public Health Service Agency. A Public Health Service Agency is a major line organization of the Public Health Service whose primary function is to direct and manage substantive health programs and whose head reports directly to the Assistant Secretary for Health. The current Public Health Service Agencies are the:

- 0 Alcohol, Drug Abuse, and Mental Health Administration headed by the Administrator
- 0 Centers for Disease Control headed by the Director
- 0 Food and Drug Administration headed by the Commissioner
- 0 Health Resources and Services Administration headed by the Administrator

- o National Institutes of Health headed by the Director
- o Agency for Toxic Substances and Disease Registry headed by the Administrator
- o Indian Health Service headed by the Director

The proper abbreviation for Public Health Service Agency is PHS Agency.

8-65-40 STANDARD DESIGNATIONS FOR ORGANIZATIONS AND HEADS OF ORGANIZATIONS

Use the statutory name in naming **organizations** and heads of organizations. If there is no **statutory** name, use the standard designations listed below. (See exceptions in section **8-65-20D.2.**) For sections A thru C and **E** thru G, these designations are listed in descending order of reporting relationships.

A. Staff Divisions

<u>Name of Organization</u>	<u>Title or Organization Head</u>
Office	Assistant Secretary, for _____, or Director
Office	Deputy Assistant Secretary for _____, or Director
Office*	Director*,
Division	Director
Branch	Chief
Section	Chief
Unit	Chief

*This level of organization may be used only when approved on a case-by-case basis by the Assistant Secretary for Management and Budget. See **8-65-50.**

B. ~~Office of the Secretary Regional Organizations Reporting to the Regional Director~~

<u>Name of Organization</u>	<u>Title of Organization Head</u>
Office	Regional (functional title) Director
Office	Director
Division	Director
Branch	Chief
Section	Chief'
Unit	Chief

C. ~~Office of the Secretary Regional Organizations Reporting Directly to Headquarters~~

<u>Name of Organization</u>	<u>Title of Organization Head</u>
Office	Regional, (functional title) Director
Office	Director
Division	Director
Branch	Chief
Section	Chief
Unit	Chief

D. Operating Divisions. The names of Operating Divisions and the titles of Operating Divisions heads are generally established by law. **If they** are not, the Secretary will select appropriate names and titles for them.

- E. Line Organizations of Operating Divisions.** The line organization of an Operating Division is that portion of the Operating Division which actually administers the substantive programs assigned to the Operating Division. The line portion of the organization begins **with the head of** the Operating Division and runs to the lowest-level operating unit with programmatic responsibilities (e.g., processing claims, managing the substantive aspects of grants and major contracts, conducting biomedical research, and carrying out regulatory activities).

<u>Name of Organization</u>	<u>Title or Organization Head</u>
Administration or Office	Administrator, Associate Administrator or Director
Bureau or Office	Director
Division	Director
Branch	Chief
Section	Chief
U n i t	Chief

Note: There are some line organizations (e.g., hospitals, laboratories, etc.), particularly within PHS which are not conducive to these titles. These entities should retain their current titles to amply identify the services they render.

- F. Staff Organizations of Operating Divisions.** The staff organization of an Operating Division is that portion of the Operating Division which provides advisory, administrative

or assessment/quality control support services to line officials, such as budget, finance, personnel, procurement, public affairs, quality control, evaluation, policy analysis, and management analysis.

<u>Name of Organization</u>	<u>Title of Organization Head</u>
Office	Deputy Assistant Secretary for _____, or Associate Administrator
Office	Commissioner for _____, or Director
Division	
Branch	Chief
Section	Chief
Unit	Chief

G. ~~Regional Organizations of Operating Divisions~~

<u>Name of Organizations</u>	<u>Title of Organization Head</u>
Office	Regional Commissioner, Regional Administrator, or Regional Representative
Office	Assistant Regional Commissioner, Assistant Regional Administrator, or Assistant Regional Director
Division	Director
Branch	Chief
Section	Chief
Unit	Chief

8-65-50 EXCEPTIONS TO STANDARD DESIGNATIONS

Exceptions to standard designations (other than those established by law or executive order) will be approved only when they are likely to increase the public's understanding of the Department's organization and purpose, and to identify more readily the work **of** an organization than the standard designation does.

Requests for exceptions should explain how the exceptions fulfill these conditions, and be submitted for approval to the Assistant Secretary for Management and Budget.



UNIFORM SYSTEM OF DEPARTMENT AND POC ORGANIZATION CHARTS

8-67-00 Purpose

- 10 Scope
- 20 Procedures and Specifications

8-67-00 PURPOSE

The purpose of this Chapter is to prescribe a Department-wide system of organization charts which specify major organization elements and key officials.

8-67-10 SCOPE

The uniform system of Department and Principal Operating Component (POC) charts prescribed by this Chapter is a management tool for use by those in directing and coordinating capacities. Under this system, the charts produced will:

- A. Show at a glance principal Departmental and POC organizations and the key personnel who direct them;
- B. Provide a means of depicting HEW organizational structure to the White House, the Congress, and the general public;
- C. Serve as a handy reference **for** top-level discussions by the Secretary, his executive staff, and key POC officials regarding organizations, functions, channels of command, and key assignments;
- D. Serve as a useful guide to the Office of Personnel Management, formerly the Civil Service Commission, in its consideration of supergrade actions; and
- E. Provide a frame of reference for discussions between the Office of the Secretary and the **POCs** regarding budgetary, staffing, and program plans.

8-67-20 PROCEDURES AND SPECIFICATIONS

- A. The **POC** overall chart should be limited to the POC head and those officials who report directly to that individual.
- B. Charts for each second-level organizational unit will show the subordinate organizations which report directly to it. Additional charts down to the division level will reflect lower level organizations.

C. Approval of Charts

1. The POC overall chart should contain the signature and date of approval of the head of the POC. Lower level charts down through the division level in a POC and line components thereof (i.e., agencies, bureaus, offices, administrations) should show the approval and date thereof by the top POC management official whose organization has responsibility for processing and/or approving organization proposals.
2. In the Office of the Secretary, charts will show the signature and date of approval by the heads of organizations reporting directly to the Secretary and will include only those subordinate organizations which report directly to the signing official.
3. Charts for the Office of the HEW Principal Regional Officials (PROs) will contain the signature and approval date by the PRO and reflect only those organizations reporting directly to that individual.

D. Preparing offices will update chart data as of April 1 and October 1 and submit updated charts to the Office of Management Analysis and Systems, OS, ten working days after the close of the update period. After the initial submission, semi-annual submissions will include only charts for organizations where changes have occurred. Submissions should include four copies of each chart. Charts should be 10½" x 8"* in size and should be suitable for reproduction.

E. Exhibit 8-67-1 contains format specifications for charts. All information shown is before reduction by the printer. Charts will be printed (not "xeroxed") "originals" suitable for reproduction and publication. Type style and size of "boxes" will be as shown on the exhibit. However, reasonable approximations are acceptable if local conditions and the overall chart size before reduction preclude rigid adherence to standards. Enter the administrative code for each "box" in parentheses in the lower right corner of the box. Show only officially approved organizations. There can be no exceptions to the specified 10½" x 8"* size of printed copies.

*After January 1, 1980, the paper size will be 8½" x 11".

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
 PUBLIC HEALTH SERVICE
 CENTER FOR DISEASE CONTROL
 OFFICE OF THE CENTER DIRECTOR

Universe 24 pt Bold/

Universe 18 pt Bold

3/4"

APPROVED: CDC
William H. Foye
 Date: 2/28/78

Approx. 2 1/2" x 1 1/4"

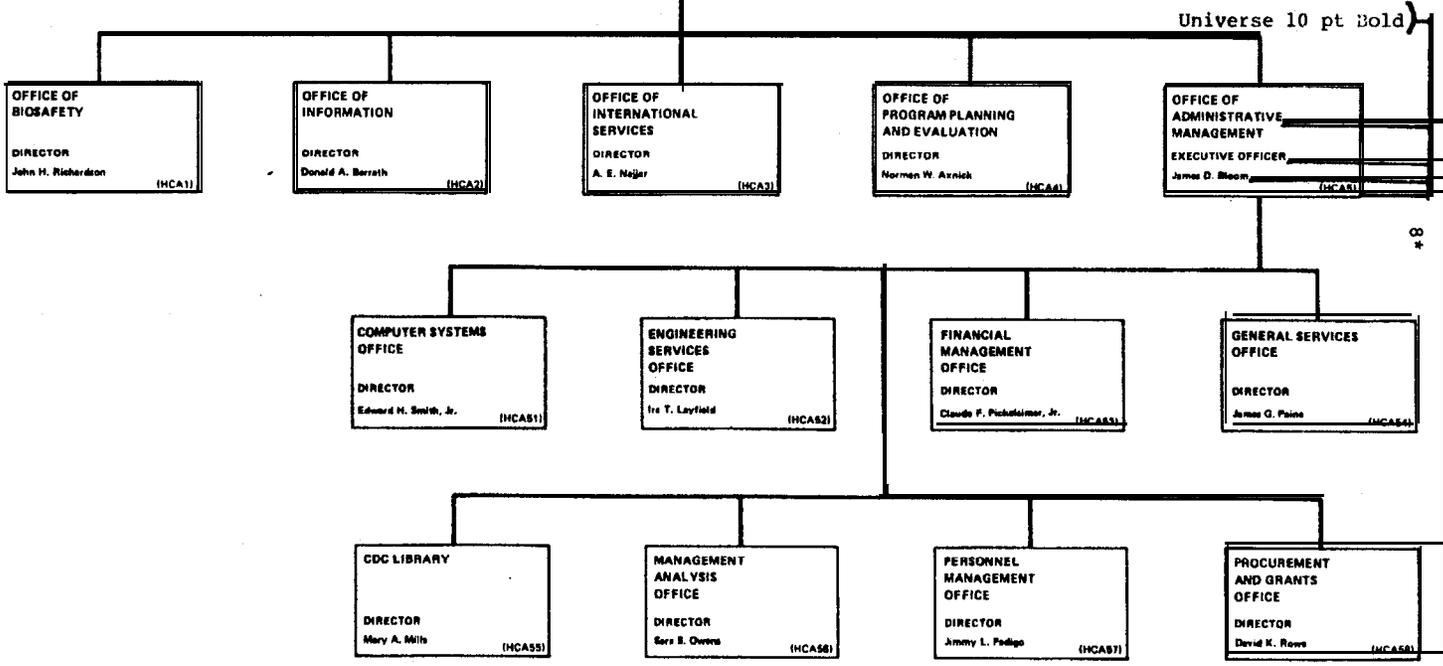
OFFICE OF THE CENTER DIRECTOR
 DIRECTOR
 William H. Foye
 DEPUTY DIRECTOR
 William C. Watson, Jr.
 ASSISTANT DIRECTOR FOR PROGRAM
 M. Bruce Dull
 ASSISTANT DIRECTOR FOR OPERATIONS
 Dessie R. Hopkins
 EXECUTIVE OFFICER
 Janet D. Bishop (HCA1)

Universe 11 pt Bold

Universe 10pt Bold

KIDNEY DONOR
 ACTIVITY
 DIRECTOR
 Frederick S. Kingma (HCA1)

Universe 8 pt Bold



Universe 10 pt Bold

*Paper size after 1/1/80 - 8 1/2 x 11

10 1/2*

- 8-69-00 Purpose and Scope
 - 10 Overview
 - 20 Technical Instructions
 - 30 Responsibilities
 - 40 Procedures

8-69-00 PURPOSE AND SCOPE

This Chapter prescribes a Standard Administrative Code for use throughout the Department of Health, Education, and Welfare. The Administrative Code is designed to be concise, easy to remember, easy to say and write, and reasonably visually **decodable**. In addition, it shows the position of a unit in the organizational structure.

8-69-10 OVERVIEW OF THE ADMINISTRATIVE CODE

A concise statement of what makes up the Standard Administrative Code is as follows:

1. The code consists of a combination of alphabetical and numeric characters; the total cannot exceed eleven characters or eleven columns.
2. The number of characters required to completely identify a particular organizational element depends on the place of a given organization in the organizational hierarchy.

For example, the Office of General Counsel in the Office of the Secretary would be coded with two alpha characters "**AG**." The first letter, "A" denotes the Office of the Secretary and the "**G**" denotes the Office of the General Counsel, a prime unit of the Office of the Secretary.

An organization at a lower level would have a longer Code. For example, HSMB would denote H Public Health Service; S Health Services Administration; M Bureau of Medical Services; and B Division of Hospitals and Clinics. Thus, the Code is hierarchical, because **it** portrays the place of an organization in the organizational structure.

3. The code is structured so that all eleven columns have the **potential for** both alphabetical and numeric characters. However, initially Columns 1-3 inclusive will specify alphabetical characters (except where a number is used in Column 3 to denote

a regional office). **Columns 4-11** will contain numeric/alpha characters.

4. Each of the eleven columns is a discrete Code element except in the single instance in which two columns are paired to denote a given organizational element.

The code can be used to identify any individual activity, even though there may be many of the same type. For example, HEW has 150 PHS Health Units under its jurisdiction. Each Unit can be separately identified. If the **various units** cannot be identified using a single column, then two columns are used. This is discussed in detail in 8-69-20-H-3.

5. Certain alphabetical and numeric characters are used for special purposes as described in 8-69-20, Technical Instructions for Code Application.

8-69-20 TECHNICAL INSTRUCTIONS FOR CODE APPLICATIONS

- A. The Code is made up of two parts: Columns 1-3 and Columns 4-11.
 1. Columns 1, 2, and 3 will specify alphabetical characters except as specified in F below. All letters are available for use in these columns, except "I," "O," and "Z" which is written as **z**. "I" and "O" are not used to avoid confusion with numbers. **z** serves a special function as explained below.
 2. Columns 4 to 11 inclusive may contain alphabetical and numeric characters, subject to the following **restrictions**:
 - a. All letters except I and O are available for use in these columns. F and **z** are available only for special uses as noted below.
 - b. Numbers 1-9 inclusive likewise are available in these columns. Numeric zero, which is written **0**, is used only for special purposes as described below.
 - c. Numbers are used first **and** then letters, except as specifically noted.
- B. Certain letters, numbers, and characters when they are placed in certain columns are used for specified purposes. The following table shows the specific reservations for Principal Operating Components (**POCs**) in Column 1, and specifies other special uses and reservations:
 - A - Col. 1 - Office of the Secretary**
 - A - Cols. 2 and 3 - Office of the head of an organization where the size and complexity require such breakout.**

- D - Col. 1 - Office of Human Development Services (OHDS)
- D - Cols. 2 and 3 denote Office of PRO, POC Regional Commissioner, or POC Regional Administrator
- E - Col. 1 - Education Division
- F - Col. 1 - Health Care Financing Administration
- F - Cols. 4-11 - Denotes a Field organization (See paragraph 8-69-20H)
- H - Col. 1 - Public Health Service
- I - Do not use anywhere
- O - Do not use anywhere
- S - Col. 1 - Social Security Administration
- X - Col. 3 or 4 Region X, Seattle
- Y - Cols. 2 or 3 - As required, denotes HEW-affiliated organization, e.g. **EEYI** (National Council on Quality of Education)
- Z - Do not use anywhere as alpha character. Use only in Cols. 4-11 to signal that the following two columns are to be used as a pair to describe multiple offices of a similar type, e.g., SSA District Offices (See 8-69-20H.3).

Numbers

1-9 - Use in Cols. 4-11

∅ - Do not use as a number. Use only in Cols. 4-11 as left digit in two columns used in pairs to delineate the first 31 units in a series of similar units

- (hyphen) - **Use only** to denote the absence of an organizational unit at a given level in the hierarchy and as a place holder. Codes containing - (hyphen) will list before codes containing alpha or numerics.' For example, EES-1 lists before **EES1**.

- C. The criteria for determining whether "F" is appropriately used in columns 4-11 or whether a unit is treated as a Headquarters unit are as follows: Headquarters is any organizational element regardless of physical location, whose functions, responsibilities, clientele, or authority extend nationwide (not geographically limited to a particular area). For example, the Center for Disease Control in Atlanta, Georgia is a headquarters organization of the Public Health Service. The Health Services Administration in Rockville, Maryland, is a headquarters organization. The organization of the Indian Health Service in Rockville, Maryland likewise is a headquarters unit for that program bureau. The Indian Health Area Office in Albuquerque, on the other hand, in its entirety, is a field organization. Organizations which are recognized as elements of the Principal Operating Component headquarters of the Social Security Administration in Baltimore are treated as Headquarters organizations. Likewise, the Bureau of Hearings and Appeals organization in Arlington, Virginia is a Headquarters organization. Hearings and Appeals units scattered throughout the country are field units.

D. Administrative Code Application for Office of the Secretary and Principal Operating Components

1. The Office of the Secretary and Principal Operating Components of the Department and their offices are depicted by a **single-letter** code, as follows:

A **Office** of the Secretary
 D **Office** of **Human** Development Services
 E Education Division
 F **Health Care** Financing **Administration**
 S **Social** Security Administration
 H **Public Health** Service

2. The next **subordinate** element is assigned a single letter in the **second column**. The second letter in combination with the code for **principal** operating component identifies a particular subordinate **organizational** element. For example:

*DA Office of Human Development Services,
 Office of the Assistant Secretary
 DG Office of Human **Development** Services,
 Administration on Aging
 ES Public **Health Service**, Health
 Services**Administration**
 EE **Education Division**, Office of Education

*Use letter "A" in the second and third columns to depict the office of the head of the organization, where size and complexity warrant such breakout.

3. The next succeeding organizational element to the above is assigned a **single** letter in the third **column**. The third letter in combination **with** the two alpha characters described above delineates this organizational element. For example:

EE **Office of Education**
 EEW Bureau of Occupational and Adult Education
 HS Health Services Administration
 HSM Bureau of Medical Services

4. The next **subordinate** element is assigned a number **or** letter in column 4. This number in combination with the foregoing identifies this organization. For example:

EEW Bureau-of Occupational and Adult Education
 EEWV Division of Vocational and Technical Education

5. The next succeeding organizational element is assigned a number or letter in Column 5. This number in combination with the foregoing identifies this unit. For example:

EEWV Division of Vocational and Technical Education
EEWV2 Post Secondary and Adult Occupational Branch

6. The next organizational element is assigned a number or letter in Column 6. This number in combination with the foregoing identifies this unit. For example:

EEW Bureau of Occupational and Adult Education
EEWV Division of Vocational and Technical Education
 EEWV2 Post Secondary and Adult Occupational Branch 21
 EEWV21 Older Workers Retaining Section*

*(hypothetical units for illustrative purposes).

7. The process of adding a numeric/alpha indicator for each succeeding subordinate organization should be followed to denote the lowest duly constituted level. The entire code designation will not exceed the eleven columns set aside for the code field.

E. Administrative Code Application to the Office of the Secretary

1. The immediate office of the Secretary, the office of the Under Secretary, and the offices of the assistant secretaries are depicted by a double-letter code, as follows:

AA Office of the Secretary (Immediate Office)
 AB Office of the Under Secretary
 AE Office of Assistant Secretary for Planning and Evaluation
 AF Office of the Inspector General
 AG Office of General Counsel
AH Office of Assistant Secretary for Personnel Administration
 AL Office of Assistant Secretary for Legislation
 AM **Office of** the Assistant Secretary for Management and Budget
AP Office of Public Affairs'

2. Certain other Office of the Secretary offices reporting to the Secretary are assigned a double-letter code similarly as follows:

AT Office for Civil Rights
 AW U.S. Office of Consumer Affairs
 AX Office of Executive Secretariat

3. The codes denoting the next succeeding level consist of three alpha characters. For example:

AG Office of General Counsel
 AGC Division of Business and Administrative Law

4. In the event of further **sub-divisions** of the elements in 3 above, the codes will be constituted as shown in D4, 5, 6, and 7 above.

F. Administrative Code Application to Regional Offices

1. The Standard Administrative Code for the Office of the Principal Regional Official would be expressed as stated below. The first two letters of the Code will be AD, and the total code will be as follows:

AD1 - Office of the Principal Regional Official, Region I (Boston)
 A - **Office of** the Secretary
 D - Office of Principal Regional Official
 1 - (in 3rd position) Region I. This is the only instance where a **number** is used in the first three columns.

2. Offices reporting to the Principal Regional Official are denoted by a letter in the fourth column. For example:

AD4H Office of Congressional and Intergovernmental Affairs,
 Region IV (Atlanta)

3. Within each region, the Standard Administrative Code denoting the next succeeding element consists of the initial portion as shown above followed by a single numeric/alpha character. For example:

AD4H3 Office of State Operations under the Office Of
 Congressional and Intergovernmental Affairs in Atlanta

4. The next succeeding element to the element shown above is assigned a number in the next column. For example:

AD4831 Division of State Plans under the Office of State
 Operations under the Office of Congressional and
 Intergovernmental Affairs in Atlanta

G. Administrative Code Applications to Offices of Regional Commissioners and Administrators

1. The Standard **Administrative Code** for the regional administrators associated with the principal operating components, would be expressed as stated below. The first letter of the Code will be the POC designator, followed by the letter "D" and then the specific Regional office designator in the next column, as follows:

F Health Care Financing Administration
 D Office of Regional Administrator8
 5 Region V (Chicago)

2. Subordinate units would be coded as in **F2**, 3, and 4 above.

H. Administrative Code Applications to Field

1. Organizations **located** outside parent organization headquarters and not within the purview of an Office of the Principal Regional Official should be coded to reflect the line hierarchical position of the organization within the parent organization.
2. A special provision has been made for coding field activities. The letter **"F"** is inserted in columns 4-11 **of the** point which divides the national headquarters organization from the field organization. **"F"** should not be used in columns 4-11 for any other purpose.

The succeeding columns, however many are necessary, will be used to identify the field organization and its internal structure. For example:

H	Public Health Service
HS	Health Services Administration
BSN	Indian Health Service
HSNF	Field
HSNF7	Phoenix Area Office
HSNF75	Colorado River Service Unit
HSNF753	PHS Indian Hospital, Parker, Arizona
HSNF7532	Administrative Services Branch
HSNF75321	Housekeeping and Transportation Section

3. The Code can be used to identify any individual activity, even though there may be many of the same type. For example, if there are 30 outpatient clinics and if a single column has a potential of 31 separate, identifiable codes, each such clinic can be identified individually in a single column.

If there is a need to identify more organizational elements than can be identified by a single column, two columns are paired to identify each organizational element. A **0** zero is placed in the left column and in the right column numbers one through nine and letters A through **Y** (except **"F," "I," "O,"** and **"Z"**) are inserted for the first 31 activities. The first would be **01**; the second **02**, etc. The 32nd is designated 1 in the left column and **1** in the right column. The 33rd is designated 1 in the left column and 2 in the right column etc. Two columns thus paired provide for 961 possible discrete code assignments.

To signal that two columns are being paired as described above, a **"Z"** is **placed** in the column immediately to the left of the paired columns. For example, **Z01, Z02**.

8-69-30 RESPONSIBILITIESA. HEW Management and Budget Office

1. The Division of Organizational Analysis (DOA), Office of the Secretary (OS), is responsible for the establishment and maintenance of the HEW Standard Administrative Code System and will provide advice and assistance to the Administrative Code Control Officers on problems of determining and applying the Code. Also, it will assign and control the Code Assignments in Columns 1, 2, and 3.
2. The Office of Personnel (OP), Assistant Secretary for Personnel Administration, is responsible for maintaining a central registry of Standard Administrative Codes and publishing listings of updated Code information on a regular basis.

B. Principal Operating Components (POC) and Staff Offices

1. The head of each POC and main subordinate elements thereof, and the DOA, Assistant Secretary for Management and Budget (ASMB), for the OS will designate an Administrative Code Control Officer who will be responsible for the establishment and maintenance of the organization's Standard Administrative Codes and the distribution of Code listings. The ASMB (DOA) will be notified of the names of these officers and their alternates.
2. The head of each POC and the ASMB for the OS will assure the development and issuance of guidance for the coding in their respective areas of jurisdiction. In addition, they will assure that the Standard Administrative Code System is applied within their respective organizations, both at headquarters and in the regions and the field. Administrative Code listings will denote currently existing and approved organizational elements. There will be situations in which obsolete Codes are retained in the Code listing until all positions are deleted from them. Once a new Code is prescribed for **an** organization, no personnel or other action will be taken affecting an employee of the Department and his rights which utilizes Administrative Codes denoting organizations which are nonexistent and which have been abolished.

8-69-40 PROCEDURESA. Assignment and Maintenance of Codes1. Reorganizations Requiring Office of the Secretary Approval

Upon Secretarial approval of an organizational change, the affected POC Administrative Code Control Officer will submit

proposed coding changes to the **DOA** utilizing Form HEW 509A (Revised) Notice of Administrative Code Revision.

For each organizational change the original and two copies of a Notice of Administrative Code Revision will be forwarded to **DOA**. One copy of the Form will be returned to the POC Administrative Code Control Officer indicating that the proposed Code changes have been reviewed and approved.

2. Reorganization Not Requiring Office of the Secretary Approval

Notifications of changes in Administrative Codes and titles should be provided on the notice form and submitted to **DOA** immediately after the organization changes have been approved.

3. Deadlines for Forwarding Change Notices

Administrative Code Control Officers should make every effort to forward Forms promptly to **DOA**. In order to include all possible data in a periodic update, Administrative Code Control Officers should dispatch Forms in time to arrive in the Employee Systems Center, OP, four days before the end of a pay period. In order to allow for the review and approval by **DOA**, change notices should be submitted to it by Tuesday noon of a week in which a pay period ends.

4. Retention of Codes

When an organizational change requires the assignment of another Administrative Code, the former Code will be preserved for at least two years before it is considered for possible re-use. Each POC will determine the period of preservation before re-use to be applied to its Codes.

B. Preparation of Form 509A (Revised) Notice of Administrative Code Revision

This form is the official source for adding a new Code, deleting an existing Code or several Codes simultaneously, or changing an existing Code. A separate entry is required for each organizational change. Since these forms provide the input to the system, they should be complete, accurate, and represent the currently approved organization to eliminate reprocessing as much as possible.

Control Number - Each form will be identified by a control number consisting of:

POC and Agency Identifier - Use first two column alpha indicators.

Fiscal Year - Last two digits of the current fiscal year.

Serial Number - Sequentially assigned number of two digits beginning **each fiscal** year with 01.

Type of Revision - Check appropriate box to indicate the nature of the organizational change as follows:

Addition
Deletion of a single code*
Change in Organization Title Only
Mass Deletion*

*NOTE: Action **to** delete codes pertaining to superseded organizations should be taken as soon as possible after an 'organization change is approved. A "deletion" action does not actually drop an administrative code from the register of administrative codes; rather it serves to notify management that, not later than 90 days after a change is approved, all positions should be transferred from the superseded organization. If, however, all positions still have not been removed, the organization will continue to be carried in a pending status.

Code Number - This item must be completed as follows:

If entry in type of revision is "Addition," enter the new Standard Administrative Code.

If entry is "Deletion - Single **Code**," enter the existing administrative code to be deleted, eventually.

If entry is "Change Organization Title," enter the Administrative Code as it currently appears.

If the entry is "Deletion - **Mass**," enter the top-level existing administrative code to be deleted, eventually.

Organization Title - Enter titles in Columns 13-75 inclusive. **Sixty-**two characters including spaces have been provided for, this item. Standard abbreviations are to be used as listed in **Exhibit** x8-69-1. Titles not included in the Exhibit on Standard Abbreviations will be written in full unless the title exceeds the characters permitted. In that event, abbreviate the title and indicate in the Remarks section the full title of the organization. The words "of" and "the" will be deleted entirely in organization **titles for** the purposes of this Chapter. Use the following guidance:

If the type of revision is "Addition: enter the new organization title.

If the type of revision is "Deletion - Single Code," it **is** not necessary to enter the existing organization title.

If the type of revision is "Change Organization Title," enter the new organization title.

If the type **of revision** is "Deletion - Mass," it is not necessary to enter the existing organization title.

Effective Date - Enter in Columns 76-80 the effective date of the organization change. Enter the last digit of the current calendar year, the month (01 through 12) and the day (01 through 31). For example, if the effective date of an organization was May 12, **1975**, it would be written 50512.

Remarks - If necessary, enter further information to clarify data furnished in previous items.

Submitted By - Form is to be signed and dated by the designated Administrative Code Control Officer or alternate.

Approved By - This space is provided for the signature or initials of the HEW Administrative Code Control Officer and the date.



ACCOUNTS	ACCTS	CALCULATING	CALCG
ACCOUNTING	ACCTG	CARDIOVASCULAR	CARDVASC
ACTIVITIES	ACTVS	CAREER	CRER
ACTIVITY	ACTVY	CATALOG	CATLG
ACTUARY	ACTRY	CENTER	CTR
ADJUDICATION	ADJUDN	CERTIFICATION	CERTIFN
ADJUSTMENTS	ADJSTMTS	CHAIRMAN	CHRMN
ADMINISTRATION	ADMIN	CHARGE	CHG
ADMINISTRATIVE	ADMIV	CHEMISTRY	CHEMSTRY
ADMINISTRATOR	ADMINR	CHIEF	CH
ADVISOR	ADVSR	CIVIL	CVL
AFFAIRS	AFFRS	CLAIMS	CLMS
AGENCY	AGNCY	CLASSIFIER	CLASSR
ANALYSIS	ANALS	CLERK	CLK
AND	&	CLINIC	CLNC
ANESTHESIOLOGY	ANESTHESLGY	CLINICAL	CLNCL
ANTIBIOTICS	ANTIBOT	CLINICS	CLNCS
APPEALS	APPLS	COLLABORATOR	COLLAB
APPRAISAL	APRSL	COLLATERAL	COLLATL
ARCHITECTURAL	ARCH	COLLECTION	COLLN
ASSEMBLY	ASSMBY	COLLEGE	COLL
ASSISTANCE	ASSTNC	COMMISSION	COMMSN
ASSISTANT	ASST	COMMISSIONER	COMMSNR
ASSOCIATE	ASSOC	COMMITTEE	COMTE
ASSOCIATION	ASSOCN	COMMODITIES	COMMODS
ATTORNEY	ATTY	COMMUNICATIONS	COMMUN
AUDIO-VISUAL	AUDVIS	COMMUNITY	COMUTY
AUDIT	AUDIT	COMPENSATION	COMP
AUDITOR	AUDR	COMPENSATORY	COMPTY
AUTOMATIC DATA PROCESSING	ADP	COMPLIANCE	COMPLNC
		CONGRESSIONAL	CONGRSL
		CONSULTANT	CONSLT
BACTERIOLOGICAL	BACTRLGL	CONSULTATION	CONSLTN
BALTIMORE	BALTO	CONSUMER	CONSMR
BENEFICIARIES	BENCS	CONTACT	CONCT
BENEFITS	BNFTS	CONTRACTS	CONTRCTS
BILINGUAL	BLNGL	CONTROL	CONTL
BIOCHEMISTRY	BIOCHEMSTRY	COORDINATION	COORD
BIOLOGICAL	BIOLGL	CORPORATION	CORP
BIOMEDICAL	BIOMDCL	COUNCIL	CNCL
BOARD	BD	COUNSEL	CNSL
BOOKKEEPING	BKKFG	COUNTY	CO
BRANCH	BR	COURT	CRT
BUDGET	BGT		
BUDGETING	BGTG		
BUILDINGS	BLDGS		
BUREAU	BU		
BUSINESS	BUS		

DEFENSE ----- DEF
 DELINQUENCY ----- DELQNCY
 DEMONSTRATION ----- DEMON
 DENTAL ----- DENTL
 DEPARTMENT ----- DEPT
 DEPARTMENTAL ----- DPTL
 DEPUTY ----- DEP
 DEVELOPMENT ----- DVPMT
 DIRECTOR ----- DIR
 DISABILITY ----- DISAB
 DISADVANTAGED ----- DISNVD
 DISBURSEMENT ----- DISBRSM
 DISSEMINATION ----- DISMTN
 DISTRICT ----- DIST
 DISTRICT OFFICE ----- DO
 DIVISION ----- DIV
 DOCUMENTATION ----- DOCMTN
 DOMESTIC ----- DMSTC
 DRUG ----- DRG

 EASTERN ----- ESTRN
 ECONOMIC ----- ECON
 EDITOR ----- EDTR
 EDITORIAL ----- EDTRL
 EDUCATION ----- EDUCN
 EDUCATIONAL ----- EDUCNL
 ELECTRIC ACCOUKTING MACHINE ----- EAM
 ELECTRONIC DATA PROCESSING ----- EDP
 ELEMENTARY ----- ELMNTY
 EMERGENCY ----- EMER
 EMPLOYMENT ----- EMPLMT
 ENFORCEMENT ----- ENFCMNT
 ENGINEER ----- ENGR
 ENGINEERING ----- ENGNRG
 ENTITLEMENT ----- ENTMNT
 ENVIRONMENTAL ----- ENVRMTL
 ESTABLISHMENT ----- ESTBLT
 EVALUATION ----- EVAL
 EXAMINATION ----- EXAM
 EXAMINER ----- EXAMR
 EXECUTIVE ----- EXEC
 EXPEDITER ----- EXPDTR
 EXTENSION ----- EXT
 EXTRAMURAL ----- EXTRAML

FACILITIES ----- FACLS
 FACILITY ----- FACL
 FAMILY ----- FAM
 FEDERAL ----- FED
 FELLOWSHIPS ----- FLWSPS
 FIELD ----- FLD
 FILES ----- FILES
 FINANCIAL ----- FINCL
 FOREIGN ----- FRGN

 GENERAL ----- GNRL
 GOVERNMENT ----- GOVT
 GOVERNMENTAL ----- GOVTL
 GOVERNMENT EMPLOYEES TRAINING
 ACT ----- GETA
 GROUP ----- GRP
 GUARANTEED ----- GURNTD

 HANDICAPPED ----- HNDCPD
 HEAD ----- HD
 HEALTH ----- HLTH
 HEARING ----- HRG
 HEMATOLOGY ----- HEMATLGY
 HISTORIAN ----- HISTRN
 HOSPITAL ----- HOSP
 HOSPITALS ----- HOSPS
 HOUSEHOLD ----- HSEHLD

 ILLUSTRATION ----- ILLUSR
 IMMEDIATE ----- IND
 INCENTIVE ----- INCNTV
 INDUSTRIAL ----- INDL
 INDUSTRY ----- INDSTRY
 INFORMATION ----- INFO
 INNOVATION ----- INVTN
 INQUIRIES ----- INQRS
 INSPECTOR ----- INSPR
 INSTITUTE ----- INST
 INSTITUTES ----- INSTS
 INSTITUTIONAL ----- INSTNL
 INSTITUTIONS ----- INSTNS
 INSTRUCTION ----- INSTRN
 INSTRUCTIONAL ----- INSTRNL
 INSURANCE ----- INS
 INSURED ----- INSD
 INTEGRATED DATA PROCESSING ----- IDP
 INTERGOVERNMENTAL ----- INGOVMNL
 INTERMEDIATE ----- INTRMED

INTERNAL ----- INTRNL
 INTERN&L REVENUE SERVICE ----- IRS
 INTERNATIONAL ----- INTL
 INTRAMURAL ----- INTRAML
 INVESTIGATION ----- INVEST'N
 INVESTIGATIVE ----- INVESTV

 JUVENILE ----- JUVNL

 LABOR - C - - - - - S - - - - - W LBR
 LABORATORIES ----- LABS
 LABORATORY ----- LAB
 LEADER ----- LDR
 LEGISLATION ----- LEGSLTN
 LEGISLATIVE ----- LEGSLTV
 LIAISON ----- LIASN
 LIBRARY ----- LBRY
 LICENSE ----- LCNS
 LITHOGRAPHIC ----- LITHO
 LOCAL ----- LOC

 MANAGEMENT ----- MGMT
 MANAGER ----- MGR
 MANPOWER ----- MNPWR
 MANUFACTURING ----- MFG
 MARKETING ----- MKTG
 MEDICAL ----- MDCL
 MEDICARE ----- MDCR
 MEDICINE ----- MEDCN
 MENTAL ----- MNLT
 METHODS ----- METHDS
 MICROBIOLOGY ----- MICROBLGY
 MIDDLE ----- MID
 MISCELLANEOUS ----- MISC
 MONITOR ----- MONTR

 NATIONAL ----- NATL
 NEUROLOGY ----- NURLGY
 NEUROPSYCHIATRY ----- NURPSYCHI
 NON-MEDICAL ----- NON-MEDCL
 NORTHEAST ----- NE
 NORTHERN ----- NTHN
 NORTHWEST ----- NW
 NOSOLOGIST ----- NOSLGST
 NURSE ----- NRS
 NURSERY ----- NRSRY
 NURSING ----- NRSNG
 NUTRITION ----- NUTRIN

OCCUPATIONAL ----- OCCPTL
 OFFICE ----- OFC
 OFFICER ----- OFCR
 ONCOLOGY ----- ONCLGY
 OPERATING ----- OPERATG
 OPERATIONS ----- OPERANS
 OPPORTUNITY ----- OPPRTNY
 ORGANIZATION ----- ORG
 ORIENTATION ----- ORNTTN

 PATHOLOGICAL ----- PATHOLOGCL
 PATHOLOGY ----- PATHLGY
 PAYMENT ----- PYMT
 PAYMENTS ----- PYMTS
 PAYROLL ----- PAYRL
 PERSONNEL ----- PRSNL
 PHARMACOLOGY ----- PHARMCLGY
 PHARMACEUTICAL ----- PHARMCTL
 PHARMACY ----- PHARMCY
 PHOTOGRAPHY ----- PKOTOGY
 PHYSICAL ----- PHYSL
 PHYSICIAN ----- PHYSN
 PLANNING ----- PLNG
 POLICIES ----- POLCYS
 POLICY ----- POLCY
 POLLUTION ----- POLU TN
 POST-ADJUDICATIVE ----- PSTADJDCTV
 POST-ENTITLEMENT ----- PSTENTMT
 POST-HOSPITAL ----- PSTPHOSP
 POSTSECONDARY ----- PSTSCNDY
 PREMIUM ----- PREM
 PREPARATION ----- PREP
 PRINCIPAL ----- PRNCPL
 PROCEDURES ----- PRCDRS
 PROCESSING ----- PROCSNG
 PROCUREMENT ----- PROC
 PROFESSIONAL ----- PROFSNL
 PROGRAM ----- PRGM
 PROGRAM CENTER ----- PC
 PROGRAMMING ----- PROGMG
 PROGRAMS ----- PRGMS
 PROJECT ----- PRJT
 PROPERTY ----- PRO P
 PROTECTION ----- PROTEC
 PSYCHIATRY ----- PSYCHY
 PSYCHOLOGY ----- PSYCHGY
 PUBLIC ----- PUB
 PUBLICATION ----- PUBLICA
 PUBLICATIONS ----- PUBLICAS
 PUBLIC HEALTH ----- PH
 PURCHASING ----- PURCHG

QUALIFICATIONS ----- **QUALIFNS**

RADIOLOGY ----- **RADLGY**

RECEIVABLES ----- **RECVBLS**

RECEPTIONIST ----- **RECPTNST**

RECONCILIATION ----- **RCNCILN**

RECONSIDERATION ----- **RRCNSN**

RECORDS ----- **RCDS**

RECRUITMENT ----- **RCRUITM**

REGION ----- **REGN**

REGIONAL ----- **REGNL**

REGULATION ----- **REGLN**

REGULATIONS ----- **REGLNS**

REHABILITATION ----- **REHAB**

REPORT ----- **RPT**

REPORTING ----- **RPTG**

REPORTS ----- **RPTS**

REPRESENTATIVE ----- **REP**

REPRESENTATIVES ----- **REPS**

REQUIREMENTS ----- **REQMTS**

RESEARCH ----- **RESCH**

RESOURCES ----- **RESCS**

RETARDATION ----- **RETRDN**

RETIREMENT ----- **RETRMT**

REVENUE ----- **REV**

REVIEW ----- **REVW**

RIGHTS ----- **RGHTS**

SAFETY ----- **SFTY**

SANITATION ----- **SANTAN**

SCHOOL ----- **SCHL**

SCIENCE ----- **SCNC**

SCIENCES ----- **SCNCS**

SCIENTIFIC ----- **SCINTFC**

SECOND ----- **SECNDY**

SECONDARY ----- **SECNDY**

SECRETARY ----- **SECY**

SECTION ----- **SECT**

SECURITY ----- **SECURTY**

SENIOR ----- **SR**

SERVICE ----- **SERV**

SERVICES ----- **SERVS**

SOCIAL ----- **SOCL**

SOUTHEAST ----- **SE**

SOUTHERN ----- **STHRN**

SOUTHWEST ----- **SW**

SPANISH ----- **SP**

SPECIAL ----- **SPECL**

STAFF ----- **STF**

STAFFING ----- **STFG**

STANDARDIZATION ----- **STDPZN**

STANDARDS ----- **STDS**

STATION ----- **STAN**

STATIONS ----- **STANS**

STATISTICAL ----- **STATCL**

STATISTICS ----- **STAT**

STUDENT ----- **STNT**

SUBUNIT ----- **SUBUN**

SUGGESTION ----- **SUGG**

***SUMMER** ----- **SUMR**

SUPERVISOR ----- **SUPVR**

SUPPLEMENTARY ----- **SPLTY**

SUPPLY ----- **SUPP**

SUPPORT ----- **SPRT**

SURGERY ----- **SURGY**

SURGICAL ----- **SURGL**

SURVEILLANCE ----- **SURVLNC**

SYSTEM ----- **SYSM**

SYSTEMS ----- **SYSMS**

***SUPERINTENDENT** ----- **SUPT**

TABULATING ----- **TABLTG**

TECHNICAL ----- **TECHNL**

TECHNOLOGY ----- **TECNLGY**

TELECOMMUNICATIONS ----- **TELECOMS**

TELEGRAPHIC ----- **TLGRPHC**

TELEPHONE ----- **TLPHN**

TELETYPE ----- **TLYTP**

TELEVISION ----- **TV**

TERMINATION ----- **TERMN**

TIMEKEEPING ----- **TMKPG**

TRAFFIC ----- **TRAFIC**

TRAINING ----- **TRNG**

TRANSPORTATION ----- **TRNSPTN**

TRAVEL ----- **TVL**

SCND ----- **UNIT**

UTILITY ----- **UTILY**

UTILIZATION ----- **UTILN**

VALIDATION ----- **VLDN**

VEHICLE ----- **VEHCL**

VETERINARY ----- **VETNRY**

VOCATIONAL ----- **VOCTL**

VOLUNTEER ----- **VOL**

VOUCHER ----- **VCHR**

WAREHOUSE ----- **WHSE**

WASHINGTON ----- **WASH**

WELFARE ----- **WELFR**

WESTERN ----- **WSTRN**

WORK ----- **WRK**

XEROX ----- **XROX**

Subject: AGENCY AGREEMENTS

8-77-00 Purpose
10 Scope
20 Definitions
30 Legal Authority for Agency Agreements
40 Management of Agency Agreements
50 Form and Content of Agency Agreements
60 Referral to the Secretary

8-77-00 PURPOSE

This chapter establishes Department policy for the management and use of agency agreements. It also provides information to be used by those who prepare these agreements.

p-77-10 SCOPE

This chapter applies only to those agreements which an HHS organizational unit enters into with another HHS organizational unit or with a Federal agency outside the Department for the purpose of procuring, providing, or exchanging services, supplies, and/or equipment. This chapter does not cover those "agreements or understandings" where agencies enter into a joint project in which they each contribute their own resources; nor does it cover "general agreements" which do not specifically commit the participating agencies to the purchase, provision or exchange of services, supplies, and/or equipment.

B-77-20 DEFINITIONS

For the purposes of this Chapter, an agency agreement (also known as a reimbursable agreement) is a written compact in which a Federal agency agrees to provide to, purchase from, or exchange with another Federal agency, services, supplies, and/or equipment. Agency agreements are generally between only **two** Federal agencies (interagency agreement) or two organizational units of the same agency (intra-agency agreement). Occasionally, they may involve more than two agencies or organizational units. As a general rule, the agency agreement will be the document with which the receiving agency agrees to reimburse the providing agency for the cost of the services, supplies or equipment. In certain cases two or more agencies may agree to exchange services, supplies, and/or equipment of an approximately **equal** value without a transfer of funds.

8-77-30 LEGAL AUTHORITY FOR AGENCY AGREEMENTS

A. Section 1535 of Title 31 of the U.S. Code (31 U.S.C. **1535**), provides the legal authority for most agency **agreements**. That section authorizes the head of an agency or a major organizational unit within an agency to **place an order** for goods and services with a major organizational unit within the same agency or with another Federal **agency if the** following four conditions are met:

1. Funds are available.
2. The head of the ordering agency or unit decides the order is in the best interest of the United States government.
3. The agency or unit to fill the order is **in a** position to supply or render the goods or services, or obtain them by contract; and
4. The head of the ordering agency decides the goods or services cannot be provided as conveniently or cheaply by a commercial enterprise.

For the purposes of this chapter, the Secretary is considered to be **"the** head of an agency." Similarly, for purposes of this chapter, the OPDIV heads and the STAPFDIV heads are considered to be the **"heads** of major organizational units." These **HHS** officials **have** authority to approve agency agreements, consistent with the provisions of 8-77-60. No other HHS official can approve agency agreements without specific delegated authority.

- B. If the work to be done under an agency agreement cannot be conducted under the authority of Title 31, other legal authority to have the work done by another agency and to transfer funds for that purpose must exist.
- C. In addition, the requisitioning and provider agencies or units must have independent legal authority to carry out the activity and expend funds for the particular purpose identified in the agreement.

8-77-40 MANAGEMENT OF AGENCY AGREEMENTS

Each major BBS organizational unit shall develop and implement within its operational framework, a system for the effective management and use of its agency agreements. As a minimum, the system should provide for:

- 0 Assurance that the services, supplies, and/or equipment to be provided under an agency agreement are essential to the operation of the requisitioning unit, cannot be provided by the requisitioning unit, and are obtained at the least possible cost.
- 0 Approval of all agency agreements at a high enough level to assure effective management control. The officials who sign the agreements must have the authority to make the commitments set forth in the agreements.
- 0 Assurance that the requisitioning unit has sufficient funds available for the services, supplies, and/or equipment to be provided under the agreement. (This should include funds certification by the appropriate administrative or financial officer.)
- 0 Review and concurrence by the budget officer or other financial manager responsible for control of the budget and staff years (FTEs) for each agreement.
- 0 Assurance that copies of the agreement are furnished to the respective finance offices for the establishment of the commitments/obligations of the requisitioning unit, and the recording of any advance if applicable.
- 0 Review and concurrence by the Office of the General Counsel (OGC) if the agreement requires the Secretary's approval, raises unresolved legal questions, presents novel or unusual legal circumstances, or is sensitive. Other agreements may be submitted for OGC review, as desired.
- 0 Referral to the Secretary, as necessary. See Section 8-77-60.
- 0 Assurance that the provisions of each agreement are consistent with OMB Circular A-76 on Commercial Activities.

- 0 Assurance that, as appropriate, **agreements comply** with requirements contained in the **HHS Information Resources Management Manual**.
- 0 Assurance that agreements are conducted in compliance with all applicable legislation (e.g., the Privacy Act, the **Paperwork** Reduction Act).
- 0 Designation of a responsible official to oversee the administration and execution of each agreement.
- 0 Maintenance, within prescribed records retention schedules, of copies of all agency agreements, together with pertinent documents related to them, *in* a systematic order at central locations which permits easy access for auditors or other Department staff.
- 0 Evaluation of the services, supplies, and/or equipment supplied or obtained under select agency agreements (e.g., those that are new or complex, those that involve large sums of money, or those that have been in existence for longer than three years) to ascertain the agreement's quality, value, and utility.

8-77-50 FORM AND CONTENT OF AGENCY AGREEMENTS

- A. Agency agreements have no single form. They may range from a few brief paragraphs **to a** detailed document of several pages. Their length and content depend on ~~the~~ complexity of the services, supplies, and/or equipment to be provided and the conditions under which the services, supplies, and/or equipment are to be provided. Exhibit 8-77-A contains a sample agreement. Use it as a guide (not an absolute).
- B. As a minimum, each agreement should contain the following information:
 - 0 Subject of the agreement.
 - 0 Official name of each *agency* participating in the agreement.
 - 0 Legal authority for the agreement.

- 0 Responsibility of each participant under the agreement.
- 0 Description of the services, supplies, and/or equipment that each participant will provide or obtain under the agreement, how and when these items will be provided and obtained, and their estimated or actual cost.
- 0 Description of financing arrangements including how the requisitioning unit will transfer funds and when, and how often, the supplying unit will submit **expenditure** reports. (Note: In certain cases, where the cooperating parties provide services to each other which are approximately equal, they may agree to provide such services without a transfer of funds.)
- 0 Time period to be covered by the agreement.
- 0 Appropriation numbers, billing address, and other accounting information applicable to the services, supplies, and/or equipment to be provided under the agreement.
- 0 Name, address, and telephone number of each person to be contacted for further information about the agreement.
- 0 Effective date of the agreement and, if necessary, provision for its modification.
- 0 Signature, name, and title of each signer to the agreement, and the date that each signer signs the agreement. Signers of the agreements should be of comparable rank.

8-77-60 REFERRAL TO **THE** SECRETARY

With the exception of Information Resources Management (**IRM**)-related agreements, which are reviewed separately under the Department's IRM review process, heads of **OPDIVs** and **STAFFDIVs** shall refer to the Secretary for approval any agency agreement which involves at least one of the following:

- 0 Agreement impacts major Secretarial or OPDIV policy initiative or contains significant policy change.
- 0 *Agreement* may have a significant impact on relations between the Department and State and local governments, Other HHS grantees, or the public.
- 0 Agreement is beyond the scope of authorities delegated by the Secretary.
- 0 Agreement is determined by OPDIV or STAFFDIV head to require Secretarial approval.

Submission of non-IRM-related agency agreements for Secretarial approval shall be made through the Assistant Secretary for Management and Budget (ASMB) under a cover memorandum which explains, in precise terms, the need for the agreement and the benefits to be derived from it. ASMB will obtain clearances of the proposed agreement from the Office of the General Counsel and other OS offices, as appropriate, before forwarding the agreement to the Secretary.

IRM-related agency agreements should be submitted for Departmental review and approval consistent with current dollar thresholds established for competitive acquisitions of information technology, and in compliance with requirements for ADP procurement as established in the HHS IRM Circulars.

SAMPLE AGENCY AGREEMENT

INTERAGENCY AGREEMENT BETWEEN
**THE DEPARTMENT OF HEALTH AND HUMAN SERVICES AND
THE DEPARTMENT OF DEFENSE**

I. **Purpose**

This interagency agreement establishes the basis for certain services to be provided to the Department of Health and Human Services (HHS) by the Department of Defense (DoD), Assistant Secretary of Defense, Comptroller, OASD(C). Under the provisions of this agreement, the DoD will provide to BBS computer access to the Federal Information Locator System (FILS) on a cost reimbursable basis. The DoD holds an umbrella contract with a commercial timesharing company which operates and maintains the FILS software.

II. **Authority**

31 USC 1535

III. **Background**

In March 1984, the Office of Management and Budget (OMB) informed Federal agencies that it was formally establishing FILS using the DoD system. Federal agencies are required to access the FILS data base for the purpose of checking new and existing public use reports for duplication with other new or existing reports. The purpose of this agreement is to arrange for BBS to have access to the computer facilities on which the FILS resides.

IV. **Scope of Work**

The DoD will provide BBS with access to the computer center at which the FILS resides in accordance with Teleprocessing Services Program (TSP) contract terms. BBS will acquire its own terminal equipment with which to access the computer center. Access to the computer center will be over public communications lines. DoD will provide BBS with the necessary protocols and account numbers to access the FILS. DoD will bill BBS for its use of computer facilities during the course of accessing FILS according to the normal rates charged users of FILS.

SAMPLE AGENCY AGREEMENT

V. Duration of Agreement

This agreement becomes effective on (date), and will remain in effect through (date). Annual renewal, commencing (date) may be made by written mutual consent of both parties. The renewal agreement will include an estimate of the reimbursable annual costs and the services to be provided.

VI. Project Officers

DoD (Name of Person)
OASD (C) MS **IRMS**
Room **3A336**, Pentagon
Washington, D.C. 20301

HHS (Name of Person)
Office of Public and State Data Systems
Office of Management Analysis and Systems
Room 526-F
Hubert H. Humphrey Building
200 Independence Avenue, S.W.
Washington, D.C. 20201

VII. Funds

The estimated value of this agreement is less than \$7,000 for FY 19__. HHS will reimburse DoD for costs incurred, not to exceed \$7,000 for FY 19__. Requests for payment should be submitted (quarterly, semiannually, annually) to:

Department of Health and Human Services
Division of Accounting Operations
Room 743-H Humphrey Building
200 Independence Avenue, S.W.
Washington, D.C. 20201

Requests for payment should cite the following accounting data:

Appropriation Number: XXXXXXXX

Common Accounting Number: XXXXXXXX Object Code: 25.xx

SAMPLE AGENCY AGREEMENT

HHS will send payment to:

OASD (Admin.), **WHS**
Directorate of Budget and Finance
Finance and Accounts Division
Room 3B 268, Pentagon
Washington, D.C.

Monthly, **DoD** will send BBS a list of the services provided under the agreement and the associated cost of the services for the preceding month. **DoD** should send these to (name of person) at the address shown above under item VI.

HHS

DoD

(Name of Person)
Assistant Secretary for
Management and Budget

(Name of Person)
Assistant Secretary of
Defense, Comptroller

Date

Date

Subject: ACQUISITION PLANNING

- 8-95-00 Purpose
 - 10 Applicability
 - 20 Requirements and Responsibilities for Acquisition Planning
 - 30 Planning by Contracting Activities
 - 40 Preparation of the Acquisition Planning Document
 - 50 Acquisition Planning Document

8-95-00 PURPOSE

This Chapter prescribes the requirements for acquisition planning for applicable negotiated acquisitions. (For additional details relative to acquisition planning, see Subpart 307.1 of the Acquisition Manual (RHSAR)).

8-95-10 APPLICABILITY

- A. An acquisition planning document is required for all new negotiated acquisitions which are expected to exceed \$ 100,000, except the following:
 - 1. Acquisition of architect-engineer services;
 - 2. Acquisition of utility services where the services are available from only one source; and
 - 3. Acquisitions made from or through other Government agencies.
- B. An acquisition planning document is also required for all **two-**step sealed bid acquisitions expected to exceed \$ 100,000.
- C. The principal official responsible for acquisition shall prescribe acquisition planning procedures for:
 - 1. Negotiated acquisitions which are not expected to exceed \$ 100,000;
 - 2. Two-step sealed bid acquisitions which are not expected to exceed \$ 100,000; and
 - 3. All other sealed bid acquisitions regardless of dollar amount.

- D. An acquisition planning document is not required for a contract modification which either exercises an option or adds funds to an incrementally funded contract, provided there is an approved acquisition planning document in accordance with HHSAR section 307.105, and there is no significant deviation from that plan.

8-95-20 REQUIREMENTS AND RESPONSIBILITIES FOR ACQUISITION PLANNING

A. **Planning by Program and Staff Activities.** Whenever execution of a program or project requires the acquisition of property or services by contract, the program or project plan shall delineate all elements to be acquired by contract. The program or project plans include a plan and time-frame for completion action.

B. **Planning for Acquisition Actions.** Action should commence as early as possible to effect an orderly and balanced acquisition workload throughout a fiscal year. Project officers who expect to initiate acquisitions are required to discuss their requirements with the acquisition officials who will be responsible for these acquisitions to compare current staff capabilities with anticipated requirements to achieve an even distribution of fiscal year workload consistent with program needs. These discussions should result in understandings on:

1. Details of the acquisition plan;
2. Schedule for the completion of the acquisition plan;
3. Preliminary discussions on the work statement/specification, and appropriate evaluation criteria: and
4. Preliminary discussions on the content and timing of the request for contract (RFC).

8-95-30 PLANNING BY CONTRACTING ACTIVITIES

Contracting activities will coordinate with program and staff offices to ensure timely and comprehensive planning for acquisitions, timely initiation of acquisition requests or requests for contract, and instruction of program and staff offices in proper acquisition practices and methods.

8-95-40 PREPARATION OF THE ACQUISITION PLANNING DOCUMENT

The acquisition planning document serves as an advance agreement

between program and acquisition personnel by outlining the methods of how and when the acquisition is to be accomplished. It serves to resolve problems early in the acquisition cycle, thereby precluding delays in contract placement. It is developed prior to the preparation and submission of the formal request for contract to the contracting activity. The acquisition planning document is prepared jointly by the project officer and the contract negotiator, or in accordance with procedures prescribed by the principal official responsible for acquisition.

B-95-50 ACQUISITION PLANNING **DOCUMENT**

The Department does not prescribe a standard format for the **acquisition** planning document, but recommends a format similar to that in **HHSAR** section 307.105. This HHSAR section also specifies the contents for the acquisition planning document.



Subject: TRAINING REQUIREMENTS FOR PROJECT OFFICERS
AND TECHNICAL PROPOSAL EVALUATORS

8-96-00	Purpose
10	Background
20	Policy
30	Exceptions
40	Course Prerequisites

8-96-00 PURPOSE

This chapter provides policies and procedures concerning training requirements, for Departmental project officers and technical proposal evaluators representing program offices involved in fulfilling mission needs and program requirements through the use of the contracting process.

8-96-10 BACKGROUND

- A. The Secretary's memorandum of **May 18, 1977**, entitled "**Actions Required to Correct Major Deficiencies in the Contracting and Grant Processes**," set forth a plan of action to improve the efficiency, effectiveness, and integrity of the Department's contracting process. As part of this plan, an intensive Department-wide training program was developed for project officers, technical proposal evaluators, and other key program officials to explain their role in the contracting process and their interrelationship with the contracting officer. The project officer training program was later updated and expanded to meet the requirements of Executive Order 12352 on Federal Procurement Reforms, dated March 17, 1982. **DHHS** now offers a "**Basic Project Officer**" course, "**Advanced Project Officer**" course, "**Basic Project Officer - ADP**" course, "**Advanced Project Officer - ADP**" course, "**Basic Project Officer - Architect/Engineer**" course, "**Basic Project Officer - Research & Development**" course, and four "**Writing Statements of Work**" courses (covering non-research & development, research & development, construction/architect & engineer, and supplies and services). Descriptions of the courses can be found in the "**DHHS Acquisition Training & Certification Program Handbook**". The Department will revise or add courses, as appropriate, to ensure that this program continues to **be of** the highest quality.

- B. While the objective of the training program is to improve technical input into all phases of the contracting process, special emphasis has been placed on the proper development of the contract statement of work, the technical evaluation process, and the contract monitoring process, to ensure that the Department's needs and interests are adequately specified and protected and that contracts are properly performed.

8-96-20 POLICY

It is the Department's goal to have all program personnel involved in the contracting process successfully complete the appropriate "Basic Project Officer" course, before assuming the responsibilities of, and serving as, project officers or technical proposal evaluators. Specifically:

- A. At least fifty percent of the DHHS program personnel, performing the function of technical proposal evaluator on a technical evaluation team or panel for any competitively solicited DHHS contract, shall have successfully completed the appropriate "Basic Project Officer" course, or an equivalent course (see paragraph C, below), as appropriate. This requirement applies to the initial technical proposal evaluation and any subsequent technical evaluations that may, be required.
- B. All program personnel selected to serve as project officers for DHHS contracts shall have successfully completed either the appropriate "Basic Project Officer" course, or an equivalent course (see paragraph C below).
- C. Determination of course equivalency shall be made by the Principal Official Responsible for Acquisition of the cognizant procuring activity. The contracting officer is responsible for ensuring that the project officer and technical proposal evaluators have successfully completed the required training.

8-96-30. EXCEPTIONS

A. Small Contracting Activities.

1. Program personnel designated to serve as project officers and technical proposal evaluators, for contracts originating in offices having a mission which only incidentally and infrequently involves the generation of contract requirements (i.e., normally less than three contract requirements per fiscal year and in an amount not exceeding \$100,000 per contract), are not required to have completed any of the Department's training courses (although completion of an appropriate "Basic Project Officer" course is recommended).
- 2: As a substitute for the training, contracting officers servicing these program offices are required to ensure, as a minimum, that program personnel designated to serve as project officers and technical proposal evaluators have read and studied the "DHHS Project Officers! Contracting Handbook", and fully understand their responsibilities. The contracting officer shall require these program personnel to furnish written certifications that they have fulfilled this requirement, prior to discharging the duties of project officer or technical proposal evaluator.

B. Urgent Requirements. In the event there is an urgent requirement for a specific individual to serve as a project officer and that individual has not successfully completed the appropriate "Basic Project Officer" course, the Principal Official Responsible for Acquisition may waive the training requirement and authorize the individual to perform the project officer duties, provided that:

1. The individual first meets with the cognizant contracting officer, to review the "DHHS Project Officers' Contracting Handbook" and to discuss the important aspects of the relationship between the contracting office and program office, as appropriate to the circumstances: and
2. The individual attends the next scheduled and appropriate "Basic Project Officer" course.

8-96-40 COURSE PREREQUISITES

A. Project Officers

1. Newly appointed project officers, and project officers **with** less than three years experience and no previous related training, are required to take the appropriate **"Basic Project Officer"** course. (The grade level for **project** officers attending the course should be GS-7 and above). All project officers are encouraged to take the appropriate **"Writing Statements of Work"** course.
2. Project officers with three years or more experience, and **project** officers with less than three years experience who have successfully completed the appropriate basic course, are qualified (and encouraged) to take the **"Advanced Project Officer"** course.
3. Additional information on prerequisites for attendance of **these** courses may be found in the **"DHHS Acquisition Training & Certification Program Handbook"**.

B. Technical Proposal Evaluators Technical proposal evaluators, regardless of experience, are required to take the appropriate **"Basic Project Officer"** course. Upon successful completion of the basic course, it is recommended that they take the appropriate **"Advanced Project Officer"** course.

Subject: DELEGATIONS OF AUTHORITY

8-100-00 Purpose

- 10 Legal Importance of Delegations
- 20 Legal Basis for Delegating Authority
- 30 Definitions
- 40 Responsibilities
- 50 Policies on Delegating Authority
- 60 Criteria for Delegating Authority
- 70 Form and Content of Delegations
- 80 Actions by the Delegating Official
- 90 Publication of Delegations
- 100 Reporting Delegations Affecting Regional Offices
- 110 Superseding, Amending, and Cancelling Delegations
- 120 Technical Assistance

Exhibit 8-100-A Sample of Delegation of Authority Memorandum

8-100-00 PURPOSE

This chapter sets forth Department policies and practices governing the delegating of authority. A companion chapter, Chapter 8-101, describes procedures for requesting the Secretary to delegate authority.

8-100-10 LEGAL IMPORTANCE OF DELEGATIONS

Delegations of authority are important to the operation of the Department. Without them the Department could not function very well since nearly all authority would reside with the Secretary. Delegations allow the Secretary and other officials to convey their authorities to subordinate officials so they may legally carry out the many activities of the Department. Carrying out these activities without legal authority could have a serious adverse impact on the Government, the Department, and the official who acts without legal authority. For example, an official who approves expenditure of funds without proper legal authority could be held liable for the funds.

It is essential that each official of this Department has written evidence of his/her legal authority before he/she takes any action to expend or use Government funds or resources.

8-100-20 LEGAL BASIS FOR DELEGATING AUTHORITY

A. Authority of the Secretary

The authority of the Secretary to delegate comes from these provisions of law:

1. Section 6 of the Reorganization Plan No. 1 of 1953 and Section 2 of the Reorganization Plan No. 3 of 1966 provide that the Secretary may make such provisions as he/she deems appropriate in authorizing the performance of any of his/her functions by any other officer or by any **agency** or employee of the Department.
2. 5 U.S.C. 301 authorizes the head of a Department to prescribe regulations for the distribution and performance of the Department's business.
3. 5 U.S.C. 302 authorizes the head of a Department to delegate to subordinate officials various powers pertaining to employment of personnel, purchase of articles from contingent funds, and other administrative matters.

In addition, laws which confer specific authorities upon the Secretary sometimes authorize the Secretary to delegate these authorities subject to certain conditions. For example, Section 856 of the Public Health Service Act (Act) authorizes the Secretary to delegate Title VIII authorities of the Act but prohibits the delegating of decision making authority on Title VIII grants and contracts to regional office personnel.

B. Authority to Delegate and Redelegate

1. The Secretary or any other Department officer may delegate and authorize redelegation of any authority conferred on him/her by law, unless the law prohibits such delegation.
2. The Secretary may **delegate** and authorize redelegation of any authority conferred on him/her by Executive Order if the Executive Order specifically authorizes **such action**. Otherwise, a legal interpretation must be obtained from the General Counsel whether such delegation and redelegation are permissible.
3. Any HHS officer or employee may redelegate any authority delegated to him/her unless the delegation document prohibits such redelegation.

4. Any BBS officer or employee who delegates or redelegates authority may continue to exercise the authority, since the act of delegating does not divest the authority from the delegating official.

8-100-30 DEFINITIONS

A. Delegation of Authority

Delegation of authority is the formal assignment or commitment of legal power, usually to a subordinate official, to make certain decisions and take certain actions that have legal significance. It may involve program authority, administrative authority, or both. It generally includes the authority to sign a legal document approving the taking of action by others. It not only empowers the delegate(s) with authority but may establish limitations on the exercise of the authority by others.

(Note. Certain employees of the Department have certain general authorities based on their status or position within their organization. For example, supervisors have the authority to assign work to employees under their supervision. These authorities are defined in position descriptions, functional statements, and other official documents. This chapter does not apply to these general grants of authority.)

B. Program Authorities

Program authorities are substantive authorities contained in Acts of the Congress or Executive Orders of the President that authorize programs. They authorize the taking of substantive actions such as issuing program guidelines, awarding grants, adjudicating eligibility for benefits, and analyzing applications for new drugs. Most program authorities of the Department are vested in the Secretary with the authority to delegate.

C. Administrative Authorities

Administrative authorities authorize the taking of financial, personnel, or other administrative actions in support of substantive programs, either directly or indirectly. Such actions include purchasing equipment, hiring employees, approving travel, issuing building passes, etc. These authorities are derived primarily from government-wide acts such as the Administrative Procedure Act of 1946, 5 U.S.C. 551 et. seq. or the Chief Financial Officers Act of 1990, 31 U.S.C. 901 et. seq., and from

regulations based on these Acts and are issued by central control agencies such as the Office of Management and Budget, General Services Administration and the Office of Personnel Management. These authorities generally reside in, flow through, or are coordinated by management staff offices which report to the head of an organization. For BBS, most of the administrative authorities flow through the Assistant Secretary for Management and Budget (Chief Financial Officer) and the personnel authorities (except as they relate to the Public Health Service Commissioned Corps) flow through the Assistant Secretary for Personnel Administration.

D. **Delegation/Redelegation**

Delegation and redelegation are acts of empowering others with legal authority. The term "delegation" describes the initial assignment of authority, while the term "**redelegation**" describes the reassignment of that authority.

8-100-40 RESPONSIBILITIES

A. **Delegation Control System**

The Head of each Operating Division (OPDIV), each Regional Director and the Assistant Secretary for Management and Budget for the Office of the Secretary (Headquarters) shall develop and maintain, within the guidelines of this chapter, a delegation control system for his/her organization that, at a minimum, provides for the:

1. Designation of a Principal Delegation Control Officer and, as needed, Delegation Control Officers for subordinate organizational levels.
2. Effective review of each delegation before putting it into effect to ensure that it meets the criteria stated in Section 8-100-60.
3. Prompt notification to all affected managers, supervisors, and other personnel of all changes in the authorities delegated to them.
4. Effective means for keeping all delegations current and available, including but not limited to these actions:
 - a. Prompt identification of the need to delegate authority.

- b. Filing of all delegations made to or by key officials within the organization with the organization's delegation control officer.
- c. Periodic review of existing delegations to ensure that they are needed, up-to-date, **and** consistent with current Department policy.

B. Delegation Control Officers

1. The HHS Delegation Control Officer, under the direction of the Office of the Deputy Assistant Secretary for Budget (DASB) develops Departmentwide policies and practices on the delegating of authority and provides Departmentwide instructions on those that are adopted, provides technical assistance on the use and application of delegations of authority, serves as the principal staff advisor within the Office of the Secretary on delegations of authority, coordinates review of proposed delegations submitted for approval by the Secretary, and maintains and indexes delegations made by the Secretary.
2. Each OPDIV Delegation Control Officer serves as his/her organization's principal advisor on delegations of authority, implements Department and agency policies and practices on delegations of authority, administers his/her organization's delegation control system, provides technical assistance on delegations of authority within his/her organization, and maintains and indexes delegations made to and within his/her organization.

C. HHS Managers

Each HHS manager is responsible for identifying the need for delegating authority within his/her organization and to subordinate organizations, for delegating authority to his/her subordinates and making certain that these officials understand the substance and limits of their authorities, and for periodically reviewing delegations in effect within the organization to insure their continued need.

8-100-50 POLICIES ON DELEGATING AUTHORITY

A. Level of Decision Making

It is Department policy to delegate decision-making authority to the organization level that will provide the

most timely, economical, and effective management and administration of programs and activities.

B. Flow of Deleated Authority

Delegations and redelegations of authority should follow organizational lines. Program authority usually flows from the Secretary through the Heads of Operating Divisions or Heads of Staff Divisions (such as the Office for Civil Rights) to operating officials at subordinate organization levels within the components or offices. Administrative authority normally flows from the Secretary through a STAFFDIV Head (such as the Assistant Secretary for Personnel Administration, the Assistant Secretary for Management and Budget, the General Counsel, etc.) to Heads of **OPDIVs**, Heads of other **STAFFDIVs**, and Regional Directors; and hence to operating and administrative officials at subordinate organization levels within the components or offices.

C. Authority to Redeleaate

Any delegated authority may be redelegated totally or partially unless the delegation document or underlying legal authority prohibits or restricts redelegation. If the delegation document contains no such prohibition or restriction, redelegation may be made.

D. Delegating Authority to Positions and to Occupants of positions

Authority should be delegated to official positions (e.g., Director, Office of Resource Management) or authority may also be delegated by name to occupants of official positions (e.g., Marie M. Harris, Director, Office of Resource Management) under necessary circumstances. However, these restrictions apply when authority is delegated to a named occupant of a position:

1. No one else can use the authority--not even the occupant's deputy serving in an acting capacity.
2. The authority becomes void when the occupant vacates the position.

Since neither of these conditions applies to delegations made to official positions, it is usually more effective to delegate to official positions than to occupants of official positions.

E. Authority of **Deputies** or a **Principal Deputy**

A deputy or principal deputy does not automatically have the same authority as the senior official. The deputy's or principal deputy's authority is limited to the delegations specifically given to the position or the authorities the deputy or principal deputy may exercise when serving in an acting capacity during the absence of the senior official.

F. Authority of **Acting** Officials

Any employee serving in a position in an acting capacity can **exercise** any authority delegated to that position, unless prohibited from doing so by the terms of the delegation or the document designating him/her as acting, or unless such exercise of authority is not otherwise legally permissible.

G. Delegations to be in Writing

Each delegation shall be made in writing in memorandum format, addressed to the positions or persons to whom the authority is being delegated, and signed by the official with the authority to make the delegation. (See Section 8-100-70 for format and content of delegation documents.)

Manuals and other official publications may be used to reflect delegations, but not to make them.

H. **Effective** Date of **Delegations**

Each delegation becomes effective on the date specified in the delegation document. No delegation can be made retroactively effective. However, under special circumstances actions taken prior to the effective date may be ratified and affirmed by the delegating official with the approval of the Office of the General Counsel.

I. Review by **Legal** Counsel

Prior to their approval, all initial delegations of authority shall be submitted to the appropriate division of the Office of the General Counsel (OGC) for review to ensure their legality. Redelegations of authority should also be submitted to the OGC for review whenever the official making the redelegation questions the legality of any aspect of the redelegation.

J. Effect of Reorganization on Delegations

Whenever an organization is reorganized, delegations to and within that organization may remain in effect **in the** successor organization, generally, unless:

1. The reorganization document specifies otherwise.
(Note. The reorganization document should always contain a statement on how the reorganization affects existing delegations. See Chapter **8-60** of this Manual for details.)
2. Functions upon which the delegations are based, or positions to which the delegations are made, are transferred to another organization or are abolished.
(In these cases, the delegations are terminated on the effective date of the reorganization unless the reorganization document specifies otherwise.)

Delegations that remain in effect in the successor organization generally shall be reviewed and updated not later than 90 days after the reorganization becomes effective to reflect changes in: the flow of authority to and within the organization, the functions performed by the organization, the organization's structure and nomenclature, the key positions within the organization, and any other factor affecting the delegating of authority.

8-100-60 CRITERIA FOR DELEGATING AUTHORITY

The decision to delegate authority shall be based upon evaluation of pertinent factors, including the following:

- o Legality. Can the authority legally be delegated?
- o Funds. Have funds been specifically appropriated to implement the authorities? Or, have senior officials allocated funds to support the authorities? If yes, from what source?
- o Need. Will the delegation effectively improve management and administration?
- o Responsibility. Is the position to which the authority is to be delegated appropriate in terms of grade level and other assigned responsibilities?
- o Economy. Will the delegation eliminate procedural steps, **shorten** lines of communication, or otherwise result in **overall** savings?

- 0 Service. Will the delegation improve services to the Department's clients?

8-100-70 FORM AND CONTENT OF DELEGATIONS

Each delegation shall be made in writing in memorandum format, and shall be signed by the delegating official. It shall contain, at least, the following information:

1. The authority of the delegating official to make the delegation.
2. The authority or authorities being delegated.
3. Any restriction or limitation to be placed on the delegate(s) in exercising or redelegating the authority. Unless the delegation restricts or limits redelegation, a delegate can redelegate any authority delegated to him/her.
4. The identity of any special instructions, if any, the delegate is to follow in exercising the delegated authority.
5. The date the delegation becomes effective. If such a date is not included in the body of the delegation, the effective date is the date that the delegating official signs the delegation.
6. The identity of each delegation that the delegation amends, supersedes, or cancels. Every effort should be made to be specific. Phrases such as **"This** delegation supersedes all previous delegations on this subject" should be used when delegations are widespread or when delegations were never updated after one or more reorganizations.

Prior to issuing a delegation, the delegating official should have the delegation reviewed for technical correctness by the delegation control officer.

See Exhibit 8-100-A at the end of this chapter for a sample delegation of authority.

8-100-80 ACTIONS BY THE DELEGATING OFFICIAL

After signing a delegation, the delegating official shall make certain that:

1. Each delegate is promptly provided a copy of the delegation.
2. Each delegate has access to the policy or procedural instructions identified in the delegation that he/she will need to exercise the delegated authority. Where appropriate, these instructions should be provided to each delegate with the delegation.
3. The delegation or a summary of it is published as prescribed by Section 8-100-90.
4. A copy of the delegation is sent to his/her delegation control officer.
5. The official file copy of the delegation is maintained for, at least, the life of the delegation; or, maintained permanently where there is a potential for litigation when the delegation is no longer viable for present actions but may be needed to show that the authority existed at the times an action was taken.

8-100-90 PUBLICATION OF DELEGATIONS

A. **Delegations Affecting the Public**

Whenever an HHS official makes a delegation or redelegation of authority that may have a significant impact on the public, that official shall have the complete text of the delegation or redelegation published as a notice in the Federal Register. Examples of delegations and redelegations that might have **such** an impact include delegations of program authority by the Secretary, redelegations of program authority by OPDIV/STAFFDIV heads, and delegations and redelegations of procurement authority or any authority where there is a potential for litigation and the delegation is needed after the delegation is no longer viable, but is required to show that the authority once existed. Delegating officials should consult their delegation control officer and legal counsel whenever they question whether publication in the Federal Register is necessary. (Part 3 of this Manual contains instructions on publishing notices in the Federal Register.)

B. Delegations of Program Authority

Whenever the Secretary or another HHS official who has statutory power makes an initial delegation of program authority to the Head of an OPDIV or STAFFDIV, that OPDIV or STAFFDIV Head shall report the delegation in its functional statement in the HHS Organization Manual.

C. Delegations of Administrative Authorities

Whenever an OS official makes a delegation of administrative authority that has wide interest, that official shall publish the delegation, or a summary of it, in the appropriate HHS staff manual. Officials in OPDIVs shall similarly publish in their directives systems redelegations of administrative authority that have wide interest.

8-100-100 REPORTING DELEGATIONS AFFECTING REGIONAL OFFICES

OPDIV regional officials and OS regional officials not under the direct supervision of a Regional Director (RD) shall keep their RD apprised of the authorities delegated to them by their headquarters. They may do this by sending the RD a copy or a summary of each delegation or by using another effective means of keeping the RD informed.

8-100-110 SUPERSEDING, AMENDING, AND CANCELING DELEGATIONS

A. Superseding Delegations

Whenever a new delegation supersedes another delegation, the superseded delegation and all redelegations based on it become null and void on the effective date of the new delegation, unless the new delegation specifically provides otherwise.

To avoid disruption of operations, the superseding delegation may provide, if legally feasible, that redelegations based on the superseded delegation will remain in effect for a reasonable time (i.e., not more than 90 days) pending the issuance of new redelegations.

B. Amending Delegations

Only the official in the position (or successor position) which issued the original delegation can amend the original delegation. Amendments to the original delegation should be processed in the same manner as the original delegation.

C. Canceling Deleaatons

To cancel a delegation, the official serving in the position (or the successor position) which issued the original delegation shall prepare a canceling memorandum, in which the delegation to be canceled and the date of cancellation are identified, and shall have the memorandum sent to each delegate who has the authority being canceled.

Whenever a delegation is canceled, the delegation and all redelegations based on it become null and void on the date stated in the canceling memorandum.

8-100-120 TECHNICAL ASSISTANCE

Technical assistance on delegating authority and applying the provisions of this chapter may be obtained from delegation control officers or from the Office of Budget, Office of the Assistant Secretary for Management and Budget, Office of the Secretary. Information on delegations made by the Secretary may also be obtained from this Office.



THE SECRETARY OF HEALTH AND HUMAN SERVICES
WASHINGTON, D.C. 20201

SAMPLE DELEGATION OF AUTHORITY

MEMORANDUM TO: Assistant Secretary
for Children and Families

SUBJECT: Delegation of Authority for Family Violence
Prevention and Services Program

Authority to Delegate

I hereby delegate to the Assistant Secretary for Children and Families the following authority vested in the Secretary of Health and Human Services.

Authority Delegated. Authority to administer the provisions of The Family Violence Prevention and Services Act, 42 USC 10401 **et seq.**, and as amended, now and hereafter.

Limitations.

1. This delegation excludes the authority to issue regulations or submit reports to Congress and shall be exercised under financial and administrative requirements applicable to all Administration for Children and Families authorities.
2. Responsibilities under this Act are to be carried out in accordance with the requirements of Section 307 of the Act. The Office of Civil Rights has been delegated enforcement authority under Section 307.

Effective Date. This delegation is effective immediately.

Effect on Existing Delegations. This delegation supersedes Memorandum dated April 30, 1986, "Delegation of Authority to Administer the Provisions of Title III of P.L. 98-457, The Family Violence Prevention and Services Act."

(Date signed)

(Secretary's name)

9-00-00	PURPOSE AND SCOPE
10	AUTHORITY
20	DEFINITIONS
30	OBJECTIVES
40	CONSULTATION ON REQUIREMENTS AND LEGAL INTERPRETATIONS
50	ROLES AND RESPONSIBILITIES
60	ESTABLISHMENT, AMENDMENT, RENEWAL/RECHARTERING AND TERMINATION OF FEDERAL ADVISORY COMMITTEES
70	NOMINATION, SELECTION AND APPOINTMENT OF FEDERAL ADVISORY COMMITTEE MEMBERS
80	CONFLICT OF INTEREST, CONFIDENTIALITY, PROCUREMENT INTEGRITY AND ETHICAL CONDUCT FOR FEDERAL ADVISORY COMMITTEE MEMBERS
90	CONDUCT OF COMMITTEE BUSINESS
100	REPORTS OF FEDERAL ADVISORY COMMITTEES

9-00-00 PURPOSE AND SCOPE

A. Purpose - This Chapter describes the Department's advisory committee policies for the:

1. Consultation on requirements and legal interpretations;
2. Roles and Responsibilities;
3. Establishment, Amendment, Renewal/Rechartering and Termination of Federal Advisory Committees;
4. Nomination, Selection and Appointment of Federal Advisory Committee Members;
5. Conflict of Interest, Confidentiality, Procurement Integrity and Ethical Conduct for Federal Advisory Committee Members;
6. Conduct of Committee Business; **AND**
7. Reports of Federal Advisory Committees.

B. Scope - The provisions of this Chapter apply to:

1. All Federal advisory committees and any similar group **whether or not established by this Department**, but which is used in the same manner as a committee established by the Department; **AND**
 2. Activities of all committees assigned to the Department by higher- authority.
- C. All other guidelines, instructions, policies or General Administration Manual (GAM) provisions which are inconsistent with this Chapter are superseded.

9-00-10 AUTHORITY

- A. Federal Advisory Committee Act (5 U.S.C. Appendix 2), as amended, Exhibit 9-00-1
13. Executive Order 12838, February 10, 1993, Exhibit O-00-2
- C. OMB Circular A-1 35, October 5, 1994, Exhibit 9-00-3

These authorities must be exercised to assure compliance with:

- A. 41 CFR Part 101-6 [FPMR Amendment A-40] Federal Advisory Committee Management, Exhibit 9-00-04
- B. Freedom of Information Act, 5 U.S.C. 552, and the Department's implementing regulation, 45 CFR 5, Exhibit 9-00-5
- C. Privacy Act, 5 U.S.C. 522a, and the Department's implementing regulation, 45 CFR 5a, Exhibit 9-00-6
- D. Government in the Sunshine Act, 5 U.S.C. 552b, Exhibit 9-00-7
- E. HHS Standards of Conduct (45 CFR Part 73), Exhibit 9-00-8
- F. Handicapped Federal Employees, Personnel Assistants Employment Excerpt, Exhibit 9-00-9
- G. Unfunded Mandate Reform Act of 1995, Section 204 (State, Local and Tribal Input), Exhibit 9-00-10, **AND**

Other relevant statutes as applicable.

9-00-20 DEFINITIONS

- A. **Federal Advisory Committee** - Any committee, board, commission, council, conference, panel, task force or other similar group, or any subcommittee or other subgroup thereof, which is not composed entirely of full-time Federal officials or employees, established by statute, or established or utilized by the Department for the purpose of obtaining advice or recommendations on issues or policies relating to the programs, responsibilities or activities of the Department.

The term Federal Advisory Committee applies to:

- (a.) All such committees regardless of whether they are established or utilized on a standing or intermittent basis; OR
- (b.) Any subcommittee or subgroup of a Federal advisory committee.

The term Federal advisory committee does not apply to single meetings between officials of the Department and groups of outside persons.

- B. **Presidential Advisory Committee** - Any advisory committee established by Executive Order or other direction by the President, or whose members are appointed by the President to provide direct advice and counsel; or any committee designated by statute as Presidential. These committees are considered to be non-discretionary.
- C. **Non-discretionary (statutory/directed by law) Advisory Committees** - Any advisory committee established by the Congress or required to be established by the Congress.
- D. **Discretionary (non-statutory) Advisory Committees** - Any advisory committee established by any Federal officer under a general authority.
- E. **Ad Hoc Committee** - Any Federal advisory committee whose expected duration is 12 months or less. The designation "ad hoc" will be included in a committee name to indicate its short-term status.
- F. **Operational Committee** - A committee which does not provide advice or make recommendations. It is not covered by the Federal Advisory Committee Act.

9-00-30 OBJECTIVES

A. The objectives of the I HHS advisory committee management program are to:

1. Assure compliance with Executive Orders, laws, and regulations governing or pertaining to advisory committee management;
2. Assure conformity to the law and basic principles of sound committee management as set forth below;
3. Limit the number of advisory committees to those that are essential and terminate any committee not fulfilling its purpose;
4. Assure effective use of advisory committees and their recommendations, while assuring that decision-making authority is retained by the responsible Department officers;
5. Provide clear goals, standards and procedures with respect to creation, operation, and duration of committee;
6. Assure that adequate information is provided to the President, the Congress, and the public regarding advisory committees;
7. Assure adequate opportunities for access by the public to advisory committee meetings;
8. Provide requirements for advisory committee reports and their availability to the public;
AND
9. Assure that committees are used solely for advisory functions unless specifically provided otherwise by statute.

9-00-40 CONSULTATION ON REQUIREMENTS AND LEGAL INTERPRETATIONS

- A. If you are an OS official, you should consult the Office of the General Counsel, Business and Administrative Law Division, for legal interpretation.
- B. If you are an Operation Division (OPDIV), you should consult the Office of the General Counsel for your agency for legal advice and counsel.

- C. OS Staff Division, (STAFFDIV) officials should call the DCMO on all other matters relating to Federal advisory committees. OPDIV officials should consult their respective CMOs concerning matters other than legal interpretations.

9-00-50 ROLES AND RESPONSIBILITIES

- D. **Secretary** - The Secretary's responsibilities, unless delegated, are to:
1. Establish uniform administrative guidelines and management controls for advisory committees established by the Department or within the Department's jurisdiction;
 2. Ensure that systematic information on the nature, functions, and operations of each such committee is maintained;
 3. Designate an Advisory Committee Management Officer for the Department;
 4. Approve the establishment, renewal, amendment or termination of Federal advisory committees within the Department unless:
 - a. the authority has been vested by statute in another official; **OR**
 - b. the authority has been delegated by the Secretary to other Department officials.
 5. Approve the appointment of and rates of pay in accordance with applicable statutes and directives, for Federal advisory committee members except those members who are appointed by the President. The Secretary may delegate appointment authority to Department officials;
 6. Approve a change of the beginning or ending dates of terms of Secretarial appointed members;
 7. Designate a person or persons within the Immediate Office of the Secretary, if desired, to:
 - a. Review materials requiring the decision or action of the Secretary, in order to provide policy direction and oversight on advisory committee management;

- b. Represent the Secretary in dealings with officials within and outside the Department;
 - c. Act as a liaison between the Secretary and the Department Committee Management Office or others on advisory committee matters; OR
 - d. Approve waivers of policy regarding membership, unless delegated.
- B. **Department Committee Management Officer (DCMO)** - The DCMO assists the Secretary in the management of Federal advisory committees and Presidential advisory committees within the Department's jurisdiction. The DCMO's responsibilities are to:
- 1. Develop and issue policies, guidelines, standards, and procedures for management control of HHS advisory committees, after consultation with the Secretary or designee;
 - 2. Review and prepare comments for the Secretary on proposed legislation, Executive Orders, regulations, and directives relating to Federal advisory committees;
 - 3. Review and prepare comments for the Secretary on committee management documents which require approval;
 - 4. Provide leadership, direction and assistance to HHS officials and Committee Management Officers (CMOs) on advisory committee matters;
 - 5. Ensure that necessary data of advisory committees and their members are collected, records maintained, reports prepared, documents released and files disposed of as required by statute, regulation, directive, and HHS policies;
 - 6. Coordinate, prepare and, subject to the approval of the Secretary or designee, publish rosters and reports required by statute or requested by the Secretary, Congress, the General Services Administration (GSA), and the Office of Management and Budget (OMB);
 - 7. Serve as liaison with other Federal agencies, the Congress or other outside organizations on advisory committee matters, after consultation with the Secretary or designee; AND
 - 8. The DCMO performs Committee Management Officer functions for HHS organizations outside the Public Health Service.

C. Heads of OPDIVS and STAFFDIVS. If you have a Federal advisory committee, you must:

1. Designate a **Committee Management Officer (CMO)** for the organization;
2. Assure through the **CMO** that adequate controls and **procedures** are established for advisory committees;
3. Provide staff and **other** support services for each duly **established** advisory committee;
4. Designate a permanent HHS employee to serve as **Designated Federal Official (IWO)**;
5. Assure that any advisory **committee** proposed for **establishment** or **renewal** is essential;
AND
6. Make adequate plans for a **committee's** administrative support.

D. Committee Management Officers (CMOs)

1. **CMOs** are **designated** for **each** of the **HHS** organizations listed below:
 - ... **Agency for Health Care Policy and Research (AHCPR)**
 - ... **Agency for Toxic Substances and Disease Registry (ATSDR)**
 - ... **Centers for Disease Control and Prevention (CDC)**
 - ... **Food and Drug Administration (FDA)**
 - ... **Health Resources and Services Administration (HRSA)**
 - ... **National Institutes of Health (NIH)**
 - ... **Substance Abuse and Mental Health Services Administration (SAMHSA)**
2. **The DCMO** performs **CMO** functions for advisory **committees** outside the jurisdiction of **these** organizations.
3. **OPDIV** and **STAFFDIV** **CMO's** responsibilities are to:
 - a. Advise **officials** of **their** advisory committee management **responsibilities**;
 - b. Review charter proposals and member **nominations** to **assure** compliance with applicable statutes, **regulations, directives** and **I-II-IS** policies;

- c. Carry out the following activities for advisory committees and their members as required by statute, regulation, directives, and HHS policies:
 - (1) Ensure that necessary data are collected;
 - (2) Provide input for Department reports to the DCMO for consolidation;
 - (3) Prepare or coordinate the preparation and submission of reports;
 - (4) Maintain records and reports; AN D
 - (5) Dispose of files.
 - d. Coordinate preparation of notices and ensure publication in the Federal Register and in other publications, as appropriate, for:
 - (1) Advisory committee meetings;
 - (2) Establishment of committees; AN D
 - (3) Availability of reports.
- E. **Designated Federal Official (DFO)** - The official to whom the Federal advisory committee reports must designate a permanent HHS employee to serve as DFO, e.g. Executive Director, Executive Secretary or Scientific Review Administrator. This official's responsibilities are to:
- 1. Supervise the day-to-day operations of the committee;
 - 2. Provide direction, control, and assistance to ensure that the committee operates as required and in accordance with good management practices;
 - 3. Ensure that the committee fulfills its mission as described in its charter;
 - 4. Ensure necessary staff support;
 - 5. Initiate requests for approval of proposed committee members in accordance with Paragraph 9-00-60 of this chapter;

6. Call or approve the calling of committee meetings;
 7. Formulate or retain final approval of the agenda for each meeting (other than Presidential advisory committees);
 8. Prepare or provide information for a notice of each meeting for submission to the Federal Register;
 9. Ensure preparation of materials for consideration by the committee;
 10. Attend each meeting or ensure that another full-time HHS employee attends;
 11. Ensure orientation of new members;
 12. Ensure that detailed minutes are kept of each meeting;
 13. Adjourn any meeting when adjournment is in the public interest, if the chairperson is a public member. If the DFO is not present at the meeting, the designated full-time HHS employee in attendance may also adjourn the meeting in the public interest;
 14. Coordinate the preparation of committee reports;
 15. Maintain all committee records required by statute, Presidential directives, directives or regulations of the OMB and GSA, and Department policy and regulations;
 16. Dispose of committee records in accordance with provisions of section 36 CFR 1228, Disposition of Federal Records, and procedures prescribed in the Department's General Administration Manual and by agency retention and disposal schedules; **AND**
 17. Perform such other duties as may be assigned by the head of the appropriate OPDIV, OS STAFFDIV, or agency.
- I. Federal Advisory Committee Members - Federal advisory committee members' responsibilities are to:
1. Comply with the requirements for Conflict of Interest and Standards of Conduct outlined in 9-00-80 of HHS GAM;

2. Excuse themselves from participating in any meeting (or portion) or other activity where they would:
 - a. Give advice or participate in any particular matter which might have:
 - (1) A direct or indirect effect on the interests of an organization or institution where the member is an employee, official, or consultant, **OR**
 - (2) A direct or indirect effect on financial interest of the member.

9-00-60 ESTABLISHMENT, AMENDMENT, RENEWAL/RECHARTERING AND TERMINATION OF ADVISORY COMMITTEES

- A. **Policy** - No Federal advisory committee will be established unless such establishment is specifically authorized by statute, by the President or by the Secretary. Discretionary (non-statutory) advisory committees will be established only after the Secretary has determined, after consultation with the GSA and OMB, where required, that the specific functions and duties cannot be adequately performed by existing I-HIS offices, by informal working relationships within or between departments or agencies of the Federal government, or by existing Federal advisory committees.
- B. **Authority** - The authority to establish a Federal advisory committee is reserved by the Secretary unless a statute or Presidential directive provides otherwise, or unless the Secretary has made a specific delegation of authority.
- C. **Establishment Process** - Heads of OPDIVS and OSSTAFFDIVS may request establishment of a Federal advisory committee when:
 1. There is a genuine need for advice from an advisory committee, and it is in the public interest to establish a committee to provide advice necessary to carry out the responsibilities imposed on the Department by law; AND
 2. These officials have ensured that adequate authority exists for such establishment and the authority complies with statutory requirements and restrictions.
- D. **Charter** - A charter must be filed for all Federal advisory committees subject to FACA. The charter should be prepared by the responsible official with assistance from the CMO. Committees are established for 2-year periods, unless otherwise fixed by law.

Charters should be specific and cite the purpose, authority, functions, structure, meetings, compensation, annual cost estimates, reports, and termination date. A committee may not meet until the charter has been signed by the appropriate authority and filed with the appropriate oversight committee in the U.S. Senate, House of Representatives and Library of Congress.

- E. **Charter Amendments and Renewal/Rechartering** - The appropriate official must approve charter amendments, the renewal of discretionary (non-statutory) committees, and rechartering of non-discretionary (statutory) committees.
- F. **Termination of Committees** - Federal advisory committees whose duration is not otherwise fixed by law or Presidential directive will terminate:
1. Two years after the date of establishment unless approved for renewal after consultation (if necessary) with the Administrator, GSA; OR
 2. Upon the expiration date set forth in the charter, unless approved for renewal after consultation (if necessary) with the Administrator, GSA; OR
 3. When its mission has been accomplished, even though the expected period of duration has not expired; OR
 4. When the function(s) assigned to the committee can be handled by another committee.

9-00-70 NOMINATION, SELECTION AND APPOINTMENT OF FEDERAL ADVISORY COMMITTEE MEMBERS

- A. **Appointing Authorities** - The President appoints members to committees which are established by Presidential directive. The Secretary appoints members to all other HHS advisory committees unless specific statutory or delegated authority has been made to other HHS officials to do so.
13. **Policy** -
1. Persons are nominated, selected and appointed to HHS Federal advisory committees based on their qualifications to contribute to the accomplishment of the committee's objectives.

2. The authority which establishes the committee or the committee charter may spell out the qualification requirements for specific members or for the entire committee membership.
3. Department policy provides that committee membership will be:
 - a. Fairly balanced in terms of the points of view represented and the functions to be performed;
 - b. Composed of as equitable geographic, ethnic and gender representation so long as the effectiveness of the committee is not impaired;
 - c. Selected without discrimination on the basis of age, ethnicity, gender, sexual orientation, disability or cultural, religious, or socioeconomic status; **AND**
 - d. Appointed in such a manner as to assure an orderly rotation of the members' terms.
4. It is Department policy to avoid excessive individual service on advisory committees and multiple committee memberships. Specifically, this policy provides that a Federal advisory committee member will not:
 - a. Serve continuously as a member of any single advisory committee for more than four years;
 - b. Serve for more than eight combined years within a period of 12 years on one or more committees within an agency;
 - c. Serve on more than one committee within an agency at the same time; **OR**
 - d. Serve on the same committee at the same time with another individual who is affiliated with a particular non-Federal organization or institution in the same city excluding designated multi-campus organizations and State systems.

9-00-80 CONFLICT OF INTEREST, CONFIDENTIALITY, PROCUREMENT INTEGRITY AND ETHICAL CONDUCT FOR ADVISORY COMMITTEE MEMBERS

- A. **Policy** - The Department's policy is to avoid conflicts of interest (COI) and the appearance of such conflicts, in the selection and use of individuals serving as members of the Department's advisory committees subject to the Federal Advisory Committee Act.

Such committees shall also be operated in such a manner as to preclude the potential for violations of procurement integrity regulations and applicable regulations governing ethical behavior. Required records shall be maintained regarding financial and organizational interests of such committee members, and the appropriate steps shall be taken to handle any potential conflict or appearance situation.

- B. Authority and Responsibility** - Regarding conflict of interest and ethics regulations, the Office of Government Ethics (OGI) has the authority to issue such regulations and provide interpretations. Regarding Procurement Integrity laws, the Business and Administrative Law division of the HHS Office of General Counsel has the lead authority to manage contract review activities.
1. Within the Department, the authority to serve as the Designated Agency Ethics Official (DAEO) has been delegated to the Special Counsel for Ethics, Office of Special Counsel for Ethics (OSCE) and this individual has the responsibility and the authority to manage the ethics program within the Department.
 2. Heads of OPDIVS and OS STAFFDIVS are responsible for providing a Deputy Ethics Counselor (DEC), with authority delegated by the DAEO, to manage the ethics program within the OPDIV/STAFFDIV. This individual is responsible for establishing and operating an effective ethics program in which the Designated Federal Official (DFO) performs the day-to-day management of COI functions for specific committees and their members.
 3. The DFO, or appropriate permanent specialized staff in each HHS agency, shall be responsible for:
 - a. Providing new committee members with orientation and training regarding conflicts of interest, ethical standards of conduct, and procurement integrity;
 - b. Obtaining and reviewing confidential financial or other pertinent information to prevent potential conflicts of interest or appearances of conflicts, as required; **AND**
 - c. Actively monitoring members' participation in meetings and precluding members from participation in matters, as appropriate, to avoid potential conflicts of interest, appearances of conflict of interest, violations of procurement integrity regulations or applicable ethics regulations.

C. Committee Members Who Serve as Special Government Employees (SGEs) -

1. **Policy** - SGEs shall comply with Federal conflict of interest laws and regulations and with regulations governing confidentiality, procurement integrity anti ethical behavior.
 - a. The Standards of Ethical Conduct for Employees of the Executive Branch provide the relevant definitions and delineate the standards of ethical behavior required of SGE advisory committee members.
 - b. SGE members of advisory councils, boards and committees are governed by the criminal Conflict of Interest Statutes (18 U.S.C. §201-208), Standards of Ethical Conduct for Employees of the Executive Branch (5 C.F.R. Part 2635), the HHS Standards of Conduct and regulations pertaining to protection of confidential information and procurement integrity.

D. Authority and Responsibility - In addition to the responsibilities listed in 2C. above, the DFO shall be responsible for:

1. Providing annual ethics training for SGEs, as defined by the DAEO and DEC;
2. Initiating, justifying, and obtaining approval for individual recusals, waivers or authorizations regarding participation in advisory committee matters, as appropriate;
AND
3. **Preparing** reports on SGEs, including the Annual Ethics Report (financial disclosure forms filed, annual ethics training provided, conflict of interest waivers granted), and other documentation, as required.

9-00-90 CONDUCT OF COMMITTEE BUSINESS

A. Limitations - No Federal advisory committee will:

1. Hold any meeting except at the call of or with the advance approval of the designated Federal official (DFO), and with an agenda approved by such official (other than Presidential advisory committee) unless the Secretary or designee determines it is in the public interest to permit such meetings;

2. Hold any meeting in the absence of a quorum. Unless otherwise established in the charter of the committee, a quorum shall consist of a majority (one more than one-half) of the committee's authorized membership, including ex officio members. In addition, ex officio members shall have full voting rights, unless otherwise prohibited by statute. The same rules will apply to sub-committees which are composed entirely or partly of members of the parent committee;
3. Hold any meeting in the absence of the DFO. If simultaneous subgroup meetings are to be held, each subgroup must have a DFO in attendance; AND
4. Make recommendations or give advice with respect to matters not considered by the committee in regular sessions or not within the scope of its functions as set forth in the charter.

B. Committee Meetings -

1. Selection of Meeting Site Locations - Meetings must be held at reasonable times and at places that are reasonably accessible to members of the public, including accommodations for physically challenged individuals, if requested. Whenever feasible, Government facilities must be used and meetings held in places involving the least expense to the Department.
2. Public Attendance and Participation at Meetings -
 - a. Any interested person may attend, as an observer, any meeting or portion thereof which is open to the public;
 - b. Questioning by the public of committee members or other participants will not be permitted, except with the approval of the committee chairperson;
 - c. Persons desiring to submit statements should be advised to address them to the DFO of the committee. Committee members must be given copies of all written statements submitted by interested individuals; AND
 - d. The DFO has authority to adjourn any meeting not considered to be in the public interest, such as an unwarranted departure from the agenda.
3. Notice and Cancellation of Committee Meetings -

- a. The DFO is responsible for ensuring that notices of all committee and subcommittee meetings are submitted to the Federal Register in sufficient time to permit publication at least 15 calendar days before each meeting. In the event that 15 days' notice is not given, the reasons must be made a part of the meeting notice;
 - b. Notices must include the name of the committee, the date, time, and place of the meeting; a summary of the agenda; a statement that the meeting is open to the public or, if the meeting or any portion thereof is closed, a statement to that effect citing the specific exemptions of the Government in the Sunshine Act as the basis for closing all or part of the meeting. In addition, the notice must contain the name, address and telephone number of the contact person from whom a list of committee members and summaries of meetings may be obtained; AND
 - c. Cancellation of a meeting previously published must be submitted to the Federal Register in time for public notice.
4. Closing of Committee Meetings to the Public - All meetings shall be open except as provided in the FACA, as amended by the Government in the Sunshine Act.
5. Committee Meeting Records -
- a. Detailed minutes shall be kept of each advisory committee meeting, including meetings of subgroups;
 - b. When a meeting (or portion) is closed, and detailed minutes are not to be made available in their entirety to the public, the advisory committee must prepare and make available to the public within 14 days of the close of the meeting a summary of its activities and related matters which are informative to the public consistent with the policy of 5 U.S.C. 552b. Notice of the availability of such a summary shall be incorporated in the notice of the meeting published in the Federal Register.

9-00-100 REPORTS OF FEDERAL ADVISORY COMMITTEES

- A. President's Annual Report to the Congress - The DCMO will coordinate the Department's submission of the President's Annual Report to Congress on Federal Advisory Committees, as required by section 6(c) of the FACA. Each committee in existence (including those that terminated) during the preceding fiscal year must report on the activities, status, and changes in its composition.

- B. Annual Report of Closed Meetings - The CMO of each OPDIV, OS STAFFDIV or agency must ensure that all Federal advisory committees issue a written annual report as required by section 10(d) of the FACA. The report must include:
1. The function of the committee;
 2. A list of members and their business addresses;
 3. The dates and places of meetings;
 4. A summary of the committee's activities and recommendations during the preceding year; AND
 5. Notice of availability of such reports must be published in the Federal Register no later than 60 days after completion. Within this period, a copy of each report will be provided directly to the Library of Congress.
- C. Annual Report Required by Section 1114(f) of the Social Security Act - The DCMO will coordinate the preparation of the annual reports on Federal advisory committees created to advise the Secretary in the discharge of the Department's responsibilities under the Social Security Act. The report requires a list of all such committees, the names and addresses of members, and a summary of activities during the preceding year.
- D. Report on Presidential Advisory Committee Recommendations - The CMO of each OPDIV, OS STAFFDIV or agency will develop, compile and submit to the DCMO the information necessary to report to GSA as required by section 6(b) of FACA: Within one year after a Presidential advisory committee has submitted a public report to the President, the President or designee (Administrator, GSA) shall make a report to Congress stating either the proposals for action or reasons for inaction, with respect to the recommendations contained in the public report.
- E. Dissemination of Reports - All of the above reports will be reviewed by the Secretary or designee before they are printed for dissemination or delivered to another Federal agency for dissemination.



Federal Advisory Committee Act

Public Law 92-463
92nd Congress, H. R. 4383
October 6, 1972

An Act

86 STAT. 770

To authorize the establishment of a system governing the creation and operation of advisory committees in the executive branch of the Federal Government, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Federal Advisory Committee Act".

Federal Advisory Committee Act.

FINDINGS AND PURPOSES

Sec. 2. (a) The Congress finds that there are numerous committees, boards, commissions, councils, and similar groups which have been established to advise officers and agencies in the executive branch of the Federal Government and that they are frequently a useful and beneficial means of furnishing expert advice, ideas, and diverse opinions to the Federal Government.

(b) The Congress further finds and declares that—

- (1) the need for many existing advisory committees has not been adequately reviewed;
- (2) new advisory committees should be established only when they are determined to be essential and their number should be kept to the minimum necessary;
- (3) advisory committees should be terminated when they are no longer carrying out the purposes for which they were established;
- (4) standards and uniform procedures should govern the establishment, operation, administration, and duration of advisory committees;
- (5) the Congress and the public should be kept informed with respect to the number, purpose, membership, activities, and cost of advisory committees; and
- (6) the function of advisory committees should be advisory only, and that all matters under their consideration should be determined, in accordance with law, by the official, agency, or officer involved.

DEFINITIONS

Sec. 3. For the purpose of this Act—

(1) The term "Director" means the Director of the Office of Management and Budget.

(2) The term "advisory committee" means any committee, board, commission, council, conference, panel, task force, or other similar group, or any subcommittee or other subgroup thereof (hereafter in this paragraph referred to as "committee"), which is—

- (A) established by statute or reorganization plan, or
- (B) established or utilized by the President, or
- (C) established or utilized by one or more agencies,

in the interest of obtaining advice or recommendations for the President or one or more agencies or officers of the Federal Government, except that such term excludes (i) the Advisory Commission on Intergovernmental Relations, (ii) the Commission on Government Procurement, and (iii) any committee which is composed wholly of full-time officers or employees of the Federal Government.

(3) The term "agency" has the same meaning as in section 551(1) of title 5, United States Code.

(4) The term "Presidential advisory committee" means an advisory committee which advises the President.

APPLICABILITY

Sec. 4. (a) The provisions of this Act or of any rule, order, or regulation promulgated under this Act shall apply to each advisory committee except to the extent that any Act of Congress establishing any such advisory committee specifically provides otherwise.

Restrictions.

(b) Nothing in this Act shall be construed to apply to any advisory committee established or utilized by-

- (1) the Central Intelligence Agency; or
- (2) the Federal Reserve System.

(c) Nothing in this Act shall be construed to apply to any local civic group whose primary function is that of rendering a public service with respect to a Federal program, or any State or local committee, council, board, commission, or similar group established to advise or make recommendations to State or local officials or agencies.

RESPONSIBILITIES OF CONGRESSIONAL COMMITTEES

Review.

Sec. 5. (a) In the exercise of its legislative review function, each standing committee of the Senate and the House of Representatives shall make a continuing review of the activities of each advisory committee under its jurisdiction to determine whether such advisory committee should be abolished or merged with any other advisory committee, whether the responsibilities of such advisory committee should be revised, and whether such advisory committee performs a necessary function not already being performed. Each such standing committee shall take appropriate action to obtain the enactment of legislation necessary to carry out the purpose of this subsection.

Outdelines.

(b) In considering legislation establishing, or authorizing the establishment of any advisory committee, each standing committee of the Senate and of the House of Representatives shall determine, and report such determination to the Senate or to the House of Representatives, as the case may be, whether the functions of the proposed advisory committee are being or could be performed by one or more agencies or by an advisory committee already in existence, or by enlarging the mandate of an existing advisory committee. Any such legislation shall--

(1) contain a clearly defined purpose for the advisory committee;

(2) require the membership of the advisory committee to be fairly balanced in terms of the points of view represented and the functions to be performed by the advisory committee;

(3) contain appropriate provisions to assure that the advice and recommendations of the advisory committee will not be inappropriately influenced by the appointing authority or by any special interest, but will instead be the result of the advisory committee's independent judgment;

(4) contain provisions dealing with authorization of appropriations, the date for submission of reports (if any), the duration of the advisory committee, and the publication of reports and other materials, to the extent that the standing committee determines the provisions of section 10 of this Act to be inadequate; and

October 6, 1972

* 3 -

Pub. Law 92-463

86 STAT. 772

(5) contain provisions which will assure that the advisory committee will have adequate staff (either supplied by an agency or employed by it), will be provided adequate quarters, and will have funds available to meet its other necessary expenses.

(c) To the extent they are applicable, the guidelines set out in subsection (b) of this section shall be followed by the President, agency heads, or other Federal officials in creating an advisory committee.

RESPONSIBILITIES OF THE PRESIDENT

Sec. 6. (a) The President may delegate responsibility for evaluating and taking action, where appropriate, with respect to all public recommendations made to him by Presidential advisory committees.

(b) Within one year after a Presidential advisory committee has submitted a public report to the President, the President or his delegate shall make a report to the Congress stating either his proposals for action or his reasons for inaction, with respect to the recommendations contained in the public report. Report to Congress.

(c) The President shall, not later than March 31 of each calendar year (after the year in which this Act is enacted), make an annual report to the Congress on the activities, status, and changes in the composition of advisory committees in existence during the preceding calendar year. The report shall contain the name of every advisory committee, the date of and authority for its creation, its termination date or the date it is to make a report, its functions, a reference to the reports it has submitted, a statement of whether it is an ad hoc or continuing body, the dates of its meetings, the names and occupations of its current members, and the total estimated annual cost to the United States to fund, service, supply, and maintain such committee. Such report shall include a list of those advisory committees abolished by the President, and in the case of advisory committees established by statute, a list of those advisory committees which the President recommends be abolished together with his reasons therefor. The President shall exclude from this report any information which, in his judgment, should be withheld for reasons of national security, and he shall include in such report a statement that such information is excluded. Annual report to Congress.
Exclusion.

RESPONSIBILITIES OF THE DIRECTOR, OFFICE OF MANAGEMENT AND BUDGET

Sec. 7. (a) The Director shall establish and maintain within the Office of Management and Budget a Committee Management Secretariat, which shall be responsible for all matters relating to advisory committees. Committee Management Secretariat.
Establishment.

(b) The Director shall, immediately after the enactment of this Act, institute a comprehensive review of the activities and responsibilities of each advisory committee to determine-- Review.

- (1) whether such committee is carrying out its purpose;
- (2) whether, consistent with the provisions of applicable statutes, the responsibilities assigned to it should be revised;
- (3) whether it should be merged with other advisory committees; or
- (4) whether it should be abolished.

The Director may from time to time request such information as he deems necessary to carry out his functions under this subsection. Upon the completion of the Director's review he shall make recommendations to the President and to either the agency head or the Congress with respect to action he believes should be taken. Thereafter, the Director shall carry out a similar review annually. Agency heads shall cooperate with the Director in making the reviews required by this subsection. Recommendations to President and Congress.
Agency cooperation.

86 STAT. 773

Performance
guidelines.

(c) The Director shall prescribe administrative guidelines and management controls applicable to advisory committees, and, to the maximum extent feasible, provide advice, assistance, and guidance to advisory committees to improve their performance. In carrying out his functions under this subsection, the Director shall consider the recommendations of each agency head with respect to means of improving the performance of advisory committees whose duties are related to such agency.

Uniform pay
guidelines.

(d) (1) The Director, after study and consultation with the Civil Service Commission, shall establish guidelines with respect to uniform fair rates of pay for comparable services of members, staffs, and consultants of advisory committees in a manner which gives appropriate recognition to the responsibilities and qualifications required and other relevant factors. Such regulations shall provide that—

(A) no member of any advisory committee or of the staff of any advisory committee shall receive compensation at a rate in excess of the rate specified for GS-18 of the General Schedule under section 5332 of title 5, United States Code; and

Travel expenses.

(B) such members, while engaged in the performance of their duties away from their homes or regular places of business, may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for persons employed intermittently in the Government service.

80 Stat. 499;
83 Stat. 190.

(2) Nothing in this subsection shall prevent—

(A) an individual who (without regard to his service with an advisory committee) is a full-time employee of the United States,

or

(B) an individual who immediately before his service with an advisory committee was such an employee,

from receiving compensation at the rate at which he otherwise would be compensated (or was compensated) as a full-time employee of the United States.

Expense recom-
mendations.

(e) The Director shall include in budget recommendations a summary of the amounts he deems necessary for the expenses of advisory committees, including the expenses for publication of reports where appropriate.

RESPONSIBILITIES OF AGENCY HEADS

Sec. 8. (R) Each agency head shall establish uniform administrative guidelines and management controls for advisory committees established by that agency, which shall be consistent with directives of the Director under section 7 and section 10. Each agency shall maintain systematic information on the nature, functions, and operations of each advisory committee within its jurisdiction.

Advisory Com-
mittee Manage-
ment Control
Officer, design-
ation.

(b) The head of each agency which has an advisory committee shall designate an Advisory Committee Management Officer who shall—

(1) exercise control and supervision over the establishment, procedures, and accomplishments of advisory committees established by that agency;

(2) assemble and maintain the reports, records, and other papers of any such committee during its existence; and

81 Stat. 54.

(3) carry out, on behalf of that agency, the provisions of section 552 of title 5, United States Code, with respect to such reports, records, and other papers.

ESTABLISHMENT AND PURPOSE OF ADVISORY COMMITTEES

Sec. 9. (a) No advisory committee shall be established unless such establishment is—

(1) specifically authorized by statute or by the President : or

October 6, 1972

- 5 -

Pub. Law 92-463

86 STAT. 774
Publication in
Federal Register.

(2) determined as a matter of formal record, by the head of the agency involved after consultation with the Director, with timely notice published in the Federal Register, to be in the public interest in connection with the performance of duties imposed on that agency by law.

(b) Unless otherwise specifically provided by statute or Presidential directive, advisory committees shall be utilized solely for advisory functions. Determinations of action to be taken and policy to be expressed with respect to matters upon which an advisory committee reports or makes recommendations shall be made solely by the President or an officer of the Federal Government.

(c) No advisory committee shall meet or take any action until an advisory committee charter has been filed with (1) the Director, in the case of Presidential advisory committees, or (2) with the head of the agency to whom any advisory committee reports and with the standing committees of the Senate and of the House of Representatives having legislative jurisdiction of such agency. Such charter shall contain the following information:

Charter,
filing.

Contents.

- (A) the committee's official designation;
- (B) the committee's objectives and the scope of its activity;
- (C) the period of time necessary for the committee to carry out its purposes;
- (D) the agency or official to whom the committee reports;
- (E) the agency responsible for providing the necessary support for the committee;
- (F) a description of the duties for which the committee is responsible, and, if such duties are not solely advisory, a specification of the authority for such functions;
- (G) the estimated annual operating costs in dollars and man-years for such committee;
- (H) the estimated number and frequency of committee meetings;
- (I) the committee's termination date, if less than two years from the date of the committee's establishment; and
- (J) the date the charter is filed.

A copy of any such charter shall also be furnished to the Library of Congress.

Corp.

ADVISORY COMMITTEE PROCEDURES

Sec. 10. (a) (1) Each advisory committee meeting shall be open to the public.

Meetings.

(2) Except when the President determines otherwise for reasons of national security, timely notices of each such meeting shall be published in the Federal Register, and the Director shall prescribe regulations to provide for other types of public notice to insure that all interested persons are notified of such meeting prior thereto.

Notice.
Publication in
Federal Register.
Regulations.

(3) Interested persons shall be permitted to attend, appear before, or file statements with any advisory committee, subject to such reasonable rules or regulations as the Director may prescribe.

(b) Subject to section 552 of title 5, United States Code, the records, reports, transcripts, minutes, appendixes, working papers, drafts, studies, agenda, or other documents which were made available to or prepared for or by each advisory committee shall be available for public inspection and copying at a single location in the offices of the advisory committee or the agency to which the advisory committee reports until the advisory committee ceases to exist.

81 Stat. 54.

(c) Detailed minutes of each meeting of each advisory committee shall be kept and shall contain a record of the persons present, a complete and accurate description of matters discussed and conclusions reached, and copies of all reports received, issued, or approved by the

Minutes.

86 Stat. 775

Certification.

advisory committee. The accuracy of all minutes shall be certified to by the chairman of the advisory committee.

81 Stat. 54.

Annual report.

(d) Subsections (a) (1) and (A) (3) of this section shall not apply to any advisory committee meeting which the President, or the head of the agency to which the advisory committee reports, determines is concerned with matters listed in section 552 (b) of title 5, United States Code. Any such determination shall be in writing and shall contain the reasons for such determination. If such a determination is made, the advisory committee shall issue a report at least annually setting forth a summary of its activities and such related matters as would be informative to the public consistent with the policy of section 552(b) of title 5, United States Code.

Federal officer or employee, attendance.

(e) There shall be designated an officer or employee of the Federal Government to chair or attend each meeting of each advisory committee. The officer or employee so designated is authorized, whenever he determines it to be in the public interest, to adjourn any such meeting. No advisory committee shall conduct any meeting in the absence of that officer or employee.

(f) Advisory committees shall not hold any meetings except at the call of, or with the advance approval of, a designated officer or employee of the Federal Government, and in the case of advisory committees (other than Presidential advisory committees), with an agenda approved by such officer or employee.

AVAILABILITY OF TRANSCRIPTS

SEC. 11. (a) Except where prohibited by contractual agreements entered into prior to the effective date of this Act, agencies and advisory committees shall make available to any person at actual cost of duplication, copies of transcripts of agency proceedings or advisory committee meetings.

"Agency proceeding."
80 Stat. 392.

(b) As used in this section "agency proceeding" means any proceeding as defined in section 551(12) of title 5, United States Code.

FISCAL AND ADMINISTRATIVE PROVISIONS

Recordkeeping.

SEC. 13. (A) Each agency shall keep records as will fully disclose the disposition of any funds which may be at the disposal of its advisory committees and the nature and extent of their activities. The General Services Administration, or such other agency as the President may designate, shall maintain financial records with respect to Presidential advisory committees. The Comptroller General of the United States, or any of his authorized representatives, shall have access, for the purpose of audit and examination, to any such records.

Audit.

Agency support services.

(b) Each agency shall be responsible for providing support services for each advisory committee established by or reporting to it unless the establishing authority provides otherwise. Where any such advisory committee reports to more than one agency, only one agency shall be responsible for support services at any one time. In the case of Presidential advisory committees, such services may be provided by the General Services Administration.

RESPONSIBILITIES OF LIBRARY OF CONGRESS

Reports and background papers.

Depository.

SEC. 13. Subject to section 552 of title 5, United States Code, the Director shall provide for the filing with the Library of Congress of at least eight copies of each report made by every advisory committee and, where appropriate, background papers prepared by consultants. The Librarian of Congress shall establish a depository for such reports and papers where they shall be available to public inspection and use.

October 6, 1972

- 7 -

Pub. Law 92-463

86 STAT. 776

TERMINATION OF ADVISORY COMMITTEES

SEC. 14. (a) (1) Each advisory committee which is in existence on the effective date of this Act shall terminate not later than the expiration of the two-year period following such effective date unless—

(A) in the case of an advisory committee established by the President or an officer of the Federal Government, such advisory committee is renewed by the President or that officer by appropriate action prior to the expiration of such two-year period; or

(B) in the case of an advisory committee established by an Act of Congress, its duration is otherwise provided for by law.

(2) Each advisory committee established after such effective date shall terminate not later than the expiration of the two-year period beginning on the date of its establishment unless—

(A) in the case of an advisory committee established by the President or an officer of the Federal Government such advisory committee is renewed by the President or such officer by appropriate action prior to the end of such period; or

(B) in the case of an advisory committee established by an Act of Congress, its duration is otherwise provided for by law.

(b) (1) Upon the renewal of any advisory committee, such advisory committee shall file a charter in accordance with section 9(c). Renewal.

(2) Any advisory committee established by an Act of Congress shall file a charter in accordance with such section upon the expiration of each successive two-year period following the date of enactment of the Act establishing such advisory committee.

(3) No advisory committee required under this subsection to file a charter shall take any action (other than preparation and filing of such charter) prior to the date on which such charter is filed.

(c) Any advisory committee which is renewed by the President or any officer of the Federal Government may be continued only for successive two-year periods by appropriate action taken by the President or such officer prior to the date on which such advisory committee would otherwise terminate. Continuation.

EFFECTIVE DATE

SEC. 15. Except as provided in section 7(b), this Act shall become effective upon the expiration of ninety days following the date of enactment.

Approved October 6, 1972.

LEGISLATIVE HISTORY:

HOUSE REPORTS: No. 92-1017 (Ctm. on Government Operations) and No. 92-1403 (Cam. of Conference).

SENATE REPORT No. 92-1096 accompanying S. 3529 (Comm. on Government Operations).

CONGRESSIONAL RECORD, VOL. 118 (1972):

May 9, considered and passed House.
Sept. 22, considered and passed Senate, amended,
in lieu of S. 3529.
Sept. 19, Senate agreed to conference report.
Sept. 20, House agreed to conference report.

THE FEDERAL ADVISORY COMMITTEE ACT AMENDMENTS OF 1997

One Hundred Fifth Congress of the United States of America

AT THE FIRST SESSION

Begun and held at the City of Washington on Tuesday, the seventh day of January, one thousand nine hundred and ninety-seven, An Act to amend the Federal Advisory Committee Act to clarify public disclosure requirements that are applicable to the National Academy of Sciences and the National Academy of Public Administration.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE. This Act may be cited as the Federal Advisory Committee Act Amendments of 1997.

SEC. 2. AMENDMENTS TO THE FEDERAL ADVISORY COMMITTEE ACT.

(a) **EXCLUSIONS FROM DEFINITION.** Section 3(2) of the Federal Advisory Committee Act (5 U.S.C. App.) is amended in the matter following subparagraph (C), by striking such term 'excludes' and all that follows through the period and inserting the following: such term 'excludes' (i) any committee that is composed wholly of full-time, or permanent part-time, officers or employees of the Federal Government, and (ii) any committee that is created by the National Academy of Sciences or the National Academy of Public Administration.

(b) **REQUIREMENTS RELATING TO THE NATIONAL ACADEMY OF SCIENCES AND THE NATIONAL ACADEMY OF PUBLIC ADMINISTRATION.** Such Act is further amended by redesignating section 15 as section 16 and inserting after section 14 the following new section:

REQUIREMENTS RELATING TO THE NATIONAL ACADEMY OF SCIENCES AND THE NATIONAL ACADEMY OF PUBLIC ADMINISTRATION

SEC. 15. (a) IN GENERAL. An agency may not use any advice or recommendation provided by the National Academy of Sciences or National Academy of Public Administration that was developed by USC of a committee created by that academy under an agreement with an agency, unless--

- (1) the committee was not subject to any actual management or control by an agency or an officer of the Federal Government;
- (2) in the case of a committee created after the date of the enactment of the Federal Advisory Committee Act Amendments of 1997, the membership of the committee was appointed in accordance with the requirements described in subsection (b)(1); and
- (3) in developing the advice or recommendation, the academy complied with--
{:%% subsection (b)(2) through (6), in the case of any advice or recommendation provided by the National Academy of

(2) **RETROACTIVE EFFECT-** Subsection (a) and the amendments made by subsection (a) shall be effective as of October 6, 1972, except that they shall not apply with respect to or otherwise affect any particular advice or recommendations that are subject to any judicial action filed before the date of the enactment of this Act.

SEC. 3. REPORT.

Not later than 1 year after the date of the enactment of this Act, the Administrator of General Services shall submit a report to the Congress on the implementation of and compliance with the amendments made by this Act.

Speaker of the House of Representatives.

Vice President of the United States and President of the Senate.

Executive Order 12838 of February 10, 1993

Termination and Limitation of Federal Advisory Committees

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Federal Advisory Committee Act ("FACA"), as amended (5 U.S.C. App.), it is hereby ordered as follows:

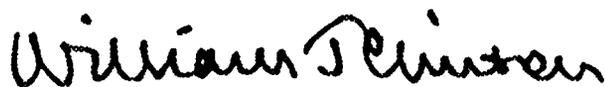
Section 1. Each executive department and agency shall terminate not less than one-third of the advisory committees subject to FACA (and not required by statute) that are sponsored by the department or agency by no later than the end of fiscal year 1993.

Sec. 2. Within 90 days, the head of each executive department and agency shall submit to the Director of the Office of Management and Budget, for each advisory committee subject to FACA sponsored by that department or agency: (a) a detailed justification for the continued existence, or a brief description in support of the termination, of any advisory committee not required by statute; and (b) a detailed recommendation for submission to the Congress to continue or to terminate any advisory committee required by statute. The Administrator of General Services shall prepare such justifications and recommendations for each advisory committee subject to FACA and not sponsored by a department or agency.

Sec. 3. Effective immediately, executive departments and agencies shall not create or sponsor a new advisory committee subject to FACA unless the committee is required by statute or the agency head (a) finds that compelling considerations necessitate creation of such a committee, and (b) receives the approval of the Director of the Office of Management and Budget. Such approval shall be granted only sparingly and only if compelled by considerations of national security, health or safety, or similar national interests. These requirements shall apply in addition to the notice and other approval requirements of FACA.

Sec. 4. The Director of the Office of Management and Budget shall issue detailed instructions regarding the implementation of this order, including exemptions necessary for the delivery of essential services and compliance with applicable law.

Sec. 5. All independent regulatory commissions and agencies are requested to comply with the provisions of this order.



THE WHITE HOUSE,
February 10, 1993.



THE DIRECTOR

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

October 5, 1994

CIRCULAR NO. A-135

TO THE HEADS OF EXECUTIVE DEPARTMENTS AND ESTABLISHMENTS

SUBJECT: Management of Federal Advisory Committees

1. Purpose. This Circular provides guidance and instructions on the management of Federal advisory committees and requires Executive Departments and agencies to establish a committee planning and review process.

2. Background. On February 7, 1993, the President signed Executive Order 12839, "Termination and Limitation of Federal Advisory Committees," which requires each Executive Department and agency to reduce the number of discretionary committees by one-third. New discretionary advisory committees are subject to review and approval by the Director of OMB.

On June 28, 1994, the Vice President issued a memorandum reiterating Administration policy regarding the maintenance of the reduction targets mandated by Executive Order 12838, as well as new guidance relating to Executive Branch action on advisory committees proposed by statute. The Vice President's memorandum also called for additional savings in committee costs over and above those achieved under E.O. 12838, as recommended by the National Performance Review (NPR),

3. Policy. The Administration is committed to maintaining advisory committees as a way of ensuring public and expert involvement and advice in Federal decision-making. At the same time, the number and cost of advisory committees must be carefully managed. Advisory committees should get down to the public's business, complete it and then go out of business.

Agencies should review and eliminate advisory committees that are obsolete, duplicative, low priority or serve a special, rather than national interest. New advisory committees should be established only when essential to the attainment of clearly defined Executive Branch priorities, as defined by E.O. 12838, and when they will not exceed an agency's advisory committee ceiling as established by the Executive order's reduction requirement.

The Administration will generally not support the establishment of new statutory committees or legislative language that exempts advisory committees from coverage under the Federal Advisory Committee Act (FACA). In addition, each agency should make a concerted effort to work with its Congressional oversight

committees to reduce the number of existing committees required by statute.

4. **Definitions.** For purposes of **this** Circular, definitions for "**advisory committee,**" "**agency,**" and other terms are the same as defined in **GSA's** implementation regulations for the Federal Advisory Committee Act (41 CFR Part 101-6). In addition:

A "non--discretionary advisory committee" is an advisory committee either mandated by Presidential directive **or** by statute and is **subject** to the Federal Advisory Committee Act. A "non-discretionary advisory committee" mandated by statute is: (1) specifically identified by name, specific purpose or function in statute, and (2) a committee whose creation or termination is beyond an agency's legal discretion. Advisory committees referenced by general (non-specific) authorizing language or committee report **language** will not be considered "non-discretionary." In addition, where a statute requires an advisory committee as defined above, but **allows** for one or more committees, only one committee shall be considered to be required by statute.

5. **Required Action.** **Each** Executive Department and agency shall report to OMB annually on the **results** of its efforts to maintain discretionary committee levels required by E.O. 12838, and other actions to reduce its inventory of non-discretionary statutory **committees.** **This** submission **will** be used by the Director of OMB as the basis for approving requests to establish new committees.

(I) Agency advisory committee management plans **will** be submitted to OMB and GSA each year and include:

(a) performance measures used to evaluate each committee's progress in achieving its stated goals or **mission;**

(b) plans for the establishment of any new advisory committees during the coming fiscal year;

(c) a summary of actions taken to ensure the advisory committee reduction goal. is maintained; and

(d) the results of a review of non--discretionary advisory committees and plans to continue, terminate or merge these groups through legislation. 'This will include a **list** of those committees established by specific statutory authority during **the** current fiscal year regardless of their coverage under the Federal Advisory **Committee** Act.

(2) With regard to non-discretionary advisory committees mandated by statute, the agency will notify GSA of plans to establish such committees prior to filing the charter required by section 9(c) of the Federal Advisory Committee Act. Such notification will provide GSA with at least 10 working days to review the proposed committee charter and advise the agency of its recommendations.

6. OMB Responsibilities-. The Office of Management and Budget shall:

(a) review and approve agency advisory committee management plans pursuant to Section 5 and in accordance with the Executive order;

(b) set advisory committee ceilings for: each agency within the government-wide advisory committee reduction goal established by the Executive order;

(c) work with agencies to control the establishment of statutory advisory committees and develop legislation to terminate those non-discretionary committees which are no longer necessary;

(d) ensure that relevant legislation is reviewed consistent with OMB Circular A-19; and

(e) ensure agencies meet the cost reduction target recommended by the Vice President's National Performance Review.

7. GSA Responsibilities. The General Services Administration shall (in addition to its responsibilities under the FACA and as an agency under Section 5 above):

(a) prepare required justifications and recommendations specified in Section 5 for each advisory committee subject to the FACA and not sponsored by another department or agency;

(b) assist OMB in its management and oversight of advisory committees, including tracking agency compliance with the reduction goals specified by E.O. 1.2838;

(c) develop guidance, specific reporting formats and instructions to implement Section 5 of this Circular. To the extent practicable, new reporting requirements will be limited to information not readily available through existing sources of data;

(d) provide recommendations to OMB and each agency regarding the continuance or management of advisory committees as required by Section 7(b) of FACA, which mandates an annual comprehensive review of all advisory committees; and

(e) implement section 5(2) of this Circular.

8. Information Contact. Questions about this' Circular should be addressed to the Federal Services Branch (202) 395-5090. Questions concerning the role of GSA should be directed to the Committee Management Secretariat (202) 273-3556.

9. Termination Review Date. This Circular will be subject to review two years after issuance.

1.0. Effective Date. This Circular is effective upon issuance.



Alice M. Rivlin
Acting Director

**GENERAL SERVICES
ADMINISTRATION**

41 CFR Part 101-6

[FPMR Amendment A-40]

**Federal Advisory Committee
Management**

AGENCY: Office of Administration, GSA.
ACTION: Final rule.

SUMMARY: This final rule provides administrative and interpretive guidelines and management controls for Federal agencies concerning the implementation of the Federal Advisory Committee Act, as amended (5 U.S.C., App.) (hereinafter "the Act"). In a previous issue of the Federal Register, GSA published an interim final rule on the management of Federal advisory committees and requested comments (48 FR 19324; April 28, 1983). Additional comments were requested through an advance notice of proposed rulemaking published in the Federal Register on February 13, 1987 (52 FR 4631). A new proposed rule, removing suggested limitations on the size of Federal advisory committees, eliminating requirements for the provision of updated committee membership data on a quarterly basis and restrictions on the compensation of committee members, and reflecting other actions to streamline compliance with the Act, was published in the Federal Register on May 19, 1987 (52 FR 18774), with a 90-day comment period ending on August 17. All comments received were considered in formulating this final rule which is intended to improve the management and use of Federal advisory committees in the Executive Branch of the Federal Government.

EFFECTIVE DATE: January 4, 1988.

ADDRESSES: General Services Administration, Committee Management Secretariat (CTM), Washington, DC 20405.

Copies of all comments received are available for public inspection in Room 7030 of the General Services Building, 18th and F Streets NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: James L. Dean, Director, Committee Management Secretariat, Office of Management Services, Office of Administration, General Services Administration, Washington, DC 20405 (202) 523-1343.

SUPPLEMENTARY INFORMATION:

Background

GSA's authority for administering the Act is contained in section 7 of the Act

and Executive Order 12024 (42 FR 61445, 3 CFR, 1977 Comp., p. 158). Under Executive Order 12024, the President delegated to the Administrator of General Services all of the functions vested in the President by the Act, as amended, except that the Annual Report to the Congress required by Section 6(c) shall be prepared by the Administrator for the President's consideration and transmittal to the Congress.

Discussion of Comments

As stated above, GSA issued a proposed rule on the management of Federal advisory committees in the Federal Register and invited comments. Nineteen commenters responded. Seven commenters had no substantive recommendations and were fully supportive of the proposed rule. Twelve others offered suggestions for improving numerous sections and the disposition of these recommendations is addressed as follows:

Clarify the Distinction Between Operational as Opposed to Advisory Committees

Two commenters suggested that further guidance in the final rule was necessary to assist agencies in interpreting what constitutes primarily an operational committee as opposed to one which performs only advisory functions, in order to determine coverage under the Act. Accordingly, GSA has added language to § 101-6.1004(g) in the final rule which more fully describes what, in general, constitutes operational functions.

While the legislative history of the Act contains the concept for the exclusion of operational committees, there is no precise legal definition of operational committee in either the Act or its legislative history. GSA believes that operational functions to be performed by an advisory committee must be so authorized by law, since the making or implementation of Government decisions is normally reserved to Federal officials as opposed to advisory committees. Additionally, sections 2(b)(6) and 9(b) of the Act provide that, unless specifically provided by statute or Presidential directive, advisory committees may not make determinations or express policy in matters under their consideration. Given the additional language in this final rule, GSA believes that it will be easier for agencies to identify committees which perform primarily operational functions.

Provide for Coverage Under the Act When Certain Groups Provide Consensus or Recurrent Advice

One commenter stated that the language in § 101-6.1004 (i) and (j) of the proposed rule was too tentative to specifically provide that acceptance of consensus advice or advice on a recurring basis from certain groups were determinants for coverage under the Act. GSA has accepted these suggestions and has strengthened the wording of these sections in the final rule.

Agencies are, in effect, cautioned that the Act would apply when an agency accepts the deliberations of a group as a source of *consensus* advice, when heretofore the agency had been obtaining the advice of attendees on an *individual* basis only. Also, when an agency *recurrently* uses a group at the group's request, as a source of advice on a preferential basis, exclusion of coverage under the Act may become questionable even if the group continues only to express its own views without further solicitations from Federal officials.

Strengthen the Provision for Excluding Coverage of So-Called Fact-Finding Subgroups

Several commenters were of the opinion that so-called fact-finding subgroups should continue to be excluded from coverage under the Act. However, it was their general consensus that § 101-6.1004(k) of the proposed rule was less than clear in including both the members of an advisory committee and any of its subcommittee members in this exclusion. One commenter felt strongly that this exclusion should apply to all members of an advisory committee and its subcommittees, whether or not the subcommittee members are members of the parent committee. GSA agrees with this recommendation since it parallels the language and intent expressed in § 101-6.1007(b) (3) and (4) which clarify certain requirements applicable to subcommittees. GSA has reworded the definition of "Advisory Committee" in § 101.6.1003 of the final rule to follow more precisely the language in section 3(2) of the Act, and has been more consistent in the use of the term "subcommittee" in § 101-6.1004(k) and § 101-6.1007(b)(3) of the final rule.

Another commenter felt that the language in § 101-6.1004(k) was not strong enough to preclude fact-finding subgroups from preparing what ultimately becomes the advice and recommendations of the chartered advisory committee, as opposed to

simply gathering information and analyzing facts for the committee. GSA has modified the language in this provision to clarify that the results of such fact-finding activities are to be subject to the deliberation of a chartered advisory committee, or a subcommittee when subsequently conducting a meeting under the Act.

Provide Additional Guidance on the Requirements Applicable to Subcommittees

One commenter requested that the final rule provide additional guidance on the applicability of various requirements of the Act to subcommittees. Since the definition of "advisory committee" in section 3(2) of the Act specifically includes " * * * any subcommittee or other subgroup thereof * * * ". GSA believes all requirements of advisory committees in the Act also apply to subcommittees. Furthermore, the Act itself contains no provisions for subcommittees which differ from those applicable to a full or parent committee. Absent more specific language in the Act, additional guidance by GSA which might serve to differentiate any requirements of subcommittees from those of advisory committees would be inconsistent with the Act.

Exclude From Coverage Under the Act Groups Convened by Agencies on an Ad Hoc Basis

One commenter recommended that the final rule contain an exclusion from coverage under the Act for so-called *ad hoc* groups lacking formal organization, structure, or continuing existence; convened by an agency to obtain views on particular matters of immediate concern. GSA is of the opinion that such an exclusion is not appropriate since the Act itself neither defines nor specifically excludes such groups. In fact, section 6(c) of the Act, providing for the President's annual report to the Congress, requires a statement for each advisory committee, " * * * of whether it is an *ad hoc* or continuing body * * * ". Accordingly, GSA has not accepted the recommendation to exclude *ad hoc* groups since GSA believes that the language of section 6(c) of the Act evidences the intent of the Congress that a group is not to be excluded from coverage merely because it is convened on an *ad hoc*, or temporary basis.

Provide That Agencies May Exercise Policy Decisions in Issuing Exclusions for One-Time Meetings

In a comment directed toward GSA's position stated in the discussion of prior comments in the proposed rule (see 52 FR 18774, SUPPLEMENTARY

INFORMATION), a commenter suggested that the final rule should not preclude agencies from issuing an exclusion for one-time meetings. This commenter felt that GSA's opinion, that such an exclusion in the rule was not appropriate in view of the limited litigation history, should not bar agencies from issuing such exclusions. In fact, it was the opinion of this commenter that the absence of litigation history was not sufficient reason to limit management discretion.

GSA continues to believe that a one-time meeting exclusion in the final rule would be inconsistent with the Act, and does not intend to provide either a direct exclusion in § 101-6.1004 or provide that such a decision may be left to an agency, thereby implying GSA's support for such exclusions. Accordingly, GSA reiterates its opinion that in the absence of any judicial precedent to the contrary, meetings or groups which take place or meet only once should not be excluded from the Act's coverage solely on this basis.

Eliminate the Agency Requirement to Assess Duplication of Advisory Committees on a Governmentwide Basis

Two commenters pointed out the impracticability of requiring an agency to assess duplication of effort of already existing committees on a Governmentwide basis as opposed to an individual agency basis. Both commenters further asserted that this Governmentwide role could be performed by GSA during its own review process subsequent to the receipt of the agency's proposal in accordance with § 101-6.1007(b) of the rule.

Since GSA is responsible for reviewing and maintaining data on all advisory committees in every agency pursuant to several provisions of the Act, GSA agrees that it can effectively perform this function. GSA can also provide agencies, on request, information on other agency committees relative to potential duplication of effort issues.

GSA has rewritten the language in § 101-6.1007 (a) and (b)(2)(ii) of the final rule to reflect this concept by providing that an agency only consider the functions of a proposed committee for duplication of existing committees in the same agency.

Include the Agency's Plan for Balanced Membership in Federal Register Notices and Charters

One commenter suggested that an agency's plan to attain balanced membership for a proposed advisory committee, to be submitted in conjunction with the review required by

§ 101-6.1007(b) of the proposed rule, should be included in both the Federal Register notice of establishment and in the filed charter.

GSA has not adopted this suggestion for two reasons. First, the agency letter proposing the establishment of an advisory committee under general agency authority already contains this information, as specified by § 101-6.1007(b)(2)(iii) of the rule, and this letter would be a public record following the establishment of the advisory committee. Second, inclusion of this information in the Federal Register notice of establishment and the filed charter is not specifically required under sections 9 (a)(2) and (c) of the Act. For purposes of this comment, GSA has not altered § 101-6.1007(b)(1) or § 101-6.1015(a)(1) of the final rule.

Provide Additional Guidance on Balanced Representation and Selection of Members

One commenter was concerned that the proposed rule did not contain sufficient guidance on balanced representation and the selection of members, and suggested that the final rule provide additional instructions for agencies to follow in these areas. GSA recognizes that the guidelines in the proposed rule are limited to the language of the Act. However, GSA believes that the provisions of section 5(c) of the Act are broad enough to allow agency discretion in determining advisory committee representation and membership relative to applicable statutes, Executive Orders, and the needs of the agency responsible for the committee. Accordingly, GSA will retain the proposed guidelines in the final rule based on the language of the Act.

Provide Revised Recordkeeping Requirements

Two commenters, directly or indirectly, expressed concern over the recordkeeping requirements contained in the proposed rule. One commenter observed that it was not possible for the Committee Management Officer (CMO) to ensure compliance with sections 10(b), 12(a) and 13 of the Act, as required by § 101-6.1017. Section 10(b) of the Act requires that the records of an advisory committee *shall be* available at a single location at the advisory committee or the agency to which it reports during the committee's existence. This commenter suggested that GSA relax the requirement of § 101-6.1017.

Another commenter, taking a different view, complained of the haphazard approach by agencies to the public

availability and retention of advisory committee records. This commenter recommended that the regulations be strengthened in these aspects.

For the following reasons, GSA has determined not to adopt the specific suggestions of either commenter. First, section 8(b)(2) of the Act provides that the CMO shall "assemble and maintain the reports, records, and other papers of any such committee during its existence." When sections 8(b)(2) and 10(b) are read together, it is clear that the records of an advisory committee are to be available at a single location and it is the CMO who is responsible for ensuring that this is accomplished. GSA has therefore decided against relaxing the requirements of § 101-6.1017 in the final rule.

The commenter who expressed concern over the haphazard approach to recordkeeping suggested that the final rule should: (1) Require agencies to keep committee records available for a certain period of time after a committee has terminated, and (2) address the perceived unavailability of the deliberative process privilege under the fifth exemption of the Freedom of Information Act (FOIA) to advisory committee records. For the following reasons, GSA has not adopted these comments.

First, pursuant to the National Archives and Records Administration Act of 1984, as amended, Pub. L. 98-497, the Archivist of the United States is responsible for records management in the Federal Government, including the issuance of regulations and guidance for records retention and disposition, as well as the process for identifying records appropriate for transfer to the permanent Archives of the United States. Since the Federal Advisory Committee Act is silent on records disposition for advisory committees, we see no reason or basis for GSA to alter normal Governmentwide procedures in this area which are the responsibility of the Archivist of the United States. Second, the commenter suggested that the Government's settlement of the law suit involving records of the Attorney General's Commission on Pornography was a concession that the deliberative process privilege under the fifth exemption of FOIA does not apply to advisory committees. Since cases may be settled for a variety of reasons which do not involve a decision on the merits, GSA does not believe that the mere settlement of a matter in litigation is dispositive of the legal issues raised in the litigation. Accordingly, GSA has determined not to adopt this suggestion.

Provide Guidance to Agencies Concerning the Applicability of the Anti-Lobbying Statute and Hatch Act to Advisory Committee Members

With respect to § 101-6.1033 of the proposed rule, one commenter stated that unless provided by statute, agencies should not compensate advisory committee members if they provide policy advice on proposals for legislation because this compensation would violate the anti-lobbying statute. (See 18 U.S.C. 1913). The same commenter also stated that GSA should direct agencies to ensure that any members of an advisory committee who are subject to the Hatch Act (5 U.S.C. 7321-7328) are aware of their obligations under that law.

For the following reasons, GSA has adopted neither suggestion. First, GSA does not believe that the traditional activities of an advisory committee fall within the scope of the activities which 18 U.S.C. 1913 was designed to protect against. Second, the Federal Advisory Committee Act itself does not reference the Hatch Act, and there is already a body of regulations on political activities by Federal employees which has been issued by the Office of Personnel Management, 5 CFR Part 733. Also, the Special Counsel of the Merit Systems Protection Board, who has responsibilities for investigation and administrative prosecution of alleged Hatch Act violations, issues advisory opinions on Hatch Act questions. GSA sees no need to issue regulations in this area when there are already regulations in place and an administrative mechanism available through agencies with greater responsibilities in this area than GSA.

Clarify the Procedures for Transmitting Follow-up Reports on Presidential Advisory Committee Recommendations

One commenter requested clarification in § 101-6.1035(a) of the proposed rule on the procedures required for transmittal of follow-up reports to the Congress on the disposition of Presidential advisory committee recommendations, as required by section 6(b) of the Act. GSA has decided to retain the proposed language in the final rule without further modification at this time. GSA agrees that there has been some confusion as to whether the agency responsible for supporting the Presidential advisory committee, or GSA, should transmit the report. GSA intends to propose further guidance in a future revision to this final rule following more consultation with the affected agencies.

Procedural and Administrative Comments

The final rule incorporates numerous technical and procedural recommendations made by several commenters, particularly in the following sections:

Section	Modification
101-6.1007(b)(2)	Requires proposed charter with agency letter.
101-6.1007(d)(1)	Provides that date of charter filing constitutes date of establishment.
101-6.1013 (a)(3) and (c)(3)	Eliminates proposed requirement for providing copies of filing letters to GSA by adding provision for filing dates on charters; makes related change to copies of Presidential advisory committee charters furnished to the Congress.
101-6.1015 (a)(2) and (b)(1)	Provides for timely notices in the Federal Register on a calendar-day basis.
101-6.1017 (a) and (d)	Adds requirements that membership lists and closed meeting determinations be included in records.
101-6.1025(b)	Adds requirement from section 10(c) of the Act on the certification to the accuracy of minutes of meetings.
101-6.1027(b)	Adds requirement to notify Secretariat when an agency head terminates a committee.
101-6.1035(d)	Provides for location for filing copies of reports with the Library of Congress.

Other sections were also amended or revised for clarity of intent, or corrected for errors in content and format. These sections include:

Section	Modification
101-6.1002(d)	Changes citation of "the Act" to the Government in the Sunshine Act.
101-6.1007(b)(2)(iv)	Clarifies provision for considering the selection of members with respect to attaining balance.
101-6.1009	Corrects title of section to preclude inadvertent exclusion of committees directed or authorized by law, or established by the President.
101-6.1013(b)	Corrects heading of section to preclude inadvertent exclusion of committees authorized by law.
101-6.1015(a)(1)	Clarifies provision that a Federal Register notice of establishment is not required for committees specifically directed by law or established by the President.
101-6.1017	Eliminates sentence concerning ties to preclude misinterpretation.
101-6.1019	Clarifies the status and role of the Designated Federal Officer.
101-6.1027(a)(3)	Specifies the means by which the President or an agency head terminates a committee.
101-6.1029(a)(1)	Clarifies the process involving the re-chartering of committees specifically directed by law whose duration extends beyond 2 years.
101-6.1031(a)	Corrects heading of section to encompass committees authorized by law; specifies that the agency head is responsible for minor charter amendments.
101-6.1031(b)	Specifies that the agency head retains final authority for amending certain charters.

Additional Instructions

Pursuant to section 7(d) of the Act, the guidelines contained in this final rule

with respect to uniform fair rates of pay for comparable services for members, staffs and consultants of advisory committees have been established after consultation by the Administrator with the Director, Office of Personnel Management.

Executive Order 12291

GSA has determined that this final rule is not a major rule for purposes of Executive Order 12291 of February 17, 1981, because it will not result in an annual effect on the economy of \$100 million or more, will not cause a major increase in costs to consumers or others, and will not have significant adverse effects. GSA has based all administrative decisions on this final rule on adequate information concerning the need for and consequences of this final rule. GSA has also determined that the potential benefits to society from this final rule far outweigh the potential costs, has maximized the net benefits, and has chosen the alternative involving the least net cost to society.

Regulatory Flexibility Act

These regulations are not subject to the regulatory flexibility analysis or other requirements of 5 U.S.C. 603 and 604.

List of Subjects in 41 CFR Part 101-6

Civil rights, Government property management, Grant programs, Intergovernmental relations, Surplus Government property, Relocation assistance, Real property acquisition, Federal advisory committees.

Accordingly, 41 CFR Part 101-6 is amended as follows:

PART 101-6—MISCELLANEOUS REGULATIONS

1. The authority citation for 41 CFR Part 101-6 continues to read as follows:

Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c); sec. 7, 5 U.S.C., App.; and E.O. 12024, 3 CFR 1977 Comp., p. 158.

2. Subpart 101-6.10 is revised to read as follows:

Subpart 101-6.10—Federal Advisory Committee Management

- Sec.
- 101-6.1001 Scope.
 - 101-6.1002 Policy.
 - 101-6.1003 Definitions.
 - 101-6.1004 Examples of advisory meetings or groups not covered by the Act or this subpart.
 - 101-6.1005 Authorities for establishment of advisory committees.
 - 101-6.1006 [Reserved]
 - 101-6.1007 Agency procedures for establishing advisory committees.

- Sec.
- 101-6.1008 The role of GSA.
 - 101-6.1009 Responsibilities of an agency head.
 - 101-6.1010 [Reserved]
 - 101-6.1011 Responsibilities of the chairperson of an independent Presidential advisory committee.
 - 101-6.1012 [Reserved]
 - 101-6.1013 Charter filing requirements.
 - 101-6.1014 [Reserved]
 - 101-6.1015 Advisory committee information which must be published in the Federal Register.
 - 101-6.1016 [Reserved]
 - 101-6.1017 Responsibilities of the agency Committee Management Officer.
 - 101-6.1018 [Reserved]
 - 101-6.1019 Duties of the Designated Federal Officer.
 - 101-6.1020 [Reserved]
 - 101-6.1021 Public participation in advisory committee meetings.
 - 101-6.1022 [Reserved]
 - 101-6.1023 Procedures for closing an advisory committee meeting.
 - 101-6.1024 [Reserved]
 - 101-6.1025 Requirement for maintaining minutes of advisory committee meetings.
 - 101-6.1026 [Reserved]
 - 101-6.1027 Termination of advisory committees.
 - 101-6.1028 [Reserved]
 - 101-6.1029 Renewal and rechartering of advisory committees.
 - 101-6.1030 [Reserved]
 - 101-6.1031 Amendments to advisory committee charters.
 - 101-6.1032 [Reserved]
 - 101-6.1033 Compensation and expense reimbursement of advisory committee members, staffs and consultants.
 - 101-6.1034 [Reserved]
 - 101-6.1035 Reports required for advisory committees.

§ 101-6.1001 Scope.

(a) This subpart defines the policies, establish minimum requirements, and provide guidance to agency management for the establishment, operation, administration, and duration of advisory committees subject to the Federal Advisory Committee Act, as amended. Reporting requirements which keep the Congress and the public informed of the number, purpose, membership, activities, and cost of these advisory committees are also included.

(b) The Act and this subpart do not apply to advisory meetings or groups listed in § 101-6.1004.

§ 101-6.1002 Policy.

The policy to be followed by Federal departments, agencies, and commissions, consistent with the Federal Advisory Committee Act, as amended, is as follows:

(a) An advisory committee shall be established only when it is essential to the conduct of agency business. Decision criteria include whether committee deliberations will result in

the creation or elimination of, or change in regulations, guidelines, or rules affecting agency business; whether the information to be obtained is already available through another advisory committee or source within the Federal Government; whether the committee will make recommendations resulting in significant improvements in service or reductions in cost; or whether the committee's recommendations will provide an important additional perspective or viewpoint impacting agency operations;

(b) An advisory committee shall be terminated whenever the stated objectives of the committee have been accomplished; the subject matter or work of the committee has become obsolete by the passing of time or the assumption of the committee's main functions by another entity within the Federal Government; or the agency determines that the cost of operation is excessive in relation to the benefits accruing to the Federal Government;

(c) An advisory committee shall be balanced in its membership in terms of the points of view represented and the functions to be performed; and

(d) An advisory committee shall be open to the public in its meetings except in those circumstances where a closed meeting shall be determined proper and consistent with the provisions in the Government in the Sunshine Act, 5 U.S.C. 552(b).

§ 101-6.1003 Definitions.

"Act" means the Federal Advisory Committee Act, as amended, 5 U.S.C., App.

"Administrator" means the Administrator of General Services.

"Advisory committee" subject to the Act means any committee, board, commission, council, conference, panel, task force, or other similar group, or any subcommittee or other subgroup thereof, which is established by statute, or established or utilized by the President or any agency official for the purpose of obtaining advice or recommendations on issues or policies which are within the scope of his or her responsibilities.

"Agency" has the same meaning as in section 551(1) of Title 5 of the United States Code.

"Committee Management Secretariat" ("Secretariat"), established pursuant to the Act is responsible for all matters relating to advisory committees, and carries out the Administrator's responsibilities under the Act and Executive Order 12024.

"Committee member" means an individual who serves by appointment on an advisory committee and has the

full right and obligation to participate in the activities of the committee, including voting on committee recommendations.

"Presidential advisory committee" means any advisory committee which advises the President. It may be established by the President or by the Congress, or used by the President in the interest of obtaining advice or recommendations for the President. "Independent Presidential advisory committee" means any Presidential advisory committee not assigned by the President, or the President's delegate, or by the Congress in law, to an agency for administrative and other support and for which the Administrator of General Services may provide administrative and other support on a reimbursable basis.

"Staff member" means any individual who serves in a support capacity to an advisory committee.

"Utilized" (or "used"), as referenced in the definition of "Advisory committee" in this section, means a committee or other group composed in whole or in part of other than full-time officers or employees of the Federal Government with an established existence outside the agency seeking its advice which the President or agency official(s) adopts, such as through institutional arrangements, as a preferred source from which to obtain advice or recommendations on a specific issue or policy within the scope of his or her responsibilities in the same manner as that individual would obtain advice or recommendations from an established advisory committee.

§ 101-6.1004 Examples of advisory meetings or groups not covered by the Act or this subpart.

The following are examples of advisory meetings or groups not covered by the Act or this subpart:

(a) Any committee composed wholly of full-time officers or employees of the Federal Government;

(b) Any advisory committee specifically exempted by an Act of Congress;

(c) Any advisory committee established or utilized by the Central Intelligence Agency;

(d) Any advisory committee established or utilized by the Federal Reserve System;

(e) The Advisory Committee on Intergovernmental Relations;

(f) Any local civic group whose primary function is that of rendering a public service with respect to a Federal program, or any State or local committee, council, board, commission, or similar group established to advise or

make recommendations to State or local officials or agencies;

(g) Any committee which is established to perform primarily operational as opposed to advisory functions. Operational functions are those specifically provided by law, such as making or implementing Government decisions or policy. An operational committee may be covered by the Act if it becomes primarily advisory in nature. It is the responsibility of the administering agency to determine whether such a committee is primarily operational. If so, it would not fall under the requirements of the Act and this Subpart, but would continue to be regulated under relevant laws, subject to the direction of the President and the review of the appropriate legislative committees;

(h) Any meeting initiated by the President or one or more Federal official(s) for the purpose of obtaining advice or recommendations from one individual;

(i) Any meeting initiated by a Federal official(s) with more than one individual for the purpose of obtaining the advice of individual attendees and not for the purpose of utilizing the group to obtain consensus advice or recommendations. However, agencies should be aware that such a group would be covered by the Act when an agency accepts the group's deliberations as a source of consensus advice or recommendations;

(j) Any meeting initiated by a group with the President or one or more Federal official(s) for the purpose of expressing the group's view, provided that the President or Federal official(s) does not use the group recurrently as a preferred source of advice or recommendations;

(k) Meetings of two or more advisory committee or subcommittee members convened solely to gather information or conduct research for a chartered advisory committee, to analyze relevant issues and facts, or to draft proposed position papers for deliberation by the advisory committee or a subcommittee of the advisory committee; or

(l) Any meeting with a group initiated by the President or one or more Federal official(s) for the purpose of exchanging facts or information.

§ 101-6.1005 Authorities for establishment of advisory committees.

An advisory committee may be established in one of four ways:

(a) By law where the Congress specifically directs the President or an agency to establish it;

(b) By law where the Congress authorizes but does not direct the President or an agency to establish it. In

this instance, the responsible agency head shall follow the procedures provided in § 101-6.1007;

(c) By the President by Executive Order; or

(d) By an agency under general agency authority in Title 5 of the United States Code or under other general agency-authorizing law. In this instance, an agency head shall follow the procedures provided in § 101-6.1007.

§ 101-6.1006 [Reserved]

§ 101-6.1007 Agency procedures for establishing advisory committees.

(a) When an agency head decides that it is necessary to establish a committee, the agency must consider the functions of similar committees in the same agency before submitting a consultation to GSA to ensure that no duplication of effort will occur.

(b) In establishing or utilizing an advisory committee, the head of an agency or designee shall comply with the Act and this subpart, and shall:

(1) Prepare a proposed charter for the committee which includes the information listed in section 9(c) of the Act; and

(2) Submit a letter and the proposed charter to the Secretariat proposing to establish or use, reestablish, or renew an advisory committee. The letter shall include the following information:

(i) An explanation of why the committee is essential to the conduct of agency business and in the public interest;

(ii) An explanation of why the committee's functions cannot be performed by the agency, another existing advisory committee of the agency, or other means such as a public hearing; and

(iii) A description of the agency's plan to attain balanced membership. For purposes of attaining balance, agencies shall consider for membership interested persons and groups with professional or personal qualifications or experience to contribute to the functions and tasks to be performed. This should be construed neither to limit the participation, nor compel the selection of any particular individual or group to obtain divergent points of view that are relevant to the business of the advisory committee.

(3) Subcommittees that do not function independently of the full or parent advisory committee need not follow the requirements of paragraphs (b)(1) and (b)(2) of this section. However, they are subject to all other requirements of the Act.

(4) The requirements of paragraphs (b)(1) and (b)(2) of this section shall apply for any subcommittee of a chartered advisory committee, whether its members are drawn in whole or in part from the full or parent advisory committee, which functions independently of the parent advisory committee such as by making recommendations directly to the agency rather than for consideration by the chartered advisory committee.

(c) The Secretariat will review the proposal and notify the agency of GSA's views within 15 calendar days of receipt, if possible. The agency head retains final authority for establishing a particular advisory committee.

(d) The agency shall notify the Secretariat in writing that either:

(1) The advisory committee is being established. The filing of the advisory committee charter as specified in § 101-6.1013 shall be considered appropriate written notification in this instance. The date of filing constitutes the date of establishment or renewal. The agency head shall then comply with the provisions of § 101-6.1009 for an established advisory committee; or

(2) The advisory committee is not being established. In this instance, the agency shall also advise the Secretariat if the agency head intends to take any further action with respect to the proposed advisory committee.

§ 101-6.1008 The role of GSA.

(a) The functions under section 7 of the Act will be performed for the Administrator by the Secretariat. The Secretariat assists the Administrator in prescribing administrative guidelines and management controls for advisory committees, and assists other agencies in implementing and interpreting these guidelines. In exercising internal controls over the management and supervision of the operations and procedures vested in each agency by section 8(b) of the Act and by § 101-6.1009 and § 101-6.1017 of this rule, agencies shall conform to the guidelines prescribed by GSA.

(b) The Secretariat may request comments from agencies on management guidelines and policy issues of broad interagency interest or application to the Federal advisory committee program.

(c) In advance of issuing informal guidelines, nonstatutory reporting requirements, and administrative procedures such as report formats or automation, the Secretariat shall request formal or informal comments from agency Committee Management Officers.

§ 101-6.1009 Responsibilities of any agency head.

The head of each agency that uses one or more advisory committees shall ensure:

(a) Compliance with the Act and this subpart;

(b) Issuance of administrative guidelines and management controls which apply to all advisory committees established or used by the agency;

(c) Designation of a Committee Management Officer who shall carry out the functions specified in section 8(b) of the Act;

(d) Provision of a written determination stating the reasons for closing any advisory committee meeting to the public;

(e) A review, at least annually, of the need to continue each existing advisory committees, consistent with the public interest and the purpose of functions of each committee;

(f) Rates of pay are justified and levels of agency support are adequate;

(g) The appointment of a Designated Federal Officer for each advisory committee and its subcommittees;

(h) The opportunity for reasonable public participation in advisory committee activities; and

(i) That the number of committee members is limited to the fewest necessary to accomplish committee objectives.

§ 101-6.1010 [Reserved]

§ 101-6.1011 Responsibilities of the chairperson of an independent Presidential advisory committee.

The chairperson of an independent Presidential advisory committee shall comply with the Act and this subpart and shall:

(a) Consult with the Administrator concerning the role of the Designated Federal Officer and Committee Management Officer; and

(b) Fulfill the responsibilities of an agency head as specified in paragraphs (d) and (h) of § 101-6.1009.

§ 101-6.1012 [Reserved]

§ 101-6.1013 Charter filing requirements.

No advisory committee may operate, meet, or take any action until its charter has been filed as follows:

(a) *Advisory committee established, used, reestablished, or renewed by an agency.* The agency head shall file---

(1) The charter with the standing committees of the Senate and the House of Representatives having legislative jurisdiction of the agency;

(2) A copy of the filed charter with the Library of Congress, Exchange and Gift Division, Federal Documents Section,

Federal Advisory Committee Desk, Washington, DC 20540; and

(3) A copy of the charter indicating the Congressional filing date, with the Secretariat.

(b) *Advisory committee specifically directed by law or authorized by law.* Procedures are the same as in paragraph (a) of this section.

(c) *Presidential advisory committee.*

When either the President or the Congress establishes an advisory committee that advises the President, the responsible agency head or, in the case of an independent Presidential advisory committee, the President's designee shall file---

(1) The charter with the Secretariat;

(2) A copy of the filed charter with the Library of Congress; and

(3) If specifically directed by law, a copy of the charter indicating its date of filing with the Secretariat, with the standing committees on the Senate and the House of Representatives having legislative jurisdiction of the agency or the independent Presidential advisory committee.

§ 101-6.1014 [Reserved]

§ 101-6.1015 Advisory committee information which must be published in the Federal Register.

(a) *Committee establishment, reestablishment, or renewal.* (1) A notice in the Federal Register is required when an advisory committee, except a committee specifically directed by law or established by the President by Executive Order, is established, used, reestablished, or renewed. Upon receiving notification of the completed review from the Secretariat in accordance with paragraph (c) of § 101-6.1007, the agency shall publish a notice in the Federal Register that the committee is being established, used, reestablished, or renewed. For a new committee, such notice shall also include statements describing the nature and purpose of the committee and that the committee is necessary and in the public interest.

(2) Establishment and reestablishment notices shall appear at least 15 calendar days before the committee charter is filed, except that the Secretariat may approve less than 15 days when requested by the agency for good cause. The 15-day advance notice requirement does not apply to committee renewals, notices of which may be published concurrently with the filing of the charter.

(b) *Committee meetings.* (1) The agency or an independent Presidential advisory committee shall publish at least 15 calendar days prior to an

advisory committee meeting a notice in the Federal Register, which includes:

- (i) The exact name of the advisory committee as chartered;
 - (ii) The time, date, place, and purpose of the meeting;
 - (iii) A summary of the agenda; and
 - (iv) A statement whether all or part of the meeting is open to the public or closed, and if closed, the reasons why, citing the specific exemptions of the Government in the Sunshine Act (5 U.S.C. 552(b)) as the basis for closure.
- (2) In exceptional circumstances, the agency or an independent Presidential advisory committee may give less than 15 days notice, provided that the reasons for doing so are included in the committee meeting notice published in the Federal Register.

§ 101-6.1016. [Reserved]

§ 101-6.1017 Responsibilities of the agency Committee Management Officer.

In addition to implementing the provisions of section 8(b) of the Act, the Committee Management Officer will carry out all responsibilities delegated by the agency head. The Committee Management Officer should also ensure that section 10(b), 12(a) and 13 of the Act are implemented by the agency to provide for appropriate recordkeeping. Records include, but are not limited to:

- (a) A set of approved charters and membership lists for each advisory committee;
- (b) Copies of the agency's portion of the Annual Report of Federal Advisory Committees required by paragraph (b) of § 101-6.1035;
- (c) Agency guidelines on committee management operations and procedures as maintained and updated; and
- (d) Agency determinations to close advisory committee meetings as required by paragraph (c) of § 101-6.1023.

§ 101-6.1018 [Reserved]

§ 101-6.1019 Duties of the Designated Federal Officer.

The agency head or, in the case of an independent Presidential advisory committee, the Administrator shall designate a Federal officer or employee, who may be either full-time or permanent part-time, to be the Designated Federal Officer for each advisory committee and its subcommittees, who:

- (a) Must approve or call the meeting of the advisory committee;
- (b) Must approve the agenda;
- (c) Must attend the meetings;
- (d) Shall adjourn the meetings when such adjournment is in the public interest; and

(e) Chairs the meeting when so directed by the agency head.

(f) The requirement in paragraph (b) of this section does not apply to a Presidential advisory committee.

§ 101-6.1020 [Reserved]

§ 101-6.1021 Public participation in advisory committee meetings.

The agency head, or the chairperson of an independent Presidential advisory committee, shall ensure that—

- (a) Each advisory committee meeting is held at a reasonable time and in a place reasonably accessible to the public;
- (b) The meeting room size is sufficient to accommodate advisory committee members, committee or agency staff, and interested members of the public;
- (c) Any member of the public is permitted to file a written statement with the advisory committee; and
- (d) Any member of the public may speak at the advisory committee meeting if the agency's guidelines so permit.

§ 101-6.1022 [Reserved]

§ 101-6.1023 Procedures for closing an advisory committee meeting.

(a) To close all or part of a meeting, an advisory committee shall submit a request to the agency head or, in the case of an independent Presidential advisory committee, the Administrator, citing the specific provisions of the Government in the Sunshine Act (5 U.S.C. 552(b)) which justify the closure. The request shall provide the agency head or the Administrator sufficient time to review the matter in order to make a determination prior to publication of the meeting notice required by § 101-6.1015(b).

(b) The general counsel of the agency or, in the case of an independent Presidential advisory committee, the general counsel of the General Services Administration should review all requests to close meetings.

(c) If the agency head or, in the case of an independent Presidential advisory committee, the Administrator agrees that the request is consistent with the provisions in the Government in the Sunshine Act and the Federal Advisory Committee Act, he or she shall issue a determination that all or part of the meeting be closed.

- (d) The agency head, or the chairperson of an independent Presidential advisory committee, shall:
 - (1) Make a copy of the determination available to the public upon request; and
 - (2) State the reasons why all or part of the meeting is closed, citing the specific exemptions used from the Government

in the Sunshine Act in the meeting notice published in the Federal Register.

§ 101-6.1024 [Reserved]

§ 101-6.1025 Requirement for maintaining minutes of advisory committee meetings.

(a) The agency head or, in the case of an independent Presidential advisory committee, the chairperson shall ensure that detailed minutes of each advisory committee meeting are kept. The minutes must include:

- (1) Time, date, and place;
- (2) A list of the following persons who were present:
 - (i) Advisory committee members and staff;
 - (ii) Agency employees; and
 - (iii) Members of the public who presented oral or written statements;
- (3) An estimated number of other members of the public present;
- (4) An accurate description of each matter discussed and the resolution, if any, made by the committee of such matter; and
- (5) Copies of each report or other document received, issued, or approved by the committee.

(b) The chairperson of each advisory committee shall certify to the accuracy of all minutes of advisory committee meetings.

§ 101-6.1026 [Reserved]

§ 101-6.1027 Termination of advisory committees.

(a) Any advisory committee shall automatically terminate not later than 2 years after it is established, reestablished, or renewed, unless:

- (1) Its duration is otherwise provided for by law;
- (2) The President or agency head renews it prior to the end of such period; or
- (3) The President or agency head terminates it before that time by revoking or abolishing its establishment authority.

(b) If an agency head terminates an advisory committee, the agency shall notify the Secretariat of the effective date of termination.

§ 101-6.1028 [Reserved]

§ 101-6.1029 Renewal and rechartering of advisory committees.

(a) Advisory committees specifically directed by law:

- (1) Whose duration extends beyond 2 years shall require rechartering by the filing of a new charter every 2 years after the date of enactment of the law establishing the committee. If a new charter is not filed, the committee is not

terminated, but may not meet or take any action.

(2) Which would terminate under the provisions of section 14 of the Act, and for which renewal would require reauthorization by law, may be reestablished by an agency provided that the agency complies under general agency authority with the provisions of § 101-6.1007.

(b) Advisory committees established by the President may be renewed by appropriate action of the President and the filing of a new charter.

(c) Advisory committees authorized by law or established or used by an agency may be renewed, provided that at least 30 but not more than 60 days before the committee terminates, an agency head who intends to renew a committee complies with the provisions of § 101-6.1007.

§ 101-6.1030 [Reserved]

§ 101-6.1031 Amendments to advisory committee charters.

(a) *Committees specifically directed by law or authorized by law; or established by the President.* The agency head shall be responsible for ensuring that any minor technical changes made to current charters are consistent with the relevant statute or Executive Order. When the Congress by law, or the President by Executive Order, changes the authorizing language which has been the basis for establishing an advisory committee, the agency head, or the chairperson of an independent Presidential advisory committee, shall:

(1) Amend those sections of the current charter affected by the new law or Executive Order; and

(2) File the amended charter as specified in § 101-6.1013.

(b) *Committees established or used by an agency.* The charter of an advisory committee established under general agency authority may be amended when an agency head determines that the existing charter no longer accurately reflects the objectives or functions of the committee. Changes may be minor, such as revising the name of the advisory committee, or modifying the estimated number or frequency of meetings. Changes may also be major such as those dealing with the objectives or composition of the committee. The agency head retains final authority for amending the charter of an advisory committee. Amending any existing advisory committee charter does not constitute renewal of the committee under § 101-6.1029.

(1) To make a minor amendment to a committee charter, an agency shall:

(i) Amend the charter language as necessary, and

(ii) File the amended charter as specified in § 101-6.1013.

(2) To make a major amendment to a committee charter, an agency shall:

(i) Amend the charter language as necessary;

(ii) Submit the proposed amended charter with a letter to the Secretariat requesting GSA's views on the amended language, along with an explanation of the purpose of the changes and why they are necessary. The Secretariat will review the proposed changes and notify the agency of GSA's views within 15 calendar days of the request, if possible; and

(iii) File the amended charter as specified in § 101-6.1013.

§ 101-6.1032 [Reserved]

§ 101-6.1033 Compensation and expense reimbursement of advisory committee members, staffs and consultants.

(a) *Uniform pay guidelines for members of an advisory committee.* Nothing in this subpart shall require an agency head to provide compensation, unless otherwise provided by law, to a member of an advisory committee. However, when compensation is deemed appropriate by an agency, it shall fix the pay of the members of an advisory committee to the daily equivalent of a rate of the General Schedule in 5 U.S.C. 5332 unless the members are appointed as consultants and compensated under 5 U.S.C. 3109. In determining an appropriate rate of pay for the members, an agency shall give consideration to the significance, scope, and technical complexity of the matters with which the advisory committee is concerned and the qualifications required of the members of the advisory committee. An agency may not fix the pay of the members of an advisory committee at a rate higher than the daily equivalent of the maximum rate for a GS-15 under the General Schedule, unless a higher rate is mandated by statute, or the head of the agency has personally determined that a higher rate of pay under the General Schedule is justified and necessary. Such a determination must be reviewed by the head of the agency annually. Under this subpart, an agency may not fix the pay of the members of an advisory committee at a rate of pay higher than the daily equivalent of a rate for a GS-18, as provided in 5 U.S.C. 5332.

(b) *Pay for staff members of an advisory committee.* An agency may fix the pay of each advisory committee staff member at a rate of the General Schedule in which the Staff member's

position would appropriately be placed (5 U.S.C. Chapter 51). An agency may not fix the pay of a staff member at a rate higher than the daily equivalent of the maximum rate for GS-15, unless the agency head has determined that under the General Schedule the staff member's position would appropriately be placed at a grade higher than GS-15. This determination must be reviewed annually by the agency head.

(1) In establishing rates of compensation, the agency head shall comply with any applicable statutes, regulations, Executive Orders, and administrative guidelines.

(2) A staff member who is a Federal employee shall serve with the knowledge of the Designated Federal Officer and the approval of the employee's direct supervisor. If a non-Federal employee, the staff member shall be appointed in accordance with applicable agency procedures, following consultation with the advisory committee.

(c) *Pay for consultants to an advisory committee.* An agency shall fix the pay of a consultant to an advisory committee after giving consideration to the qualifications required of the consultant and the significance, scope, and technical complexity of the work. The compensation may not exceed the maximum rate of pay authorized by 5 U.S.C. 3109, and shall be in accordance with any applicable statutes, regulations, Executive Orders and administrative guidelines.

(d) *Gratuitous services.* In the absence of any special limitations applicable to a specific agency, nothing in this subpart shall prevent an agency from accepting the gratuitous services of an advisory committee member, staff member, or consultant who agrees in advance to serve without compensation.

(e) *Travel expenses.* Advisory committee members and staff members, while engaged in the performance of their duties away from their homes or regular places of business, may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of Title 5, United States Code, for persons employed intermittently in the Government service.

(f) *Services for handicapped members.* While performing advisory committee duties, an advisory committee member who is blind or deaf or who qualifies as a handicapped individual may be provided services by a personal assistant for handicapped employees if the member:

(1) Qualifies as a handicapped individual as defined by section 501 of

the Rehabilitation Act of 1973 (29 U.S.C. 794); and

(2) Does not otherwise qualify for assistance under 5 U.S.C. 3102 by reason of being an employee of an agency.

(g) *Exclusions.* (1) Nothing in this section shall prevent any person who (without regard to his or her service with an advisory committee) is a full-time Federal employee from receiving compensation at a rate which he or she otherwise would be compensated as a full-time Federal employee.

(2) Nothing in this section shall prevent any person who immediately before his or her service with an advisory committee was a full-time Federal employee from receiving compensation at the rate at which he or she was compensated as a full-time Federal employee.

(3) Nothing in this section shall affect a rate of pay or a limitation on a rate of pay that is specifically established by law or a rate of pay established under the General Schedule classification and

pay system in chapter 51 and chapter 53 of Title 5, United States Code.

§ 101-6.1034 [Reserved]

§ 101-6.1035 Reports required for advisory committees.

(a) Within one year after a Presidential advisory committee has submitted a public report to the President, the President or his delegate will prepare a follow-up report to the Congress detailing the disposition of the committee's recommendations in accordance with section 6(b) of the Act:

(b) The President's annual report to the Congress shall be prepared by GSA based on reports filed on a fiscal year basis by each agency consistent with the information specified in section 6(c) of the Act. Reports from agencies shall be consistent with instructions provided annually by the Secretariat. This report has been cleared in accordance with FIRMR 201-45.6 in 41 CFR Chapter 201 and assigned interagency report control number 0304-GSA-XX.

(c) In accordance with section 10(d) of the Act, advisory committees holding closed meetings shall issue reports at least annually, setting forth a summary of activities consistent with the policy of Section 552(b) of Title 5, United States Code.

(d) Subject to section 552 of Title 5, United States Code, eight copies of each report made by an advisory committee, including any report on closed meetings as specified in paragraph (c) of this section, and, where appropriate, background papers prepared by consultants, shall be filed with the Library of Congress as required by section 13 of the Act, for public inspection and use at the location specified in paragraph (a)(2) of § 101-6.1013.

Dated: November 24, 1987.

T.C. Golden,

Administrator of General Services.

[FR Doc. 87-27776 Filed 12-1-87; 8:45 am]

BILLING CODE 6820-34-M

**GENERAL SERVICES
ADMINISTRATION**

41 CFR Part 101-6

[FPMR Amdt. A-48]

**Federal Advisory Committee
Management**

AGENCY: Office of Administration, GSA.

ACTION: Final rule.

SUMMARY: This final rule provides additional administrative and interpretive guidelines and management controls for Federal agencies concerning the implementation of the Federal Advisory Committee Act, as amended (5 U.S.C., App.) (hereinafter "the Act"). In a previous issue of the Federal Register, GSA published an initial final rule on the management of Federal advisory committees (52 FR 45928, December 2, 1987). This new final rule revises the current rule to improve further the management and use of Federal advisory committees in the Executive Branch of the Federal Government. These revisions: (1) Clarify the guidelines applicable to achieving committee memberships which are balanced in a way that is fair and consistent with section 5(b) of the Act; (2) add new language which cross-references regulations relating to Federal conflict-of-interest statutes and standards of conduct within the final rule; (3) clarify the procedures for transmitting follow-up reports to the Congress as required by section 6(b) of the Act on Presidential advisory committee recommendations; and (4) provide that annual agency fiscal year reports to GSA shall also include information requested to carry out the annual comprehensive review required by section 7(b) of the Act. Corrections of minor, nonsubstantive errors in the text of the original final rule have also been made.

EFFECTIVE DATE: October 5, 1989.

ADDRESSES: General Services Administration, Committee Management Secretariat (CTM), Washington, DC 20405.

Copies of the two comments received are available for public inspection in Room 8206 of the General Services Building, 18th and F Streets, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Charles F. Howton, Senior Committee Management Specialist, Committee Management Secretariat, Office of Management Services, Office of Administration, General Services Administration, Washington, DC 20405 (202) 523-4884.

SUPPLEMENTARY INFORMATION:

Background

GSA's authority for administering the Act is contained in section 7 of the Act and Executive Order 12024 (42 FR 81445, 3 CFR, 1977 Comp., p. 158). Under Executive Order 12024, the President delegated to the Administrator of General Services all of the functions vested in the President by the Act, as amended, except that the Annual Report to the Congress required by section 6(c) shall be prepared by the Administrator for the President's consideration and transmittal to the Congress.

Discussion of Comments

GSA published a notice of proposed rulemaking in the Federal Register on the management of Federal advisory committees, with a 60-day comment period ending on February 28, 1989 (53 FR 53022, December 30, 1988). No Federal agency submitted substantive recommendations. Two non-Federal commenters responded in writing and were highly supportive of the proposed rule, stating, for example, that "The proposed rule provides greater guidance to agencies . . ." and, that "The changes proposed by GSA . . . represent a major improvement over the existing rules." Both commenters offered suggestions for improving two sections of the proposed rule, both of which pertained to provisions relating to balanced membership of advisory committees. These comments discussed three recommendations made in relation to § 101-6.1007(b)(2)(iii) and to § 101-6.1015(a)(1) of the proposed rule. The disposition of these recommendations is addressed as follows:

Require that Agencies Include in Their Balanced Membership Plans a Description of Plans To Attain and Maintain Fairly Balanced Membership

One commenter stated that the final rule should require agencies to describe plans to maintain fairly balanced membership, since . . . "advisory committees undergo changes from the initial composition through routine membership rotations or the resignation and replacement of members." GSA agrees that advisory committees often have changing membership composition.

However, section 14(a)(2)(A) of the Act provides that advisory committees established by agencies shall terminate after two years unless renewed by appropriate action. In § 101-6.1029(c) of the original final rule, GSA requires that an agency head who intends to renew a committee comply with the provisions of § 101-6.1007 of the final rule duplicating procedures for establishment. The

renewing agency must provide a description of its plan to attain fairly balanced membership on a biennial basis and, therefore, must address at the time of renewal any changes to the composition of the committee which may have occurred since its establishment or last renewal. GSA recognizes the merit of this suggestion, but believes that the Act and existing rule already provide for agencies to accommodate the requirement for fairly balanced membership. GSA, therefore, has not adopted this recommendation.

Require that Agencies Consider and Select a Cross-Section of Certain Membership Categories

The other commenter was of the opinion that the language in the proposed rule requiring that an agency consider (only) certain categories of potential members seemed to suggest that . . . "so long as an agency has 'considered' a cross-section of views and interests in the course of putting a committee together, it can ultimately select any composition it wants, including one which is one-sided and imbalanced." GSA does not believe that the guidance provided in the rule necessarily will cause agencies to adopt this perceived course with regard to membership selection, leading to the results suggested by this commenter.

In any case, § 101-6.1015(a)(1) of the new final rule will now require the agency to publish in advance in the Federal Register its description of its plan to attain fairly balanced membership, allowing for public comments which could include those offered by any interested party who might disagree that the committee will be fairly balanced. Furthermore, since the eventual selection of members for the composition an advisory committee established under this provision rests with the agency head, GSA does not believe that the final rule can compel an agency to make any particular membership selection. GSA has, therefore, not adopted this recommendation.

Require that an Agency's Federal Register Notice of Establishment Solicit the Proposal of Specific Nominees for Inclusion on a Committee

With regard to the Federal Register notice of establishment required by § 101-6.1015(a)(1) of the final rule, the previous commenter also suggested further that . . . "by requiring agencies to give the public an opportunity to comment on the plan for attaining fairly balanced membership, including by proposing specific nominees for

inclusion on the committee . . . (that) This would be invaluable to the public and would also be of great benefit to agencies, because it would ensure that they would have the most information possible about potential committee members."

For the following reasons, GSA has not adopted this suggestion. First, a notice of establishment normally contains the name and telephone number of the agency official responsible for responding to questions from, or for receiving comments provided by, any interested person. Such comments can include proposals for specific nominees for membership on a committee. Second, notices of establishment frequently are published by an agency prior to the selection of members, and the agency would have the opportunity to consider the commenter's suggestions of potential members. Even if an agency has chosen the members of a committee prior to the publication of the notice, it can make changes to the membership at any time during the life of the committee. Third, GSA is of the opinion that the overall purpose of the Federal Register notice of establishment, which in accordance with § 101-6.1015(a)(2) of the final rule shall appear at least 15 days before the filing of the committee's charter, is to provide the public an opportunity to comment on the necessity or any other aspect of the proposed committee.

Additional Information

The guidelines contained in this final rule with respect to § 101-6.1008(d), wherein GSA may solicit the assistance of the Office of Management and Budget in assuring the completion of follow-up reports required by section 6(b) of the Act, were developed by GSA after consultation with that agency.

Similarly, the guidelines contained in this final rule with respect to § 101-6.1009(j), wherein an agency head shall ensure that the interests and affiliations of advisory committee members are reviewed consistent with regulations published by the Office of Government Ethics, were developed by GSA after consultation with that agency.

Executive Order 12291

GSA has determined that this final rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it will not result in an annual effect on the economy of \$100 million or more, will not cause a major increase in costs to consumers or others, and will not have significant adverse effects. GSA has based all administrative decisions on this final rule on adequate information concerning

the need for and consequences of this final rule. GSA has also determined that the potential benefits to society from this final rule far outweigh the potential costs, has maximized the net benefits, and has chosen the alternative involving the least cost to society.

Regulatory Flexibility Act

These regulations are not subject to the regulatory flexibility analysis or other requirements of 5 U.S.C. 603 and 604.

List of Subjects in 41 CFR Part 101-6

Civil Rights, Government property management, Grant programs, Intergovernmental relations, Surplus Government property, Relocation assistance, Real property acquisition, Federal advisory committees.

Accordingly, 41 CFR part 101-6 is amended as follows:

PART 101-6—MISCELLANEOUS REGULATIONS

1. The authority citation for 41 CFR part 101-6 continues to read as follows:

Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c); sec. 7, 5 U.S.C., App.; and E.O. 12024, 3 CFR 1977 Comp., p. 158.

2. Section 101-6.1001 is amended by revising paragraph (a) to read follows:

§ 101-6.1001 Scope.

(a) This subpart defines the policies, establishes minimum requirements, and provides guidance to agency management for the establishment, operation, administration, and duration of advisory committees subject to the Federal Advisory Committee Act, as amended. Reporting requirements which keep the Congress and the public informed of the number, purpose, membership activities, and cost of these advisory committees are also included.

3. Section 101-6.1002 is amended by revising paragraph (c) to read as follows:

§ 101-6.1002 Policy.

(c) An advisory committee shall be fairly balanced in its membership in terms of the points of view represented and the functions to be performed; and

4. Section 101-6.1007 is amended by revising the introductory text of paragraph (b)(2) and paragraph (b)(2)(iii) to read as follows:

§ 101-6.1007 Agency procedures for establishing advisory committees.

(b) . . .

(2) Submit a letter and the proposed charter to the Secretariat proposing to establish or use, reestablish, or renew an advisory committee. The letter shall include the following information:

(iii) A description of the agency's plan to attain fairly balanced membership. The plan will ensure that, in the selection of members for the committee, the agency will consider a cross-section of those directly affected, interested, and qualified, as appropriate to the nature and functions of the committee. Committees requiring technical expertise should include persons with demonstrated professional or personal qualifications and experience relevant to the functions and tasks to be performed.

5. Section 101-6.1008 is amended by adding paragraph (d) to read as follows:

§ 101-6.1008 The role of GSA.

(d) The Secretariat shall assure that follow-up reports required by section 6(b) of the Act are prepared and transmitted to the Congress as directed by the President; either by his delegate, by the agency responsible for providing support to a Presidential advisory committee, or by the responsible agency or organization designated pursuant to paragraph (c) of § 101-6.1011. In performing this function, GSA may solicit the assistance of the Office of Management and Budget and other appropriate organizations, as deemed appropriate.

6. Section 101-6.1009 is amended by revising paragraphs (e), (h) and (i); and by adding paragraphs (j) and (k) to read as follows:

§ 101-6.1009 Responsibilities of an agency head.

(e) A review, at least annually, of the need to continue each existing advisory committee, consistent with the public interest and the purpose and functions of each committee;

(h) The opportunity for reasonable public participation in advisory committee activities;

(i) That the number of committee members is limited to the fewest necessary to accomplish committee objectives;

(j) That the interests and affiliations of advisory committee members are reviewed consistent with regulations published by the Office of Government

Ethics in 5 CFR parts 734, 735, and 737, and additional requirements, if any.

Established by the sponsoring agency pursuant to Executive Order 12574, the conflict-of-interest statutes, and the Ethics in Government Act of 1978, as amended; and

(k) Unless otherwise specified by the President, the preparation and transmittal of a follow-up report to the Congress detailing the disposition of the public recommendations of a Presidential advisory committee supported by the agency, in accordance with sections 6(b) of the Act.

7. Section 101-6.1011 is amended by revising paragraphs (a) and (b); and by adding paragraph (c) to read as follows:

§ 101-6.1011 Responsibilities of the chairperson of an independent Presidential advisory committee.

(a) Consult with the Administrator concerning the role of the Designated Federal Officer and Committee Management Officer;

(b) Fulfill the responsibilities of an agency head as specified in paragraphs (d), (h) and (j) of § 101-6.1009; and

(c) Unless otherwise specified by the President, consult with the Administrator regarding the designation of an agency or organization responsible for implementing section 6(b) of the Act.

8. Section 101-6.1015 is amended by

revising paragraph (a)(1) to read as follows:

§ 101-6.1015 Advisory committee information which must be published in the Federal Register.

(a) * * *

(1) A notice in the Federal Register is required when an advisory committee, except a committee specifically directed by law or established by the President by Executive Order, is established, used, reestablished, or renewed. Upon receiving notification of the completed review from the Secretariat in accordance with paragraph (c) of § 101-6.1007, the agency shall publish a notice in the Federal Register that the committee is being established, used, reestablished, or renewed. For a new committee, such notice shall also describe the nature and purpose of the committee and the agency's plan to attain fairly balanced membership, and shall include a statement that the committee is necessary and in the public interest.

9. Section 101-6.1035 is amended by revising paragraphs (a) and (b) to read as follows:

§ 101-6.1035 Reports required for advisory committees.

(a) Within one year after a Presidential advisory committee has submitted a public report to the

President, a follow-up report will be prepared and transmitted to the Congress as determined under paragraph (d) of § 101-6.1008, detailing the disposition of the committee's recommendations in accordance with section 6(b) of the Act. Reports shall be consistent with specific instructions issued periodically by the Secretariat;

(b) The President's annual report to the Congress shall be prepared by GSA based on reports filed on a fiscal year basis by each agency consistent with the information specified in section 6(c) of the Act. Reports from agencies shall be consistent with instructions provided annually by the Secretariat. Agency reports shall also include information requested to enable the Secretariat to carry out the annual comprehensive review of each advisory committee as required by section 7(b) of the Act. These reports have been cleared in accordance with FIRMR Subpart 201-45.6 in 41 CFR chapter 201 and assigned interagency report control number 0304-GSA-XX.

Dated: August 23, 1989.

Richard G. Austin,

Acting Administrator of General Services.
[FR Doc. 89-23455 Filed 10-4-89; 8:45 am]
BILLING CODE: 6820-34-M

The Freedom of Information Act

5 U.S.C. Section 552 (As Amended)

Sec. 552. Public information; agency rules, opinions, orders, records, and proceedings

(a) Each agency shall make available to the public information as follows:

(1) Each agency shall separately state and currently publish in the Federal Register for the guidance of the public--

(A) descriptions of its central and field organization and the established places at which, the employees (and in the case of a uniformed service, the members) from whom, and the methods whereby, the public may obtain information, make submittals or requests, or obtain decisions;

(B) statements of the general course and method by which its functions are channeled and determined, including the nature and requirements of all formal and informal procedures available;

(C) rules of procedure, descriptions of forms available or the places at which forms may be obtained, and instructions as to the scope and contents of all papers, reports, or examinations;

(D) substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by the agency; and

(E) each amendment, revision, or repeal of the foregoing. Except to the extent that a person has actual and timely notice of the terms thereof, a person may not in any manner be required to resort to, or be adversely affected by, a matter required to be published in the Federal Register and not so published. For the purpose of this paragraph, matter reasonably available to the class of persons affected thereby is deemed published in the Federal Register when incorporated by reference therein with the approval of the Director of the Federal Register.

(2) Each agency, in accordance with published rules, shall make available for public inspection and copying--

(A) final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases;

(B) those statements of policy and interpretations which have been adopted by the agency and are not published in the Federal Register; and

(C) administrative staff manuals and instructions to staff that affect a member of the public;

unless the materials are promptly published and copies offered for sale. To the extent required to prevent a clearly unwarranted invasion of personal privacy, an agency may delete identifying details when it makes available or publishes an opinion, statement of policy, interpretation, or staff manual or instruction. However, in each case the justification for the deletion shall be explained fully in writing. Each agency shall also maintain and make available for public inspection and copying current indexes providing identifying information for the public as to any matter issued, adopted, or promulgated after July 4, 1967, and required by this paragraph to be made available or published. Each agency shall promptly publish, quarterly or more frequently, and distribute (by sale or otherwise) copies of each index or supplements thereto unless it determines by order published in the Federal Register that the publication would be unnecessary and impracticable, in which case the agency shall nonetheless provide copies of such index on request at a cost not to exceed the direct cost of duplication. A final order, opinion, statement of policy, interpretation, or staff manual or instruction that affects a member of the public may be relied on, used, or as precedent by an agency against a party other than an agency only if-

(i) it has been indexed and either made available or published as provided by this paragraph; or

(ii) the party has actual and timely notice of the terms thereof.

(3) Except with respect to the records made available under paragraphs (1) and (2) of this subsection, each agency, upon any request for records which (A) reasonably describes such records and (B) is made in accordance with published rules stating the time, place, fees (if any), and procedures to be followed, shall make the records promptly available to any person.

(A)(i) In order to carry out the provisions of this section, each agency shall promulgate regulations, pursuant to notice and receipt of public comment, specifying the schedule of fees applicable to the processing of requests under this section and establishing procedures and guidelines for determining when such fees should be waived or reduced. Such schedule shall conform to the guidelines which shall be promulgated, pursuant to notice and receipt of public comment, by the Director of the Office of Management and Budget and which shall provide for a uniform schedule of fees for all agencies.

(ii) Such agency regulations shall provide that--

(I) fees shall be limited to reasonable standard charges for document search, duplication, and review, when records are requested for commercial use;

(II) fees shall be limited to reasonable standard charges for document duplication when records are not sought for commercial use and the request is made by an educational or noncommercial scientific institution, whose purpose is scholarly or scientific research; or a representative of the news media; and

(III) for any request not described in (I) or (II), fees shall be limited to reasonable standard charges for document search and duplication.

(iii) Documents shall be furnished without any charge or at a charge reduced below the fees established under clause (ii) if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.

(iv) Fee schedules shall provide for the recovery of only the direct costs of search, duplication, or review. Review costs shall include only the direct costs incurred during the initial examination of a document for the purposes of determining whether the documents must be disclosed under this section and for the purposes of withholding any portions exempt from disclosure under this section. Review costs may not include any costs incurred in resolving issues of law or policy that may be raised in the course of processing a request under this section. No fee may be charged by any agency under this section--

(I) if the costs of routine collection and processing of the fee are likely to equal or exceed the amount of the fee; or

(II) for any request described in clause (ii) (II) or (III) of this subparagraph for the first two hours of search time or for the first one hundred pages of duplication.

(v) No agency may require advance payment of any fee unless the requester has previously failed to pay fees in a timely fashion, or the agency has determined that the fee will exceed \$250.

(vi) Nothing in this subparagraph shall supersede fees chargeable under a statute specifically providing for setting the level of fees for particular types of records.

(vii) In any action by a requester regarding the waiver of fees under this section, the court shall determine the matter de novo: Provided, That the court's review of the matter shall be limited to the record before the agency.

(B) On complaint, the district court of the United States in the district in which the complainant resides, or has his principal place of business, or in which the agency records are situated, or in the District of Columbia, has jurisdiction to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant. In such a case the court shall determine the matter de novo, and may examine the contents of such agency records in camera to determine whether such records or any part thereof shall be withheld under any of the exemptions set forth in subsection (b) of this section, and the burden is

on the agency to sustain its action.

(C) Notwithstanding any other provision of law, the defendant shall serve an answer or otherwise plead to any complaint made under this subsection within thirty days after service upon the defendant of the pleading in which such complaint is made, unless the court otherwise directs for good cause shown.

(D) *[Except as to cases the court considers of greater importance, proceedings before the district court, as authorized by this subsection, and appeals therefrom, take precedence on the docket over all cases and shall be assigned for hearing and trial or for argument at the earliest practicable date and expedited in every way.]*
Repealed. Pub. L. 98-620, title IV, Sec. 402(2), Nov. 8, 1984, 98 Stat. 3357.

(E) The court may assess against the United States reasonable attorney fees and other litigation costs reasonably incurred in any case under this section in which the complainant has substantially prevailed.

(F) Whenever the court orders the production of any agency records improperly withheld from the complainant and assesses against the United States reasonable attorney fees and other litigation costs, and the court additionally issues a written finding that the circumstances surrounding the withholding raise questions whether agency personnel acted arbitrarily or capriciously with respect to the withholding, the Special Counsel shall promptly initiate a proceeding to determine whether disciplinary action is warranted against the officer or employee who was primarily responsible for the withholding. The Special Counsel, after investigation and consideration of the evidence submitted, shall submit his findings and recommendations to the administrative authority of the agency concerned and shall send copies of the findings and recommendations to the officer or employee or his representative. The administrative authority shall take the corrective action that the Special Counsel recommends.

(G) In the event of noncompliance with the order of the court, the district court may punish for contempt the responsible employee, and in the case of a uniformed service, the responsible member.

1. Each agency having more than one member shall maintain and make available for public inspection a record of the final votes of each member in every agency proceeding.

(6)(A) Each agency, upon any request for records made under paragraph (1), (2), or (3) of this subsection, shall--

1. determine within ten days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of any such request whether to comply with such request and shall immediately notify the person making such request of such determination and the reasons therefor, and of the right of such person to appeal to the head of the agency any adverse determination; and

(ii) make a determination with respect to any appeal within twenty days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of such appeal. If on appeal the denial of the request for records is in whole or in part upheld, the agency shall notify the person making such request of the provisions for judicial review of that determination under paragraph (4) of this subsection.

(B) In unusual circumstances as specified in this subparagraph, the time limits prescribed in either clause (i) or clause (ii) of subparagraph (A) may be extended by written notice to the person making such request setting forth the reasons for such extension and the date on which a determination is expected to be dispatched. No such notice shall specify a date that would result in an extension for more than ten working days. As used in this subparagraph, "unusual circumstances" means, but only to the extent reasonably necessary to the proper processing of the particular request--

(i) the need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;

(ii) the need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(iii) the need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of the agency having substantial subject-matter interest therein.

(C) Any person making a request to any agency for records under paragraph (1), (2), or (3) of this subsection shall be deemed to have exhausted his administrative remedies with respect to such request if the agency fails to comply with the applicable time limit provisions of this paragraph. If the Government can show exceptional circumstances exist and that the agency is exercising due diligence in responding to the request, the court may retain jurisdiction and allow the agency additional time to complete its review of the records. Upon any determination by an agency to comply with a request for records, the records shall be made promptly available to such person making such request. Any notification of denial of any request for records under this subsection shall set forth the names and titles or positions of each person responsible for the denial of such request.

(b) This section does not apply to matters that are--

(1)(A) specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and (B) are in fact properly classified pursuant to such Executive order;

(2) related solely to the internal personnel rules and practices of an agency;

(3) specifically exempted from disclosure by statute (other than section 552b of this title), provided that such statute (A) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(4) trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency;

(6) personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(7) records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information (A) could reasonably be expected to interfere with enforcement proceedings, (B) would deprive a person of a right to a fair trial or an impartial adjudication, (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy, (D) could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source, (E) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or (F) could reasonably be expected to endanger the life or physical safety of any individual;

(8) contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or

(9) geological and geophysical information and data, including maps, concerning wells. Any reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt under this subsection.

(c)(1) Whenever a request is made which involves access to records described in subsection (b)(7)(A) and--

(A) the investigation or proceeding involves a possible violation of criminal law; and

(B) there is reason to believe that (i) the subject of the investigation or proceeding is not aware of its

pendency, and (ii) disclosure of the existence of the records could reasonably be expected to interfere with enforcement proceedings, the agency may, during only such time as that circumstance continues, treat the records as not subject to the requirements of this section.

(2) Whenever informant records maintained by a criminal law enforcement agency under an informant's name or personal identifier are requested by a third party according to the informant's name or personal identifier, the agency may treat the records as not subject to the requirements of this section unless the informant's status as an informant has been officially confirmed.

(3) Whenever a request is made which involves access to records maintained by the Federal Bureau of Investigation pertaining to foreign intelligence or counterintelligence, or international terrorism, and the existence of the records is classified information as provided in subsection (b)(1), the Bureau may, as long as the existence of the records remains classified information, treat the records as not subject to the requirements of this section.

(d) This section does not authorize withholding of information or limit the availability of records to the public, except as specifically stated in this section. This section is not authority to withhold information from Congress.

(e) On or before March 1 of each calendar year, each agency shall submit a report covering the preceding calendar year to the Speaker of the House of Representatives and President of the Senate for referral to the appropriate committees of the Congress. The report shall include--

(1) the number of determinations made by such agency not to comply with requests for records made to such agency under subsection (a) and the reasons for each such determination;

(2) the number of appeals made by persons under subsection (a)(6), the result of such appeals, and the reason for the action upon each appeal that results in a denial of information;

(3) the names and titles or positions of each person responsible for the denial of records requested under this section, and the number of instances of participation for each;

(4) the results of each proceeding conducted pursuant to subsection (a)(4)(F), including a report of the disciplinary action taken against the officer or employee who was primarily responsible for improperly withholding records or an explanation of why disciplinary action was not taken;

(5) a copy of every rule made by such agency regarding this section;

(6) a copy of the fee schedule and the total amount of fees collected by the agency for making records available under this section; and

(7) such other information as indicates efforts to administer fully this section.

The Attorney General shall submit an annual report on or before March 1 of each calendar year which shall include for the prior calendar year a listing of the number of cases arising under this section, the exemption involved in each case, the disposition of such case, and the cost, fees, and penalties assessed under subsections (a)(4)(E), (F), and (G). Such report shall also include a description of the efforts undertaken by the Department of Justice to encourage agency compliance with this section.

(f) For purposes of this section, the term "agency" as defined in section 551(1) of this title includes any executive department, military department, Government corporation, Government controlled corporation, or other establishment in the executive branch of the Government (including the Executive Office of the President), or any independent regulatory agency.

H.R.3802

**One Hundred Fourth Congress of the United States of America
AT THE SECOND SESSION**

**Begun and held at the City of Washington on Wednesday, the third day of January,
one thousand nine hundred and ninety-six**

An Act

To amend section 552 of title 5, United States Code, popularly known as the Freedom of Information Act, to provide for public access to information in an electronic format, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the Electronic Freedom of Information Act Amendments of 1996.

SEC. 2. FINDINGS AND PURPOSES.

(a) **FINDINGS-** The Congress finds that---

- (1) the purpose of section 552 of title 5, United States Code, popularly known as the Freedom of Information Act, is to require agencies of the Federal Government to make certain agency information available for public inspection and copying and to establish and enable enforcement of the right of any person to obtain access to the records of such agencies, subject to statutory exemptions, for any public or private purpose;
- (2) since the enactment of the Freedom of Information Act in 1966, and the amendments enacted in 1974 and 1986, the Freedom of Information Act has been a valuable means through which any person can learn how the Federal Government operates;
- (3) the Freedom of Information Act has led to the disclosure of waste, fraud, abuse, and wrongdoing in the Federal Government;
- (4) the Freedom of Information Act has led to the identification of unsafe consumer products, harmful drugs, and serious health hazards;
- (5) Government agencies increasingly use computers to conduct agency business and to store publicly valuable agency records and information; and
- (6) Government agencies should use new technology to enhance public access to agency records and information.

(b) **PURPOSES-** The purposes of this Act are to--

- (1) foster democracy by ensuring public access to agency records and information;
- (2) improve public access to agency records and information;
- (3) ensure agency compliance with statutory time limits; and
- (4) maximize the usefulness of agency records and information collected, maintained, used, retained, and disseminated by the Federal Government.

SEC. 3. APPLICATION OF REQUIREMENTS TO ELECTRONIC FORMAT INFORMATION.

Section 552(f) of title 5, United States Code, is amended to read as follows:

(f) For purposes of this section, the term--

- (1) agency as defined in section 551(1) of this title includes any executive department, military department, government corporation, Government controlled corporation, or other establishment in the executive branch of the Government (including the Executive Office of the President), or any independent regulatory agency; and
- (2) record and any other term used in this section in reference to information includes any information that would be an agency record subject to the requirements of this section when maintained by an agency in any format, including an electronic format..

SEC. 4. INFORMATION MADE AVAILABLE IN ELECTRONIC FORMAT AND INDEXATION OF RECORDS.

Section 552(a)(2) of title 5, United States Code, is amended--

- (1) in the second sentence, by striking or staff manual or instruction and inserting staff manual, instruction, or copies of records referred to in subparagraph (D);
- (2) by inserting before the period at the end of the third sentence the following: , and the extent of such deletion shall be indicated on the portion of the record which is made available or published, unless including that indication would harm an interest protected by the exemption in subsection (b) under which the deletion is made;
- (3) by inserting after the third sentence the following: If technically feasible, the extent of the deletion shall be indicated at the place in the record where the deletion was made.;
- (4) in subparagraph (B), by striking and after the semicolon;
- (5) by inserting after subparagraph (C) the following:

(D) copies of all records, regardless of form or format, which have been released to any person under paragraph (3) and which, because of the nature of their subject matter, the agency determines have become or are likely to become the subject of subsequent requests for substantially the same records; and

(E) a general index of the records referred to under subparagraph (D).;
- (6) by inserting after the fifth sentence the following: Each agency shall make the index referred to in subparagraph (E) available by computer telecommunications by December 31, 1999.; and
- (7) by inserting after the first sentence the following: For records created on or after November 1, 1996, within one year after such date, each agency shall make such records available, including by computer telecommunications or, if computer telecommunications means have not been established by the agency, by other electronic means..

SEC. 5. HONORING FORM OR FORMAT REQUESTS.

Section 552(a)(3) of title 5, United States Code, is amended--

- (1) by inserting (A) after (3);
- (2) by striking (A) the second place it appears and inserting (i);
- (3) by striking (B) and inserting (ii); and
- (4) by adding at the end the following new subparagraphs:

(B) In making any record available to a person under this paragraph, an agency shall provide the record in any form or format requested by the person if the record is readily reproducible by the agency in that form or format. Each agency shall make reasonable efforts to maintain its records in forms or formats that are reproducible for purposes of this section.

(C) In responding under this paragraph to a request for records, an agency shall make reasonable efforts to search for the records in electronic form or format, except when such efforts would significantly interfere with the operation of the agency's automated information system.

(D) For purposes of this paragraph, the term search means to review, manually or by automated means, agency records for the purpose of locating those records which are responsive to a request..

SEC. 6. STANDARD FOR JUDICIAL REVIEW.

Section 552(a)(4)(B) of title 5, United States Code, is amended by adding at the end the following new sentence: In addition to any other matters to which a court accords substantial weight, a court shall accord substantial weight to the affidavit of an agency concerning the agency's determination as to technical feasibility under paragraph (2)(C) and subsection (b) and reproducibility under paragraph (3)(B)..

SEC. 7. ENSURING TIMELY RESPONSE TO REQUESTS.

(a) MULTITRACK PROCESSING- Section 552(a)(6) of title 5, United States Code, is amended by adding at the end the following new subparagraph:

(D)(i) Each agency may promulgate regulations, pursuant to notice and receipt of public comment, providing for multitrack processing of requests for records based on the amount of work or time (or both) involved in processing requests.

(ii) Regulations under this subparagraph may provide a person making a request that does not qualify for the fastest multitrack processing an opportunity to limit the scope of the request in order to qualify for faster processing.

(iii) This subparagraph shall not be considered to affect the requirement under subparagraph (C) to exercise due diligence..

(b) UNUSUAL CIRCUMSTANCES- Section 552(a)(6)(B) of title 5, United States Code, is amended to read as follows:

(B)(i) In unusual circumstances as specified in this subparagraph, the time limits prescribed in either clause (i) or clause (ii) of subparagraph (A) may be extended by written notice to the person making such request setting forth the unusual circumstances for such extension and the date on which a determination is expected to be dispatched. No such notice shall specify a date that would result in an extension for more than ten working days, except as provided in clause (ii) of this subparagraph.

(ii) With respect to a request for which a written notice under clause (i) extends the time limits prescribed under clause (i) of subparagraph (A), the agency shall notify the person making the request if the request cannot be processed within the time limit specified in that clause and shall provide the person an opportunity to limit the scope of the request so that it may be processed within that time limit or an opportunity to arrange with the agency an alternative time frame for processing the request or a modified request. Refusal by the person to reasonably modify the request or arrange such an alternative time frame shall be considered as a factor in determining whether exceptional circumstances exist for purposes of subparagraph (C).

(iii) As used in this subparagraph, unusual circumstances means, but only to the extent reasonably necessary to the proper processing of the particular requests---

(I) the need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;

(II) the need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(III) the need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of the agency having substantial subject-matter interest therein.

(iv) Each agency may promulgate regulations, pursuant to notice and receipt of public comment, providing for the aggregation of certain requests by the same requestor, or by a group of requestors acting in concert, if the agency reasonably believes that such requests actually constitute a single request, which would otherwise satisfy the unusual circumstances specified in this subparagraph, and the requests involve clearly related matters. Multiple requests involving unrelated matters shall not be aggregated..

(c) EXCEPTIONAL CIRCUMSTANCES- Section 552(a)(6)(C) of title 5, United States Code, is amended by inserting (i) after (C), and by adding at the end the following new clauses:

(i) For purposes of this subparagraph, the term exceptional circumstances does not include a delay that results from a predictable agency workload of requests under this section, unless the agency demonstrates reasonable progress in reducing its backlog of pending requests.

(ii) Refusal by a person to reasonably modify the scope of a request or arrange an alternative time frame for processing a request (or a modified request) under clause (i) after being given an opportunity to do so by the agency to whom the person made the request shall be considered as a factor in determining whether exceptional circumstances exist for purposes of this subparagraph..

SEC. 8. TIME PERIOD FOR AGENCY CONSIDERATION OF REQUESTS.

(a) **EXPEDITED PROCESSING-** Section 552(a)(6) of title 5, United States Code (as amended by section 7(a) of this Act), is further amended by adding at the end the following new subparagraph:

(E)(i) Each agency shall promulgate regulations, pursuant to notice and receipt of public comment, providing for expedited processing of requests for records--

(I) in cases in which the person requesting the records demonstrates a compelling need; and

(II) in other cases determined by the agency.

(ii) Notwithstanding clause (i), regulations under this subparagraph must ensure--

(I) that a determination of whether to provide expedited processing shall be made, and notice of the determination shall be provided to the person making the request, within 10 days after the date of the request; and

(II) expeditious consideration of administrative appeals of such determinations of whether to provide expedited processing.

(iii) An agency shall process as soon as practicable any request for records to which the agency has granted expedited processing under this subparagraph. Agency action to deny or affirm denial of a request for expedited processing pursuant to this subparagraph, and failure by an agency to respond in a timely manner to such a request shall be subject to judicial review under paragraph (4), except that the judicial review shall be based on the record before the agency at the time of the determination.

(iv) A district court of the United States shall not have jurisdiction to review an agency denial of expedited processing of a request for records after the agency has provided a complete response to the request.

(v) For purposes of this subparagraph, the term compelling need means--

(I) that a failure to obtain requested records on an expedited basis under this paragraph could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or

(II) with respect to a request made by a person primarily engaged in disseminating information, urgency to inform the public concerning actual or alleged Federal Government activity.

(vi) A demonstration of a compelling need by a person making a request for expedited processing shall be made by a statement certified by such person to be true and correct to the best of such persons knowledge and belief..

(b) **EXTENSION OF GENERAL PERIOD FOR DETERMINING WHETHER TO COMPLY WITH A REQUEST-** Section 552(a)(6)(A)(i) of title 5, United States Code, is amended by striking ten days and inserting 20 days.

(c) **ESTIMATION OF MATTER DENIED-** Section 552(a)(6) of title 5, United States Code (as amended by section 7 of this Act and subsection (a) of this section), is further amended by adding at the end the following new subparagraph:

(F) In denying a request for records, in whole or in part, an agency shall make a reasonable effort to estimate the volume of any requested matter the provision of which is denied, and shall provide any such estimate to the person making the request, unless providing such estimate would harm an interest protected by the exemption in subsection (b) pursuant to which the denial is made..

SEC. 9. COMPUTER REDACTION.

Section 552(b) of title 5, United States Code, is amended in the matter following paragraph (9) by inserting after the period the following: The amount of information deleted shall be indicated on the released portion of the record, unless including that indication would harm an interest protected by the exemption in this subsection under which the deletion is made. If technically feasible, the amount of the information deleted shall be indicated at the place in the record where such deletion is made..

SEC. 10. REPORT TO THE CONGRESS.

Section 552(e) of title 5, United States Code, is amended to read as follows:

e)(1) On or before February 1 of each year, each agency shall submit to the Attorney General of the United States a report which shall cover the preceding fiscal year and which shall include--

(A) the number of determinations made by the agency not to comply with requests for records made to such agency under subsection (a) and the reasons for each such determination;

(B)(i) the number of appeals made by persons under subsection (a)(6), the result of such appeals, and the reason

for the action upon each appeal that results in a denial of information; and

(ii) a complete list of all statutes that the agency relies upon to authorize the agency to withhold information under subsection (b)(3), a description of whether a court has upheld the decision of the agency to withhold information under each such statute, and a concise description of the scope of any information withheld;

(C) the number of requests for records pending before the agency as of September 30 of the preceding year, and the median number of days that such requests had been pending before the agency as of that date;

(D) the number of requests for records received by the agency and the number of requests which the agency processed;

(E) the median number of days taken by the agency to process different types of requests;

(F) the total amount of fees collected by the agency for processing requests; and

(G) the number of full-time staff of the agency devoted to processing requests for records under this section, and the total amount expended by the agency for processing such requests.

(2) Each agency shall make each such report available to the public including by computer telecommunications, or if computer telecommunications means have not been established by the agency, by other electronic means.

(3) The Attorney General of the United States shall make each report which has been made available by electronic means available at a single electronic access point. The Attorney General of the United States shall notify the Chairman and ranking minority member of the Committee on Government Reform and Oversight of the House of Representatives and the Chairman and ranking minority member of the Committees on Governmental Affairs and the Judiciary of the Senate, no later than April 1 of the year in which each such report is issued, that such reports are available by electronic means.

(4) The Attorney General of the United States, in consultation with the Director of the Office of Management and Budget, shall develop reporting and performance guidelines in connection with reports required by this subsection by October 1, 1997, and may establish additional requirements for such reports as the Attorney General determines may be useful.

(5) The Attorney General of the United States shall submit an annual report on or before April 1 of each calendar year which shall include for the prior calendar year a listing of the number of cases arising under this section, the exemption involved in each case, the disposition of such case, and the cost, fees, and penalties assessed under subparagraphs (E), (F), and (G) of subsection (a)(4). Such report shall also include a description of the efforts undertaken by the Department of Justice to encourage agency compliance with this section..

SEC. 11. REFERENCE MATERIALS AND GUIDES.

Section 552 of title 5, United States Code, is amended by adding after subsection (f) the following new subsection:

(g) The head of each agency shall prepare and make publicly available upon request, reference material or a guide for requesting records or information from the agency, subject to the exemptions in subsection (b), including--

(1) an index of all major information systems of the agency;

(2) a description of major information and record locator systems maintained by the agency; and

(3) a handbook for obtaining various types and categories of public information from the agency pursuant to chapter 35 of title 44, and under this section..

SEC. 12. EFFECTIVE DATE.

(a) **IN GENERAL.** Except as provided in subsection (b), this Act shall take effect 180 days after the date of the enactment of this Act.

(b) PROVISIONS EFFECTIVE ON ENACTMENT

- Sections 7 and 8 shall take effect one year after the date of the enactment of this Act.

aker of the House of Representatives.

vice President of the United States and President of the Senate.

Privacy Act of 1974 and Amendments (as of Jan 2, 1991)

[From GPO US Code on CD-ROM (GPO S/N 052-001-004-00439-6)]

5 USC Sec. 552a

TITLE 5

PART I

CHAPTER 5

SUBCHAPTER II

Sec. 552a. Records maintained on individuals

(a) Definitions. - For purposes of this section -

(1) the term 'agency' means agency as defined in section 552(e) (FOOTNOTE 1) of this title;

(FOOTNOTE 1) See References in Text note below.

(2) the term 'individual' means a citizen of the United States or an alien lawfully admitted for permanent residence;

(3) the term 'maintain' includes maintain, collect, use, or disseminate;

(4) the term 'record' means any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, his education, financial transactions, medical history, and criminal or employment history and that contains his name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or a photograph;

(5) the term 'system of records' means a group of any records under the control of any agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual;

(6) the term 'statistical record' means a record in a system of records maintained for statistical research or reporting purposes only and not used in whole or in part in making any determination about an identifiable individual, except as provided by section 8 of title 13;

(7) the term 'routine use' means, with respect to the disclosure of a record, the use of such record for a purpose which is compatible with the purpose for which it was collected;

(8) the term 'matching program' -

(A) means any computerized comparison of -

(i) two or more automated systems of records or a system of records with non-Federal records for the purpose of -

(I) establishing or verifying the eligibility of, or continuing compliance with statutory and regulatory requirements by, applicants for, recipients or beneficiaries of, participants in, or providers of services with respect to, cash or in-kind assistance or payments under Federal benefit programs, or

(II) recouping payments or delinquent debts under such Federal benefit programs, or

(ii) two or more automated Federal personnel or payroll systems of records or a system of Federal personnel or payroll records with non-Federal records,

(B) but does not include -

(i) matches performed to produce aggregate statistical data without any personal identifiers;

(ii) matches performed to support any research or statistical project, the specific data of which may not be used to make decisions concerning the rights, benefits, or privileges of specific individuals;

(iii) matches performed, by an agency (or component

thereof) which performs as its principal function any activity pertaining to the enforcement of criminal laws, subsequent to the initiation of a specific criminal or civil law enforcement investigation of a named person or persons for the purpose of gathering evidence against such person or persons;

(iv) matches of tax information (I) pursuant to section 6103(d) of the Internal Revenue Code of 1986, (II) for purposes of tax administration as defined in section 6103(b)(4) of such Code, (III) for the purpose of intercepting a tax refund due an individual under authority granted by section 464 or 1137 of the Social Security Act; or (IV) for the purpose of intercepting a tax refund due an individual under any other tax refund intercept program authorized by statute which has been determined by the Director of the Office of Management and Budget to contain verification, notice, and hearing requirements that are substantially similar to the procedures in section 1137 of the Social Security Act;

(v) matches -

(I) using records predominantly relating to Federal personnel, that are performed for routine administrative purposes (subject to guidance provided by the Director of the Office of Management and Budget pursuant to subsection (v)); or

(II) conducted by an agency using only records from systems of records maintained by that agency; if the purpose of the match is not to take any adverse financial, personnel, disciplinary, or other adverse action against Federal personnel; or

(vi) matches performed for foreign counterintelligence purposes or to produce background checks for security clearances of Federal personnel or Federal contractor personnel;

(9) the term 'recipient agency' means any agency, or contractor thereof, receiving records contained in a system of records from a source agency for use in a matching program;

(10) the term 'non-Federal agency' means any State or local government, or agency thereof, which receives records contained in a system of records from a source agency for use in a matching program;

(11) the term 'source agency' means any agency which discloses records contained in a system of records to be used in a matching program, or any State or local government, or agency thereof, which discloses records to be used in a matching program;

(12) the term 'Federal benefit program' means any program administered or funded by the Federal Government, or by any agent or State on behalf of the Federal Government, providing cash or in-kind assistance in the form of payments, grants, loans, or loan guarantees to individuals; and

(13) the term 'Federal personnel' means officers and employees of the Government of the United States, members of the uniformed services (including members of the Reserve Components), individuals entitled to receive immediate or deferred retirement benefits under any retirement program of the Government of the United States (including survivor benefits).

(b) Conditions of Disclosure. - No agency shall disclose any record which is contained in a system of records by any means of communication to any person, or to another agency, except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains, unless disclosure of the record would be -

(1) to those officers and employees of the agency which maintains the record who have a need for the record in the performance of their duties;

(2) required under section 552 of this title;

(3) for a routine use as defined in subsection (a)(7) of this section and described under subsection (e)(4)(D) of this section;

(4) to the Bureau of the Census for purposes of planning or carrying out a census or survey or related activity pursuant to

the provisions of title 13;

(5) to a recipient who has provided the agency with advance adequate written assurance that the record will be used solely as a statistical research or reporting record, and the record is to be transferred in a form that is not individually identifiable;

(6) to the National Archives and Records Administration as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, or for evaluation by the Archivist of the United States or the designee of the Archivist to determine whether the record has such value;

(7) to another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if the head of the agency or instrumentality has made a written request to the agency which maintains the record specifying the particular portion desired and the law enforcement activity for which the record is sought;

(8) to a person pursuant to a showing of compelling circumstances affecting the health or safety of an individual if upon such disclosure notification is transmitted to the last known address of such individual;

(9) to either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof, any joint committee of Congress or subcommittee of any such joint committee;

(10) to the Comptroller General, or any of his authorized representatives, in the course of the performance of the duties of the General Accounting Office;

(11) pursuant to the order of a court of competent jurisdiction; or

(12) to a consumer reporting agency in accordance with section 3711(f) of title 31.

(c) Accounting of Certain Disclosures. -- Each agency, with respect to each system of records under its control, shall --

(1) except for disclosures made under subsections (b)(1) or (b)(2) of this section, keep an accurate accounting of --

(A) the date, nature, and purpose of each disclosure of a record to any person or to another agency made under subsection (b) of this section; and

(B) the name and address of the person or agency to whom the disclosure is made;

(2) retain the accounting made under paragraph (1) of this subsection for at least five years or the life of the record, whichever is longer, after the disclosure for which the accounting is made;

(3) except for disclosures made under subsection (b)(7) of this section, make the accounting made under paragraph (1) of this subsection available to the individual named in the record at his request; and

(4) inform any person or other agency about any correction or notation of dispute made by the agency in accordance with subsection (d) of this section of any record that has been disclosed to the person or agency if an accounting of the disclosure was made.

(d) Access to Records. -- Each agency that maintains a system of records shall --

(1) upon request by any individual to gain access to his record or to any information pertaining to him which is contained in the system, permit him and upon his request, a person of his own choosing to accompany him, to review the record and have a copy made of all or any portion thereof in a form comprehensible to him, except that the agency may require the individual to furnish a written statement authorizing discussion of that individual's record in the accompanying person's presence;

(2) permit the individual to request amendment of a record pertaining to him and --

(A) not later than 10 days (excluding Saturdays, Sundays, and legal public holidays) after the date of receipt of such request, acknowledge in writing such receipt; and

(B) promptly, either -

(i) make any correction of any portion thereof which the individual believes is not accurate, relevant, timely, or complete; or

(ii) inform the individual of its refusal to amend the record in accordance with his request, the reason for the refusal, the procedures established by the agency for the individual to request a review of that refusal by the head of the agency or an officer designated by the head of the agency, and the name and business address of that official;

(3) permit the individual who disagrees with the refusal of the agency to amend his record to request a review of such refusal, and not later than 30 days (excluding Saturdays, Sundays, and legal public holidays) from the date on which the individual requests such review, complete such review and make a final determination unless, for good cause shown, the head of the agency extends such 30-day period; and if, after his review, the reviewing official also refuses to amend the record in accordance with the request, permit the individual to file with the agency a concise statement setting forth the reasons for his disagreement with the refusal of the agency, and notify the individual of the provisions for judicial review of the reviewing official's determination under subsection (g)(1)(A) of this section;

(4) in any disclosure, containing information about which the individual has filed a statement of disagreement, occurring after the filing of the statement under paragraph (3) of this subsection, clearly note any portion of the record which is disputed and provide copies of the statement and, if the agency deems it appropriate, copies of a concise statement of the reasons of the agency for not making the amendments requested, to persons or other agencies to whom the disputed record has been disclosed; and

(5) nothing in this section shall allow an individual access to any information compiled in reasonable anticipation of a civil action or proceeding.

(e) Agency Requirements. - Each agency that maintains a system of records shall -

(1) maintain in its records only such information about an individual as is relevant and necessary to accomplish a purpose of the agency required to be accomplished by statute or by executive order of the President;

(2) collect information to the greatest extent practicable directly from the subject individual when the information may result in adverse determinations about an individual's rights, benefits, and privileges under Federal programs;

(3) inform each individual whom it asks to supply information, on the form which it uses to collect the information or on a separate form that can be retained by the individual -

(A) the authority (whether granted by statute, or by executive order of the President) which authorizes the solicitation of the information and whether disclosure of such information is mandatory or voluntary;

(B) the principal purpose or purposes for which the information is intended to be used;

(C) the routine uses which may be made of the information, as published pursuant to paragraph (4)(D) of this subsection; and

(D) the effects on him, if any, of not providing all or any part of the requested information;

(4) subject to the provisions of paragraph (11) of this subsection, publish in the Federal Register upon establishment or revision a notice of the existence and character of the system of records, which notice shall include -

(A) the name and location of the system;

(B) the categories of individuals on whom records are maintained in the system;

(C) the categories of records maintained in the system;

(D) each routine use of the records contained in the system, including the categories of users and the purpose of such use;

(E) the policies and practices of the agency regarding storage, retrievability, access controls, retention, and

disposal of the records;

(F) the title and business address of the agency official who is responsible for the system of records;

(G) the agency procedures whereby an individual can be notified at his request if the system of records contains a record pertaining to him;

(H) the agency procedures whereby an individual can be notified at his request how he can gain access to any record pertaining to him contained in the system of records, and how he can contest its content; and

(I) the categories of sources of records in the system;

(5) maintain all records which are used by the agency in making any determination about any individual with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to assure fairness to the individual in the determination;

(6) prior to disseminating any record about an individual to any person other than an agency, unless the dissemination is made pursuant to subsection (b) (2) of this section, make reasonable efforts to assure that such records are accurate, complete, timely, and relevant for agency purposes;

(7) maintain no record describing how any individual exercises rights guaranteed by the First Amendment unless expressly authorized by statute or by the individual about whom the record is maintained or unless pertinent to and within the scope of an authorized law enforcement activity;

(8) make reasonable efforts to serve notice on an individual when any record on such individual is made available to any person under compulsory legal process when such process becomes a matter of public record;

(9) establish rules of conduct for persons involved in the design, development, operation, or maintenance of any system of records, or in maintaining any record, and instruct each such person with respect to such rules and the requirements of this section, including any other rules and procedures adopted pursuant to this section and the penalties for noncompliance;

(10) establish appropriate administrative, technical, and physical safeguards to insure the security and confidentiality of records and to protect against any anticipated threats or hazards to their security or integrity which could result in substantial harm, embarrassment, inconvenience, or unfairness to any individual on whom information is maintained;

(11) at least 30 days prior to publication of information under paragraph (4) (D) of this subsection, publish in the Federal Register notice of any new use or intended use of the information in the system, and provide an opportunity for interested persons to submit written data, views, or arguments to the agency; and

(12) if such agency is a recipient agency or a source agency in a matching program with a non-Federal agency, with respect to any establishment or revision of a matching program, at least 30 days prior to conducting such program, publish in the Federal Register notice of such establishment or revision.

(f) Agency Rules. - In order to carry out the provisions of this section, each agency that maintains a system of records shall promulgate rules, in accordance with the requirements (including general notice) of section 553 of this title, which shall -

(1) establish procedures whereby an individual can be notified in response to his request if any system of records named by the individual contains a record pertaining to him;

(2) define reasonable times, places, and requirements for identifying an individual who requests his record or information pertaining to him before the agency shall make the record or information available to the individual;

(3) establish procedures for the disclosure to an individual upon his request of his record or information pertaining to him, including special procedure, if deemed necessary, for the disclosure to an individual of medical records, including psychological records, pertaining to him;

(4) establish procedures for reviewing a request from an individual concerning the amendment of any record or information

pertaining to the individual, for making a determination on the request, for an appeal within the agency of an initial adverse agency determination, and for whatever additional means may be necessary for each individual to be able to exercise fully his rights under this section; and

(5) establish fees to be charged, if any, to any individual for making copies of his record, excluding the cost of any search for and review of the record.

The Office of the Federal Register shall biennially compile and publish the rules promulgated under this subsection and agency notices published under subsection (e) (4) of this section in a form available to the public at low cost.

(g) (1) Civil Remedies. -- Whenever any agency

(A) makes a determination under subsection (d) (3) of this section not to amend an individual's record in accordance with his request, or fails to make such review in conformity with that subsection;

(B) refuses to comply with an individual request under subsection (d) (1) of this section;

(C) fails to maintain any record concerning any individual with such accuracy, relevance, timeliness, and completeness as is necessary to assure fairness in any determination relating to the qualifications, character, rights, or opportunities of, or benefits to the individual that may be made on the basis of such record, and consequently a determination is made which is adverse to the individual; or

(D) fails to comply with any other provision of this section, or any rule promulgated thereunder, in such a way as to have an adverse effect on an individual,

the individual may bring a civil action against the agency, and the district courts of the United States shall have jurisdiction in the matters under the provisions of this subsection.

(2) (A) In any suit brought under the provisions of subsection (g) (1) (A) of this section, the court may order the agency to amend the individual's record in accordance with his request or in such other way as the court may direct. In such a case the court shall determine the matter de novo.

(B) The court may assess against the United States reasonable attorney fees and other litigation costs reasonably incurred in any case under this paragraph in which the complainant has substantially prevailed.

(3) (A) In any suit brought under the provisions of subsection (g) (1) (B) of this section, the court may enjoin the agency from withholding the records and order the production to the complainant of any agency records improperly withheld from him. In such a case the court shall determine the matter de novo, and may examine the contents of any agency records in camera to determine whether the records or any portion thereof may be withheld under any of the exemptions set forth in subsection (k) of this section, and the burden is on the agency to sustain its action.

(B) The court may assess against the United States reasonable attorney fees and other litigation costs reasonably incurred in any case under this paragraph in which the complainant has substantially prevailed.

(4) In any suit brought under the provisions of subsection (g) (1) (C) or (D) of this section in which the court determines that the agency acted in a manner which was intentional or willful, the United States shall be liable to the individual in an amount equal to the sum of --

(A) actual damages sustained by the individual as a result of the refusal or failure, but in no case shall a person entitled to recovery receive less than the sum of \$1,000; and

(B) the costs of the action together with reasonable attorney fees as determined by the court.

(5) An action to enforce any liability created under this section may be brought in the district court of the United States in the district in which the complainant resides, or has his principal place of business, or in which the agency records are situated, or in the District of Columbia, without regard to the amount in controversy, within two years from the date on which the cause of

action arises, except that where an agency has materially and willfully misrepresented any information required under this section to be disclosed to an individual and the information so misrepresented is material to establishment of the liability of the agency to the individual under this section, the action may be brought at any time within two years after discovery by the individual of the misrepresentation. Nothing in this section shall be construed to authorize any civil action by reason of any injury sustained as the result of a disclosure of a record prior to September 27, 1975.

(h) Rights of Legal Guardians. - For the purposes of this section, the parent of any minor, or the legal guardian of any individual who has been declared to be incompetent due to physical or mental incapacity or age by a court of competent jurisdiction, may act on behalf of the individual.

(i) (1) Criminal Penalties. - Any officer or employee of an agency, who by virtue of his employment or official position, has possession of, or access to, agency records which contain individually identifiable information the disclosure of which is prohibited by this section or by rules or regulations established thereunder, and who knowing that disclosure of the specific material is so prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000.

(2) Any officer or employee of any agency who willfully maintains a system of records without meeting the notice requirements of subsection (e) (4) of this section shall be guilty of a misdemeanor and fined not more than \$5,000.

(3) Any person who knowingly and willfully requests or obtains any record concerning an individual from an agency under false pretenses shall be guilty of a misdemeanor and fined not more than \$5,000.

(j) General Exemptions. - The head of any agency may promulgate rules, in accordance with the requirements (including general notice) of sections 553(b) (1), (2), and (3), (c), and (e) of this title, to exempt any system of records within the agency from any part of this section except subsections (b), (c) (1) and (2), (e) (4) (A) through (F), (e) (6), (7), (9), (10), and (11), and (i) if the system of records is -

(1) maintained by the Central Intelligence Agency; or

(2) maintained by an agency or component thereof which performs as its principal function any activity pertaining to the enforcement of criminal laws, including police efforts to prevent, control, or reduce crime or to apprehend criminals, and the activities of prosecutors, courts, correctional, probation, pardon, or parole authorities, and which consists of (A) information compiled for the purpose of identifying individual criminal offenders and alleged offenders and consisting only of identifying data and notations of arrests, the nature and disposition of criminal charges, sentencing, confinement, release, and parole and probation status; (B) information compiled for the purpose of a criminal investigation, including reports of informants and investigators, and associated with an identifiable individual; or (C) reports identifiable to an individual compiled at any stage of the process of enforcement of the criminal laws from arrest or indictment through release from supervision.

At the time rules are adopted under this subsection, the agency shall include in the statement required under section 553(c) of this title, the reasons why the system of records is to be exempted from a provision of this section.

(k) Specific Exemptions. - The head of any agency may promulgate rules, in accordance with the requirements (including general notice) of sections 553(b) (1), (2), and (3), (c), and (e) of this title, to exempt any system of records within the agency from subsections (c) (3), (d), (e) (1), (e) (4) (G), (H), and (I) and (f) of this section if the system of records is -

(1) subject to the provisions of section 552(b) (1) of this title;

(2) investigatory material compiled for law enforcement

purposes, other than material within the scope of subsection (j)(2) of this section: Provided, however, That if any individual is denied any right, privilege, or benefit that he would otherwise be entitled by Federal law, or for which he would otherwise be eligible, as a result of the maintenance of such material, such material shall be provided to such individual, except to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to the effective date of this section, under an implied promise that the identity of the source would be held in confidence;

(3) maintained in connection with providing protective services to the President of the United States or other individuals pursuant to section 3056 of title 18;

(4) required by statute to be maintained and used solely as statistical records;

(5) investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, military service, Federal contracts, or access to classified information, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to the effective date of this section, under an implied promise that the identity of the source would be held in confidence;

(6) testing or examination material used solely to determine individual qualifications for appointment or promotion in the Federal service the disclosure of which would compromise the objectivity or fairness of the testing or examination process; or

(7) evaluation material used to determine potential for promotion in the armed services, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to the effective date of this section, under an implied promise that the identity of the source would be held in confidence.

At the time rules are adopted under this subsection, the agency shall include in the statement required under section 553(c) of this title, the reasons why the system of records is to be exempted from a provision of this section.

(1) Archival Records. - Each agency record which is accepted by the Archivist of the United States for storage, processing, and servicing in accordance with section 3103 of title 44 shall, for the purposes of this section, be considered to be maintained by the agency which deposited the record and shall be subject to the provisions of this section. The Archivist of the United States shall not disclose the record except to the agency which maintains the record, or under rules established by that agency which are not inconsistent with the provisions of this section.

(2) Each agency record pertaining to an identifiable individual which was transferred to the National Archives of the United States as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, prior to the effective date of this section, shall, for the purposes of this section, be considered to be maintained by the National Archives and shall not be subject to the provisions of this section, except that a statement generally describing such records (modeled after the requirements relating to records subject to subsections (e)(4)(A) through (G) of this section) shall be published in the Federal Register.

(3) Each agency record pertaining to an identifiable individual which is transferred to the National Archives of the United States as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, on or after the effective date of this section, shall, for the purposes of this section, be considered to be maintained by the National Archives and shall be exempt from the requirements of this

section except subsections (e) (4) (A) through (G) and (e) (9) of this section.

(m) (1) Government Contractors. - When an agency provides by a contract for the operation by or on behalf of the agency of a system of records to accomplish an agency function, the agency shall, consistent with its authority, cause the requirements of this section to be applied to such system. For purposes of subsection (i) of this section any such contractor and any employee of such contractor, if such contract is agreed to on or after the effective date of this section, shall be considered to be an employee of an agency.

(2) A consumer reporting agency to which a record is disclosed under section 3711(f) of title 31 shall not be considered a contractor for the purposes of this section.

(n) Mailing Lists. - An individual's name and address may not be sold or rented by an agency unless such action is specifically authorized by law. This provision shall not be construed to require the withholding of names and addresses otherwise permitted to be made public.

(o) Matching Agreements. - (1) No record which is contained in a system of records may be disclosed to a recipient agency or non-Federal agency for use in a computer matching program except pursuant to a written agreement between the source agency and the recipient agency or non-Federal agency specifying -

(A) the purpose and legal authority for conducting the program;

(B) the justification for the program and the anticipated results, including a specific estimate of any savings;

(C) a description of the records that will be matched, including each data element that will be used, the approximate number of records that will be matched, and the projected starting and completion dates of the matching program;

(D) procedures for providing individualized notice at the time of application, and notice periodically thereafter as directed by the Data Integrity Board of such agency (subject to guidance provided by the Director of the Office of Management and Budget pursuant to subsection (v)), to -

(i) applicants for and recipients of financial assistance or payments under Federal benefit programs, and

(ii) applicants for and holders of positions as Federal personnel,
that any information provided by such applicants, recipients, holders, and individuals may be subject to verification through matching programs;

(E) procedures for verifying information produced in such matching program as required by subsection (p);

(F) procedures for the retention and timely destruction of identifiable records created by a recipient agency or non-Federal agency in such matching program;

(G) procedures for ensuring the administrative, technical, and physical security of the records matched and the results of such programs;

(H) prohibitions on duplication and redisclosure of records provided by the source agency within or outside the recipient agency or the non-Federal agency, except where required by law or essential to the conduct of the matching program;

(I) procedures governing the use by a recipient agency or non-Federal agency of records provided in a matching program by a source agency, including procedures governing return of the records to the source agency or destruction of records used in such program;

(J) information on assessments that have been made on the accuracy of the records that will be used in such matching program; and

(K) that the Comptroller General may have access to all records of a recipient agency or a non-Federal agency that the Comptroller General deems necessary in order to monitor or verify compliance with the agreement.

(2) (A) A copy of each agreement entered into pursuant to paragraph (1) shall -

(i) be transmitted to the Committee on Governmental Affairs of

the Senate and the Committee on Government Operations of the House of Representatives; and

(ii) be available upon request to the public.

(B) No such agreement shall be effective until 30 days after the date on which such a copy is transmitted pursuant to subparagraph (A) (i).

(C) Such an agreement shall remain in effect only for such period, not to exceed 18 months, as the Data Integrity Board of the agency determines is appropriate in light of the purposes, and length of time necessary for the conduct, of the matching program.

(D) Within 3 months prior to the expiration of such an agreement pursuant to subparagraph (C), the Data Integrity Board of the agency may, without additional review, renew the matching agreement for a current, ongoing matching program for not more than one additional year if -

(i) such program will be conducted without any change; and

(ii) each party to the agreement certifies to the Board in writing that the program has been conducted in compliance with the agreement.

(p) Verification and Opportunity to Contest Findings. - (1) In order to protect any individual whose records are used in a matching program, no recipient agency, non-Federal agency, or source agency may suspend, terminate, reduce, or make a final denial of any financial assistance or payment under a Federal benefit program to such individual, or take other adverse action against such individual, as a result of information produced by such matching program, until -

(A) (i) the agency has independently verified the information; or

(ii) the Data Integrity Board of the agency, or in the case of a non-Federal agency the Data Integrity Board of the source agency, determines in accordance with guidance issued by the Director of the Office of Management and Budget that -

(I) the information is limited to identification and amount of benefits paid by the source agency under a Federal benefit program; and

(II) there is a high degree of confidence that the information provided to the recipient agency is accurate;

(B) the individual receives a notice from the agency containing a statement of its findings and informing the individual of the opportunity to contest such findings; and

(C) (i) the expiration of any time period established for the program by statute or regulation for the individual to respond to that notice; or

(ii) in the case of a program for which no such period is established, the end of the 30-day period beginning on the date on which notice under subparagraph (B) is mailed or otherwise provided to the individual.

(2) Independent verification referred to in paragraph (1) requires investigation and confirmation of specific information relating to an individual that is used as a basis for an adverse action against the individual, including where applicable investigation and confirmation of -

(A) the amount of any asset or income involved;

(B) whether such individual actually has or had access to such asset or income for such individual's own use; and

(C) the period or periods when the individual actually had such asset or income.

(3) Notwithstanding paragraph (1), an agency may take any appropriate action otherwise prohibited by such paragraph if the agency determines that the public health or public safety may be adversely affected or significantly threatened during any notice period required by such paragraph.

(q) Sanctions. - (1) Notwithstanding any other provision of law, no source agency may disclose any record which is contained in a system of records to a recipient agency or non-Federal agency for a matching program if such source agency has reason to believe that the requirements of subsection (p), or any matching agreement entered into pursuant to subsection (o), or both, are not being met by such recipient agency.

- (2) No source agency may renew a matching agreement unless -
- (A) the recipient agency or non-Federal agency has certified that it has complied with the provisions of that agreement; and
 - (B) the source agency has no reason to believe that the certification is inaccurate.

(r) Report on New Systems and Matching Programs. - Each agency that proposes to establish or make a significant change in a system of records or a matching program shall provide adequate advance notice of any such proposal (in duplicate) to the Committee on Government Operations of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Office of Management and Budget in order to permit an evaluation of the probable or potential effect of such proposal on the privacy or other rights of individuals.

(s) Biennial Report. - The President shall biennially submit to the Speaker of the House of Representatives and the President pro tempore of the Senate a report -

(1) describing the actions of the Director of the Office of Management and Budget pursuant to section 6 of the Privacy Act of 1974 during the preceding 2 years;

(2) describing the exercise of individual rights of access and amendment under this section during such years;

(3) identifying changes in or additions to systems of records;

(4) containing such other information concerning administration of this section as may be necessary or useful to the Congress in reviewing the effectiveness of this section in carrying out the purposes of the Privacy Act of 1974.

(t)(1) Effect of Other Laws. - No agency shall rely on any exemption contained in section 552 of this title to withhold from an individual any record which is otherwise accessible to such individual under the provisions of this section.

(2) No agency shall rely on any exemption in this section to withhold from an individual any record which is otherwise accessible to such individual under the provisions of section 552 of this title.

(u) Data Integrity Boards. - (1) Every agency conducting or participating in a matching program shall establish a Data Integrity Board to oversee and coordinate among the various components of such agency the agency's implementation of this section.

(2) Each Data Integrity Board shall consist of senior officials designated by the head of the agency, and shall include any senior official designated by the head of the agency as responsible for implementation of this section, and the inspector general of the agency, if any. The inspector general shall not serve as chairman of the Data Integrity Board.

(3) Each Data Integrity Board -

(A) shall review, approve, and maintain all written agreements for receipt or disclosure of agency records for matching programs to ensure compliance with subsection (o), and all relevant statutes, regulations, and guidelines;

(B) shall review all matching programs in which the agency has participated during the year, either as a source agency or recipient agency, determine compliance with applicable laws, regulations, guidelines, and agency agreements, and assess the costs and benefits of such programs;

(C) shall review all recurring matching programs in which the agency has participated during the year, either as a source agency or recipient agency, for continued justification for such disclosures;

(D) shall compile an annual report, which shall be submitted to the head of the agency and the Office of Management and Budget and made available to the public on request, describing the matching activities of the agency, including -

(i) matching programs in which the agency has participated as a source agency or recipient agency;

(ii) matching agreements proposed under subsection (o) that were disapproved by the Board;

(iii) any changes in membership or structure of the Board in the preceding year;

(iv) the reasons for any waiver of the requirement in paragraph (4) of this section for completion and submission of a cost-benefit analysis prior to the approval of a matching program;

(v) any violations of matching agreements that have been alleged or identified and any corrective action taken; and

(vi) any other information required by the Director of the Office of Management and Budget to be included in such report;

(E) shall serve as a clearinghouse for receiving and providing information on the accuracy, completeness, and reliability of records used in matching programs;

(F) shall provide interpretation and guidance to agency components and personnel on the requirements of this section for matching programs;

(G) shall review agency recordkeeping and disposal policies and practices for matching programs to assure compliance with this section; and

(H) may review and report on any agency matching activities that are not matching programs.

(4) (A) Except as provided in subparagraphs (B) and (C), a Data Integrity Board shall not approve any written agreement for a matching program unless the agency has completed and submitted to such Board a cost-benefit analysis of the proposed program and such analysis demonstrates that the program is likely to be cost effective. (FOOTNOTE 2)

(FOOTNOTE 2) So in original. Probably should be 'cost-effective.'

(B) The Board may waive the requirements of subparagraph (A) of this paragraph if it determines in writing, in accordance with guidelines prescribed by the Director of the Office of Management and Budget, that a cost-benefit analysis is not required.

(C) A cost-benefit analysis shall not be required under subparagraph (A) prior to the initial approval of a written agreement for a matching program that is specifically required by statute. Any subsequent written agreement for such a program shall not be approved by the Data Integrity Board unless the agency has submitted a cost-benefit analysis of the program as conducted under the preceding approval of such agreement.

(5) (A) If a matching agreement is disapproved by a Data Integrity Board, any party to such agreement may appeal the disapproval to the Director of the Office of Management and Budget. Timely notice of the filing of such an appeal shall be provided by the Director of the Office of Management and Budget to the Committee on Governmental Affairs of the Senate and the Committee on Government Operations of the House of Representatives.

(B) The Director of the Office of Management and Budget may approve a matching agreement notwithstanding the disapproval of a Data Integrity Board if the Director determines that --

(i) the matching program will be consistent with all applicable legal, regulatory, and policy requirements;

(ii) there is adequate evidence that the matching agreement will be cost-effective; and

(iii) the matching program is in the public interest.

(C) The decision of the Director to approve a matching agreement shall not take effect until 30 days after it is reported to committees described in subparagraph (A).

(D) If the Data Integrity Board and the Director of the Office of Management and Budget disapprove a matching program proposed by the inspector general of an agency, the inspector general may report the disapproval to the head of the agency and to the Congress.

(6) The Director of the Office of Management and Budget shall, annually during the first 3 years after the date of enactment of this subsection and biennially thereafter, consolidate in a report to the Congress the information contained in the reports from the various Data Integrity Boards under paragraph (3) (D). Such report shall include detailed information about costs and benefits of matching programs that are conducted during the period covered by such consolidated report, and shall identify each waiver granted by a Data Integrity Board of the requirement for completion and submission of a cost-benefit analysis and the reasons for granting

the waiver.

(7) In the reports required by paragraphs (3)(D) and (6), agency matching activities that are not matching programs may be reported on an aggregate basis, if and to the extent necessary to protect ongoing law enforcement or counterintelligence investigations.

(v) Office of Management and Budget Responsibilities. - The Director of the Office of Management and Budget shall -

(1) develop and, after notice and opportunity for public comment, prescribe guidelines and regulations for the use of agencies in implementing the provisions of this section; and

(2) provide continuing assistance to and oversight of the implementation of this section by agencies.

(Added Pub. L. 93-579, Sec. 3, Dec. 31, 1974, 88 Stat. 1897, and amended Pub. L. 94-183, Sec. 2(2), Dec. 31, 1975, 89 Stat. 1057; Pub. L. 97-365, Sec. 2, Oct. 25, 1982, 96 Stat. 1749; Pub. L. 97-375, title II, Sec. 201(a), (b), Dec. 21, 1982, 96 Stat. 1821; Pub. L. 97-452, Sec. 2(a)(1), Jan. 12, 1983, 96 Stat. 2478; Pub. L. 98-477, Sec. 2(c), Oct. 15, 1984, 98 Stat. 2211; Pub. L. 98-497, title I, Sec. 107(g), Oct. 19, 1984, 98 Stat. 2292; Pub. L. 100-503, Sec. 2-6(a), 7, 8, Oct. 18, 1988, 102 Stat. 2507-2514; Pub. L. 101-508, title VII, Sec. 7201(b)(1), Nov. 5, 1990, 104 Stat. 1388-334.)

REFERENCES IN TEXT

Section 552(e) of this title, referred to in subsec. (a)(1), was redesignated section 552(f) of this title by section 1802(b) of Pub. L. 99-570.

Section 6103 of the Internal Revenue Code of 1986, referred to in subsec. (a)(8)(B)(iv), is classified to section 6103 of Title 26, Internal Revenue Code.

Sections 464 and 1137 of the Social Security Act, referred to in subsec. (a)(8)(B)(iv), are classified to sections 664 and 1320b-7, respectively, of Title 42, The Public Health and Welfare.

For effective date of this section, referred to in subsections.

(k)(2), (5), (7), (1)(2), (3), and (m), see Effective Date note below.

Section 6 of the Privacy Act of 1974, referred to in subsec. (s)(1), is section 6 of Pub. L. 93-579, which was set out below and was repealed by section 6(c) of Pub. L. 100-503.

For classification of the Privacy Act of 1974, referred to in subsec. (s)(4), see Short Title note below.

The date of enactment of this subsection, referred to in subsec. (u)(6), is the date of enactment of Pub. L. 100-503 which enacted subsec. (u) of this section, and which was approved Oct. 18, 1988.

CODIFICATION

Section 552a of former Title 5, Executive Departments and Government Officers and Employees, was transferred to section 2244 of Title 7, Agriculture.

AMENDMENTS

1990 - Subsec. (p). Pub. L. 101-508 amended subsec. (p) generally, restating former pars. (1) and (3) as par. (1), adding provisions relating to Data Integrity Boards, and restating former pars. (2) and (4) as (2) and (3), respectively.

1988 - Subsec. (a)(8) to (13). Pub. L. 100-503, Sec. 5, added pars. (8) to (13).

Subsec. (e)(12). Pub. L. 100-503, Sec. 3(a), added par. (12).

Subsec. (f). Pub. L. 100-503, Sec. 7, substituted 'biennially' for 'annually' in last sentence.

Subsecs. (o) to (q). Pub. L. 100-503, Sec. 2(2), added subsections (o) to (q). Former subsections (o) to (q) redesignated (r) to (t), respectively.

Subsec. (r). Pub. L. 100-503, Sec. 3(b), inserted 'and matching programs' in heading and amended text generally. Prior to amendment, text read as follows: 'Each agency shall provide

adequate advance notice to Congress and the Office of Management and Budget of any proposal to establish or alter any system of records in order to permit an evaluation of the probable or potential effect of such proposal on the privacy and other personal or property rights of individuals or the disclosure of information relating to such individuals, and its effect on the preservation of the constitutional principles of federalism and separation of powers.'

Pub. L. 100-503, Sec. 2(1), redesignated former subsec. (o) as (r).

Subsec. (s). Pub. L. 100-503, Sec. 8, substituted 'Biennial' for 'Annual' in heading, 'biennially submit' for 'annually submit' in introductory provisions, 'preceding 2 years' for 'preceding year' in par. (1), and 'such years' for 'such year' in par. (2).

Pub. L. 100-503, Sec. 2(1), redesignated former subsec. (p) as (s).

Subsec. (t). Pub. L. 100-503, Sec. 2(1), redesignated former subsec. (q) as (t).

Subsec. (u). Pub. L. 100-503, Sec. 4, added subsec. (u).

Subsec. (v). Pub. L. 100-503, Sec. 6(a), added subsec. (v).

1984 - Subsec. (b)(6). Pub. L. 98-497, Sec. 107(g)(1), substituted 'National Archives and Records Administration' for 'National Archives of the United States', and 'Archivist of the United States or the designee of the Archivist' for 'Administrator of General Services or his designee'.

Subsec. (l)(1). Pub. L. 98-497, Sec. 107(g)(2), substituted 'Archivist of the United States' for 'Administrator of General Services' in two places.

Subsec. (q). Pub. L. 98-477 designated existing provisions as par. (1) and added par. (2).

1983 - Subsec. (b)(12). Pub. L. 97-452 substituted 'section 3711(f) of title 31' for 'section 3(d) of the Federal Claims Collection Act of 1966 (31 U.S.C. 952(d))'.

Subsec. (m)(2). Pub. L. 97-452 substituted 'section 3711(f) of title 31' for 'section 3(d) of the Federal Claims Collection Act of 1966 (31 U.S.C. 952(d))'.

1982 - Subsec. (b)(12). Pub. L. 97-365, Sec. 2(a), added par. (12).

Subsec. (e)(4). Pub. L. 97-375, Sec. 201(a), substituted 'upon establishment or revision' for 'at least annually' after 'Federal Register'.

Subsec. (m). Pub. L. 97-365, Sec. 2(b), designated existing provisions as par. (1) and added par. (2).

Subsec. (p). Pub. L. 97-375, Sec. 201(b), substituted provisions requiring annual submission of a report by the President to the Speaker of the House and President pro tempore of the Senate relating to the Director of the Office of Management and Budget, individual rights of access, changes or additions to systems of records, and other necessary or useful information, for provisions which had directed the President to submit to the Speaker of the House and the President of the Senate, by June 30 of each calendar year, a consolidated report, separately listing for each Federal agency the number of records contained in any system of records which were exempted from the application of this section under the provisions of subsections (j) and (k) of this section during the preceding calendar year, and the reasons for the exemptions, and such other information as indicate efforts to administer fully this section.

1975 - Subsec. (g)(5). Pub. L. 94-183 substituted 'to September 27, 1975' for 'to the effective date of this section'.

EFFECTIVE DATE OF 1988 AMENDMENT

Section 10 of Pub. L. 100-503, as amended by Pub. L. 101-56, Sec. 2, July 19, 1989, 103 Stat. 149, provided that:

'(a) In General. - Except as provided in subsections (b) and (c), the amendments made by this Act (amending this section and repealing provisions set out as a note below) shall take effect 9 months after the date of enactment of this Act (Oct. 18, 1988).

'(b) Exceptions. - The amendment made by sections 3(b), 6, 7, and

8 of this Act (amending this section and repealing provisions set out as a note below) shall take effect upon enactment.

'(c) Effective Date Delayed for Existing Programs. -- In the case of any matching program (as defined in section 552a(a)(8) of title 5, United States Code, as added by section 5 of this Act) in operation before June 1, 1989, the amendments made by this Act (other than the amendments described in subsection (b)) shall take effect January 1, 1990, if --

'(1) such matching program is identified by an agency as being in operation before June 1, 1989; and

'(2) such identification is --

'(A) submitted by the agency to the Committee on Governmental Affairs of the Senate, the Committee on Government Operations of the House of Representatives, and the Office of Management and Budget before August 1, 1989, in a report which contains a schedule showing the dates on which the agency expects to have such matching program in compliance with the amendments made by this Act, and

'(B) published by the Office of Management and Budget in the Federal Register, before September 15, 1989.'

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-497 effective Apr. 1, 1985, see section 301 of Pub. L. 98-497, set out as a note under section 2102 of Title 44, Public Printing and Documents.

EFFECTIVE DATE

Section 8 of Pub. L. 93-579 provided that: 'The provisions of this Act (enacting this section and provisions set out as notes under this section) shall be effective on and after the date of enactment (Dec. 31, 1974), except that the amendments made by sections 3 and 4 (enacting this section and amending analysis preceding section 500 of this title) shall become effective 270 days following the day on which this Act is enacted.'

SHORT TITLE OF 1990 AMENDMENT

Section 7201(a) of Pub. L. 101-508 provided that: 'This section (amending this section and enacting provisions set out as notes below) may be cited as the 'Computer Matching and Privacy Protection Amendments of 1990'.'

SHORT TITLE OF 1989 AMENDMENT

Pub. L. 101-56, Sec. 1, July 19, 1989, 103 Stat. 149, provided that: 'This Act (amending section 10 of Pub. L. 100-503, set out as a note above) may be cited as the 'Computer Matching and Privacy Protection Act Amendments of 1989'.'

SHORT TITLE OF 1988 AMENDMENT

Section 1 of Pub. L. 100-503 provided that: 'This Act (amending this section, enacting provisions set out as notes above and below, and repealing provisions set out as a note below) may be cited as the 'Computer Matching and Privacy Protection Act of 1988'.'

SHORT TITLE

Section 1 of Pub. L. 93-579 provided: 'That this Act (enacting this section and provisions set out as notes under this section) may be cited as the 'Privacy Act of 1974'.'

DELEGATION OF FUNCTIONS

Functions of Director of Office of Management and Budget under this section delegated to Administrator for Office of Information and Regulatory Affairs by section 3 of Pub. L. 96-511, Dec. 11, 1980, 94 Stat. 2825, set out as a note under section 3503 of Title

PUBLICATION OF GUIDANCE UNDER SUBSECTION (P) (1) (A) (II)

Section 7201(b) (2) of Pub. L. 101-508 provided that: 'Not Later than 90 days after the date of the enactment of this Act (Nov. 5, 1990), the Director of the Office of Management and Budget shall publish guidance under subsection (p) (1) (A) (ii) of section 552a of title 5, United States Code, as amended by this Act.'

LIMITATION ON APPLICATION OF VERIFICATION REQUIREMENT

Section 7201(c) of Pub. L. 101-508 provided that: 'Section 552a(p) (1) (A) (ii) (II) of title 5, United States Code, as amended by section 2 (probably means section 7201(b)(1) of Pub. L. 101-508), shall not apply to a program referred to in paragraph (1), (2), or (4) of section 1137(b) of the Social Security Act (42 U.S.C. 1320b-7), until the earlier of --

' (1) the date on which the Data Integrity Board of the Federal agency which administers that program determines that there is not a high degree of confidence that information provided by that agency under Federal matching programs is accurate; or

' (2) 30 days after the date of publication of guidance under section 2(b) (probably means section 7201(b)(2) of Pub. L. 101-508, set out as a note above).!

EFFECTIVE DATE DELAYED FOR CERTAIN EDUCATION BENEFITS COMPUTER MATCHING PROGRAMS

Pub. L. 101-366, title IX, Sec. 206(d), Aug. 15, 1990, 1.04 Stat. 442, provided that:

' (1) In the case of computer matching programs between the Department of Veterans Affairs and the Department of Defense in the administration of education benefits programs under chapters 30 and 32 of title 38 and chapter 106 of title 3.0, United States Code, the amendments made to section 552a of title 5, United States Code, by the Computer Matching and Privacy Protection Act of 1988 (Pub. L. 100-503) (other than the amendments made by section 10(b) of that Act) (see Effective Date of 3.988 Amendment note above) shall take effect on October 1, 1990.

' (2) For purposes of this subsection, the term 'matching program' has the same meaning provided in section 552a(a) (8) of title 5, United States Code.'

IMPLEMENTATION GUIDANCE FOR 1988 AMENDMENTS

Section G(b) of Pub. L. 100-503 provided that: 'The Director shall, pursuant to section 552a(v) of title 5, United States Code, develop guidelines and regulations for the use of agencies in implementing the amendments made by this Act (amending this section and repealing provisions set out as a note below) not later than 8 months after the date of enactment of this Act (Oct. 3.8, 1988).'

CONSTRUCTION OF 1988 AMENDMENTS

Section 9 of Pub. L. 100-503 provided that: 'Nothing in the amendments made by this Act (amending this section and repealing provisions set out as a note below) shall be construed to authorize

' (1) the establishment: or maintenance by any agency of a national data bank that combines, merges, or Links information on individuals maintained in systems of records by other Federal agencies;

' (2) the direct linking of computerized systems of records maintained by Federal agencies;

' (3) the computer matching of records not otherwise authorized by law; or

' (4) the disclosure of records for computer matching except to a Federal, State, or local agency.'

Section 2 of Pub. L. 93-579 provided that:

' (a) The congress finds that. --

' (1) the privacy of an individual is directly affected by the collection, maintenance, use, and dissemination of personal information by Federal agencies;

' (2) the increasing use of computers and sophisticated information technology, while essential to the efficient operations of the Government, has greatly magnified the harm to individual privacy that can occur from any collection, maintenance, use, or dissemination of personal information;

' (3) the opportunities for an individual to secure employment, insurance, and credit, and his right to due process, and other legal protections are endangered by the misuse of certain information systems;

' (4) the right to privacy is a personal and fundamental right protected by the Constitution of the United States; and

' (5) in order to protect the privacy of individuals identified in information systems maintained by Federal agencies, it is necessary and proper for the Congress to regulate the collection, maintenance, use, and dissemination of information by such agencies.

' (h) The purpose of this Act (enacting this section and provisions set out as notes under this section) is to provide certain safeguards for an individual against an invasion of personal privacy by requiring Federal agencies, except as otherwise provided by law, to --

' (1) permit an individual to determine what records pertaining to him are collected, maintained, used, or disseminated by such agencies;

' (2) permit an individual to prevent records pertaining to him obtained by such agencies for a particular purpose from being used or made available for another purpose without his consent;

' (3) permit an individual to gain access to information pertaining to him in Federal agency records, to have a copy made of all or any portion thereof, and to correct or amend such records;

' (4) collect, maintain, use, or disseminate any record of identifiable personal information in a manner that assures that such action is for a necessary and lawful purpose, that the information is current and accurate for its intended use, and that adequate safeguards are provided to prevent misuse of such information;

' (5) permit exemptions from the requirements with respect to records provided in this Act only in those cases where there is an important public policy need for such exemption as has been determined by specific statutory authority; and

' (6) be subject to civil suit for any damages which occur as a result of willful or intentional action which violates any individual's rights under this Act. '

PRIVACY PROTECTION STUDY COMMISSION

Section 5 of Pub. L. 93-579, as amended by Pub. L. 95-38, June 1,

Commission and provided that the Commission study data banks, automated data processing programs and information systems of governmental, regional and private organizations to determine standards and procedures in force for protection of personal information, that the Commission report to the President and Congress the extent to which requirements and principles of section 552a of title 5 should be applied to the information practices of those organizations, and that it make other legislative recommendations to protect the privacy of individuals while meeting the legitimate informational needs of government and society, ceased to exist on September 30, 1977, pursuant to section 5(g) of Pub. L. 93-579.

PROTECTION OF RECORDS OF INDIVIDUALS

Section 6 of Pub. L. 93-579, which provided that the Office of Management and Budget shall develop guidelines and regulations for use of agencies in implementing provisions of this section and provide continuing assistance to and oversight of the implementation of the provisions of such section by agencies, was repealed by Pub. L. 100-503, Sec. 6(c), Oct. 18, 1988, 102 Stat. 2513.

DISCLOSURE OF SOCIAL SECURITY NUMBER

Section 7 of Pub. L. 93-579 provided that:

'(a) (1) It shall be unlawful for any Federal, State or local government agency to deny to any individual any right, benefit, or privilege provided by law because of such individual's refusal to disclose his social security account number.

'(2) the (The) provisions of paragraph (1) of this subsection shall not apply with respect to ~

'(A) any disclosure which is required by Federal statute, or

'(B) the disclosure of a social security number to any Federal, state, or Local agency maintaining a system of records in existence and operating before January 1, 3.975, if such disclosure was required under statute or regulation adopted prior to such date to verify the identity of an individual.

'(b) Any Federal, State, or local government agency which requests an individual to disclose his social security account number shall inform that individual whether that disclosure is mandatory or voluntary, by what statutory or other authority such number is solicited, and what uses will be made of it.'

AUTHORIZATION OF APPROPRIATIONS TO PRIVACY PROTECTION STUDY COMMISSION

Section 9 of Pub. L. 93-579, as amended by Pub. L. 94-394, Sept. 3, 1976, 90 stat. 1198, authorized appropriations for the period beginning July 1, 1975, and ending on September 30, 3.977.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 552b, 121.2, 3111, 7133 of this title; title 7 sections 1359hh, 1359ii, 2204b; title 10 sections 424, 1102; title 12 section 1715z; title 15 section 278g-3; title 16 sections 410cc-35, 1536; title 20 sections 1080a, 1221e-1; title 26 sections 6103, 7852; title 32 sections 3701, 3711, 3718, 3729, 3733; title 38 sections 1784A, 3301; title 39 section 410; title 42 sections 300aa-25, 402, 405, 1306, 9660; title 44 sections 2906, 3501, 3504; title 46 sections 7702, 9303.

Return to the EPIC Privacy Archive

GOVERNMENT IN THE SUNSHINE ACT

§ 552b. Open meetings

(a) For purposes of this section -

(1) the term "agency" means any agency, as defined in section 552(e) (FOOTNOTE 1) of this title, headed by a **collegial** body composed of two or more individual **members**, a majority of whom are appointed to such position by the President with the advice and **consent** of the Senate, and any subdivision thereof authorized to act on behalf of the agency; (FOOTNOTE 1) See References in Text note below.

(2) the term "meeting" **means** the deliberations of at least the number of individual agency **members required** to take action on **behalf** of the agency **where** such deliberations **determine** or result in **the** joint conduct or disposition of official agency business, but does not include deliberations **required** or permitted by subsection (d) or (c); and (3) the term "member" means an individual who belongs to a **collegial** body heading an agency.

(b) Members shall not jointly conduct or dispose of agency business other than in accordance with this **section**. **Except** as provided in subsection (c), **every** portion of every meeting **of an** agency **shall** be open to public observation. **Except** in a case where the agency finds that the public interest requires otherwise, the second sentence of subsection (b) shall not apply to any portion of an agency meeting, and the **requirements** of subsections (d) and (e) shall not apply to any information pertaining to such meeting otherwise required by this **section** to be disclosed to the public, **where** the agency properly determines that such portion or portions of its **meeting** or the **disclosure** of such information is **likely** to -

(1) disclose matters that are (A) specifically **authorized under** criteria established by an Executive order to be **kept** secret in the interests of **national** defense or foreign policy and (B) in fact properly **classified** pursuant to such Executive order;

(2) relate **solely** to the internal **personnel rules** and **practices** of an agency;

(3) disclose matters **specifically** exempted from disclosure by **statute** (other than section 552 of this title), provided that such statute (A) **requires** that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (B) establishes particular **criteria** for withholding or refers to particular types of **matters** to be withheld;

(4) disclose trade secrets and commercial or financial information **obtained from** a person **and privileged** or confidential;

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

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

(7) disclose investigatory records compiled for law enforcement purposes, or information which if **written** would be contained in such records, but only to the extent that **the** production of such **records** or **information** would (A) **interfere** with enforcement **proceedings**, (B) **deprive** a person of a right to a fair trial or an impartial adjudication, constitute an **unwarranted invasion** of **personal** privacy, (D) disclose the

identity of a confidential **source** and, in **the case** of a **record compiled** by a criminal law enforcement authority in the course of a criminal investigation, or by **an agency** conducting a **lawful national security intelligence** investigation, confidential information **furnished** only by **the** confidential source, (I) **disclose investigative techniques and procedures**, or (F) **endanger the life or physical safety of law enforcement personnel**;

(8) disclose information contained in or **related to examination**, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the **regulation** or supervision or **financial** Institutions;

(9) **disclose** information the premature **disclosure** of which would ..

(A) in the case of an agency which regulates currencies, securities, **commodities**, or financial institutions, be likely to (I) lead to significant financial speculation in currencies, securities, or commodities, or (ii) **significantly endanger** the stability of any **financial** institution; or

(B) in the case of any agency, be likely to significantly **frustrate implementation** of a **proposed** agency action, that subparagraph (B) shall **not** apply in any instance where the agency has **already** disclosed to the public the **content** or **nature** of its proposed action, or where the **agency is required by law** to make such disclosure on **its own initiative** prior to taking final **agency** action on such proposal; or

(10) specifically **concern** the agency's **issuance** of a subpoena, or **the agency's** participation in a civil action or proceeding, an action in a foreign court or international tribunal, or an arbitration, or **the** initiation, conduct, or disposition by **the** agency of a particular **case** of formal agency adjudication pursuant to **the** procedures in section 554 of this title or otherwise involving a determination on the record after opportunity **for a hearing**.

(d)(f) Action under subsection shall be taken only **when** a majority of the **entire membership** of the agency (as **defined** in **subsection** (a)(f)) votes to take such action. A separate vote of **the** agency, **members** shall be taken with **respect** to each agency meeting a portion or portions of which are proposed to **be** closed to the public pursuant to subsection (c), or with respect to any information which is **proposed** to be withheld **under** subsection (c). A single vote may be taken with **respect** to series of **meetings**, a portion or portions of which are proposed to be closed to the public, or with **respect** to any information concerning such **series** of meetings, so long as each **meeting** in such series **involves the same** particular matters and is **scheduled** to be **held no more** than thirty days **after the initial** meeting in such **series**. The vote of each **agency member** participating in **such** vote shall be recorded and no proxies shall be allowed.

(2) **Whenever** any person **whose** interests may be directly **affected** by a portion of a meeting **requests** that **the** agency close such portion to the public for any of **the** reasons referred to in paragraph (S), (6), or (7) of subsection (c), **the** agency, upon request of any one of its **members**, shall vote by recorded vote whether to close such meeting.

(3) Within one day of any vote **taken** pursuant to paragraph (1) or (2), the agency shall **make** publicly available a written copy of such vote reflecting the vote of each member on **the question**. **If** a portion of a **meeting** is to be closed to the public, **the** agency shall, within **one** day of the **vote** taken pursuant to paragraph (1) or (2) of this subsection, make publicly **available** a full written explanation **of** its action closing **the** portion together with a list of **all** persons expected to attend the **meeting** and **their** affiliation.

(4) Any agency, a majority of whose meetings may properly **be closed** to the public pursuant to **paragraph** (4), (8), (9)(A), or (10) of **subsection (c)**, or any combination **thereof**, may provide by regulation for **the**

closing of such meetings or portions thereof in the event that a majority of the members of the agency votes by recorded vote at the beginning of such meeting, or portion thereof, to close the exempt portion or portions of the meeting, and a copy of such vote, reflecting the vote of each member on the question, is made available to the public. The provisions of paragraphs (1), (2), and (3) of this subsection and subsection (e) shall not apply to any portion of a meeting to which such regulations apply: Provided, That the agency shall, except to the extent that such information is exempt from disclosure under the provisions of subsection (c), provide the public with public announcement of the time, place, and subject matter of the meeting and of each portion thereof at the earliest practicable time.

(e)(1) In the case of each meeting, the agency shall make public announcement, at least one week before the meeting, of the time, place, and subject matter of the meeting, whether it is to be open or closed to the public, and the name and phone number of the official designated by the agency to respond to requests for information about the meeting. Such announcement shall be made unless a majority of the members of the agency determines by a recorded vote that agency business requires that such meeting be called at an earlier date, in which case the agency shall make public announcement of the time, place, and subject matter of such meeting, and whether open or closed to the public, at the earliest practicable time.

(2) The time or place of a meeting may be changed following the public announcement required by paragraph (1) only if the agency publicly announces such change at the earliest practicable time. The subject matter of a meeting, or the determination of the agency to open or close a meeting, or portion of a meeting, to the public, may be changed following the public announcement required by this subsection only if (A) a majority of the entire membership of the agency determines by a recorded vote that agency business so requires and that no earlier announcement of the change was possible, and (B) the agency publicly announces such change and the vote of each member upon such change at the earliest practicable time.

(3) Immediately following each public announcement required by this subsection, notice of the time, place, and subject matter of a meeting, whether the meeting is open or closed, any change in one of the preceding, and the name and phone number of the official designated by the agency to respond to requests for information about the meeting, shall also be submitted for publication in the Federal Register.

(f)(1) For every meeting closed pursuant to paragraphs (1) through (10) of subsection (c), the General Counsel or chief legal officer of the agency shall publicly certify that, in his or her opinion, the meeting may be closed to the public and shall state each relevant exemptive provision. A copy of such certification, together with a statement from the presiding officer of the meeting setting forth the time and place of the meeting, and the persons present, shall be retained by the agency. The agency shall maintain a complete transcript or electronic recording adequate to record fully the proceedings of each meeting, or portion of a meeting, closed to the public, except that in the case of a meeting, or portion of a meeting, closed to the public pursuant to paragraph (8), (9)(A), or (10) of subsection (c), the agency shall maintain either such a transcript or recording, or a set of minutes. Such minutes shall fully and clearly describe all matters discussed and shall provide a full and accurate summary of any actions taken, and the reasons therefor, including a description of each of the views expressed on any item and the record of any rollcall vote (reflecting the vote of each member on the question). All documents considered in connection with any action shall be identified in such minutes,

(2) The agency shall make promptly available to the public, in a place easily accessible to the public, the transcript, electronic recording, or minutes (as required by paragraph (1)) of the discussion of any item on the agenda, or of any item of the testimony of any witness received at the meeting, except for such item or items of such discussion or testimony as the agency determines to contain information which may be withheld under subsection (c). Copies of such transcript, or minutes, or a transcription of such recording disclosing the identity of each speaker, shall be furnished to any person at the actual cost of duplication or

transcription. **The** agency shall maintain a **complete verbatim** copy of **the** transcript, a **complete copy** of the minutes, or a **complete** electronic recording of each **meeting**, or portion of a **meeting**, closed to the public, for 8 period of at least two years **after** such meeting, or until one year **after** the conclusion of any agency proceeding with **respect** to Which **the meeting** or portion was **held, whichever occurs later.** (g) **Each agency** subject to the **requirements** of this section shall, within 180 days **after** the date of **enactment** of this **section**, following consultation with the **Office** of the Chairman of the Administrative Conference of **the** United States and published notice in **the Federal Register** of at least thirty days and opportunity for **written** comment by any person, **promulgate** regulations to implement the **requirements** of **subsections** (b) through (f) of this section. Any person may bring a **proceeding** in the **United States District Court** for **the** District of Columbia to require an agency to promulgate such regulations if such **agency** has not promulgated such regulations within the time period **specified** herein. Subject to any limitations of time provided by law, any **person** may bring a **proceeding** in the **United States Court of Appeals** for **the** District of Columbia to set aside agency **regulations** issued pursuant to this subsection that are not in accord with the requirements of subsections (b) through (f) of this section and to **require** the promulgation of **regulations** that are in accord with such subsections (h)(1) **The** district courts of **the** United States **shall have** jurisdiction to **enforce the requirements** of subsections (b) through (f) of this section by declaratory **judgment**, injunctive relief, or **other relief** as may be appropriate. Such actions may be brought by any person against an agency prior to, or within sixty days **after, the** meeting out of which **the** violation of this section arises, **except** that if public **announcement** of such meeting is not initially provided by **the agency** in accordance with the **requirements** of this section, such action **may** be instituted pursuant to this section-at any time prior to sixty days after any public announcement of such **meeting**. Such actions may **be brought** in the district court of the **United States** for **the** district in which **the** agency meeting is held or in which the **agency** in question has its **headquarters**, or in the District Court for the District of Columbia. **In** such actions a defendant shall serve his **answer** within thirty days **after** the **service** of **the** complaint. **The** burden is on the defendant to sustain his action. In deciding such **cases** the court may examine in **camera** any portion of **the** transcript, **electronic** recording, or minutes of a **meeting closed** to **the** public, and may **take** such additional evidence as it deems **necessary**. **The** court, having **due regard** for orderly administration and the public **interest**, as well as **the interests** of the parties, may grant such equitable relief as it deems **appropriate**, including granting an injunction against future violations of this **section** or ordering the agency to make available to **the** public such **portion** of **the** transcript, recording, or minutes of a meeting as is not authorized to be withheld under subsection of this section.

(2) Any Federal court otherwise authorized by law to **review** agency action may, at the application of any person **properly** participating in **the** proceeding pursuant to **other applicable** law, **inquire** into violations by **the agency** of **the** requirements of this section and **afford** such relief as it deems appropriate. Nothing. **in** this **section** authorizes any Federal court having jurisdiction solely on the basis of paragraph (1) to set aside, **enjoin**, or **invalidate** any agency action (other than an action to close a meeting or to withhold information under this section) taken or discussed at any agency **meeting** out of which the violation of this section **arose**.

(I) **The** court may assess against any party reasonable attorney **fees** and other litigation costs reasonably incurred by any other party who substantially prevails in any action brought in accordance with the provisions of subsection (g) or (h) of this section, except that costs may be assessed against the plaintiff only where the court finds that the suit was initiated by **the plaintiff primarily** for frivolous or dilatory **purposes**. In the **case** of assessment of costs against an agency, 'the costs may be assessed by the court against the United States.

(j) **Each agency** subject to **the requirements** of this **section** shall annually report to **Congress** regarding its compliance with such **requirements**, including a tabulation of the **total** number of agency meetings open to **the** public, **the total** number of **meetings** closed to the public, the reasons for closing such **meetings**, and a

description of any litigation brought against the agency under this section, including my costs assessed against the agency in such litigation (whether or not paid by the agency).

(k) **Nothing** herein expands or limits the **present** rights of **any person** under **section 552** of this title, **except** that **the exemptions** set forth in subsection (f) of this section shall govern in **the case** of any **request made** pursuant to **section 552** to copy or **inspect** the transcripts, **recordings**, or **minutes described in subsection (f) of this section**. **The requirements of chapter 33 of title 44, United States Code, shall not apply to the transcripts, recordings, and minutes described in subsection (f) of this section.**

(l) This section does **not** constitute authority to withhold any information **from** Congress, and does not authorize the closing of any **agency meeting** or portion thereof required by any **other** provision of law to be open.

(m) **Nothing** in this section authorizes any **agency** to withhold **from any** individual any record, including transcripts, **recordings**, or **minutes** required by this section, which is **otherwise** accessible to such individual under section **552a** of this title.

ETHICS RULES FOR ADVISORY COMMITTEE MEMBERS APPOINTED AS SPECIAL GOVERNMENT EMPLOYEES (SGEs)

This summary has been prepared for committee members appointed to serve on HHS advisory committees as Special Government Employees (SGEs). Persons new to the Government often are surprised by, or even resentful of, the complexity of the rules governing Federal employees. Ignoring them, however, can result in serious consequences, including public embarrassment for the individual and the Department. If you have any questions on any of the topics covered in this guidance, you should consult with the Federal Official responsible for your committee.

Who is a Special Government Employee (SGE)?

An "SGE," or "special Government employee," is an officer or employee in the executive branch of the Federal Government who is appointed to perform temporary duties, with or without compensation, for a period not to exceed 130 days during any period of 365 consecutive days. 18 U.S.C. § 202(a). This status is important since the ethics rules for SGEs are somewhat less restrictive than the rules for other Federal employees and officials.

Some members of advisory committees are appointed for a multi-year term. During their term of appointment, committee members generally will not be expected to perform work for HHS in excess of 130 days during any period of 365 consecutive days. Thus, most committee members will be considered "SGEs."

Confidential Financial Disclosure Reporting Requirements

All HHS advisory committee members appointed as SGEs are required under the Ethics in Government Act, amended by the Ethics Reform Act of 1989, to file a financial disclosure report when first appointed (5 C.F.R. Part 2634). Committee members may also be required to update the information on the report before each meeting throughout their term of appointment. The information reported is used to determine the matters for which a committee member must be disqualified under 18 U.S.C. § 208(a), and the matters for which a committee member may be granted a waiver under 18 U.S.C. § 208(b)(3). Complete reporting is essential to protect the committee member from inadvertently violating any of the criminal conflict of interest statutes, and to ensure to the public that the advice provided by an HHS advisory committee is free from any real, or perceived, conflicts of interest. The information reported by committee members is confidential and may not be released except under the limited circumstances described in the Privacy Act notice provided with the report.

Criminal Conflict of Interest Statutes.

As an SGE, you are subject to the following criminal conflict of interest statutes (18 U.S.C. §§ 201-216):

- 18 U.S.C § 201 - Section 201, commonly known as the "bribery" statute, prohibits Federal employees, including SGEs, from seeking, accepting, or agreeing to receive anything of value in return for being influenced in the performance of an official act,
- 18 U.S.C. § 203 - Section 203 prohibits an SGE from receiving compensation for representational services rendered by the employee or another person before HHS or another Federal agency or other specified entity (such as a court or commission) in any particular matter involving a specific party (i) in which the SGE has participated personally and substantially as a Government employee, or (ii) which is pending in the Government agency in which the SGE is serving if the SGE has served for more than 90 days during the immediately preceding 365 days.

Exempted from this rule are representations required in the proper discharge of official duties. Also exempted are representations required in the performance of work under a grant, contract or other agreement with or for the benefit of the Government.

A particular matter involving specific parties is a matter that is focused upon the interests of specific persons, or a discrete and identifiable class of persons. Particular matters may include, but are not limited to, reviews of grant proposals or contract applications, other funding decisions, studies or approvals of scientific studies or project, and other actions which involve deliberation, decision, or action.

Representational services include communications (written or oral) and appearances made on behalf of someone else, generally with the intent to influence or persuade the Government. An inquiry as to the status of a pending matter is not necessarily a representation, although depending upon the context of the inquiry, it could give rise to the appearance of a prohibited representation.

To avoid appearance problems, during the period in which a committee is in session, committee members may not contact Department staff concerning any matters pending before the agency, or as to which the agency has an interest. Such matters would include, for example, applications for Federal funding, progress reports regarding CRADAS or clinical trials, and pending drug investigations or applications.

- 18 U.S.C. § 205 - Section 20.5 prohibits an SGE from representing a party, with or without compensation, before HHS or another Federal agency or other specified entity (such as a court or commission) in any particular matter involving a specific party in which the United States is a party or has a direct and substantial interest: (i) that the SGE participated in personally and substantially as a Government employee; or (ii) which is pending in the agency in which the SGE is serving, if the SGE has served for more than 90 days during the immediately preceding 365 days.
- 18 U.S.C. § 207 - Section 207, the "post-employment" statute, imposes a lifetime ban on a former SGE from representing another person or entity to HHS or another Federal agency or other specified entity (such as a court or commission) in any particular matter involving a specific party in which the former SGE participated personally and substantially while serving in the Government.
- 18 U.S.C. § 208 - Section 208(a), the main conflict of interest statute, prohibits an SGE from participating personally and substantially in any particular matter that could affect the financial interests of the SGE, the SGE's spouse, minor child, general partner, an organization in which the SGE serves as an officer, director, trustee, general partner, or employee, or an organization with which the SGE is negotiating or with which the SGE has an arrangement for prospective employment.

Under this statute, for example, you would be prohibited from reviewing a grant application submitted by a researcher from the same university in which you are employed, or a contract proposal from an association for which you serve as a member of the board of directors. In those instances, you would be required to disqualify yourself from participation in the reviews.

Section 208 would also prohibit you from participating in setting standards for grantees or contractors in general, to the extent that your university (or any organization with which you are affiliated as an officer or board member) would be affected by those standards. Under this scenario, however, a waiver could be issued to permit you to participate in such general matters.

A waiver for advisory committee members may be granted under 18 U.S.C. § 208(b)(3). Section 208(b)(3) authorizes issuance of a waiver to an SGE who serves on a committee subject to the Federal Advisory Committee Act if the official responsible for the individual's appointment certifies in writing that the need for the individual's services outweighs the potential for a conflict of interest created by the particular financial interest involved. The waiver granted is considered a "general" waiver, in that it allows participation in matters that affect all institutions, or types of institutions similarly. Even with

a general waiver, however, SGEs must disqualify themselves from participation in all matters that specifically and uniquely affect their financial interests. The Federal Official responsible for your committee will explain the procedures for disqualification.

Standards of Ethical Conduct

The following are some of the major Standards Of Ethical Conduct regulations (5 C.F.R. Part 2635) that pertain to HHS SGE advisory committee members during the term of their appointment:

I. Teaching, Speaking and Writing in a Personal Capacity (Other Than as a Government Employee)

Generally, during their term of appointment, committee members may continue to receive fees, honoraria, and other compensation for teaching, speaking and writing undertaken in their personal or non-Governmental capacities. However, there are some limitations:

- (A) An SGE is prohibited from receiving compensation for teaching, speaking, and writing that "relates to the employee's official duties." 5 C.F.R. § 2635.807. The "relatedness" test is met for an SGE if:
- (1) the activity is undertaken as an official Government duty;
 - (2) the circumstances indicate that the invitation to engage in the activity was extended to the SGE primarily because of the employee's position in the Government rather than the employee's expertise on the particular subject matter;
 - (3) the invitation to engage in the activity or the offer of compensation for the activity was extended to the employee, directly or indirectly, by a person who has interests that may be affected substantially by the performance or nonperformance of the employee's official duties; or
 - (4) the information conveyed through the activity draws substantially on ideas or official data that are confidential or not publicly-available.

- (B) Additionally, if a committee member serves for less than 60 days during a one-year period, the SGE may not accept compensation for teaching, speaking, and writing if the subject matter of the teaching, speaking or writing concerns a particular matter, involving specific parties, in which the SGE participated or is participating personally and substantially as a Government employee.

For example, an AIDS researcher has been appointed to a four-year term as a member of an advisory committee established for the purpose of surveying and recommending modification of procedures that deter the development of treatments for HIV infection and HIV-related diseases. The committee member is not expected to serve more than 60 days each year during her four-year term of appointment.

The committee member may accept compensation for an article or speech about the deterrent effect of certain procedures required for clinical investigations and trial designs even though such issues are being discussed by the advisory committee. Clinical procedures in general are not a particular matter involving specific parties. The committee member could not accept compensation for an article or speech which recounts committee deliberations that took place in a closed meeting, or which relies upon other, non-public information. In addition, the committee member could not accept compensation for an article or speech about specific collaborations in the HIV drug development process which were discussed by the committee, since the collaborations are considered a particular matter involving specific parties.

- (C) If a committee member serves for more than 60 days, the SGE is additionally prohibited from receiving compensation for teaching, speaking, and writing if the subject of the activity deals in significant part with any matter to which the SGE is presently assigned or was assigned during the previous one-year period.

EXCEPTIONS:

1. This rule does not preclude a committee member from receiving compensation for teaching, speaking, or writing on a subject within the committee member's discipline or inherent area of expertise based on the SGE's educational background or experience. The outside activity must not be about or distinctly related to the work the SGE is providing to the Government.

7. These restrictions also do not apply to teaching in a course requiring multiple presentations that is part of the regularly established curriculum of an institution of higher education, an elementary or secondary school, or a program of education or training sponsored and funded by the Federal, State, or local government.

II. Gifts

Any gift given to a committee member because of the member's service on an HHS advisory committee would raise concerns. Please consult with the Federal Official responsible for your committee should this situation arise. Gifts given to you because of your position or achievements in the private (non-Government) sector generally are not problematic.

III. Charitable Fundraising

A committee member may engage in charitable fundraising in a personal capacity as long as the committee member does not personally solicit funds or other support from any person or entity known to the committee member to be a person or entity whose interests may be substantially affected by the performance or nonperformance of the committee member's Federal duties. 5 C.F.R. § 2635.808. If you have specific questions concerning particular fundraising events or activities, please consult with the Federal Official responsible for your committee.

IV. Expert Witness

A committee member cannot serve as an expert witness, in a proceeding before a United States court or agency in which the United States is a party or has a direct and substantial interest, except on behalf of the United States, if the committee member participated, while a Federal employee, in the particular proceeding, unless authorized by the HHS designated agency ethics official, the Special Counsel for Ethics, who can be reached at (202)690-7258.

In addition, a committee member who was appointed by the President, serves on a commission established by statute, or has served or is expected to serve for more than 60 days in a period of 365 consecutive days, cannot serve, other than on behalf of the United States, as an expert witness, with or without compensation, in any proceeding before a United States court or agency in which the committee members' employing agency is a party or has a direct and substantial interest unless authorized by the Special Counsel for Ethics. 5 C.F.R. § 2435.805.

V. Impartiality

Although committee members are prohibited under 18 U.S.C. § 208(a) from participating in matters in which they have a financial interest, there may be other circumstances in which a committee member's participation in a particular matter involving specific parties would raise a question regarding the member's impartiality in the matter. For example, a committee member asked to review a grant application submitted by the SGE's mentor, or someone with whom the SGE has a close personal or professional relationship, would raise a concern about the committee member's impartiality in the review. In such circumstances, the committee member should discuss the relationship with the Federal Official responsible for the committee and a determination will be made as to whether the member should be disqualified from participation in the matter, or should be granted an "authorization" to permit the member to participate in the matter. 5 C.F.R. § 2635.502.

VI. Misuse of Position

Committee members are subject to a number of prohibitions intended to address the use, or appearance of use, of "public office for private gain." 5 C.F.R. Part 2635, Subpart G. These prohibitions include:

- (A) Using their HHS titles or referring to their Government positions for their own private gain, the private gain of friends, relatives, or anyone with whom they are affiliated in a non-Governmental capacity (including nonprofit organizations which they serve as officers, members, employees, or in any other business relationship), or for the endorsement of any product, service, or enterprise.
- (B) Using their HHS titles or Government positions to coerce or induce another person to provide any benefit to themselves or another person.
- (C) Using non-public Government information in a financial transaction to further their private interests or those of another, or disclosing confidential or non-public information without authorization.
- (D) Using Government property for unauthorized purposes.

Employment by, or Gifts from, Foreign Governments

There are constitutional limitations on a committee member's employment by a foreign government, including political subdivisions of a foreign government. United States Constitution, art. I § 9, cl. 8. There are also statutory provisions restricting acceptance of gifts from foreign governments. 5 U.S.C. § 7342. Committee members should consult with the Office of the Special Counsel for Ethics for details about these restrictions.

Lobbying Activities

In their official capacities or as a group, committee members are prohibited from engaging in any activity which directly or indirectly encourages or directs any person or organization to lobby one or more members of Congress, 18 U.S.C. § 1913. When authorized, committee members may appear before any individual or group for the purpose of informing or educating the public about a particular policy or legislative proposal. Committee members also may communicate to Members of Congress at the request of any Representative or Senator. Communications to Members of Congress initiated by committee members, in their official capacity as members of the committee, should be coordinated through the Office of the Assistant Secretary for Legislation.

As private citizens, committee members may express their personal views (but not the views of the committee as a whole or the opinions of HHS) to anyone. In doing so, committee members may state their affiliation with the committee, may factually state the committee's official position on the matter (to the extent that non-public information is not used), but may not take new positions and represent those views as the committee's position on the matter. Moreover, in expressing their private views, as with all other personal (non-Governmental) activities, committee members are not permitted to use Government computers, copiers, telephones, letterhead, staff resources, or other appropriated funds. All personal activities must occur "off duty time."

In addition, committee members are prohibited in their personal capacities from making representations on behalf of others, to the Government, on particular matters involving specific parties in which they were involved as Government employees. (See discussion above under 18 U.S.C. §§ 203 & 205.)

Political Activities

The Hatch Act (5 U.S.C. §§ 7321-7328) prescribes the restrictions on certain political activities of Federal employees (see chart below). Unlike the criminal statutes and most of the other ethics rules which are fully applicable to an SGE throughout the SGE's entire term of appointment, the Hatch Act restrictions apply only during the period of any day in which the SGE actually is performing Government business. For example, if an SGB attends an advisory committee meeting from 8:00 am - 1:00 pm, at 3:00 pm, the SGE could attend a political fund raiser and even solicit political contributions from the attendees.

Permissible Activities	Prohibited Activities (while on duty)
<ul style="list-style-type: none"> * <i>May be candidates for public office in nonpartisan elections</i> * <i>May register and vote as they choose.</i> * <i>May assist in voter registration drives.</i> * <i>May express opinions about candidates and issues.</i> * <i>May contribute money to political organizations.</i> * <i>May attend political fund raising functions.</i> * <i>May attend and be active at political rallies and meetings.</i> * <i>May join and be an active member of a political party or club.</i> * <i>May sign nominating petitions.</i> * <i>May campaign for or against referendum questions, constitutional amendments, municipal ordinances.</i> * <i>May campaign for or against candidates in partisan elections.</i> * <i>May distribute campaign literature in partisan elections.</i> * <i>May hold office in political clubs or parties (except Treasurer).</i> 	<ul style="list-style-type: none"> * <i>May not use their official authority to interfere with an election.</i> * <i>May not collect political contributions, unless both individuals are members of the same Federal labor organization and the one solicited is not a subordinate employee.</i> * <i>May not knowingly solicit or discourage the political activity of any person who has business before the agency.</i> * <i>May not engage in political activity while on duty.</i> * <i>May not engage in political activity in any Government office.</i> * <i>May not engage in political activity while wearing an official uniform.</i> * <i>May not engage in political activity while using a Government vehicle.</i> * <i>May not solicit political contributions from the general public.</i> * <i>May not actively participate as a candidate for public office in a partisan election.</i>

There are also criminal political statutes that apply at all times and prohibit coercion and intimidation regarding political activities.

Handicapped Federal Employees, Personal Assistants, Employment (excerpt)

94 STAT. 3040

PUBLIC LAW 96-523—DEC. 12, 1980

Travel expenses

“(d)(1) In the case of any handicapped employee (including a blind or deaf employee) traveling on official business, the head of the agency may authorize the payment to an individual to accompany or assist (or both) the handicapped employee for all or a portion of the travel period involved. Any payment under this subsection to such an individual may be made either directly to that individual or by advancement or reimbursement to the handicapped employee.

Payment limitation.

“(2) With respect to any individual paid to accompany or assist a handicapped employee under paragraph (1) of this subsection—

“(A) the amount paid to that individual shall not exceed the limit or limits which the Office of Personnel Management shall prescribe by regulation to ensure that the payment does not exceed amounts (including pay and, if appropriate, travel expenses and per diem allowances) which could be paid to an employee assigned to accompany or assist the handicapped employee; and

5 USC 8101 et seq.

“(B) that individual shall be considered an employee, but only for purposes of chapter 81 of this title (relating to compensation for injury) and sections 2671 through 2680 of title 28 (relating to tort claims).

“(e) This section may not be held or considered to prevent or limit in any way the assignment to a handicapped employee (including a blind or deaf employee) by an agency of clerical or secretarial assistance, at the expense of the agency under statutes and regulations currently applicable at the time, if that assistance normally is provided, or authorized to be provided, in that manner under currently applicable statutes and regulations.”

(b) The item relating to section 3102 in the analysis of chapter 31 of title 5, United States Code, is amended to read as follows:

“3102. Employment of personal assistants for handicapped employees, including blind and deaf employees.”

(c)(1) Section 604(a)(16)(A) of title 23, United States Code, is amended by striking out “3102” and inserting in lieu thereof “3102(b)”.

(2) Section 410(b)(1) of title 39, United States Code, is amended by striking out “3102 (employment of reading assistants for blind employees and interpreting assistants for deaf employees),” and inserting in lieu thereof “section 3102 (employment of personal assistants for blind, deaf, or otherwise handicapped employees).”

Sec. 2. Section 7(d)(1) of the Federal Advisory Committee Act (5 U.S.C. App.) is amended by striking out “and” at the end of subparagraph (A), by striking out the period at the end of subparagraph (B) and inserting “; and” in lieu thereof, and by adding at the end thereof the following new subparagraph:

“(C) such members—

“(i) who are blind or deaf or who otherwise qualify as handicapped individuals (within the meaning of section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 794)), and

“(ii) who do not otherwise qualify for assistance under section 3102 of title 5, United States Code, by reason of being an employee of an agency (within the meaning of section 3102(a)(1) of such title 5),

may be provided services pursuant to section 3102 of such title 5 while in performance of their advisory committee duties.”

Sec. 3. The amendments made by this Act shall take effect sixty days after the date of the enactment of this Act.

Sec. 4. (a) Section 8332 of title 5, United States Code, is amended by adding at the end thereof the following new subsection:

Ante, p. 3039.

r

29 USC 791.
Ante, p. 3039.

L

Effective date.
5 USC 3102 note.

Unfunded Mandates Reform Act of 1995 (Excerpt)

PUBLIC LAW 104-4--MAR. 22, 1995

109 STAT. 65

(B) the extent to which there are available Federal resources to carry out the **intergovernmental** mandate;
(3) estimates by the agency, if and to the extent that the agency determines that accurate estimates are reasonably feasible, of-

(A) the future compliance costs of the Federal mandate;
and

(B) any disproportionate budgetary effects of the Federal mandate upon any particular regions of the nation or particular State, local, or tribal governments, urban or rural or other types of communities, or particular segments of the private sector;

(4) estimates by the agency of the effect on the national economy, such as the effect on productivity, economic growth, full employment, creation of productive jobs, and international competitiveness of United States goods and services, if and to the extent that the agency in its sole discretion determines that accurate estimates are reasonably feasible and that such effect is relevant and material; and

(5)(A) a description of the extent of the agency's prior consultation with elected representatives (under section 204) of the affected State, local, and tribal governments;

(B) a summary of the comments and concerns that were presented by State, local, or tribal governments either orally or in writing to the agency; and

(C) a summary of the agency's evaluation of those comments and concerns.

(b) **PROMULGATION.**---In promulgating a general notice of proposed rulemaking or a final rule for which a statement under subsection (a) is required, the agency shall include in the promulgation a summary of the information contained in the statement.

(c) **PREPARATION IN CONJUNCTION WITH OTHER STATEMENT.**---Any agency may prepare any statement required under subsection (a) in conjunction with or as a part of any other statement or analysis, provided that the statement or analysis satisfies the provisions of subsection (a).

SEC. 203. SMALL GOVERNMENT AGENCY PLAN.

2 USC 1533.

(a) **EFFECTS OF SMALL GOVERNMENTS.**---Before establishing any regulatory requirements that might significantly or uniquely affect small governments, agencies shall have developed a plan under which the agency shall---

(1) provide notice of the requirements to potentially affected small governments, if any;

(2) enable officials of affected small governments to provide meaningful and timely input in the development of regulatory proposals containing significant Federal intergovernmental mandates; and

(3) inform, educate, and advise small governments on compliance with the requirements.

(b) **AUTHORIZATION OF APPROPRIATIONS.**---There are authorized to be appropriated to each agency to carry out the provisions of this section and for no other purpose, such sum as are necessary.

SEC. 204. STATE, LOCAL, AND TRIBAL GOVERNMENT INPUT.

2 USC 1534.

(a) **IN GENERAL.**---Each agency shall, to the extent permitted in law, develop an effective process to permit elected officers of State, local, and tribal governments (or their designated employees

Unfunded Mandates Reform Act of 1995 - Continued

109 STAT. 66

PUBLIC LAW 104-4 MAR. 22, 1996

with authority to act on their behalf) to provide meaningful and timely input in the development of regulatory proposals containing significant Federal intergovernmental mandates.

(b) **MEETINGS BETWEEN STATE, LOCAL, TRIBAL AND FEDERAL OFFICERS.**—The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to actions in support of intergovernmental communications where—

(1) meetings are held exclusively between Federal officials and elected officers of State, local, and tribal governments (or their designated employees with authority to act on their behalf) acting in their official capacities; and

(2) such meetings are solely for the purposes of exchanging views, information, or advice relating to the management or implementation of Federal programs established pursuant to public law that explicitly or inherently share intergovernmental responsibilities or administration.

(c) **IMPLEMENTING GUIDELINES.**—No later than 6 months after the date of enactment of this Act, the President shall issue guidelines and instructions to Federal agencies for appropriate implementation of subsections (a) and (b) consistent with applicable laws and regulations.

2 USC 1535.

SEC. 205. LEAST BURDENSOME OPTION OR EXPLANATION REQUIRED.

(a) **IN GENERAL.**—Except as provided in subsection (b), before promulgating any rule for which a written statement is required under section 202, the agency shall identify and consider a reasonable number of regulatory alternatives and from those alternatives select the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule, for—

(1) State, local, and tribal governments, in the case of a rule containing a Federal intergovernmental mandate; and

(2) the private sector, in the case of a rule containing a Federal private sector mandate.

(b) **EXCEPTION.**—The provisions of subsection (a) shall apply unless—

(1) the head of the affected agency publishes with the final rule an explanation of why the least costly, most cost-effective or least burdensome method of achieving the objectives of the rule was not adopted; or

(2) the provisions are inconsistent with law.

(c) **OMB CERTIFICATION.**—No later than 1 year after the date of the enactment of this Act, the Director of the Office of Management and Budget shall certify to Congress, with a written explanation, agency compliance with this section and include in that certification agencies and rulemakings that fail to adequately comply with this section.

2 USC 1536.

SEC. 206. ASSISTANCE TO THE CONGRESSIONAL BUDGET OFFICE.

The Director of the Office of Management and Budget shall—

(1) collect from agencies the statements prepared under section 202; and

(2) periodically forward copies of such statements to the Director of the Congressional Budget Office on a reasonably timely basis after promulgation of the general notice of proposed rulemaking or of the final rule for which the statement was prepared.

subject: INFORMATION COLLECTION THROUGH REPORTS

- 10-00-00 Purpose and Scope of Information Management
 - 10 Purpose and Scope of Reports Management
 - 20 Definitions
 - 30 Categories of Respondents and Types of Reports, Clearances Required, and Authorities
 - 40 Relationship of Reports to Other Functions

10-00-00 PURPOSE AND SCOPE OF INFORMATION MANAGEMENT

The mission of the Department is to serve as the Federal Government's principal agency to administer mandated programs that further the good health of Americans and provide them with essential human services, particularly for those persons most vulnerable and unable to help themselves.

- A. The purpose of information management is to provide a bridge between the problems that arise in the administration of these programs and the decisions that must be made as solutions toward those problems.
- B. The scope of information management ranges from the definition of the problem to be solved, a determination of the information available to solve it and the information yet to be assembled.

For the latter, it is necessary to raise a number of questions. Does the information exist? Where can it be found? Is it in the public domain? Who currently holds it? What would be the cost of collection? Are there legal ramifications involved in collection? Are there "privacy" considerations? Are there security problems?

Thereafter, the requirer/acquirer of information must further consider the source of the information, because the source determines the means of collection, i.e., the regulations governing the collection and the techniques to be used in the collection generally, the instrument for collection of data is a form. In many instances, information from forms, followed by analysis, becomes the basis for a report.

10-00-10 PURPOSE AND SCOPE OF REPORTS MANAGEMENT

The purpose of a report is to provide information that, accompanied by other information from staff or from records, either becomes the final input to (1) decisionmaking; (2) developing a situation; (3) solving a problem; or incorporation into yet another report.

A. The purpose of reports management in HHS is:

1. to acquire data and information so that decisions or analysis can be made on a timely basis;
2. to secure this necessary data and information at minimum cost consistent with 2. above;
3. to limit the reporting requirements to essential needs; and
4. to maintain current and accurate information and control on all reports and reporting systems with which the Department and the OPDIVs are concerned.

B. The scope of reports management entails several dimensions. It may be looked at from any or all of the following approaches:

1. On the basis of the hierarchical level of the requirer of the report
 - a. Division level (or below) personnel
 - b. OPDIV or STAFFDIV Head down to a. above
 - c. The Secretary
 - d. Other Secretaries and Agency Heads, i.e., for interagency reports
 - e. The President (or Director, OMB), the Congress, and the Judiciary.
2. On the basis of the location of the submitter of information for the report:
 - a. The submitter is an employee of an Agency of the Federal Government, and the report is provided to that Agency (defined officially as an internal report).
 - b. The submitter is an employee of an Agency of the Federal Government, and the report is provided to an Agency not that of the submitter (defined officially as an interagency report).
 - c. The submitter is not an employee of the Federal Government (defined officially as an information collection request or requirement imposed on the public--&g*, individual, unit of State or local government, company, etc.).

3. On the basis of control exercised over the report
 - a. Exempt reports
Required by Congress, the President (or Director, OMB),
or the Judiciary
Routine administrative reports
One-time reports
Division-level (or below) reports
 - b. Non-exempt reports
All other internal reports
Interagency reports
Information collection requests
4. On the basis of the relationship of the report to other steps and functions of the decisionmaking continuum. (See Sec. 10-00-40.)

The chapters of this Manual that provide instructions on reports management utilize all four of these approaches at one time or another.

10-00-20 DEFINITIONS

The following definitions are applicable to reports and reporting requirements:

A. Bootleg Report

A report used by an organization within the Department that requires clearance or approval, but has not received it.

B. Collection of Information

The obtaining or soliciting of facts or opinions by an agency through the use of written report forms, application forms, schedules, questionnaires, reporting or recordkeeping requirements, or other similar methods calling for either:

1. Answers to identical questions posed to, or identical reporting or recordkeeping requirements imposed on, ten or more persons, other than agencies, instrumentalities, or employees of the United States; or
2. Answers to questions posed to agencies, instrumentalities, or employees of the United States which are to be used for general statistical purposes.

C. Controlled Report

A report which is subject to clearance and/or management control.

D. Exempt Report

A report which is exempt from clearance and control by the Department Reports Management Officer, the General Services Administration's Office of Information Resources Management (GSA/OIRM), and the Office of Management and Budget. (see sec. 10-11-00).

E. Feeder Report

A report that is prepared primarily to supply data or information for another report. Feeder reports are normally given the same clearance/approval identification as the primary report.

F. HHS Coordinating Organization

The Office or activity that coordinates, for the Department, - -
to an HHS externally-required report.

G. Information Collection Request (ICR)

A written report form, application form, schedule, questionnaire, reporting or recordkeeping requirement, or other similar method calling for the collection of information.

H. Issued Report

A report that is prepared to meet an anticipated need and for which no requirement has been received. This type of report should be limited to a one-time report.

I. Interagency and Information Collection Request

A report that requires the collection of information from both Federal agencies and ten or more public respondents.

J. Interagency Information Collection Request

An interagency report that necessitates collection of information from ten or more members of the public by another department or Federal agency to satisfy the needs of the report.

K. Interagency Report

A report that is prepared by one or more Executive Departments or independent agencies for use by other Executive Departments and independent agencies. An interagency report may be either required by HHS or prepared

and submitted by HHS. Interagency reports require clearance by the Office of Information Resources Management (OIRM) and variations of interagency reports, by OIRM and OMB (see I. and J.)

L. Internal Report

A report for which the requestor and the respondents are all within the Department. It does not, however, include exempt reports that would otherwise meet this requirement.

M. One-Time (or Single-Time) Report

A report that is required a single time with no expectation that the requirement will be repeated.

N. Recurring Report

A report that is required more than one time.

O. Report

A compilation of data or information for use in determining policy; planning, controlling, and evaluating operations and performance; making administrative determinations; and preparing other reports. The data or information may be in narrative, statistical, graphic, or other form and may be on paper, magnetic tapes, or other media.

P. Reports Clearance/Approval Identification

A unique number or code used to identify an approved report. This identification is always included on a controlled report and its requiring directive. It also identifies the requiring organization of the report.

1. HHS Reports Approval Symbol

Approval and/or identification which is assigned by a designated Reports Management Officer in HHS or an OPDIV for a controlled report which is not controlled by OMB or GSA/OIRM.

2. OMB Reports Clearance Number

Clearance (approval) identification which is assigned by OMB for an Information Collection Request.

3. OIRM Reports Control Number

Approval identification which is assigned by GSA/OIRM for a controlled interagency (or variation) report.

Q. Reporting Requirement

Any requirement which calls for the preparation and ~~transmission~~ of a report.

R. Requiring Organization

The Operating Division, office, agency, or other organization that establishes a reporting requirement and, generally, has authority to propose revision or cancellation of the reporting requirement.

S. Responding Organization

The Operating Division, office, agency, or other organization that is required to respond to a reporting requirement.

10-00-30 CATEGORIES OF RESPONDENTS AND TYPES OF REPORTS, CLEARANCE
REQUIRED, AND AUTHORITIES

There are differing categories (and combinations of categories) of respondents from which data are required. These stem from differing information needs, based on different authorities. Similarly, they encompass a number of clearance process variations. Information delineating this is contained in Exhibit 10-00-A.

10-00-40 RELATIONSHIP OF REPORTS TO OTHER FUNCTIONS

The basic thrust of the information continuum in the Department of Health and Human Services is centered on decisionmaking requisite to the resolution of program problems. Reports form an integral part of this continuum. Exhibit 10-00-B lists a number of events and tasks which commence with the definition of the problem, continue with steps for acquisition of information (in which reports figure prominently), follow with the decisionmaking itself and the necessary action, and terminate with the ultimate disposition of records created by the events and tasks in the continuum.

The main concern at this point is to note that forms are the source for much data used in analysis, while reports become instruments of information and further analysis for final decisionmaking. These relationships either are often not understood or appreciated, or are glossed over. Only on rare occasions will a report be more accurate than the sum of its three inputs, the staff personal backgrounds, the records, and the information derived from data on forms. Logical analysis and presentation properly done will translate forms data into information and can do much to assist in the creation of a report that clarifies issues and options for the decisionmaker.

CATEGORIES OF RESPONDENTS AND TYPES OF REPORTS, CLEARANCES WIRE, AND AUTHORITIES

RESPONDENTS	TYPES OF REPORTS	TYPE OF CLEARANCE REQUIRED*	AUTHORITY	ES				
			OUTSIDE HHS	HHS MANUAL REFERENCES				
1. Public Respondent/ Recordkeepers (e.g., individuals, companies, State and local govern- ments, etc.) .	(exempt by law)	Originator	Implied - P.L. 96-511, Sec. 3502(4)(A)	GAM, Chapter 10-20 et seq.				
					a. Nine or fewer public respondents			
					b. Ten or more public respondents			
c. Agencies and employees of the U.S. giving answers for statisti- cal purposes	Information collection request (ICR)	OMB	P.L. 96-511, Sec. 3502(4)(A) (Paperwork Reduction Act of 1980) and 5 CFR Part 1320	GAM, Chapter 10-20 et.seq.				
2. Federal Agencies	Reports to Congress, the Judiciary, the President, and OMB (except ICRs)	Dept. and/or OPDIV	Individual legislation and FIRMR 201-45.103-2 (d) (1)	GAM, Chapter 10-11-10, 10-11-40 and -50				
					a. Respondents within HHS			
					a. Internal report (recurring)	Dept. or OPDIV	FIRMR 201-45.103-2(a)	GAM, Chapter 10-10
					b. Due-time report (exempt)	Originator	FIRMR 201-45.103-2 (a)	GAM, Chapters 10-11-10 and -20
c. required in routine administrative opera- tions; used to document an inspection or survey, etc.; response to a request for review and coordination (exempt)	Originator	FIRMR 201-45.103-2 (a)	GAM, Chapters 10-11-10 and -20					

CATEGORIES OF RESPONDENTS AND TYPES OF REPORTS, CLEARANCES REQUIRED, AND AUTHORITIES

RESPONDENTS	TYPES OF REPORTS	TYPE OF CLEARANCE REQUIRED*	AUTHORITIES	
			OUTSIDE HHS	HHS MANUAL REFERENCES
c. Respondents within HHS and in same specified organizational category as originator (requirer)	(exempt)	Originator	FIRMR 201-45.103-2	GAPS, Chapters 10-11-10 and 10-11-30 C
d. Federal Government components are the respondents	Interagency report	GSA (OIRM)	FIRM? Subpart 201-45.6	GAM, Chapter 10-15
3. Federal and Public Respondents				
a. As in 2.d., in which at least one of the respondents must utilize an information collection request from the public in order to provide its data	Interagency information collection request	GSA and OMB	FIRMR 201-45.610-1, plus provisions of Chapter 10-16-3	GAM, Chapter 10-16
b. Federal Government components and the public are respondents	Interagency and Information collection request	GSA and OMB	FIRMR 201-45.610-1, plus provisions of Chapter 10-16-3	GAM, Chapter 10-16

*Regardless of type of clearance required (or not required) the provisions of the Privacy Act of 1974 apply (Chapter 10-19) .

CHAPTER 11-50
SCHEDULES OF UNIFORM ALLOWANCES UNDER THE
FEDERAL EMPLOYEES UNIFORM ALLOWANCE ACT - PUBLIC HEALTH SERVICE*

11-50-00 Purpose

- 10 General
- 20 Service-wide Allowances
- 30 Bureau of Health Services' Allowances
- 40 Bureau of Disease Prevention and Environmental Control's Allowances

U-50-00 PURPOSE

This Chapter sets forth **allowances** which are authorized for **Public Health Service** civil service employees who are required **to wear** uniforms but for **whom** such uniforms are not furnished. The allowances are in accordance with the Federal Employees Uniform Allowance Act, as amended by the Federal Pay and Fringe Benefits Act of 1966 (P.L. 89-504).

Note: When uniforms are furnished to Public Health Service civil service employees, such uniforms are furnished under authority of Section 509 of the Public Health Service Act, as amended (42 U.S.C. 227), rather than under the Federal Employees Uniform Allowance Act. (See also PHS Delegation of Authority No. 11.)

11-50-10 GENERAL

- A. Public Health Service officials authorized to prescribe a uniform for which an allowance will be paid are designated in General Administration Manual Chapter **PHS:2-35**.
- B. Allowances for uniforms may not be paid, unless (or until) the position category, the articles of apparel and the allowances have been approved by the Assistant Secretary for Administration, for entry in the Schedules issued in Part 11 of this Manual.
 - 1. Section **11-50-20** provides schedules of allowances for uniforms authorized for Service-wide use, when such uniforms are specifically prescribed by authorized PHS officials.
 - 2. Other sections of this Chapter list additional allowances established to meet the needs of specific PHS program areas.
- C. **Requests** for changes in the Schedules **shall** be made through usual administrative channels to the PHS Representative on the Department **Committee** on Uniforms and Uniform Allowances (General Administration Manual **11-05**). Such requests shall be supported by the information required by **Chapter 11-20**.

***See** Chapter U-60 for Freedmen's Hospital

11-50-20 SERVICE-WIDE ALLOWANCES

<u>Position Category</u>	<u>Prescribed Uniform</u>	<u>Annual Allowance</u>	<u>Pay Period Allowance</u>
<u>FEMALE:</u>			
Dental Assistant Dental Hygienist Dietetic Intern Dietitian Nurse Nursing Assistant Therapist, Occupational Therapist, Physical	Dress Cap Hose	"\$75.82	\$ 2.92
	When prescribed for Physical Therapist in addition to above items:		
	Slacks Shirt	* 93.72	3.60
 <u>MALE:</u>			
Dental Assistant Dietitian Nurse Therapist, Occupational Therapist, Physical	coat Trousers Shirt Tie	* 75.82	2.92
Nursing Assistant	Trousers Shirt	* 56.06	2.14

*See page 7.

11-50-30 BUREAU OF HEALTH SERVICES' ALLOWANCES

A. Bureau-wide Allowances

<u>Position Category</u>	<u>Prescribed Uniform</u>	<u>Annual Allowance</u>	<u>Pay Period Allowance</u>
<u>FEMALE:</u>			
Elevator Operator	Dress	*\$56.06	\$ 2.16
Medical Aide	Dress Cap		
	Hose	* 75.82	2.92
Physical Therapy Assistant	Dress		
Electrocardiograph Technician	Hose	* 70.98	2.73
Medical Technician (Bacteriology, Chemistry, Cytology , General, Hematology , Histopathology, Mycology , Parasitology, Serology, Transfusion Service)			
Medical Radiology Technician			
Medical Technologist			
<u>MALE:</u>			
Elevator Operator	Trousers shirt		
	Tie	* 56.06	2.16
Medical Aide	shirt	* 56.06	2.16
Physical Therapy Assistant	Trousers		
Dental Laboratory Technician			
Electrocardiograph Technician	Trousers		
Medical Technician	Shirt (Intern)	*59.80	2.30
(Bacteriology, Chemistry, Cytology , General, Hematology , Histopathology , Mycology , Parasitology , Serology, Transfusion Service)			
Medical Radiology Technician			
Medical Technologist			

See page 7.

TN-68.1(2/6/68)

Supersedes page 3, TN-164

GENERAL ADMINISTRATION

(11-50-30A continued)

Bureau-wide Allowances (Continued)

<u>Position Category</u>	<u>Prescribed Uniform.</u>	<u>Annual Allow- ance</u>	<u>Pay Period Allow- ance</u>
	<u>Summer Uniform</u>		
Chauffeur Guard	Trousers Shirt Tie Cap	*\$75.82	\$ 2.92
	<u>Summer and Winter Uniform</u>		
Chauffeur Guard	Coat (Wool) Trousers (Wool) Overcoat (Wool) Shirt Tie Cap Trousers shirt Tie Cap	* 123.71	4.76

B. Additional Allowances for Personnel of Division of Indian Health (Division-wide)

<u>Position Category</u>	<u>Prescribed Uniform</u>	<u>Annual Allow- ance</u>	<u>Pay Period Allow- ance</u>
<u>FEMALE:</u>			
Admitting Office and Medical. Record Clerical Personnel	Dress	* 56.06	\$ 2.16
Executive Housekeeper	Dress Hose	*70.98	2.73
Public Health Nurse Practical Nurse (Public Health Nursing Asst.)	Dress, Summer Dress, Winter Coat, Winter Raincoat Sweater Hat, Summer Hat, Winter	*112.55	4.33

*See page 7.

(11-50-30B continued)

Additional Allowances for Personnel of Division of Indian Health
(Division-wide)

<u>Position Category</u>	<u>Prescribed Uniform</u>	<u>Annual Allow- ance</u>	<u>Pay Period Allow- ance</u>
MALE:			
Executive Housekeeper	Trousers Shirt	*\$56.06	\$ 2.16

C. Additional Allowances for Personnel of Alaska Native Health
Facilities (except Mt. Edgecumbe)

<u>Position Category</u>	<u>Prescribed Uniform</u>	<u>Annual Allow- ance</u>	<u>Pay Period Allow- ance</u>
<u>FEMALE:</u>			
Baker Cook Kitchen Helper Meat Cutter	Dress Cap	*\$ 61.15	\$ 2.35
<u>MALE:</u>			
Baker Cook Kitchen Helper Meat cutter	Trousers Shirt Cap	* 61.W	2.35

*See page 7.

11-50-40 BUREAU OF DISEASE PREVENTION AND ENVIRONMENTAL CONTROL'S ALLOWANCE

A. Additional Allowances for Personnel of the National Communicable Disease Control Center, Atlanta, Georgia (Center-wide),

<u>Position Category</u>	<u>Prescribed Uniform</u>	<u>Annual Allowance</u>	<u>Pay Period Allowance</u>
<u>MALE:</u>			
Guard	Coat, Blue Wool Trousers, Blue Wool Trousers, Summer overcoat Shirt, White Tie Belt, heavy duty. Cap	*\$123.71^{1/}	4.76

1/ Allowance is Paid in full on initial appointment. After completion of one year's service, it is Paid in biweekly installments.

B. Additional Allowances for Personnel of the Foreign Quarantine Program

<u>Position Category</u>	<u>Prescribed Uniform</u>	<u>Annual Allowance</u>	<u>Pay Period Allowance</u>
<u>Quarantine Service, MALE:</u>			
Biological Aide	Uniform (Khaki)		
Biological Laboratory Technician	Uniform (Blue) coat		
Biologist	Shirt		
Entomologist	Cap		
Inspector, Quarantine	Belt		
Inspector, Sanitation	Hose		
Special Assistant for Inspectional Services, Washington, D. C. Area	Tie	*123.71	
Pilot			
Training Administrator, Rosebank Quar. Sta. , Staten Island, N. Y.			
Medical Officer		\$123.71	

*See page 7.

CHAPTER 11-90
SCHEDULES OF UNIFORMS UNDER THE FEDERAL
EMPLOYEES UNIFORM ALLOWANCE ACT - OFFICE OF EDUCATION

11-90-10 Allowances When Uniform Is Not Furnished

11-90-10 **ALLOWANCES WHEN UNIFORM IS NOT FURNISHED**

<u>Position Category</u>	<u>Prescribed Uniform</u>	<u>Annual Allow- ance</u>	<u>Pay Period Allow- ance</u>	<u>Effec- tive Date</u>
Chauffeur	Winter uniform coat Cap Trousers Tie Overcoat Summer uniform coat Trousers Cap Tie	\$125* initial allowance \$125* annual allowance for replacement purposes to be paid when the employee furnishes a receipt for replacement items		7/31/66*

*Mandatory increase. of allowance in effect on April 1, 1966. This allowance
 by effective July 31, 1966. Section 407, Public Law 89-504, approved July 18, 1966,
 31, 1966.





Memorandum

MAR 6 1991

Date

From Acting Director; Office of
Human Resource Programs, **ASPER**

Subject Federal Pay Reform Adjustment to Uniform Allowance Payments

To Directors of Personnel for OS, PHS, and SSA

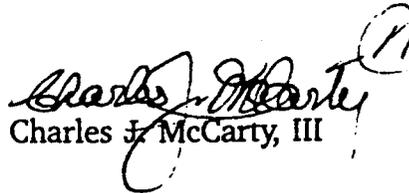
The Office of Personnel Management (OPM) recently published implementing regulations covering several provisions of the Federal Employees Pay Comparability Act of 1990 (FEPCA). The FEPCA revision to 5 U.S.C., Section 5901, increased the maximum yearly uniform allowance from \$125 to **\$400**, as a change that does not require new or revised regulations.

In this Department, payment of uniform allowances to more than 6000 eligible civilian employees is administered in accordance with the General Administrative Manual (GAM), Chapter 11, which was last revised in March, 1971. **ASPER** will be working with ASMB over the next few weeks to update GAM Chapter 11. Since the maximum uniform allowance that may be paid has already been increased by statute, increased amounts may be paid to **HHS** employees now under the conditions described below.

The Public Health Service should revise PHS Instruction 594-1 to reflect current management decisions regarding increases within the new maximum allowed by Law. OS and SSA should exercise delegated authorities contained in the GAM and issue determinations for payment of increased amounts.

Increased uniform allowance payments are handled through the Department's central payroll system, and must be individually processed by our Servicing Personnel Offices. Payments may be approved retroactively to any pay period beginning after February 14, 1991. Please provide this office and the **SPOs** who service your employees with copies of revised OPDN policies for payment of increased allowances as soon as possible.

Your timely assistance is greatly appreciated. You can contact Dave **Selner** at (FTS) 475-0109 if you have any questions.


Charles J. McCarty, III

CHAPTER 12-00
MAIL AND RELATED SERVICES -- GENERAL

- 12-00-00 Purpose
 - 10 Policy
 - 20 **Responsibility** for Providing Mail and -Related Services

12-00-00 PURPOSE

Part 12 provides Departmental policy and procedures governing official mail and related services (such as mail and messenger) and payment for postal services. Details for local use of such services will, as necessary, be issued locally in Manual Guide form. Appropriate GSA and U.S. Postal Service publications **will be used.**

12-00-10 POLICY

- A. Centrally located mail facilities shall be established whenever economically feasible in each building or group of buildings for the receipt and dispatch of official mail.
- B. Mail and related services shall be used only in the conduct of official business.

12-00-20 RESPONSIBILITY FOR PROVIDING SERVICES

- A. The Office of Administration, Office of the **Secretary**, is responsible for providing Departmental policy and procedures relating to mail and related services. This office is also responsible for liaison with the U.S. **Postal Service and the General Services Administration.**
- B. The heads of operating agencies are responsible for providing services in their respective buildings. They are also responsible for HEW activities where their respective agency **is the principal** HEW tenant of multi-tenant buildings. The other tenants shall furnish such funds or manpower as are equitable.
- C. Officials in charge of HEW field installations shall maintain liaison with local post offices and will acquaint themselves with the services available from them and their local practices. Such liaison should assure that all **HEW** mail, printing and reproduction facilities **will keep** their systems compatible with mail flow in the postal service.

~~(12-0-20~~ continued)

- D. All contracts negotiated by HEW organizations with private mailers will stipulate that all HEW mailings produced by such contracts be prepared in compliance with current zip code pre-sort **requirements** and deposited in the appropriate city post office no later than **4:00** p.m. (see **HEW** Procurement Manual, paragraph 3-1.350).

CHAPTER 12-10
MAIL AND MESSENGER SERVICES

12-10-00 Policy
10 General Policy
20 Incoming Mail
30 Outgoing Mail
40 Special Mail Services
50 Messenger Services

12-10-00 PURPOSE

This chapter establishes Department policy for the provision of efficient, uniform and economical mail and messenger **services.**

12-10-10 GENERAL POLICY

- A. **Mail** reading in mail facilities should be limited to those pieces of mail that cannot otherwise be correctly routed, usually those which are improperly addressed.
- B. Mail delivery points should be established according to need by agreement between the customer organization and the head of the mail facility.
- C. Detailed local operating procedures should be supplemented as required by the maintenance and use of the Postal Manual - Chapter 1, Post Office Services/Domestic and Chapter 2, International Mail. Other Post Office and General Services Administration issues and guides should be used as appropriate.

12-10-20 INCOMING MAIL

- A. All incoming mail shall be **received** in the mail facility, opened when necessary, and routed according to the local mail routing guide. Normally, envelopes are attached **to** and routed with incoming communications.
- B. Registered and Certified mail shall be signed for **by** authorized mail room personnel upon delivery by the Post Office. Those employees, in turn, shall require the addressee to sign Form HEW-40 (Messenger Receipt Card) showing the date and **time** of receipt. (See Exhibit X12-10-1.)
- C. Air Mail and Special Delivery mail shall be handled in the same manner as first class mail. Mail that is tagged for immediate handling shall be promptly handled according to instructions on the tag.

(12-10-20-C continued)

Postal matter that is marked in such a manner as to indicate that the contents are intended solely for the addressee is not to be opened by anyone but the addressee. When any such material is opened inadvertently, it shall be resealed by the opening unit and marked "Opened in error" or some similar designation.

- E. Cash and negotiable instruments received shall be adequately controlled and safeguarded. A responsible employee shall be designated to enter in a log, as available, the name and address of the remitter and type and amount of receipts. Delivery of such receipts shall be made to an appropriate agent cashier or collections unit. Local instructions will be issued to supplement this policy, as required. Mail control activities such as date and time stamping of bids should be done by customer organizations rather than by the central mail facility. Mail Control Card HEW-73 and similar controls will be maintained at action points, as necessary. (See Exhibit 12-10-1.)

12-10-30 OUTGOING MAIL

- A. The most economical class and type of mail service consistent with the needs shall be used.
- B. All outgoing mail shall be forwarded to the central mail facility at regular intervals throughout the day to avoid peak loads at the end of the day. Official mail is not to be dropped into building mail slots.
- C. Regulations prohibit the inclusion of borders, markings, slogans or designs on mailing envelope labels, etc. Requests for exceptions shall be directed to the Office of Administration, Office of the Secretary.
- D. Because of the volume of Christmas mail, all bulk mailings of supplies, publications, books, forms or other printed matter should be withheld from the mails for the period December 1 through December 26 of each year.
- E. Consolidated Mailings. All first class mail directed to the same address shall be consolidated by the mail facility, and, as volume permits, dispatched in one envelope. Mail to installations for which consolidated mailings are authorized shall be forwarded to the mail facility in messenger envelopes. Mail facilities shall maintain preaddressed envelopes for consolidated mailings.
- F. Segregation by Type and Class of Service. Mail facilities shall segregate mailings according to type of mail and class of service desired and place in separate mail bags, properly labeled. Bags and labels may be obtained from the local post offices. Where there is insufficient material to warrant bagging separately, items intended for air mail and/or special delivery shall be tied separately, properly marked, and placed on top of bundles of ordinary letters.

- G. Local and Out-of-Town. To expedite handling by the Post Office, separate "Local" and "Out-of-Town" mail, and tie with addresses facing the same way. Labels for use on each type may be obtained from the local Post Office.
- H. Perishable Biological Materials Via International Mail
1. Perishable biological materials may be transmitted in the postal union mail only as letter packages (packages paid at letter rate having weight limit of four pounds, six ounces, except 60 pounds for Canada). These packages must bear distinctive violet labels. Labels will be furnished by the U.S. Postal Service to laboratories making written application. (See Chapter 2 of the Postal Manual for conditions, dimension restrictions, and list countries agreeing to accept materials.)
 2. Perishable biological materials may be transmitted by parcel post. See Directory of International Mail regarding individual agreements with various countries.
- I. Envelopes, Cards, and Self-Mailers
1. Standard size cards and envelopes, especially small envelopes, should be used whenever practicable. These are available through HEW ordering channels.
 2. Self-mailer type matter prepared without envelopes or wrappers must be sealed or secured so that it may be handled by machines, and otherwise conform to Post Office regulations.
 3. New types of mailing pieces not of standard format or design shall be submitted to the U.S. Postal Service for prior approval as to conformance with postal requirements. When prepared in Washington, D.C., a specimen shall be submitted to the Division of Mail Classification, Bureau of Operations, U.S. Postal Service. When prepared at a field office the specimen should be submitted to the local postmaster.
- J. Postal Guidelines for Automatic Mail Processing

Whenever possible, outgoing mail should be prepared in accordance with the "Guidelines for Preparing U.S. Government Mail," transmitted by the General Services Administration Bulletin FPMR-B-22. Optical Character recognition and other automatic processing equipment in the postal centers throughout the United States require the application of these guidelines.

(12-10-30)

K. Return Address Limitations

Return addresses on mail pieces, labels and the like, should not exceed five lines. If it is necessary to identify each component of a multiplex organization in a return address, this may be accomplished by entering the title of the department followed by the **action** office and followed by the organization code as indicated by Chapter 8-66 of the General Administration **Manual**.

L. Two Letter State Abbreviations

Two letter state abbreviations authorized by the U.S. Postal Service **are permissible** for use **on outgoing mail throughout** the **Department** when used in conjunction **with** the zip code. They are particularly applicable where space can be saved in the addresses contained in the various automated addressing systems and their output. They should not **be** used on letters **placed** in window envelopes.

12-10-40 MAIL CLASSES AND SERVICES

The four classes of mail and certain special services which may be used when necessary to modify their use **are** as follows:

A. Classes of Mail.

1. First-Class Mail. Use first-class for mail requiring the highest priority surface handling.
2. Second-Class Mail. Second-class mail is used for **newspapers and periodicals. The Department of HEW does not use this class.**
3. Third-Class Mail. Printed material and **parcels** weighing less **than one pound qualify** for third-class.
4. Fourth-Class Mail. Printed **material and** parcels weighing one pound and over qualify for fourth-class. Fourth-class is commonly referred to as **parcel** post.

To effect economy and a reduction in the **issuance** of SF-1103, Government Bills of Lading, the Comptroller General has directed **all agencies** to use parcel post for shipment of mailable Government materials. The use of freight or express shall be restricted to **materials** classed as **not** mailable and to shipments that exceed weight **and** size limits for **parcel** post. (See **Postal Manual.**)

- B. Special Mail Services. These services shall be kept at a minimum to avoid additional costs to the Government. If more detailed information is needed than that provided below, customer offices should consult with appropriate officials in **charge** of mail facilities. Requests for special mail services are **made** via Form **HEW-76**, Mailing Instructions.

Air Mail Service. Normally, this service is used when more than **24** hours time can be gained and where the distance is over **500** miles. Dispatching air mail on a **Thursday** or **Friday** is normally not feasible **if regular** mail will reach the destination on a **Monday**. Where the recipient is an organization that receives and processes mail on a **24** hour shift basis or operates seven days a week, exception would be in order.

Certified Mail Service. Certified mail service **is** used for **dispatch** where a record is needed of the **sending** and receipt of **important** papers such as certain legal or personnel documents. (See C below for uses.)

Insured Mail Service. Insured **mail** service is used for **parcel** post. Use minimum fee unless otherwise **required**.

Registered Mail Service. Registered mail service is used to protect valuable and **important** mail and provide evidence of delivery **and** receipt.

Return receipts shall be requested only when proof of delivery must be made a matter of record.

Special Delivery should be used only under exception & conditions, usually for mail requiring immediate action outside the Government agencies.

Special Handling provides the most **expeditious handling** available for fourth class mail only. It is not used for special delivery.

- C. The major **characteristics** of registered **and** certified **mail** services **are** as follows:

Registered Mail (postage at first-class or air mail rate must be paid).
Additional sealing devices may be used but not over **inter-**sections of sealing flaps on envelopes.

Certified Mail (for **first-class** domestic use **only**).
Lower special fee charged.
Must be sealed. No **restriction** on additional sealing devices.

12-10-40

Authenticated mailing receipt furnished sender by post office.	Mailing receipt prepared by sender.
Sender's return receipt service. (Optional.)	Same.
Restricted delivery service to addressee only. (Option&L.)	Same.
Complete mailing records kept at the Post Office recorded in transit and separated from other mail. Receives additional security if warranted.	No record kept at the Post Office. Not recorded in transit. Handled with first-class mail without separation.
Controlled at Post Office of address by charge-out to delivering employees.	Not charged to carriers. Carriers identify mail by endorsement rules governing.
Signed delivery kept two years by Post Office.	Seine.
Postal indemnity provided, subject to limitations of Government Losses in Shipment Act (5 U.S.C. 134, 134a-h) if value declared and fee for value paid. Indemnity not paid for articles mailed under " Postage and Fees Paid " reimbursement arrangements.	No indemnity provided.

12-10-50 MESSENGER SERVICES

- A. Regularly scheduled pickup and delivery **service** shall be provided for all offices of the **Department.** It shall:
1. Be of sufficient frequency to meet the operating needs of the offices served and minimize the need for special messenger services.
 2. **Provide an** even flow of incoming and outgoing communications throughout the regular workday.

- B. **Messenger** personnel shall be assigned to the central mail facility wherever possible so that assignment of routes will not be duplicated and manpower utilization will be more effective.
- c. Offices served by messengers shall provide one "IN" and one "OUT" box (plainly marked) for receipt and dispatch of communications.' These boxes shall be placed as **near** as possible to the entrance of the office which is to serve as the pickup and **delivery station.**
- D. Desk-to-desk distribution of *communications* within each office shall be the responsibility of respective offices. Whenever practicable, combined pickup and delivery stations shall be established for offices functionally related or occupying continuous interconnecting space.
- E. Urgent mail which must be dispatched after the last regular messenger pickup shall be delivered by the originating office or the clearance point to the mail facility for dispatching.
- F. Special messenger service shall be furnished, provided **mossengers** are **available,** the need is urgent, and regular service will not suffice.
- G. Duties assigned to messengers shall be in keeping with the mission of the central mail facilities. Requests for other services shall be referred to the mail room supervisor or other appropriate officials for resolution.
- H. Material distributed by the mail and messenger activities should normally be limited to communications sent or received in the conduct of Departmental or Agency business. The distribution material prepared by employee groups will be handled in accordance with the **HEW** Personnel Manual where it deals with "**Employee - Management Cooperation.**" Other material that is questionable should be brought to the attention of the mail room supervisor or other appropriate **officials.**



Form HEW-40 ("MESSENGER RECEIPT CARD")

HEW-40
MESSENGER RECEIPT CARD

Date

Description

From

Addressed to

Building Room No.

Time Received Messenger.....

Time Delivered Received by
(Sign full name—Do not use initials)

Form HEW-73 ("MAIL CONTROL CARD") - 5-part Snapout

J3701
 U.S. GOVERNMENT PRINTING OFF. CE 1967 264 983

FROM:			CONTROL NO.
SUBJECT AND DATE:			DATE REC'O.
			DUE DATE
REFERRED (1)	(2)	(3)	(4)
DATE:			
REPLY SENT TO:			DATE RELEASED
REMARKS			ACKNOWLEDGED - DATE
			<input type="checkbox"/> NO ANSWER NEEDED
			<input type="checkbox"/> EXPLAIN IN REM'KS

HEW-73 (REV. 3-66)

MAIL CONTROL SCHEDULE

REMOVE THIS COPY ONLY— DO NOT SEPARATE REMAINING COPIES

- 12-20-00 Purpose
 - 10 Definitions
 - 20 Use of Official Mailing Xndicia
 - 30 Use of Postage Stamps for Official Mail
 - 40 Payment for Postal Service

12-20-00 PURPOSE

This chapter establishes department policy for the use of official mailing indicia and provides instructions for the payment of postage fees on all official mail.

Reference: U.S. Postal Service Manual, Part 137, "Official Mail," and the U.S. Postal Service "Payment fcr Official Mail" current year.

12-20-10 DEFINITIONS

- A. Indicia mail is mail sent with the phrase "Postage and Fees Paid" substituting for a postage stamp on the envelope, mailing label, self-mailer, etc.
- B. Postal Service Unit (PSU) is an HEW unit or group of units whom the U.S. Postal Service has granted a postal mailing code number. HEW Postal Service Units and their respective mailing code numbers are:

<u>Post21 Service Units</u>	<u>Mailing Code Number</u>
1. <u>Office of the Secretary</u> (includes): Office for Civil Rights	391
2. <u>Office of Human Development Services</u>	353
3. <u>Public Health Service</u> (includes): Office of Assistant Secretary for Health Alcohol, Drug Abuse, and Mental Health Administration Health Resources Administration Food and Drug Administration National Institutes of Health Health Services Administration Center for Disease Control	396

4. <u>Education Division</u> (includes):	395
Office of Assistant Secretary for Education	
National Center for Education Statistics	
Office of Education	
5. <u>National Institute of Education</u>	398
6. <u>Health Care Financing Administration</u>	392
7. <u>Social Security Administration</u>	397

12-20-20 USE OF OFFICIAL MAILING INDICIA

- A. The term "official mail" applies **exclusively to** the business of the government of the United States. Any matter transmitted under an HEW indicia must pertain to official department business. Any other use is prohibited.

Each Postal Service Unit must have its mailing code number printed on all its indicia mail.

- B. Postal Service Units cannot use the mailing code number of another PSU.
- C. HEW employees responsible for the printing of indicia mail covers (envelopes, labels, cards, self-mailers, etc.) should **insure** that:
1. The approved eagle symbol, the HEW **indicia**, and the appropriate mailing code number are printed in the upper right corner of the address side, as shown below:



*(insert appropriate mailing code number)

This marking must be printed. It cannot be handwritten, type-written, or hand-stamped on **the envelope**.

2. The name of the department, the name of the appropriate Postal Service Unit, and the appropriate return address, including the Zip Code, are printed above the notation, "Official Business" and "Penalty for Private Use \$300" in the upper left corner of the address side, as shown in the following example:

DEPARTMENT OF HEALTH, ~~EDUCATION,~~ AND WELFARE
OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20201.

Human Service

OFFICIAL BUSINESS
PENALTY FOR PRIVATE USE \$300

- D. Never use indicia envelopes for personal or unofficial mail, even if you place stamps on the envelope. This prohibition also applies to the personal mail of hospital patients. Never use a government envelope of any kind for personal correspondence.
- E. Offices served by an interdepartmental messenger service, (i.e., the United States Official Mail and Messenger Service in Washington, D.C. Run-Stop-Service) should use this service to the fullest extent possible. Use Standard Form 65, U.S. Government Messenger Envelope, for this mail whenever possible. Otherwise, use a plain envelope. Show agency stop numbers on the envelope.
- F. Department employees may, if for purposes of official business, supply to members of the public printed reply envelopes or labels printed with indicia and pre-addressed to a Federal Government office or officer. These should be supplied for the sake of convenience in having persons submit information for official purposes.

Project officers may supply envelopes or labels to department contractors for use in accordance with contract terms and U.S. Postal Service Regulations. The envelopes must bear the printed return address of the department over the words "Official Business." Never use the name and return address of a private person or firm on an envelope utilized for official mailing. This includes envelopes mailed by a contractor as well as envelopes used in reply to a contractor's inquiries.

HEW Postal Service Units that have contractors performing mailing services which interface with the U.S. Postal Service must obtain a permit for the contractor before such mailings may be entered into the mailstream.

When a special mail service is required, supply a reply envelope or label preprinted with the type of special mail service desired. Users of reply envelopes or labels may not add their own markings for these services.

- G. Never supply envelopes or labels to an individual or concern:
1. If law or regulation require the requested information.

2. If the requested information pertains primarily to the person's own business with the Government (e.g., a claim), a personal matter, or the application for Federal funds under a grant program.
3. For replies to a mailing list circularization; however, **self-**addressed cards or envelopes without the official mailing indicia may be provided for the use of respondents to circularizations of mailing lists.

12-20-30 USE OF POSTAGE STAMPS FOR OFFICIAL MAIL

- A. Department **employees** should use postage stamps for official mail when the use of an **indicia** would hamper their tasks (e.g., when the success of investigative work performed by the department would be jeopardized). The officials listed in paragraph **12-20-40B**, or their designees, can authorize the purchase of such stamps.
- B. The department will reimburse employees in foreign countries for foreign stamps purchased for official business.
- C. Department employees should return stamps supplied by an inquirer if the stamps are not affixed to a self-addressed envelope.

12-20-40 PAYMENT FOR POSTAL SERVICES

- A. Law requires government agencies to reimburse the U.S. Postal Service for all official mailings. Such reimbursement can be made from any funds available to an organization. For the purpose of postal service billing, **HEW** is divided into seven Postal Service Units (see paragraph **12-20-10B**). Each PSU negotiates, consistent with department policy, directly with the U.S. Postal Service for payment of postal charges. Each PSU shall send its postal service payments to:

Disbursing Officer
U.S. Postal Service
New York Postal Data Center
Main Post Office Building
New York, New York 10099

To obtain further information regarding the payment of USPS charges, contact:

Chief, Postal Management Branch
Division of Administrative Services
Office of Management Services
Office of the Secretary

- B. The U.S. Postal Service bills each Postal Service Unit quarterly on the basis of an annual estimate prepared by the PSU and furnished to

the U.S. Postal Service by September 1. This estimate should be based on the preceding year, correlated with projected volume trends. As an alternative reimbursement procedure, HEW Postal Service Units may use the Simplified Intra-Governmental Billing and Correction (SIBAC) System which provides for the automatic monthly transfer of funds from Federal agencies to the U.S. Postal Service. The officials listed below are responsible for preparing and submitting the postal service estimates of their respective **PSU's**.

<u>Postal Service Unit</u>	<u>Responsible Official</u>
Office of the Secretary	Director, Office of Management Services
Office of Human Development Services	Director, Office of Adminis- tration and Management
Education Division	Assistant Commissioner for Administration
National Institute of Education	Assistant Director for Adminis- tration and Management
Public Health Service	Deputy Executive Officer
Social Security Administration	Associate Commissioner for Management and Administration
Health Care Financing Administration	Director, Division of Administrative Management Service

- C.** Regional administrative officials are responsible for conducting respective regional mail counts in accordance with prescribed procedures as set forth **in** this chapter.' Regional POC units, including Office of the Secretary, **will** submit their postal service estimates to their parent or primary funding organization.
- D.** The U.S. Postal Service annually distributes the format for reports of annual mailing estimates. Copies of the current format can be obtained from the Chief, Postal Management Branch (see paragraph **12-20-40A**).
- E.** The Postal Management Branch, Division of Administrative Services, OS, will furnish to each Postal Service Unit by August 15 of each year a report of the **actual** mailings for that agency made by the Printing and Visual Systems Branch, DAS-OS.
- F.** Departmental policy provides these three methods for estimating annual mail costs:

1. An actual count of the number of pieces of mail and computation of postage payable over a representative one-week period occurring each half of the fiscal year. This is the minimum sampling mandated by the U.S. Postal Service and the random weeks to be used are selected by the Postal Service. The department strongly recommends a one-week count occurring each quarter of the fiscal year. The amount of postage for these periods will be averaged and projected into an annual estimate.

NOTE: A count by weight may be substituted where a conversion between weight and number of pieces has been calculated by the mailing facility and approved by the USPS. **Due** to the wide variation in types **and** classes of mailings, a department-wide conversion table is not feasible.

2. Program workload figures may be used in lieu of sampling by those organizations which can establish ratios between program workloads and total postage costs. Under this method, periodic samplings of special surface mail are necessary to verify trends.
3. A beginning inventory of **indicia** items, plus acquisitions, minus closing inventory may be used as an estimate of postage costs. In this method, a periodic sampling of special mail services is necessary to determine total mailing costs.

The Chief, Postal Management Branch (see paragraph **12-20-40A**) can provide detailed information regarding implementation of the methods described above.

G. Estimates of postal service costs shall include:

1. All official matter entered in the U.S. Postal Service such as first-class mail, special delivery, registered mail, certified mail, foreign mail, parcel post, periodicals, postage due items where postage would ordinarily be paid upon delivery, proof of mailings, reply cards or envelopes, return receipts, etc.
2. Adjustments for voluminous mailings occurring in other than the sample period or for planned increases or decreases in programs which would affect the amount of mail.
3. The final reimbursement amount must be fully documented with respect to type and size, class, quantities and rates applied in accordance with the U.S. Postal Service current format. Postal Service Units will submit summary data with a copy of its procedures for sampling and estimating **fiscal** year totals **to** the Manager, Government Revenue and Examination Branch, USPS, as soon as possible at year end, but no later *than* October 31.

-
- H. Mail sampling to determine estimates of postal service costs shall not include:
1. Express Mail. 'Express mail is billed separately from the rest of postal usage.
 2. Actual mailings by the Government Printing Office. The U.S. Postal Service will bill Postal Service Units separately for their GPO mailings.
 3. Mailings made by printer-mailer contractors engaged through the Government Printing Office or through other channels must be accounted for and documented on an individual basis.
- I. Postal Service Units should include funds to -cover the payment of postal services in their annual budget requests. Postal Service Units can reimburse the USPS for postal services from any funds available to the **PSUs**. In most instances, a PSU will distribute postal service costs among the various components of the PSU. **Some** suggested methods for allocating postal service costs to components **are:**
1. By past experience adjusted to reflect known changes.
 2. By reports of fndicia items procured by components.
 3. By the number of staff producing correspondence in the component.
 4. By workload data or other management documents.



CHAPTER 13- 10

USE OF HEW RESEARCH FACILITIES BY ACADEMIC
SCIENTISTS, ENGINEERS AND STUDENTS

34 FR 18938 11/27/69

Title 45—PUBLIC WELFARE

Subtitle A-Department of **Health,**
Education, and Welfare, General
Administration

**PART 9—USE OF HEW RESEARCH FA-
CILITIES BY ACADEMIC SCIENTISTS,
ENGINEERS, AND STUDENTS**

Part 9 of Subtitle A of Title 45 of the
Code of Federal Regulations is revised to
read as follows :

- sec.
- 9.1 Purpose.
- 9.2 Policy.
- 9.3 Delegations of authority.
- 9.4 Criteria.
- 9.5 Restrictions.

AUTHORITY: The provisions of this Part 9
issued under 27 Stat. 395, as amended; 20
U.S.C. 91.

§ 9.1 Purpose.

To enhance the availability of **DHEW**
scientific research and study **facilities** to
academic scientists, **engineers,** and **qual-**
ified students.

§ 9.2 Policy.

It is the policy of the Department of
Health, Education, and Welfare in ac-
cordance with the policy of the President
announced on February 21, 1969, to make
research **and study** facilities of the De-
partment readily available to the **scien-**
tific community, especially qualified **aca-**
demic scientists and engineers. Unique,
unusual, and expensive-to-duplicate fa-
cilities at laboratories and other study
and research facilities of the Depart-
ment will be made available to the na-
tional scientific community, to the max-
imum extent practical without serious
detriment to the missions of those facili-
ties. It is also the policy of the Depart-
ment to permit qualified students and
graduates of institutions of learning in
the several States, and territories, as well
as the District of Columbia, to use study
and research facilities of the Depart-
ment. When **such facilities are used by**
academic scientists, engineers, and stu-
dents, the costs incurred for the opera-
tion of the unique or unusual research
facilities, as well as of the other facili-
ties, should be funded by the operating
agency responsible for the operation of
that **facility,** except for any significant
incremental **costs** incurred in support
of research not directly related to an
HEW mission.

34 FR 18938 11/27/69

§ 9.3 Delegations of authority.

(a) The heads of operating agencies
are delegated authority for negotiations
and decisions as to the use of Depart-
ment facilities by qualified academic
scientists, engineers, and students.

(b) The heads of operating agencies
may (and are encouraged to) redelegate
to the heads of their respective compo-
nent organizations, with the power to
further redelegate to laboratory direc-
tors, the authority for negotiations and
decisions as to the use of departmental
facilities. Appropriate use shall be made
of advisory groups in formulating their
decisions.

§ 9.4 Criteria.

(a) The **official** permitting use of De-
partment facilities must determine that
it **would** be consistent with the programs
of his activity to participate. Facilities
may be made available provided the use
of such facilities will be of direct bene-
fit to the objectives of the academic
scientist, or engineer, or student, with
the prospect of fruitful interchange of
ideas and information between Depart-
ment personnel and the academic scien-
tist, or engineer, or student, and such
use will not interfere with the Depart-
ment program.

(b) The **official** permitting use of **De-**
partment facilities will furnish the **non-**
Government user with safety require-
ments or operating procedures to be **fol-**
lowed. Such requirements or procedures
are to include **the** requirement to report
to the **permitting** official any **accident**
involving the non-Government user.

(c) The **official** delegated authority
for approving the use of Department
facilities will not permit the use of lab-
oratory facilities **unless** he **determine:**

(1) That **facilities** are available **for**
the period desired; and

(2) That the proposed research will
not interfere with regular Department
functions or needs, nor require the subse-
quent acquisition of additional equipment
by the Department.

§ 9.5 Restrictions.

(a) Each individual authorized to use
Department facilities **will** be expected to
use the facilities and equipment with
customary care and **otherwise** conduct
himself in such manner as to complete
his research or study within any time
limits prescribed.

(9.5 continued/

34 FR 18938 11/27/69

(b) Each individual authorized to use HEW facilities may not be authorized to sign requisitions for supplies and equipment.

(c) Any official approving the use of **HEW** facilities should seek an agreement, executed by non-Government users, absolving the Federal agency of liability in case of personal injury, death, and failure or damage to the non-Government user's experiments or equipment. The agreement must also contain a statement that the non-Government user will comply with all safety regulations and procedures while using such facilities.

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

Approved: November 20, 1969.

SOL ELSON,
*Acting Deputy Assistant Secretary
for Administration.*

(F.R. Doc. 69-14103; Filed, Nov. 26, 1969;
8:48 a.m.]

CHAPTER 13-20
USE OF DEPARTMENT FACILITIES FOR
NONOFFICIAL PURPOSES

- 13-20-00 Purpose
 - 10 Background
 - 20 Policy

13-20-00 PURPOSE

This chapter establishes the Department's policy on the public use of conference rooms, auditoriums, classrooms, and similar space within buildings assigned to HEW by the General Services Administration (GSA) and in buildings for which **the** Department has custody and responsibility.

13-20-10 BACKGROUND

With the implementation of the Public Buildings Cooperative Use Act of 1976, Public Law 94-541 **dated October** 18, 1976, GSA's goals have been broadened to make "public buildings"* (as the term is used in that Act) accessible to the general public wherever and whenever possible. The "occasional use" part of the Act encourages use of Federally-occupied buildings by a variety of cultural, educational or recreational groups. The buildings in question are all Federally occupied buildings in both large and small cities. Occasional use is defined as temporary use, 48 hours or less, on a one-time or intermittent basis.

13-20-20 POLICY

- A. In all buildings assigned to HEW by GSA, the following policies will **apply**:
1. The Department's official who has been designated the HEW facilities manager in the Office of the Secretary (OS), Regional Office (RO), Principal Operating Component (POC), Agencies within the POCs, bureaus, installations, etc., shall ensure that assignments of "**occasional**" use space are not adverse to HEW's mission, and are consistent with the public interest.
 2. Other HEW officials who receive requests from public groups for use of conference rooms, classrooms, auditoriums, or similar facilities should refer such requests to their respective HEW facilities manager. The HEW facilities manager will review each request with the appropriate GSA buildings manager to assure that there will be minimal interference with the conduct of Government business. The GSA buildings manager is responsible for approving the request and for the administration and management of each request.
 3. No costs will be borne by HEW. This applies to costs for physical protection, cleaning, overtime for labor, utilities, and similar purposes.

-
4. All persons attending meetings or performances will be subject to GSA's rules and regulations governing conduct in public buildings and grounds. Such rules and regulations shall be stipulated to the prospective user by GSA prior to an agreement for use of the facilities.
 5. There will be no alterations to space in a public building solely for occasional use unless the Regional GSA Administrator determines that such alterations are necessary to encourage and facilitate occasional use. Costs of such alterations will be borne by GSA and not HEW.
 6. Floor space made available for occasional use shall be as isolated as possible from the working office area of the building.
- B. In the Social Security Administration and Public Health Service, buildings for which the Department has custody and responsibility, the following policies will apply to approving requests for "occasional use" of space by employee groups, community service organizations or similar organizations engaged in cultural, educational, or recreational activities. Authority to approve such requests has been delegated from the Assistant Secretary for Management and Budget to the heads of the POCs. (See Memorandum, Subject-- Delegation of Authority for Approving the Temporary Use of HEW Facilities for Nonofficial Purposes dated Way 16, 1979.)
1. Upon approval by the POC official, conference rooms, auditoriums, cafeterias, etc., may be used by employee groups and community service organizations or similar type activities for meetings and related activities on an occasional use basis.
 2. It shall be the duty of the approving official in the Social Security Administration and Public Health Service to ensure that such assignments are not adverse to HEW's mission, and are consistent with the interests of the Government.
 3. Generally, such use shall not be scheduled beyond normal building operating hours such as Saturdays, Sundays, holidays or other times when the facility is normally closed.
 4. Organizations using such property on an occasional use basis are to reimburse HEW for the use of the space at a rate comparable to the SLUC charge that would be applied if it were a building under the control of GSA, including any costs for utilities, maintenance, protection, and other provided services expected to be incurred as a result of the organization's use of the property.
 5. Unless otherwise provided by law, revenues collected from nonfederal activities for the occasional use of HEW-owned or leased property shall be deposited in the miscellaneous receipts of the Treasury. The responsible official may at his discretion, take into consideration any benefits which may occur to HEW and the community from such occasional use of space and reduce or waive all charges.

-
6. **All** persons attending meetings and performances will be subject to the rules and regulations of conduct governing such buildings and grounds, including those instituted by the responsible official of the HEW activity. Such rules and regulations shall be stipulated to the prospective users by the responsible official prior to an agreement to use the facility.



14-00-00	Purpose
10	Definitions
20	Scope of Library Services
30	organization
40	Functions
50	Coordination
60	Non-Headquarters Libraries

14-00-00 **PURPOSE**

This chapter sets forth the scope, organization, and **function of the** Library system at **Headquarters**.

14-00-10 **DEFINITIONS**

- A. **Department Library System** - **all libraries**, branches, and reference room of the Office of the **Secretary** and t&e respective **principal** operating components at Headquarters.
- B. **Library materials** - **books, periodicals, and other materials** acquired and processed for placement in any of the library **units** for **service** to Department personnel. Does not include desk reference materials required by **individuals** for continuous **or long-term** use in their respective offices.
- C. **Specialized program** needs - books, periodicals, etc., needed in the **respective** subject areas for those **programs** or projects **currently** in progress or **in** the **planning stage**.

14-00-20 **SCOPE OF LIBRARY SERVICES**

The Department Library System provides library services to **all Department personnel**, either **directly or through** libraries at other **buildings**, and on a **reciprocal** basis, to **other Government**, educational, and **research** agencies. It also services **Department field** personnel on request. **As required by the Depository law**, the **Department** library makes **Government** publications available for the **free** use of the **general public**. The public may **also** inspect Federal **advisory committee reports**.

14-00-30 ORGANIZATION

The Department Library system is composed of:

- A. The Department Library in the HEW North Building.
- B. Educational Research Library Branch in FOB 6.
- c. Food and Drug Administration, Bureau of Foods Library, in FOB 8.
- D. HEW Library Users Council - an advisory group comprised of a representative and an alternate from each user element served by the Library Director and his specialized staff. The Council will aid the Librarian in upgrading services and serving as liaison with user organizations.

14-00-40 FUNCTIONS**A. The Department Library will:**

1. Provide:

- a. Research, general reference, and bibliographic services to all offices and personnel.
- b. Specialized services required by the Headquarters staff of the Office of the Secretary and the respective principal operating components.
- c. Assistance in automated searches.

2. Acquire, process, house, and service:

- a. General reference, historical, and bibliographical materials for all Headquarters offices.
- b. Research and program materials which substantially cub across subject interests of two or more agencies.
- c. Selected materials no longer needed for current research programs in the branches and reference rooms.
- d. Congressional and legislative materials, federal and state law and court decisions, and supporting legal treatises and reporting services.
- e. An extensive document and microform collections (ERIC, CIS, Newsbank).

(14-00-40A continued)

3. **Maintain a comprehensive collection** of the **official** publications issued by the **Department for public information** (see HEW Manual, General Administration, Chapter 14-10).
 4. **Provide centralized interlibrary loan service** for **all** library units, unless **otherwise** assigned.
 5. **Prepare and keep up to date a list of periodicals currently received; prepare and issue** aperiodic list of **selected new acquisitions; perform other related bibliographic activities.**
 6. **Participate** in cooperative studies and projects **with** other libraries of professional organizations, **reporting on items for New Serial Titles** or the **Union List of Serials; Ohio College Library Cataloging** system (O.C.L.C.); etc.
 7. Within its capability provide **advice** on organization of **library services and materials** to Headquarters library units and to **various** field offices or others.
- B. The branch libraries of the National Institute of Education and the Food and Drug **Administration will:**
1. Acquire, process, house and **service** the specialized **subject** materials rewed for their respective current programs as well as **service** within their collections' scope as required by other **Departmental** personnel., in accordance with the established **standards** and **uniform** procedures.
 2. **Advise**, assist, and cooperate with the **Department Library** and other **library** units in their **fulfillment** of **Department-wide library** needs and services.

14-00-50 COORDINATION

- A. The HEW **Library** Users Council, representing the **respective** principal operating components and **offices, shall** give **advise and** counsel to the Department Librarian and other staff offices **on** policy matters affecting **Headquarters' library** needs and **services.**
- B. The **Department Librarian shall:**
1. **Serve** in an advisory capacity to the staff offices of the Office of the **Secretary** and the heads of the principal operating components on matters involving library facilities and services at Headquarters.

14-00-50B (continued)

2. **Establish and promulgate standards and uniform procedures, for application throughout Headquarters, related to establishment and operation of library units and the acquisition, weeding, processing, and servicing of books and periodicals.**
3. **Review proposals and make recommendations, as appropriate thereto, for establishment of new or revision of existing library organization units at Headquarters, in relation to staffing, space, and equipment plans; review proposed library budget estimates developed by the principal operating components and the Office of the General Counsel.**
4. **Develop a scope and coverage policy statement for the Department Library system, indicating the content and depth of the various library unit collections.**
5. **Provide leadership, guidance, advice, and coordination of activities for the Headquarters library units.**
6. **Represent the Department on the Federal Library Committee and in other library matters outside the Department with other Departments, agencies, libraries, and professional organizations. Cooperate with other libraries, both in the Department and outside, in coordinating services and cooperative studies in the interest of economy and effectiveness.**

14-00-60 NON-HEADQUARTERS LIBRARIES

Other libraries of the Department (which are not considered within the Headquarters area) are:

- A. National Library of Medicine, Bethesda, Maryland. **Holdings in the literature of the medical sciences exceed one million items. Provides nation-wide services through interlibrary loans, and an extensive program of publication of indexes, catalogs, and bibliographics.**
- B. National Institutes of Health Library, Bethesda, Maryland. **Contains scientific collections of approximately 100,000 volumes selected to support laboratory investigations and programs in the biomedical and related sciences conducted by the National Institutes of Health. Provides reference, circulation, and bibliographical services.**

14-00-60 (continued)

- C. Saint Elizabeths Hospital Library, Washington, D. C. **Contains** a medical collection with special emphasis **on psychiatry, neurology, psychoanalysis, psychology, and nursing. Provides reference and loan service to the Hospital staff and operates a patients' library.**
- D. Social Security Administration Library, Baltimore, Maryland. Contains a collection which includes materials **on social insurance, economics, statistics, personnel administration, management,** and related subjects. Provides reference **and loan service to the Baltimore staff.**
- E. Parklawn Medical Library, Bethesda, Maryland. Contains a **collection which** includes materials **on the** health sciences, public health, health and social statistics, chronic diseases, nursing hospitals, **socioeconomics of health and medicine and mental health.**
- F. Educational Research Library, NIE, Washington, D. C. **Provides library, technical information and documentation** resources-and services to the **DHEW Education Division** and its **constituencies.** Its **resources include:**
1. ~0,000 **volume** book collection **in** education and related **fields.**
 2. 550 **periodical** and newspaper titles received **regularly.**
 3. **Extensive** document and microform **collections** (**ERIC, CIS, Newsbank, etc.**).
 4. Rare educational books and textbooks.
 5. **Audiovisual loan service.**

CHAPTER 14-10
ACQUISITION, PRESERVATION, AND CIRCULATION OF
DHEW PUBLICATIONS BY THE DEPARTMENT LIBRARY

- 14-10-00 Purpose
- 10 Responsibility
- 20 Acquisition of Publications

14-10-00 PURPOSE

This chapter provides policy and information on the acquisition, preservation, and circulation of **DHEW** publications by the Department Library.

14-10-10 RESPONSIBILITY

- A. The Department Library has the responsibility to:
 - 1. Collect Department publications that have historical value and/or value for current use.
 - 2. Organize publications by classifying and cataloging them.
 - 3. Maintain an historical, noncirculating collection.
 - 4. Maintain a circulating collection with sufficient copies of each publication for Library users. Many of these publications are in microform.
 - 5. Maintain a selected government documents collection of legislative materials and Federal advisory committee reports.

14-10-20 ACQUISITION OF PUBLICATIONS

- A. The acquisition and retention of Department publications by the Department Library is governed by the continuing historical value and/or the value of current need of these publications.
- B. Types of Materials Acquired by the Library
 - 1. Annual reports
 - 2. Periodicals
 - 3. Series' publications
 - 4. Bibliographies
 - 5. Selected special reports
 - 6. Selected special surveys

(14-10-20B continued)

7. Reproduced speeches **and addresses** of the Secretary, Under Secretary, Assistant Secretaries, Inspector General, and Heads and Deputy Heads of Principal Operating Components.
8. Selected press releases
9. Directories
10. Selected miscellaneous publications

C. Types of Materials Not Acquired by the Library

1. Records
2. Correspondence and forms
3. Posters
4. Other material which is preserved by the Department's records management program.

D. Number of Copies of Materials Required by the Library

The Library requires at least two copies of each **DHEW** publication--one for the historical, noncirculating collection and one for the circulating collection. When necessary, the Library will acquire additional copies for the circulating collection.

Subject: HHS TELEPHONE DIRECTORY SYSTEM

- 15-10-00 Purpose
 - 10 Responsibilities
 - 20 HHS Telephone Directory

15-10-00 PURPOSE

This Chapter sets forth assignments of responsibilities and the mechanics of entering data into the organizational and alphabetical sections of the semi-annual HHS Telephone Directory.

15-10-10 RESPONSIBILITIES

- A. The Documentation Management Branch (DMB), Division of Administrative Services, Office of Management Services, Office of the Secretary, HHS, will publish the Department of Health and Human Services Telephone Directory.
- B. Each Principal Operating Component (POC) will designate an HHS Telephone Directory Representative who will be responsible for coordinating the submission of data for the Directory to DMB. the **POCs** will submit the names, addresses, and telephone numbers of their Directory Representatives, and any changes thereto, as they occur, to:
 - Documentation Management Branch
 - Office of the Secretary, HHS
 - HHS North Building
 - 330 Independence Ave., S.W.
 - STOP 367
- C. The Division of Organizational Analysis in the Office of Management Analysis and Systems, OS, will review the organizational section of the Directory before publication to ensure that organizational listings conform to approved organizational structures.
- D. The submitting organization has ultimate responsibility for the accuracy and completeness of the **data submitted**. Since changes occur so frequently between publication of the Directory, it is essential that administrative officers of submitting organizations familiarize themselves with procedures for submitting change data, using Form HHS-91 (paragraph **15-10-20.D.**).

15-10-20 HHS TELEPHONE DIRECTORY

A. General

The HHS Telephone Directory provides:

1. An alphabetical directory of most **HHS** employees in the Washington metropolitan area, and all personnel listed in the organizational section of the Directory.
2. A convenient organizational directory of key Departmental officials.
3. Instructions on telecommunications and **interdepartmental** calls.
4. Selected information on Departmental and organizational services.

B. Frequency of Publication

Normally the **HHS** Telephone Directory will be published semi-annually (i.e., in the Spring and Fall).

C. Distribution

Each organizational component of OS, and the **POCs** will determine their requirements for copies of the Directory prior to each publication. Intra-departmental distribution will be made in accordance with information and quantities provided to DMB. The Directory is available to the public by sale through the Superintendent of Documents, U.S. Government Printing Office.

D. Directory Data Input

Data for use in publishing the HHS Telephone Directory is compiled as follows:

1. Organizational Directory Data

Prior to the publication of each Directory, and sufficiently in **advance** of the Spring and Fall due dates, the Documentation Management Branch (DMB) will issue a reminder to each OS component and POC Telephone Directory Representative, giving specific due dates and any special instructions not covered by this Chapter. The accuracy of the organizational part of the Directory will be ensured by sending out the previous Directory edition's listing to Directory representatives for mark-up or retyping, if changes are extensive. In order to preclude variances in **the appearance** of the organizational section, the **DMB** reminder memorandum will specify format; however, each **HHS** component must determine the extent of the organizational breakdown to be shown, using the following general guidelines.

- a. Organizational listings should indicate:
 - (1) Organizational title, with lower levels of the same organization appropriately indented.
 - (2) Principal personnel (Director, Deputy Director, Chief, Assistant Chief, etc.). Technical assistants below the office, service, or bureau level will not be listed (e.g.,

administrative officers, secretaries, etc.) because of space and "balance" constraints.

- (3) Administrative code (see the Directory for name of administrative code representative, or check with the POC Directory Representative for that person's name and telephone number).
 - (4) Building (see Directory for list of abbreviations to be used).
 - (5) **Room** number.
 - (6) **Centrex** or other telephone code and extension.
- b. Directory Representatives are responsible for ensuring that the format specified for the organizational section is followed, although the OS Division of Organizational Analysis should be consulted if there is any question as to whether organizational listings to be submitted are officially approved (i.e., published in the Federal Register, if Division level or above, or approved by the Office Head, if lower).
2. Alphabetical Section Compilation

Well in advance of the scheduled publication date for each **HHS** Directory, DMB will furnish Directory Representatives with their component's alphabetical portion of **the** Directory, broken down by administrative code, for validation. Representatives will distribute the listings to each organization whose administrative code appears in the listing for verification. Any changes to the computer listings will be entered into the system by using Form **HHS-91** (see Exhibit 15-10-A).

a. Additions

All names to be added must be submitted by Directory Representatives to **DMB** using the HHS-91 completely and accurately filled out. The HXS-91 may be obtained from the General Services Administration Self-Service Store, through the component Directory Representative or by order to the OS Property and Supply Section, using Form BBS-393, "Purchase/Service/Stock Requisition." Of particular importance in filling out the BBS-91 are:

- (1) Social Security Numbers (used only to differentiate between persons with the same name; in accordance with the Privacy Act of 1974, **SSNs** will neither be published in the Directory nor given out to unauthorized personnel).
- (2) An **"X"** in the appropriate space in HHS-91, column (b) -- DELETE, ADD, or CHANGE.

- (3) Correct spelling of the person's name.
- (4) Correct "agency" abbreviation (i.e., OS, HDS, PHS, **ADMHA**, CDC, FDA, HCFA, HRA, HSA, NIH and SSA).
- (5) Building Abbreviation (as given in the Directory).
- (6) Room Number
- (7) Correct Administrative Code (note: this is of extreme importance, inasmuch as the code will be used to break down the component's alpha listing in order to facilitate validation).
- (8) Correct Telephone Number Code (e.g., 24, 47, 44, etc.) and Extension.

b. Deletions

Names of persons who **have left** the organization must be deleted from the alphabetical section of the Directory by the administrative officer, using Form HHS-91, as part of the person's **out-**processing procedure. Only the person's Social Security Number, the "DELETE" column and name are filled out on the HHS-91. Any changes requiring use of the HHS-91 will be made at the time the change takes place.

c. Changes (Other than Additions or Deletions)

Any other changes, such as changes in name, address, telephone number, or corrections in spelling must also be submitted as they occur to DMB using the HHS-91. Please note (see Exhibit) that the form is designed for multiple entries -- i.e., all lines may be used, regardless of the type(s) of changes involved.

3 Responsibility for Data Accuracy

- a. Accuracy of data submitted **for** the alphabetical section of the HHS Directory is the responsibility of those individual **organiza-**tions which are given validation listings for verification. If there are **any** inaccuracies in this data, it is the responsibility of the reviewing office(s) to correct them. Ultimately, it is the responsibility of the administrative officer to ensure that his/her part of the alphabetical listing is kept current.
- b. To meet Directory deadlines for publication, as given in "reminder" memoranda from DMB to OS and POC Telephone Directory Representatives,

it is essential that administrative officers submit HHS-91s to DMB as changes occur, rather than waiting until notification of **deadlines** is received, thereby causing last minute "rush" efforts. Any changes submitted after the established deadlines will not appear in the new Directory.



CHAPTER 15-11

GENERAL ACCOUNTING OFFICE AUDITS

15-11-00 General

- 10 Replies to GAO Letters
- 20 Distribution of Copies of Replies

15-11-00 **GENERAL**

The Regional Offices of the General Accounting Office make periodic audits of field units of the Department. At the conclusion of an audit the GAO Regional Manager generally sends a letter to the head of the field unit involved stating the results of the audit. Such letters will contain only those matters which GAO believes are within the authority and responsibility of the head of the field unit to take appropriate action and do not require any action or reply from the headquarters office. Arrangements have **been** made with the GAO for copies of such letters to **be** sent to the head of the agency responsible for the field activities reviewed by the GAO and the Office of **Financial** Management; Office of the Secretary.

15-11-10 **REPLIES OF GENERAL ACCOUNTING OFFICE LETTERS**

- A. The GAO Regional **Manager** generally requests the head of the **DHEW** field unit to advise **him** of the action taken on the matters contained in the GAO letter. The head of the field unit shall reply as promptly as possible to the GAO letter. Generally it will not be necessary for him to refer his reply to Washington for prior review **unless:**
1. He is requested by his headquarters office when, in its opinion, the matter is significant **or** that an agency or Department policy may be involved. The Director, Division of Internal **Audit**, Office of the Secretary, will advise the agency of any matter which he feels should be cleared at the Department level.
 2. The head of the field unit has some question as to the action to be taken on a GAO audit findings or, **in** his opinion, the matter may have program-wide implications.

15-u-20 . **DISTRIBUTION OF COPIES OF REPLIES**

Copies of the reply sent to the GAO Regional **Manager** by the head of the field unit shall be sent to the headquarters office of the agency involved, the Director, Division of Internal Audit, OS, and in the case **of replies** by Regional Directors to the Office of Field Administration, OS.



Subject: PERFORMANCE OF COMMERCIAL ACTIVITIES IN THE DEPARTMENT OF
HEALTH AND HUMAN SERVICES

- 18-10-00 Purpose
 - 10 Policy
 - 20 Applicability
 - 30 Responsibility
 - 40 Reports
 - 50 Bulletins
 - 60 Implementation

18-10-00 PURPOSE

This Chapter prescribes Department policy concerning the review of the method of performance of commercial activities (CA) within the Department of Health and Human Services.

In accordance with paragraph 9d of OMB Circular A-76, "Performance of Commercial Activities" which requires agencies to implement A-76, "... with a minimum of internal instructions", this chapter will prescribe unique Departmental guidance only.

18-10-10 POLICY

- A. It is Departmental policy in full accord with the policies and intent of the A-76 Circular to rely on the private enterprise system to supply its needs in products and services, except where it is proven that such reliance on the private sector would not be in the national interest.
- B. It is Departmental policy to locate and/or encourage development of private sector support, where lack of such capabilities are instrumental in the initiation/continuance of an "in-house" commercial activity (CA).

18-10-20 APPLICABILITY

- A. The requirements of OMB Circular A-76 and this General Administration Manual Chapter 18-10 are mandatory on all operating divisions (OPDIV), staff divisions (STAFFDIV), and their components within the Department of Health and Human Services.
- B. Each HHS OPDIV and STAFFDIV specified in 18-10-30, "Responsibilities" will prescribe necessary internal operating instructions to insure compliance with this Chapter and OMB Circular A-76. A copy of such internal operating procedures shall be submitted to the Deputy Assistant Secretary for Procurement, Assistance and Logistics for review.

18-10-30 RESPONSIBILITIES

- A. The Assistant Secretary for Management and Budget (ASMB) is responsible for overall Departmental compliance with the Circular A-76 and this Chapter. Specific responsibilities include:
- (1) Disseminating and interpreting Department-wide policies.
 - (2) Coordination with the Office of Management and Budget on matters pertaining to overall policy.
 - (3) Maintaining oversight of OPDIV/STAFFDIV implementation of A-76 and subsequent CA reviews.
 - (4) Adjudication of appeals in accordance with established OPDIV A-76 procedures for a review of a method of performance decision made by any other Assistant Secretary level official, or the Director, Office of Facilities and Management Services, OS.
- B. Deputy Assistant Secretary for Procurement, Assistance, and Logistics (DASPAL), OASMB is responsible for:
- (1) Staff implementation of all the responsibilities assigned to ASMB.
 - (2) The compilation and maintenance of a current inventory of all Departmental CA's.
- C. The Heads of Operating Divisions and HHS Region III Director (as lead region) are responsible for implementation of the provisions of OMB Circular A-76 and this chapter for their respective organizations. Specific responsibilities include:
- (1) Establishing internal operating procedures necessary to carry out the requirements of OMB Circular A-76 and this Chapter.
 - (2) Designating and assigning the senior management **official** of their immediate staff as the **OPDIV** or Regional Office, Commercial Activities Control Officer (CACO) who is directly responsible for:
 - (a) Ensuring compliance with the requirements of OMB Circular A-76 and this Chapter.
 - (b) Providing staff implementation of all responsibilities.
 - (c) Compiling and maintaining a current inventory and review files of all **Commercial Activities (CA)**, and periodically providing status of review efforts to DASPAL as specified **18-10-40(c)**.

- (d) Establishing internal cost comparison review and approval thresholds levels in accord with A-76
 - (e) Establishing internal CA appeals procedures, levels and thresholds in accord with A-76. (When internal instructions require an assistant secretary decision on the method of performance of a CA, such appeals to that decision will be adjudicated by ASMB. Internal OPDIV/STAFFDIV procedures will cite this provision).
 - (f) Authorizing the operation of a CA when its operation is based upon criteria specified in A-76 paragraph 8a. This authority cannot be redelegated.
 - (g) Authorizing the operation of a CA when its operation is based upon criteria specified in A-76 paragraph 8c. (This authorization, which is only applicable to the Public Health Service, must be exercised only with the consultation of the Chief Medical Director of the PHS. This authority cannot be redelegated.
- D. The Director, Office of Facilities and Management Services, OS, is the Commercial Activities Control Officer for the Office of the Secretary and is responsible for the requirements enumerated in paragraph C(1) through C(2)(f) above. Such authorities will be exercised with the advice of STAFFDIV heads.

18-10-40 REPORTS

- A. The A-76 required reports enumerated in OMB Circular A-76 and Supplements thereto, Chapter 4, are required for receipt in the Office of the DASPAL by March 1 of each year. DASPAL will consolidate such reports for a single Departmental report to OMB.
- B. In addition to the A-76 reports CACO's will submit an inventory of all in-house Commercial Activities (CA's) in accordance with the instructions and format of Exhibit 18-10-A. The report is due for receipt by the DASPAL on or before November 1, 1983 and shall be completely updated each year thereafter. Additions or deletions to the inventory shall be accomplished by the CACO as required throughout the year. The transmitting memorandum will cite the number of staff years and expenses incurred resulting from A-76 reviews and oversight during the reporting quarter.
- C. Three times yearly, February 1, May 1, and August 1, CACO's shall submit a commercial activities inventory status report in accordance with the instructions and format of Exhibit 18-10-B. The report will be for the preceding fiscal quarter and will be submitted to the DASPAL for use in monitoring accomplishment of review schedules. The transmitting memorandum will cite the number of staff years and expenses incurred resulting from A-76 reviews and oversight during the reporting quarter.

18-10-50 BULLETINS

- A. The DASPAL shall, as the need **arises**, issue A-76 policy and procedure amendments or general information, via "Commercial Activity Bulletins." Such Bulletins are in the Format of Exhibit 18-10-C.

18-10-60 IMPLEMENTATION

- A. OPDIV heads and HHS Region III Director shall designate a Commercial Activities Officer in accordance with 18-10-30c. Designations will be in memorandum form and will be received by DASPAL no later than 15 days after publication of this Chapter.
- B. Within 45 calendar days after publication of this Chapter, CACO's will submit internal A-76 implementing procedures enumerated in 18-10-30C(1) containing all delegations of review and approval authorities and established appeals procedures.
- C. CACO's will schedule all applicable Commercial Activities for review in accordance with A-76 and compile and submit the Inventory of all Commercial Activities to DASPAL no later than December 15, 1983 (November 1 each year thereafter).

Instructions for Completion of Commercial Activities Inventory

Several

CACO shall complete the Commercial Activities inventory in accordance with the instructions below, indicating all in-house Commercial Activities within their respective OPDIV/RO/STAFFDIV. The completed form(s) are due for receipt by the Deputy Assistant Secretary for Procurement, Assistance, and Logistics on or before November 1 of each year. The data should reflect applicable information as of October 1.

Selected data elements will be updated by 3 quarterly reports (see xl 8-10-B) due February 1, May 1, and August 1 of each year.

Completion Instructions

Header Data

The report will be divided into two basic parts; Parts I and II. CACOs will complete and title the Commercial Activities Inventory form(s) of "Part I" for all CA's with ten or less FTE's. Such form(s) will contain a summary line at the end of the columns denoting;

Column 1: total CA's with 10 or less FTE's

Column 4: total FTE's

Column 5: total operating costs

Column 6: total capital investment

CACO's will complete and title the Commercial Activities Inventory form(s) as Part II for all CA's above 10 FTE's. In addition to the Part II summary line for Columns 1, 4, 5, and 6, the Part II form will also contain a totals summary line for both **Parts I** and II. The totals line will add the summary lines of Parts I and II.

Column Data

- Column 1: Enter CACO assigned activity number for the CA being entered, The activity number will remain the same as long as that activity is in inventory.
- Column 2: Enter the activity title and city, state location of the CA.
- Column 3: Enter a brief (1 or 2 sentence) description of the CA work effort.
- Column 4: Enter the number of full-time equivalent (FTE) personnel directly engaged in performance of the CA. (See Part I, Chapter I of A-76 Supplement for FTE explanation).
- Column 5: Enter current annual cost of operating the CA in thousands of dollars.
- Column 6: Enter cost of capital investment in plant and equipment in thousands of dollars.
- Column 7: Enter the last and next scheduled A-76 review completion dates.
- Column 8: Enter one of the following codes denoting what phase a current A-76 review is in. For **CAs** not currently under review, this will be left blank. The action codes are:
1. Management Study Completed
 2. Statement of Work Completed
 3. Government Cost Estimate Prepared
 4. Cost Comparison Completed
 5. Method of Performance rendered
 6. Appeal of Decision in process

Column 9: Enter applicable code from A-76 Supplement Part I, Chapter 7, page I- IO for CA's whose method of performance authorized establishment or continuation of in-house operation. Please note:

Code A is not applicable for HHS use.

Codes B, C, D, require the direct approval of the CACO.

Column 10: Enter applicable remarks.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

PART I: UNDER IO FTE's

OPDIV/STAFFDIV/RO _____

RESPONSIBLE OFFICIAL _____

PART II: OVER IO FTG

COMPONENT _____

DATE PREPARED _____

PART _____

COMMERCIAL ACTIVITIES INVENTORY

1	2	3	4	5	6	7	8	9	10	
ACTIVITY NUMBER	TITLE/LOCATION	DESCRIPTION	FTE	OPER COST: (\$000)	CAP. INVST. (\$000)	REV. COM. LAST	DATES NEXT	ACTION CODE	IN-HOUSE REASON CODE	REMARKS

HHS Commercial Activities
Quarterly Status Report Format and instructions

General

On February 1, May 1, and August 1, CACO's will submit the Commercial Activities Quarterly Status Report in the following Format for each activity whose A-76 review status changed during the **preceeding** fiscal quarter:

<u>Activity #</u>	<u>Action Codes</u>	<u>In-house Reason Code</u>	<u>Remarks</u>
-------------------	---------------------	-----------------------------	----------------

Instructions:

Activity #: Self Explanatory

Action Code: See Exhibit 18-10-A for applicable action codes

In-house Reason Code: See A-76 Part I, Chapter I, Page 1-10 for applicable reason codes

Remarks: Enter Applicable Remarks. Such occurrences as a revised completion date should be fully explained in remarks column.





DEPARTMENT OF HEALTH & HUMAN SERVICES

**COMMERCIAL
ACTIVITIES
BULLETIN**

DATE:

TO:

SUBJECT:



CHAPTER 18-20

USER CHARGES

-
- 18-20-00 Purpose
 - 10 Policy
 - 20 **Charges and Fees**
 - 30 Collections
 - 40 Changes in Existing Law
 - 50 Accounting and Reporting

18-20-00 PURPOSE

This chapter states **DHEW policy** and procedures for implementation of **Government-wide** policy concerning "user charges". It prescribes **development** of a uniform **system** of charges for rendering special services and for selling or leasing property to persons or non-federal organizations. It also outlines the requirements for determining the amounts **to be charged**, the disposition of receipts, and the accounting records **to be maintained**. Its provisions are based primarily on OMB Circular A-25, **September 23, 1959, as amended**.

18-20-10 POLICY

A. General

A reasonable **charge** should be **made** to **each** identifiable recipient for a measurable unit or **amount** of **Government service** or property **from which** he derives a special benefit.

B. Special Services

1. As a rule, services (or privileges)' which **provide** special benefits to identifiable recipients above and **beyond** those which accrue to the public at large **should be** charged for **at levels which** recover the **full cost** to the **Federal Government**. For **example**, a special benefit will be considered to accrue and a charge **should be imposed** when a **Government-rendered service**:

- a. Enables the **beneficiary** to obtain **more immediate** or substantial gains or values (which **may** or may not be measurable **in monetary** terms) than those which accrue to the general public (e.g., receiving a patent or a license to carry **on** a specific business);

(18-20-10 continued)

- b. Provides business stability or assures public confidence in the business activity of the beneficiary (e.g., safety inspections of aircraft): or
 - c. Is **performed** at the **request** of the recipient and is above and beyond the services regularly **received by other members of the same industry or group** or of **the** general public (e.g., receiving a passport, visa, airman's certificate, or an **inspection** after regular duty hours).
2. No **charge** should be made for **services when the identification of the ultimate beneficiary is obscure and the service can be primarily considered as benefiting broadly the general public** (e.g., licensing of new biological products).
 3. The award of grant (in cash or kind), traineeship, **fellowship**, or other authorized training does not provide special service benefits for "User Charges" purposes.

C. Lease or Sale

Where Federally owned resources or property are leased or sold, a fair **market** value should be obtained. Charges are **to** be determined by the **application** of sound business management principles, and so far as practicable and feasible in accordance with **comparable commercial practices**. **Charges need not be limited to the recovery of costs; they may produce net revenues to the Government.**

D. Exclusions and Exceptions

1. The provisions of this chapter do not apply to fringe benefits for military personnel and civilian employees, sale or disposal of surplus property under approved programs, or interest rates.
2. In general, charges **may** be waived or reduced when:
 - a. The recipient of the benefit is engaged in a **non-profit** activity designed for public safety, health, education or welfare, except in those cases in which:
 - (1) Charges are being made or are authorized on an individual basis,

(18-20-10 continued)

- (2) There is reasonable ground for believing that a charge would not **be contrary** to the statutory objective of the activity.
- b. The **incremental cost of** collecting the fee would be an unduly large part of the receipt **from** the activity.
- c. The furnishing of the service is an appropriate courtesy to a foreign country or international organization; or **comparable** fees are set on a reciprocal basis.
- d. Payment of the full fees by a State, **local government**, or non-profit **group would** not be in the interest of the program.
- e. Programs in which the rendering of the service fee to statutory beneficiaries is an **element** of the program objective e.g., **medical** care of merchant seam. **How-**ever, medical services are not excluded per se.

18-20-20 CHARGES AND FEESA. Establishment of Fees

Each agency shall establish fees in accordance with the policies **and procedures** stated in this chapter. Fees and rates for the recovery of full costs or fair market value of a special service will be established in advance **when** feasible. The cost of providing the service, not the value of the service to the recipient, will govern the fee level. **The** costs shall be reviewed every year and the fees adjusted, if necessary. Heads of operating agencies will be responsible for providing for the review of cost **computations** so as to assure their adequacy.

B. Determination of Costs

1. Costs shall be determined or **estimated from** the best available records **in** the agency. New cost accounting **systems** will not be established solely for this purpose. **The** cost **computations** shall cover the direct and indirect costs to the **Government** of carrying out the activity, including but not limited to:
- a. Civilian salaries or wages, personnel costs of leave and government contributions for retirement, medical **expense**, insurance, etc.,

(18-20-20 continued)

- b. Cost of materials, supplies, travel expense, communications, utilities, property and equipment rental, maintenance and depreciation of property and equipment,
 - c. A proportionate share of the agency's management and supervisory costs.
 - d. A proportionate share of military pay and allowances, where applicable,
 - e. The costs of enforcement, research, establishing standards, and regulation, to the extent they are determined to be properly chargeable to the activity.
2. When elements of costs are not incorporated in accounting records, e.g. accrued leave or depreciation charges, they should be recognized for the purposes of computing user charges. A reasonable fixed amount may be charged or an equitable proration established, for example by finding the percentage relationship for a representative period that the accrued leave and depreciation bear to all direct costs. This percentage would then be applied to the direct costs related to users in determining the total user charges.
 3. Charges in connection with fees for special information services will be determined in accordance with Public Information Regulation, Title 45, Subtitle A, Part 5 - Availability of Information to the Public Pursuant to PL 90-23.

18-20-30 COLLECTIONS

- A. Collection of charges and fees should usually be made in advance of rendering the service. In certain instances, it may be more practical to collect at the time of conveying the service or property to the recipient.
- B. Collections will normally be deposited into the general fund of the Treasury as Miscellaneous Receipts. However, exceptions may be made where:
 1. It is intended that a specifically identifiable part of a program or an organization administering such a program be operated on a substantially self-sustaining basis from receipts for services performed or from the sale of products or use of Government-owned resources or property,

(18-20-30 continued)

2. **The agency can show** that the **initiation** or increase of fees or charges is not feasible without earmarking of receipts: or
 3. **The receipts are in payment** of the cost of authorized special benefits for which the **demand** is irregular or unpredictable, such as **inspections performed** upon request outside the regular duty hours.
- C. This chapter is not intended to change the **present system of sharing** with States and counties receipts **from** the lease of certain lands and the sale of certain resources.

18-20-40 CHANGES IN EXISTING LAW

In cases where collection of fees and charges for services or property in accordance with this chapter is limited or restricted by provisions of existing law, the agencies concerned should **submit** appropriate **remedial** legislative proposals to the Office of the Secretary under the established clearance procedure.

18-20-50 ACCOUNTING AND REPORTING

A. Accounting Requirement

Each agency's Financial Management Officers will maintain records for each fiscal year on:

1. All changes in costs or charges for services or property covered by this directive, as **well** as for the **establishment of new user charges based upon the** annual review.
2. Total collection of user charges during the fiscal year, furnishing the total **amount deposited** and credited to Miscellaneous **Receipts** of the Treasury and to each appropriation and fund account.
3. A **complete** inventory of all user charges in effect.

B. Reporting Requirement

There is no requirement for an annual report to the Department. **Information** required by the preceding paragraph will **be maintained by** the agency to support the review process and for special studies.



- A. A separate form will be **prepared** for each of the following categories, where applicable:
1. Special services for which existing charges are producing full cost recovery; and lease or sale activities which are **returning** fair market value.
 2. Special services for which existing charges are producing less than **full** cost recovery; and lease or sale activities for **which** less than fair market value is being obtained.
 3. Special services and activities for which no charges are currently being made, and for which charges are apparently required.
 4. Special services and activities for which no charges are to be made in accordance with the policy guidelines and exceptions provided.
 5. Services and activities which have been discontinued or **transferred** to other agencies since the previous report (not applicable to the initial report).
- B. The **category** of items covered by each form will be identified in the heading by placing an **"X"** in the box corresponding with the number of the category as shown above. **Forms** need not be submitted for categories in which there is nothing to be reported. Enter the full title of the **DHEW** in the box on the form labeled **"Agency."** Enter the **full** title of the operating agency **under** "Bureau."
- C. Columns on the form will be **completed** as follows:
1. Enter the number used in previous reports. **For new activities** assign a number within the scheme developed **for previous reports.**
 2. List each special service provided under a heading "Special **Services**" and each lease or sale activity under a heading, "**Lease** or Sale."
 3. Enter the unit for measuring the service or property provided.
 4. **Enter** the amount of the charge being made for each unit as of the preceding June 30. **In** cases where there are various rates for differing situations, a **summary** schedule of rates may be **attached in lieu of listing each rate individually.**
 5. Enter the date the charge **shown** in **Column 4** became effective.

c. (continued)

6. Enter the **amount** of the charge which was made previous to the date in Column 5.
7. Enter the number of **units** of activity for the last completed fiscal year.
8. **Enter** (in thousands of dollars) the cost of providing the **service** or the fair market value of resources or property sold or leased.
9. Enter (in thousands of dollars) the **amount** of collections (net of refunds) during the last completed fiscal year.
10. Enter the **symbol** of the receipt account, appropriation account, or **fund** account (excluding deposit funds) to which collections were or will be credited.
11. Enter any pertinent explanatory comments relating to the information shown in the preceding columns. On reports covering categories 2, 3, and 4, specifically note in this **column**, for each item, the reason that full cost recovery or fair market **value** for lease and sale activities is not obtained for services. Also indicate whether **full** cost recovery for special services or fair **market** value for lease **and** sale activities can be obtained under existing law; the status of specific legislative proposals (e.g., under study, drafted, cleared, introduced, or reported); and the status of proposed administrative changes in fees and charges, **including** effective dates. On reports subsequent to the initial report, indicate in this column the previous category in which **the item was** reported. **On** reports covering category 5, identify the services and activities transferred to other agencies or organizational units and the agency or organizational unit to which the transfer was made.

D. Where SF-4 May Be Obtained

SF-4 will be stocked by the GSA and should be procured by each **organiza-**
tion through its normal supply channels.

USER CHARGES REPORT

STANDARD FORM NO. 4
 (SEPTEMBER 1959)
 BUREAU OF THE SUPPORT
 CIRCULAR NO. A-33

CATEGORY OF ITEMS (Check one)

- 1
- 2
- 3
- 4
- 5

AGENCY

BUREAU

CONTACT

DATE SUBMITTED

IDENTIFICATION NUMBER	SPECIAL SERVICES OR ACTIVITIES	CHARGE AS OF JUNE 30			DATE ESTABLISHED	PREVIOUS CHARGE	VOLUME	ACTIVITY, FISCAL YEAR 19			REMARKS
		UNIT	AMOUNT	DATE				COST OR FAVORABLE VALUE (THOUSANDS)	COLLECTIONS	AMOUNT (THOUSANDS)	
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	

CHAPTER 19-11

CONSULTATION WITH HEADS OF STATE AND LOCAL GOVERNMENTS:
PROPOSED REGULATIONS, INTERAGENCY AGREEMENTS, AND ORGANIZATION **CHANGES**

- 19-11-00 Purpose
 - 10 Definition of Regulations
 - 20 Policies
 - 30 Prior Consultation
 - 40 Clearance of proposed **Documents**
 - 50 Interagency Agreements and Organization Changes
 - 60 Applicability to the Office of the Secretary

19-11-00 **PURPOSE**

This chapter describes the policies and general practices of the Department to be followed in complying with the **Government-wide** policy of affording heads of State and local governments a reasonable opportunity ~~to~~ comment on significant proposed Federal regulations, interagency agreements, and organization changes. The Government-wide policy is prescribed by Office of Management and **Budget** Circular no. **A-85**. (Chapter **3-20**, General Administration Manual, "Development **and** Processing of Regulations and Notices of **Proposed** Rule Making," describes the specific procedures required in the development, submission and processing of regulations to assure adequate **participation** by State and local **governments**.)

19-11-10 **DEFINITION OF REGULATIONS**

The word "Regulations," as used in this chapter, includes all **significant** proposed Federal rules, regulations, standards, procedures, **and** guidelines, **and** all amendments thereto, which are applicable to Federal assistance programs and which are to be issued by the Secretary or an official of an operating **agency** that administers Federal assistance programs. Federal assistance is construed here to be primarily grant-in-aid to State **and local governments** but could include other types of assistance which require issuance of guidance or procedures to State **and local governments**.

19-11-20 **POLICIES**

Operating agencies will be guided, to the **maximum** practical extent **consistent** with Federal **laws**, by the following policies in developing regulations for administering programs of **assistance to State and local governments**.

- a. The central coordinating role **of heads** of State and **local governments**, including their role of initiating and **developing State and local programs**, will be supported and strengthened.

(19-11-20 continued)

- b. **Department Regulations should not encumber the heads of State and local governments in providing effective organizational and administrative arrangements and in developing planning, budgetary, and fiscal procedures responsive to needs.**
- c. **Duplication of reporting requirements and controls which are established by State and local governments will be avoided, and operating agencies should rely whenever possible on internal or independent audits performed at the State or local level,**
- d. **Except as may be required by law or special circumstances, operating agency regulations dealing with matters of common concern to other operating agencies of the Department (e.g., allowable costs, definitions of like terms, and procedures and information needed for determining eligibility in like cases) will be mutually consistent.**

19-11-30 PRIOR CONSULTATION

- a. **In addition to the formal clearance of the regulations prior to publication as described in 19-11-40 below, it is important that operating agency personnel actively pursue consultation with state and local governments well in advance of the stage of formulating formal regulations.**
Accordingly, during the **planning and developmental stage**, the concerned agency will **provide to heads of affected State and local governments through the Department Regulations Officer and the Advisory Commission on Intergovernmental Relations:**
 - 1. Any discussion material, such as initial planning documents, outlines of issues and proposed action, on the proposed regulations sent to program counterparts in State and local governments or to other groups outside the Department.
 - 2. Invitations to any meetings held with State and local program counterparts or others to discuss the proposed regulations.
- b. **In addition, consultation may be required by law with counterpart organizations, e.g., in public health programs, the Conference of State and Territorial Health Officers, and in the latter instance, operating agencies should whenever feasible provide for concurrent clearance with the Advisory Commission on Intergovernmental Relations through the Department Regulations officer.**

19-11-40 CLEARANCE OF PROPOSED DOCUMENTS

- A. To make certain that vital Department assistance programs are made workable at the point of impact, the Department will afford heads of State and local governments, through the Advisory Commission on **Intergovernmental** Relations (**ACIR**) an opportunity to comment on Department regulations prior to their issuance.
- B. The Department Regulations Officer, Office of the Assistant Secretary for Administration, is responsible for submitting and clearing proposed regulations with **ACIR**. Whenever an operating agency plans to issue a regulation (as defined in Section **19-11-10**), 25 copies of both the complete text and a summary of the proposed regulations shall be forwarded to the Department Regulations Officer. The summary should focus on those **provisions** which would affect State and local governments. The submission should include a designation of a liaison officer who will be prepared to provide such additional background information or explanatory material as **ACIR** may require. (Chapter **3-20**, General Administration Manual, "Development and Processing of Regulations and Notices of Proposed Rule Making," describes the procedures to be followed in the development, submission and processing of regulations requiring clearance with **ACIR**.)
- C. All proposed regulations need not automatically be submitted to **ACIR**. No purpose would be served by creating unnecessary paper work. The Department Regulations Officer will be selective in determining which substantive and administrative regulations are significant enough to be processed through the consultation arrangements. For instance, if a regulation is being liberalized at the request of a State (e.g., more **time** is permitted for preparing and submitting certain **information**), it may not be necessary to submit the proposed regulatory issuance to **ACIR** for formal review. This will be determined in each case by the Department **Regulations** Officer, where appropriate through **informal** consultation with **ACIR**.
- D. In addition to new **regulations**, operating **agency** personnel should give constructive consideration to requests from heads of State **and** local governments to review and revise regulations already in effect.

19-11-50 INTERAGENCY AGREEMENTS AND ORGANIZATION CHANGES

Major **interagency agreements** and organization changes shall be referred to **ACIR** for consultation, in accordance with the same procedures outlined for the clearance of **regulations** (Section 19-11-40). Only those actions which will have a significant effect on State or local **governments** are subject to this requirement. Questions on application of this policy should be referred to the Department Regulations Officer.

19-11-60 APPLICABILITY TO THE OFFICE OF THE SECRETARY

The foregoing provisions of this Chapter, requiring and specifying the policies and procedures with respect to **prior consultation** with heads of State and local governments, are applicable to and shall be adhered to by officials of the Office of the Secretary in the development of **regulations** (as defined in Section 19-11-10) which will establish standards, policies or procedures binding upon the operating agencies in the conduct of their programs. Where such proposed standards, policies or procedures are of appropriate concern to heads of State and local governments within the scope of Office of Management and Budget Circular No. A-85, such **consultation** prior to promulgation of such actions will be **more timely and meaningful than** at a later time when the operating agencies would have to propose and seek such consultation on regulations implementing such previously promulgated **standards, policies and procedures**.

CHAPTER 20-10

DEVELOPMENT OF DEPARTMENT OF HEALTH, EDUCATION, AND
WELFARE POSITIONS REGARDING FOREIGN POLICY MATTERS

- 20-10-10 Purpose and Scope
 - 20 Development of United States Foreign Policy
 - 30 Development of HEW Positions
 - 40 Interdepartmental Committees and Formal Working Parties
 - 50 Informal Working Parties

20-10-10 PURPOSE AND SCOPE

This chapter prescribes policies and procedures for developing and coordinating Department positions regarding foreign policy matters. The policies set forth in this chapter apply to operating agencies which engage in international activities paralleling their domestic program responsibilities. They also apply to the conduct of Departmental representatives serving on interdepartmental committees in the international field.

20-10-20 DEVELOPMENT OF UNITED STATES FOREIGN POLICY

- A. The President is responsible for the formulation, execution, and coordination of foreign policies. As Chief Executive, as Commander-in chief, and as Chairman of the National Security Council, he presides over the process of defining United States objectives in the world, and coordinating foreign affairs to achieve those objectives. In directing U.S. participation in international organizations, the President, acting through the Department of State, determines policy and designates representatives and agencies for its execution.
- B. The heads of Executive Departments **and** Agencies cooperate with the Department of State in the formulation, development and implementation of foreign policy. The Secretary of Health, Education, and Welfare is responsible for developing HEW positions.

- C. The Department of state utilizes interdepartmental committees, formal working parties and other consultative methods in the establishment of foreign policies and programs in the international field. Representatives of HEW participate in these activities at the direction of the Secretary of Health, Education, and Welfare.

20-10-30 DEVELOPMENT OF HEW POSITIONS

- A. The Secretary of Health, Education, and Welfare is responsible for developing HEW positions on foreign policy. He has delegated to the Office of International Affairs Management the responsibility to serve as the focal point in the Department for the development and coordination of position papers.
- B. The approval of official HEW positions on matters of foreign policy is reserved to the Secretary, and is exercised on his behalf by the Special Assistant to the Secretary for International Affairs. Representatives of the Department officially serving on interdepartmental committees or working parties may not approve, on behalf of the Department, foreign policy positions without prior consultation with the Office of International Affairs Management.
- C. Representatives of the Department serving as members of interagency groups concerned with technical matters may give Departmental clearance without prior consultation provided:
1. The matter is technical in nature only;
 2. Is in accordance with approved policy; and
 3. Has been cleared with other agencies of the Department when the substantive comments refer to their technical areas.

20-10-40 INTERDEPARTMENTAL COMMITTEES AND FORMAL WORKING PARTIES

- A. A designated Departmental representative on an official interdepartmental committee or formal working party has the following responsibilities:
1. Participates in the discussions and deliberations on behalf of the Department.

CHAPTER 20-15
DEPARTMENT WORKING AGREEMENT WITH
AGENCY FOR INTERNATIONAL DEVELOPMENT

- 20-15-00 Purpose and Scope
 - 10 Policy
 - 20 Planning, Coordination and Consultation
 - 30 Service Agreements and Types of Assistance
 - 40 Professional Development
 - 50 operating Relationships
 - 60 Reporting and Evaluation
 - 70 Financing
 - 80 Termination of Amendment of Agreement and Appendices
 - 90 Supplementary Agreements

20-15-00 PURPOSE AND SCOPE

The Department and the Agency for International Development concluded a joint general agreement, effective, March 3, 1966, that establishes a framework for cooperative relationships in carrying out the provision of Section 632(b) of the Foreign Assistance Act of 1961, as amended. The full text of this agreement and the several supplements have been distributed to the executive officers of the operating agencies. The salient features are summarized below.

20-15-10 POLICY

The Department in concluding this agreement recognizes its responsibilities to contribute toward United States Foreign policy by participation in foreign assistance programs designed to build and strengthen human and institutional resources essential to sustained national development of the less developed societies.

20-15-20 PLANNING, COORDINATION, AND CONSULTATION

The agreement establishes an administrative framework to effect close planning, coordination, and consultation between Agency for International Development and the Department. The Deputy Assistant Secretary for International Affairs is the Department's senior officer responsible for coordinating basic negotiations and matters of general policy. Joint Agency for International Development-Department of Health, Education, and Welfare arrangements may extend to examining total country development plans, reviewing actual or proposed Department activities and surveys, and evaluating the effectiveness of current and completed Department activities.

20-15-30 SERVICE AGREEMENTS AND TYPES OF ASSISTANCE

A. **Services** rendered by the Department either in the United States or overseas will be governed by individual Participating Agency Service Agreements (PASA's). The Department agrees to provide to Agency For International Development a variety of services:

1. Project services - Those which can be defined specifically in terms of planned end results, estimated costs, and locations of implementation, and duration. The project may be short or long-range, and may be performed in the United States or overseas. The project will be accomplished with the Department assuming the operating responsibility for it.
2. Technical consultation and support services - Those services other than a project service or a staff service that normally are performed in the United States.
3. Staff services - The detail or assignment of an individual officer in the uniformed service to fill an Agency for International Development staff position overseas.

20-15-40 PROFESSIONAL DEVELOPMENT

The Department considers foreign service for its employees of such importance that it will assure that such service will be fully recognized in their career development and promotion within the Department.

20-15-50 OPERATING RELATIONSHIPS

The Department will carry out general, technical, and project services in the United States in accordance with its established procedures. Department personnel assigned overseas as members of an Agency for International Development mission will receive support, benefits, and privileges as do Agency for International Development direct-hire personnel. such Department personnel will be administratively responsible to the United States Agency for International Development Director, or his designee, on matters of personal conduct, public relations, and general program and policy direction. Official communications on technical, professional, and personnel matters related to project services may be direct or through Agency for International Development at the option of the Department, provided that copies of communications sent directly will be simultaneously provided to Agency for International Development mission and Agency for International Development/Washington headquarters. Official communications dealing with Agency for International Development program and policy matters will be transmitted through Agency for International Development. With respect to staff services, all communications except personnel matters are through Agency for International Development.

20-15-60 REPORTING AND EVALUATION

The Department will provide Agency for International Development with **project** progress and administrative reports as required.

20-15-70 FINANCING

Agency for International Development will provide the Department with timely forecasts of **general requirements for guidance in planning** and will provide **financial support** for its **project** or staff **services**.

20-15-80 TERMINATION OR AMENDMENT OF AGREEMENT AND APPENDICES

The **Agreement and Appendices** will continue in force until **termination** notice by either party. **Subsequent amendments normally will be** executed for **DHEW** by the Assistant Secretary (Health and Scientific Affairs). Within three **years** from the effective date of the agreement, the Department and Agency for International Development will conduct a **Joint review** to **determine** if the Agreement **will remain** in force, be modified, or **cancelled**.

20-15-90 SUPPLEMENTARY AGREEMENTS

Detailed arrangements between the Department and the Agency for International Development are specified in supplementary agreements as follows:

- Appendix I - Participating agency **service agreements**.
- Appendix IS - personnel **arrangements**.
- Appendix III - Technical **consultation and support services**.
- Appendix IV - **Procurement** of commodities incidental to the functioning of services.
- Appendix V - **Training** of foreign nationals.



INTERAGENCY AGREEMENTS FOR INTERNATIONAL ACTIVITIES

- 20-20-00 Purpose
 - 10 Definition of Formal Agreements
 - 20 Coordination Prior to Signature
 - 30** Formal Agreements File

20-20-00 PURPOSE

This Chapter sets forth Department procedures **for** coordinating the negotiation of formal agreements with other Federal agencies related to HEW participation in international activities, **and** provides for a central file of such agreements,.

20-20-10 DEFINITION OF FORMAL AGREEMENTS

"Formal agreements" as used herein includes both basic agreements which contain general statements of policies and procedures by which the Department agrees with other specified Federal agencies to **perform** certain international activities, and more narrowly specific agreements which detail particular projects or services to be performed by HEW for another Federal agency.

20-20-20 COORDINATION PRIOR TO SIGNATURE

All formal agreements shall be sent to the Office of International Affairs Management (**OIAM**), and reviewed by **OIAM** before final commitments are made and they are signed. The Office of International Affairs Management will provide coordination, as needed, of such agreements among HFW **operating** agencies and within the Office of the Secretary.

20-20-30 FORMAL AGREEMENTS FILE

HEW agencies will furnish a copy of each signed formal agreement to the Office of International Affairs Management, which shall maintain a file **of** formal agreements.



Subject: FOREIGN GIFTS AND DECORATIONS

20-25-00 Purpose
 10 Definitions
 20 Responsibility and Policy
 30 Procedures for Reporting Foreign Gifts
 40 Annual Report to Secretary of State

20-25-00 PURPOSE

To provide policy and procedures for the acceptance of gifts and decorations from foreign governments by HHS employers, including members of their families, as authorized by the Foreign Gifts and Decorations Act of 1966, **P.L.** 89-673, as amended by **p.L.** 95-105 (**5** USC 7342).

20-25-10 DEFINITIONS

As used in this chapter:

- A. The term "employee" includes every person who occupies an office or a position in the government of the United States, its territories and possessions: who is an expert or consultant under contract with the United States or any agency thereof: or who is the spouse or dependent of such person.
- B. The term "foreign government" includes every foreign government and every official, agent, or representative of such government: and any international or multinational organization whose membership is composed of any unit of foreign government.
- c. The term "gift" includes any tangible or intangible present, other than a decoration, tendered by or received from a foreign government.
- D. The term "decoration" includes any order, device, medal, badge, insignia, emblem, or award tendered by or received from a foreign government.
- E. The term "minimal value" means a retail value in the United States of \$200 or less.

20-25-20 RESPONSIBILITY AND POLICY

- A. Responsibility. The Office of International Affairs (**OIA**), OS, is responsible for ensuring that HHS employees are acquainted with the requirements of P.L. **95-105**, and for giving effect to this chapter and implementing the requirements of the law relating to the deposit of gifts and decorations for disposal and their retention for official use. OIA will also provide advice and assistance to employees on any question relating to the application or implementation of the policy and procedures outlined below.
- B. General Policy. No employee shall request or otherwise encourage the offer of a gift or decoration; nor shall they accept a gift or decoration, other than in accordance with the provisions below.
- C. Gifts of Minimal Value. With the exception of an education scholarship, medical treatment, or, under conditions stated below, travel or expenses for travel, an employee may not accept a gift or more than minimal value unless it appears that to refuse the gift would likely cause offense or embarrassment or otherwise adversely affect the foreign relations of the United States. If an employee accepts a tangible gift of more than minimal value, such a gift is deemed to have been accepted on behalf of the United States and, upon acceptance, becomes the property of the United States. The donee must deposit the gift with the Office of International Affairs, OS, within 60 days for:
(1) return to the donor; (2) official use within the Department; or (3) disposal as surplus property.
- E. Gifts of Travel or **Travel Expenses.**
1. An employee may accept gifts of travel or expenses for travel taking place entirely outside the United States (such as transportation, food, and lodging) of more than minimal value, if in the employee's opinion such acceptance is appropriate, consistent with the interests of the United States, and is approved on a Form HHS-348 in accordance with the provisions of Chapter 1-70, Acceptance of Payment in Cash or Services in Kind to Cover Travel Expenses, HHS Travel Manual.
 2. Employees traveling on official duty may accept plane tickets on behalf of the U.S. Government for

travel originating and/or terminating in a U.S. city. HHS travel orders must reflect that payment of travel expenses, including per diem and similar expenses, by a foreign government or international organization is accepted by the traveler on behalf of the U.S. Government.

3. For private travel, **HHS** employees may accept gifts of travel or expenses for travel only when such travel takes place entirely outside the United States and is approved in accordance with paragraph 1 above. Article I, Section 9 of the Constitution of the United States prohibits **an** employee from receiving reimbursement directly from a foreign government **or** international organization without the consent of Congress.

- F. Decorations. Employees may accept, keep, and wear decorations tendered in recognition of active field service in time of combat operations or awarded for other outstanding or unusually meritorious performance, subject to the approval of the Assistant Secretary for Management and Budget. Without this approval, the **decoration** is considered to have been accepted on **behalf** of the United States, shall become the property of the United States, and shall **be** deposited by the employee, within 60 days of acceptance, with the Office of International Affairs, OS, for official use or disposal.
- G. Use or Disposal of Gifts and Decorations which Become the Property of the United States. Any gift or decoration that becomes the property of the United States under the provisions of this-chapter may be kept for official use by the Department of Health and Human Services. The decision whether or not to keep gifts and decorations for official use will be made by the Assistant Secretary for Management and Budget. With respect to gifts and decorations not so retained, the Office of International Affairs will either (1) return them to the donor, or (2) forward them to the Administrator of General Services.
- H. Civil Actions Against Employees. The Attorney General may bring a civil action against any employee: **(1)** who knowingly solicits or accepts a gift from a foreign government not consented to by this Department, or **(2)** who fails to deposit or report such gift to the Office of International Affairs, OS. The court in which such

action is brought may assess a penalty against such employee in any amount not to exceed the retail value of the gift improperly solicited or received plus \$5,000. Cases in which there exists evidence of failure of an employee to comply with the deposit and reporting requirements of this chapter will be referred to the Inspector General for review and action.

- I. Purchase of Gifts for Foreign Individuals. No HHS office can use appropriated funds to purchase a tangible gift of more than minimal value for a foreign individual unless the Congress has approved such purchase.

20-25-30 PROCEDURES FOR REPORTING FOREIGN GIFTS

- A. **For** Tangible Gifts of **More Than Minimal Value.** When an employee deposits a tangible gift **of** more than minimal value for disposal or for official use pursuant to Paragraph **20-25-20D**, the employee shall file a statement with the Office of International Affairs, OS, containing the following information:
 1. the name and title of the employee;
 2. a brief description of the gift and the circumstances justifying acceptance;
 3. the identity, if known, of the foreign government and the name and title of the individual who presented the gift;
 4. the date of acceptance of the gift: and
 5. the estimated retail value in the United States of the gift at the time of acceptance.
- B. **For** Gifts of Travel or Travel Expenses. Within 30 days after accepting travel or travel expenses as provided in Paragraph 20-25-203, unless acceptance of such travel or travel expenses is approved in advance in accordance with the provisions of Chapter 1-70, **HHS** Travel Manual, the employee shall file a statement with the Office of International Affairs, OS, containing the following information:
 1. the name and title of the employee;
 2. a brief description of the gift and the circumstances justifying acceptance: and

3. the identity, if known, of the foreign government and the name and position of the individual who presented the gift.

C. For Decorations. Employees who are to receive decorations, or who receive them without advance knowledge, shall request permission to accept, retain, and wear such decoration from the Assistant Secretary for Management and Budget, through the Office of International Affairs, OS. The request must contain the following information:

1. the name and title of the employee;
2. the title of the decoration;
3. the exact wording of the citation: and
4. the circumstances under which the decoration is to be received (or was accepted).

20-25-40 ANNUAL REPORT TO THE SECRETARY OF STATE

Not later than January 31 of each year, the Office of International Affairs, OS, will compile a listing of all statements filed during the preceding year by HHS employees pursuant to this chapter and shall send such listing to the Secretary for State, who is required by law to make an annual U.S. Government report to Congress.

CHAPTER 20-30
REQUESTS FOR WAIVER OF FOREIGN RESIDENCE REQUIREMENT
EXCHANGE VISITOR PROGRAM

- 20-30-00 Background
 - 10 Authority of DHEW
 - 20 Exchange Visitor Waiver Review Board
 - 30 Policy
 - 40 Procedure
 - 50** Personal Hardship, Persecution and Visa Extension Considerations
 - 60 Release from Foreign Government

20-30-00 BACKGROUND

A. The Educational and Cultural Exchange Program

The Educational and Cultural Exchange Program is authorized by The Mutual Educational and Cultural Exchange Act of 1961, Public Law 87-256 (75 Stat. **527-538**), enacted by the 87th Congress on September 21, 1961, as amended by Public Law 91-225, (84 Stat. **116-117**), enacted by the **91st** Congress on April 7, 1970. This Act supersedes earlier legislation (The United States Information and Educational Exchange Act of 1948, and its amendment, P.L. 555, 1956).

The Exchange Visitor Program provide6 for educational and cultural exchange6 between the United States and other countries, including, among other things, visits to the United States by citizens and nationals of foreign countries, who are **students**, trainees, teachers, professors, or leader6 in field6 of specialized knowledge of skill.

The objective6 of the Act and program are stated **as follows:**

"Sec. 101. Statement of Purpose.--The purpose of this Act is to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries by means of educational and cultural exchange; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments,

(20-30-00 A continued;

and **achievements** of the people of the United States and other nations, and the contributions being made toward a peaceful and more fruitful life for people throughout the world; to promote international cooperation for educational and cultural advancement; and **thus** to assist in the development of **friendly, sympathetic,** and peaceful relations between the United States and the other countries of the world."

B. Provisions of P.L. 87-256, as mended, Regarding Foreign Residence and Waivers Thereof

1. Section **101(a)(15)(J)** of the Immigration and Nationality Act defines an exchange visitor as follows:

"(J) **an alien** having a residence in a foreign country which he has no intention of abandoning who is a bona **fide** student, scholar, trainee, teacher, professor, research assistant, specialist, or leader in a field of specialized knowledge or skill, or other person of similar description, who is coming temporarily to the United States as a participant in a program designated by the Secretary of State, for the purpose **of** teaching, instructing or lecturing, studying, observing., conducting research, consulting, **demonstrating** special skills, or receiving training," and the **alien** spouse and minor children of any such alien if accompanying him or following to join him."

2. Sec. 2. Section 212(e) of the Immigration and Nationality Act (8 **U.S.C.** 1182(b)) **is** amended to read as follows:

" No person admitted under section **101(a)(15)(J)** or acquiring such status after admission whose (i) participation in the program for which he came to the United States was financed in whole or in part, directly or indirectly, by an agency **of** the Government of the United States or by the government of the country of his nationality or his last residence, or (ii) who at the time of admission or acquisition of status under section **101(a)(15)(J)** was a national or resident of a country which the Secretary of State, pursuant to regulations

prescribed by him, had designated as clearly requiring the services of persons engaged in the field of specialized knowledge or skill in which the alien was engaged, shall be eligible to apply for an immigrant visa, or for permanent residence, or for a nonimmigrant visa under section **101(a)(15)(H)** or section **101(a)(15)(L)** until it is established that such person has resided and been physically present in the country of his nationality or his last residence for an aggregate of at least two years following departure from the United States: Provided, That upon the favorable recommendation of the Secretary of State, pursuant to the request of an interested United States Government agency, or of the Commissioner of Immigration and Naturalization after he has determined that departure from the United States would impose exceptional hardship upon the alien's spouse or child (if such spouse or child is a citizen of the United States or a lawfully resident alien), or that the alien cannot return to the country of his nationality or last residence because he would be subject to persecution on account of race, religion, or political opinion, the Attorney General may waive the requirement of such two-year foreign residence abroad in the case of any alien whose admission to the United States is found by the Attorney General to be in the public interest: And provided further, That the Attorney General may, upon the favorable recommendation of the Secretary of State, waive such two-year foreign residence requirement in any case in which the foreign country of the alien's nationality or last residence has furnished the Secretary of State a statement in writing that it has no objection to such waiver in the case of such alien."

20-30-10 AUTHORITY OF DHEW

Under the authority of the Mutual Educational and Cultural Exchange Act of 1961 (75 Stat. 527) and the Immigration and Nationality Act as amended (84 Stat. **116**), the Department of Health, Education, and Welfare is an "interested United States Government agency" with the authority to submit **requests** through the Department of State to the Attorney General for a waiver of the two-year

20-30-10 (continued)

foreign residence requirement for exchange visitors under the Mutual Educational and Cultural Exchange Program.

20-30-20 EXCHANGE VISITOR WAIVER REVIEW BOARD

- A. Establishment. The Exchange Visitor Waiver Review Board is established for the purpose of carrying out the Department's responsibilities under the Exchange Visitor Program.
- B. Functions. The Exchange Visitor Waiver Review Board is responsible for making thorough and equitable evaluations of applications for waiver submitted to the Department and for rendering recommendations to the Department of State on such applications on behalf of the Secretary.
- C. Membership. The Exchange Visitor Waiver Review Board consists of not less than five members, of whom no less than three shall consider any particular application. The Special Assistant to the Secretary for International Affairs is an ex officio member of the Board and serves as Chairman of the Board. He may designate a staff member of the Office of the Secretary to serve as member and Chairman in his absence. Two regularly assigned members are appointed by the Assistant Secretary for Health to consider applications concerning health and related fields and two regularly assigned members are appointed by the Assistant Secretary for Education to consider applications concerning education or training and related fields. The Board may be expanded to include members from other appropriate operating components of the Department when necessary in order to consider an application in other fields of interest to the Department (e.g., welfare, social security or rehabilitation). When, in the Board's judgment, it is required, the Board may obtain expert advisory opinion from other sources.

20-30-30 POLICYA. Criteria and Information Pertaining to Waivers.

The Department of Health, Education, and Welfare has a stringent and restrictive policy with respect to requesting waivers for foreign visitors under the exchange visitor program. Each case is evaluated individually on the basis of the facts available. The general criteria which are applied are:

1. The program or activity of the applicant institution or organization in which the exchange visitor is employed must be of high priority and significance in an area of interest to the Department. The Waiver Review Board will not request a waiver when the documentation clearly demonstrates that the problem is primarily one of recruitment in order to overcome a local community or institutional manpower shortage, however serious.
2. The exchange visitor must be needed as an integral part of the program or activity, or of an essential component thereof. The Board will not request a waiver when the principal problem appears to be one of administrative or program inconvenience to the institution or other employer.
3. The exchange visitor must possess outstanding qualifications, training, and experience. The Board will not request a waiver simply because an individual has specialized training or experience or is occupying a senior staff position in a university, hospital, or other institution.

B. Waivers for Members of Exchange Visitor's Family

1. Where a decision is made to request a waiver for an exchange visitor, a waiver will **also** be requested for the spouse and children, if any, if they are also subject to the foreign residence requirement.

20-30-30 (continued)

2. In cases of married couples where one spouse is an exchange visitor, the subject of a waiver application, and the other is a citizen of the United States or **resident** alien, a waiver will be requested for the exchange visitor if either spouse is found to meet the strict criteria given above.

20-30-40 PROCEDURE

A. Procedure for Submission of Application to DHEW

1. The applicant institution (educational institution, hospital, laboratory, corporation, etc.) should send a completed application (HEW Form 426, Exhibit X20-30-1) to the Executive Secretary, Exchange Visitor Waiver Review Board, Department of Health, Education, and Welfare, Washington, D.C. 20201. **Application** forms and information may be obtained from the Executive Secretary. The application must be signed by an authorized official of the applicant institution. The information given in the application should describe in detail the circumstances of the case involved. This should include but not be limited to:
 - a. A complete description of the program or activity in which the exchange visitor is engaged; including factual evidence of the way in which the program or activity serves the national or international public interest.
 - b. His or her relationship to the program, particular contribution, and other responsibilities, if any.
 - c. The probable future of the program if the waiver is not granted: including specific evidence showing how the loss of the exchange visitor's services would seriously restrain the initiation, continuation, completion, or success of the program or activity, or a major part thereof.

- d. The applicant institution's long-range plans for the exchange visitor, and ways in which the visitor will contribute in the future to the activities in which he or she is employed.
 - e. Specific evidence of a demonstrated unique capability of the exchange visitor to make essential contributions to the program or activity over a long period of time.
 - f. The exchange visitor's curriculum vitae, bibliography, date and place of birth, present citizenship, date and port of entry and current address.
 - g. Any other facts considered germane.
2. Since the formal filing of an application for waiver with the Immigration and Naturalization Service automatically terminates the applicant's exchange visitor status, it is permissible to **obtain the** decision of the Exchange Visitor Waiver Review Board before filing with the Immigration and Naturalization Service.

B. Procedure After Board Decision

1. If the Exchange Visitor Waiver Review Board disapproves an application, the applying institution is informed of the decision.
2. If the Board approves an application, the Chairman of the Board sends the Department of State a request for a waiver for the exchange visitor', and also for spouse and children if applicable. The applying institution is also informed of the decision. The Department of State reviews the request from the standpoint of policy, exchange **program**, and foreign relations implications. A favorable review results in a State Department recommendation to the appropriate District Office of the Immigration and Naturalization Service that it grant a waiver. If the District Office accepts the recommendation, it notifies the exchange visitor that the waiver is granted, and also informs the visitor of further steps which should be taken to clarify his/her status.

20-30-50 PERSONAL HARDSHIP, PERSECUTION AND VISA
EXTENSION CONSIDERATIONS

- A. The Department is not responsible for considering applications for waivers based on:
1. Exceptional **hardship** to the exchange visitor's American or legally resident alien spouse or child; or
 2. The alien's unwillingness to return to the country of his/her nationality or last residence on the grounds that he/she or family members would be subject to persecution on account of race, religion or political opinion.
- B. Likewise, this Department is not responsible for considering requests for extension of visa.
- C. Inquiries concerning the above should be directed to the District Office of the Immigration and Naturalization Service which has jurisdiction over the exchange visitor's place of residence in the U.S.

20-30-60 RELEASE FROM FOREIGN GOVERNMENT

The Department of **State** has the responsibility to consider applications for waivers which are based on a notification from the exchange visitor's country that it has no objection to a waiver (22 CFR 63.31).

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
WASHINGTON, D.C.
APPLICATION FOR WAIVER OF THE TWO-YEAR FOREIGN
RESIDENCE REQUIREMENT OF THE EXCHANGE VISITOR PROGRAM

SECTION 1. APPLYING INSTITUTION AND PROGRAM

1. NAME OF INSTITUTION	2. TELEPHONE, AREA - NUMBER
3. COMPLETE ADDRESS	
4. NAME AND POST OF RESPONSIBLE ADMINISTRATIVE OFFICER WHO CERTIFIES THIS APPLICATION AND THE DATA IT CONTAINS	
5. PROGRAM (Department or Division) IN WHICH EXCHANGE VISITOR IS ENGAGED	
6. PRINCIPAL PROGRAM OFFICER, RANK AND POSITION	
7. SOURCE OF PROGRAM FUNDS (If supported by HEW or other public funds, identify grants by source, title, number, and amount and terminal dates.)	

On a separate sheet of paper please provide detailed and specific information about the program and its essentiality.

SECTION 2. RELATION OF EXCHANGE VISITOR TO INSTITUTION AND PROGRAM

8. PRESENT POSITION CLASSIFICATION AND SALARY

(1) HOW LONG HAS HE BEEN EMPLOYED IN THE INSTITUTION? (2) IN THE PROGRAM?

(3) WHAT EFFORTS HAVE BEEN MADE TO REPLACE HIM? (4) AT WHAT SALARY? (5) WITH WHAT RESULTS?

On a separate sheet please specify the activities of the exchange visitor as they support the program. What are his unique related functions? How would his departure affect the program?

9. IF WAIVER IS GRANTED: (1) WHAT WILL BE HIS STATUS IN THE PROGRAM AND IN THE INSTITUTION? (2) HOW LONG DO YOU BELIEVE HE WILL REMAIN WITH THE PROGRAM?

SECTION 3. EXCHANGE VISITOR FOR WHOM WAIVER IS REQUESTED

10. NAME (Surname) (Given names) (Maiden name, if married female)	
11. RESIDENTIAL ADDRESS (No., Street, City, State or Province, Country)	
12. CURRENT ADDRESS OF SPOUSE, IF DIFFERENT	
13. OCCUPATION TITLE	
14. DATE OF BIRTH (Month, Day, Year)	15. BIRTHPLACE (City, State, Country)
16. SEX: MALE <input type="checkbox"/> FEMALE <input type="checkbox"/>	17. MARITAL STATUS: MARRIED <input type="checkbox"/> SINGLE <input type="checkbox"/>
18. CITIZENSHIP	19. COUNTRY OF LAST RESIDENCE BEFORE ENTERING U.S.A.
21. ALIEN REGISTRATION NO.	20. IF NO LONGER IN U.S.A., STATE LAST PLACE OF U.S. RESIDENCE (City & State)
22. LOCAL IMMIGRATION OFFICE WHERE REGISTERED	23. DATE OF ENTRY INTO U.S.A. AS EXCHANGE VISITOR
	24. EXPIRATION DATE OF CURRENT PERMIT (1-94)

25. WHAT FUNDS WERE USED TO FINANCE THE EXCHANGE VISIT?
 U.S. GOV'T. U.N. OR AFFILIATE PRIVATE AGENCY VISITOR'S GOV'T. VISITOR'S PERSONAL OTHER
 (If government agency, please identify)

26. OTHER APPLICATIONS, IF ANY, FOR FOREIGN RESIDENCE WAIVER FOR THIS VISITOR

DATE OF APPLICATION	TO FEDERAL AGENCY	BY INSTITUTION

27. FAMILY (If married, list dependents)

NAME	BIRTHDATE	BIRTHPLACE	VISA TYPE
(Spouse)			
(Children)			

28. EDUCATION (College, postgraduate, other)

NAME AND LOCATION OF INSTITUTION	DATES ATTENDED		YEARS COMPLETED	DEGREES RECEIVED	EXCHANGE VISITOR PROGRAM # (If any)
	FROM	TO			

29. EXPERIENCE

NAME AND LOCATION OF ORGANIZATION	PERIOD OF SERVICE		NATURE OF ASSIGNMENT (Start with current assignment and work back)	EXCHANGE VISITOR PROGRAM # (If any)
	FROM	TO		

If additional space is needed, use separate sheets. Attach a list of publications, if any, as well as letters of recommendation. Extracts or reprints of publications may also be submitted.

SECTION 4. CERTIFICATION OF ACCURACY OF INFORMATION AND APPLICATION

Signature of Principal Program Officer _____ DATE _____

Signature of Responsible Administrative Officer _____ DATE _____

Note: Where the main ground for a waiver application is the work of the exchange visitor's spouse who is a U.S. citizen or resident alien, all of the information listed in sections 1 through 4 should be given for the spouse and also for the exchange visitor, to the extent possible. In such cases, use two separate forms. Where both husband and wife are exchange visitors in their own right (i.e., each has J-1 visa status and neither has J-2 status), a separate application should be submitted for each of them.

Subject: **REVIEW AND CLEARANCE OF FOREIGN AFFAIRS RESEARCH
SUPPORTED BY HHS GRANTS AND CONTRACTS**

20-60-00 Purpose

- 10 Review and Clearance Policy
- 20 Review and Clearance Procedures

20-60-00 **PURPOSE**

To provide policy and procedures for review and clearance by the Department of State of proposed HHS-financed grants and contracts for potentially sensitive research programs and studies in the social, behavioral and medical sciences dealing with international relations or with foreign areas and peoples conducted **abroad or** in the United States.

20-60-10 **REVIEW AND CLEARANCE POLICY**

- A. The President has **determined** that no **Government** sponsorship of foreign area research **should** be undertaken which in the **judgment** of the Secretary of State would adversely affect United **States** foreign relations (Presidential letter of August 2, 1965, Vol. 1, Weekly **Comp. Pres. Docs.** 43).
- B. In **compliance** with this policy, all grants and contracts for potentially sensitive (as defined below) research dealing with foreign areas and peoples conducted abroad or in the United States, and **financed by HHS funds, will be reviewed and cleared by the Department** of State for consistency with U.S. foreign policy objectives.

Exceptions: Grants of the National Institutes of Health and the Alcohol, **Drug Abuse, and Mental Health Administration** are exempt from these provisions. Grants and contracts that are routinely **cleared with a policy bureau** in the **Department** of State (such as Special Foreign Currency **Program projects cleared by the Bureau of Oceans** and International **Environmental** and Scientific Affairs) are also **exempt from these provisions.**

20-60-20 **REVIEW AND CLEARANCE PROCEDURES**

- A. Prospective research projects are either "non-sensitive" or "potentially sensitive." The definition of **"potentially sensitive"** projects is given in paragraph B.3 below. Operating Divisions (**OPDIVs**) should review each **proposed** project **and** make an initial **determination** as to whether it is non-sensitive or potentially sensitive.

For prospective projects which are non-sensitive, OPDIVs should follow existing clearance procedures, such as transmittal of the project **agreement for host country signature through Department of State (OES) channels.**

For proposed projects which fit the definition of "potentially sensitive", the procedures described in paragraph B below apply. OPDIVs should **send** information on such projects to the Office of International Affairs (OIA), OS, through designated channels, for review and transmission to State for clearance (do not send the information directly to State).

In respect to all such prospective projects, OPDIVs should not, if practicable, enter **into** contract or grant negotiations until **Department** of State clearance has been given. In all cases, no firm commitments should be made until such clearance is **given.**

B. Clearance of Potentially Sensitive Projects

1. Information on potentially sensitive projects, as defined in paragraph 3 below, must be submitted through official **channels to** OIA for submission to the Department of State Research Council for review in accordance with Department of State requirements (Policies and Procedures for **Department of State Review** and Coordination of **Government-sponsored Research on Foreign Affairs**, dated January, 1982).
2. The **Secretary of State has created the Department of State Research Council** to assist him in formulating policies for State **Department review and clearance of project proposals.**
3. Project Sensitivity
 - a. Potentially sensitive projects are those which involve **foreign** travel or contact with foreign nationals and which:
 - (1) Deal with the authority, effectiveness, or policies of a foreign **government**, with the nature and relationships of politically significant internal institutions, or with the attitude of the people toward the government (especially if the **government** is characterized by instability);
 - (2) Involve large-scale or formalized surveys or interviews:
or
 - (3) Are conducted by large teams or which cover **extensive** or **remote** areas of a foreign country.

- b. Projects which involve neither foreign travel nor contact with foreign nationals may also be sensitive if they deal with subjects under active negotiation or **currently** in dispute.
- c. Projects less likely to be sensitive are those which:
 - (1) **Deal** with historical rather than **contemporary** subjects unless **there are contemporary** implications;
 - (2) Gather information in the host country through documentary investigation rather than **interviews** or questionnaires;
 - (3) Have the approval of interested agencies of the host country **government**;
 - (4) Involve professional participation by host country nationals as researchers; or
 - (5) Are not designed to contribute specifically to the operating mission of an agency of the **U.S. Government**.
- 4. It is the responsibility of the sponsoring OPDIV to determine according to the criteria in paragraph 3 above, which proposed **projects may be potentially sensitive and, with respect to these projects, to provide the Office of International Affairs with the following information:**
 - a. Title of the proposed project, and a brief description, including the objectives of the research, and, when not otherwise obvious, the reasons for involving the foreign **country**, and any benefit of the research to that country.
 - b. **Sponsoring** agency or agencies and name and **telephone number** of contact.
 - c. Name of grantee or contractor, estimated cost (including information of any funding by other agencies), and principal researchers, including foreign researchers, if any.
 - d. Detailed **information on the proposed project:** questions to be investigated, methods, schedules, types of findings anticipated, countries or regions covered.

- e. If the project involves field **work** abroad, names of researchers and indication of time of proposed field **work** and extent and types of contact with foreign nationals.
 - f. Extent to which discussion with a U.S. **diplomatic** mission has already **been** held in the formulation of the project proposal.
 - g. Security classification, **if any, of project and proposed** disposition of reports.
5. **The Director, OIA, is the HHS focal point for clearance of** potentially sensitive projects with the **Department** of State Research Council, and is responsible within **HHS** for: making a further review of foreign affairs research projects **submitted to OIA for potential foreign relations** sensitivity, in accordance with paragraph above: **deciding which projects need State Department** clearance: and submitting the latter to State for review.
6. When OIA has received indication of clearance or **non-**clearance **from the Department of State, OIA will so** inform the appropriate OPDIV.

CHAPTER **21-40**

SELECTION AND PREPARATION OF MATERIALS FOR PRESIDENTIAL LIBRARIES

- 21-40-00 Purpose**
 - 10 scope
 - 20 Responsibility**
 - 30 Criteria for Selection of Materials
 - 40 Procedures**

21-40-00 PURPOSE

This chapter establishes a continuing procedure for the collection of materials to be deposited in Residential libraries by the Department of **Health, Education, and Welfare**.

21-40-10 SCOPE

The provisions of this chapter apply to the Office of the **Secretary** and to the operating agencies.

21-40-20 RESPONSIBILITY

- A. The President has requested the Administrator of the General Services Administration to establish a continuing program to collect copies of **materials** from Government agencies for the purpose of **enriching** the collections **and** enhancing the usefulness of all Residential Libraries.
- B. The Rational Archives and Records Service, on behalf of the Administrator of the General Services Administration, has enlisted the help of Executive Departments and agencies in **carrying** out the Resident's request.
- C. Within this **Department**, the Assistant Secretary for Administration has the **over-all** responsibility for coordinating and directing the activities related to the Presidential Library **Program**. The Office of **Management** Planning will serve as the principal staff assistant to the Assistant Secretary for Administration in this regard.
- D. The Office of the Secretary **and** each operating *agency shall* designate a senior official to coordinate **and** direct the activities **related** to Presidential Libraries.

21-40-30 CRITERIA FOR SELECTION OF MATERIALS

- A. Documents and other items to be selected for deposit in Residential Libraries are **those which are significant to planning and executing DHEW-related Residential Programs.**
- B. **The materials which this Department will make** available to Presidential Libraries **may include documents** of various types: letters, **memoranda**, position papers, **memoranda** to the files, memoranda of conversations, minutes of **meetings, speeches, press** releases, policy and procedural directives, **scripts, and other materials** related to radio and television appearances. In **many** instances entire series of documents **may** be selected for inclusion in Presidential Libraries, for example, files on proposed legislation. In addition, the materials **may include pertinent** exhibits, photographs, **films**, and printed materials, unless the General Services Administration **informs** the **Department** to the contrary.
- C. The materials made available by this **Department may** include materials of all security classification and degrees of **sensitivity, inasmuch** as Presidential Libraries are equipped to deal **with** classified materials.

21-40-40 PROCEDURES

- A. The Office of the Secretary and the **operating agency** representatives will conduct a continuous review of **documents** and related materials created by their respective organizations. **Promptly after identification of candidate** items the representatives will notify the Office of **Management Planning** of the existence and location of such **items.**
- B. The Office of **Management Planning** will **arrange** for the **National Archives and** Records Service to review the candidate items.
- C. The **National Archives and** Records Service will **review candidate** items and determine **which** to accept for Presidential Libraries. The **National Archives and** Records Service **will** arrange to have necessary microfilming done at or **near** the location of the documents, so **that** this **operation** will result in **as** little disruption as possible. The **National Archives and** Records Service **will** arrange to pick up **and transport** items designated for deposit in a **Presidential Library.**

CHAPTER h:21-90
G E N E R A L I N F O R M A T I O N

h:21-90-00 Purpose
10 General Responsibility
20 Types of Reports

h:

21-90-00 PURPOSE

Chapters 21-90 to 21-95 inclusive state policies and procedures for dealing with legislative matters within the Department, including legislative drafting, reports on proposed legislation or enrolled bills, and testimony on bills.

h:

21-90-10 GENERAL RESPONSIBILITY

- A. The Office of the General Counsel is responsible for:
1. Drafting all proposals for legislation originating in the Department and reviewing all proposed legislation submitted to the Department or to **any** principal **operating** component of the Department for comments;
 2. Preparing or reviewing reports and letters to Congressional Committees and the Office of Management and Budget and others'on proposed legislation; and
 3. Prescribing procedures to govern the routing and review within the Department of material relating to proposed legislation.
- B. These responsibilities are carried out through the Division of Legislation which is under the immediate supervision of an Assistant General Counsel;

h:

21-90-20 TYPES OF REPORTS

Reports may be requested on proposed bills either by the Office of Management and Budget or a Congressional Committee (see Chapter **h:21-92**). For reports on enrolled bills see Chapter **h:21-94**.

CHAPTER h:21-91

LEGISLATIVE DRAFTING

- h:21-91-10 Assistance in Drafting
 - 20 Release of Draft Legislation
 - 30 Approval of Changes in Draft Bills

h:
21-91-10 ASSISTANCE IN DRAFTING

Throughout the development of any legislative proposal within the Department, the Division of Legislation, Office of the General Counsel, is responsible for preparation of any legislative drafts and for rendering other appropriate assistance.

h:
21-91-20 RELEASE OF DRAFT LEGISLATION

No draft of any proposed legislation shall be released to anyone outside the Department until the draft has been cleared by the General Counsel or the Division of Legislation and such release has been authorized by the Office of the Secretary.

h:
21-91-30 APPROVAL OF CHANGES IN DRAFT BILLS

- A. When proposed legislation, other than appropriation language, affecting the Department is under consideration by a committee or a member of the Congress, the Division of Legislation is responsible for drafting (or for approval when drafted by someone outside the Department) of the language of any proposals made or agreed upon by representatives of the Department and for collaboration with the Legislative Counsel of the House or Senate.
- B. Changes in appropriation language proposed to be made or agreed to in the course of Congressional consideration shall be similarly cleared with the Division of Legislation, unless in the judgment of the Assistant Secretary, Management and Budget, or his designee time does not permit.

h:21-92-00 General

- 10 Requests for Reports
- 20 Routing of Legislative Materials
- 30 Schedules and Controls
- 40 Form of Reports
- 50 Clearances

h:

21-92-00 GENERAL

- A. Scope. The procedures prescribed in this chapter are applicable to requests for legislative reports from Congressional committees, from the Office of Management and Budget and from other Government agencies.
- B. The objectives of these procedures are:
 - 1. To expedite the processing of reports on Federal legislation.
 - 2. To assure time for adequate consideration of reports by all concerned.
 - 3. To make reports more effective in presenting the Department's position.

h:

21-92-10 REQUESTS FOR REPORTS

- A. Letters to Individual Congressmen on Proposed Legislation.
OMB Circular A-19 (Exhibit **h:21-92-1**) provides that letters to individual members of Congress which constitute **recommendations** or reports on proposed or pending legislation shall follow the same procedure as reports to Congressional committees. When an inquiry from a member of Congress, calling for such a recommendation or report, is received by an officer of the Department other than the Secretary, a reply for the Secretary's signature, or comments, shall be prepared and routed through the Division of **Legislation**.
- B. Annual or Special Reports Containing Legislative Recommendations. Section 5(c) of Office of Management and Budget Circular A-19 requires that any recommendation in an annual or special report for new or amendatory legislation shall first be submitted to the Office of Management and Budget. Any report containing such recommendations,

(h:21-92-10B continued)

therefore, shall be prepared by the principal operating component (POC) or other office concerned and cleared with the Division of Legislation in the manner provided for reports on proposed legislation.

h:

21-92-20 ROUTING OF LEGISLATIVE MATERIALS

- A. Routing of Requests. The Immediate Office of the Secretary will receive from the Mail Room all requests addressed to the Secretary from Congressional committees, the Office of Management and Budget, and other Government agencies for legislative reports. Immediately upon receipt, the requests will be transmitted directly to the Division of Legislation of the General Counsel's Office. Any such requests addressed to or received by a POC will also be transmitted immediately to the Division of Legislation.
- B. Acknowledgment of Requests. The Division of Legislation shall prepare an acknowledgment of all requests from Congressional committees and Government agencies, other than the Office of Management and Budget. (Requests from the Office of Management and Budget will not be routinely acknowledged.) Routine acknowledgments shall be signed by the Assistant General Counsel. Special acknowledgments shall be prepared by the Division of Legislation for the signature of the Assistant Secretary (for Legislation) or, if the special nature of the request indicates, the Secretary.
- C. Referral of Requests. Generally, the Division of Legislation will, within two working days, refer the request to the head of the POC or other officer of the Department primarily or most directly concerned or familiar with the subject matter of the bill, for preparation of a proposed report on the bill. (There will be attached to each referral an instruction sheet and Guidelines for preparation of the report.) When a significant request is received which may involve policy, the Division will inform the appropriate Assistant Secretary of the receipt of such request. When

(h:21-92-20C continued)

two or more **POCs** are affected by or interested in the subject matter of the bill, the Division of Legislation will either (1) refer the request to the POC most concerned and ask that POC to consult with, and clear the report with, the other POC interested or affected, or (2) prepare the report in the first instance after obtaining comment from each POC concerned. The report may also be prepared in the first instance by the Legislation Division in other situations when, in the judgment of that Division, this is more efficient or required by time limits. For enrolled bills see Chapter **h:21-94**.

A copy of each referral memorandum will be sent by the Division to the **POCs** (other than the one to which it is addressed) affected by or interested in the report and the appropriate Assistant General Counsel.

- D.** Routing of Completed Report. The POC responsible for preparation of the proposed report shall submit it in final form, with requisite copies, to the Division of Legislation. If typed on MAG II, MAG II cards should be forwarded with the proposed report. This Division is responsible for transmittal of the report, through the General Counsel, to other officers concerned in the Office of the Secretary for clearance and final signature.

h:

21-92-30 SCHEDULES AND CONTROLS

A. Time Schedules

1. To the extent not established by this Manual or the Division of Legislation, time schedules for submission of legislative reports to the Division of Legislation shall be established by the POC or other office charged with preparation of the report with a view to permitting so far as possible, completion of review by the Division of Legislation, and by others, in the line of review in the Office of the Secretary, in time to assure that there is opportunity for obtaining Office of Management and Budget clearance and that all requests are met by deadline dates set by the Committee or other requester of the report or, if none, within a

(h:21-92-30.A1 continued)

reasonable time, and that within the total time available adequate time is given each unit or official for his part in the preparation or review of the report. It is realized that, where specific time schedules have been set, some reports can and should be processed ahead of schedule while others, in the light of their individual complexity or other special reasons, or their relative nonpriority in peak workload periods, may not be completed within the time schedules originally set.

2. Where no specific time limit has been set by this Manual, by the Division of Legislation, or by the Committee or other requester of the report and the timing of submission of the report to the Division of Legislation is thus left in the first instance to the POC or office to which the matter has been referred (see 1., above), that agency or office should in that connection, to the extent practicable, keep informed (and inform the Division of Legislation) of circumstances with respect to the prospect of hearings or other Committee action bearing on the timing of the report, so that the report will be developed and submitted in time to allow adequate review by the Division and others in the Office of the Secretary. If others, in the Office of the Secretary, and especially the Congressional Liaison Office, receive information of this nature, they should likewise advise the Division of Legislation, which will record the information and make sure that the POC or office concerned has this information. Moreover, when the Division of Legislation receives information indicating that priority or greater priority than previously indicated must be given an item already referred to a POC, it will arrange with the POC for such advances in any due dates previously established as may be necessary to meet the new deadline date.

(h:21-92-30.A continued)

3. The minimum time (in working days) that should ordinarily be available for review of a proposed report in the Office of the Secretary before transmittal to the Office of Management and Budget is as follows:

Review by Division of Legislation and
General Counsel----- 5 days

Review by other officials in Office of
Secretary----- 3 days

Consideration by Secretary----- 2 days

4. Requests for reports which carry deadlines that would not be met by adherence to the above schedule for routine items but permit at least 10 days for Department work on the report shall be handled in accordance with a time schedule fixed by the Division of Legislation in the light of the total time available in each case, but the schedule shall, where feasible, allow not less than the following:

Consideration by Secretary----- 2 days

Review by officials of the Office of
the Secretary other than the General
Counsel's Office----- 2 days

Review by Division of Legislation and
General Counsel----- 2 days

Preparation of report by POC--- Aggregate time
available less 6 days

5. Rush items which carry deadline permitting less than 10 days for Department work on the report shall be handled in accordance with schedules fixed by the Division of Legislation, with a minimum of one day for consideration by the Secretary and one day for review by officials in the Office of the Secretary.

(h:21-92-30.A continued)

6. Proposed reports sent back to the POC by the Division of Legislation (on its own initiative or on the basis of decisions by others in the Office of the Secretary) for revision in accordance with memoranda to, or discussions with, the POC, will carry, when considered appropriate, a due date set by the Division of Legislation.

B. Controls on Due Dates

1. Controls maintained by each POC. Each POC shall maintain, either in the office of its legislative services officer or in the office of the head of the POC, a central control on the processing of all legislative reports referred to it for preparation or comment, and these controls shall, among other things, be adequate to enable the agency to give prompt information as to the status of a report on any item.
2. Controls Maintained by the Division of Legislation
 - a. Master Control. The Division of Legislation will maintain a master control on all pending requests for legislative reports.
 - b. Follow-up on Priority and Rush Items. The Division of Legislation will also follow up with the appropriate POC or office (by telephone or memorandum) on the due date of all priority and rush items not received from that agency or office, and secure expected completion dates.

h:

21-92-40 FORM OF REPORTSA. Opening Paragraphs

Immediately after the first paragraph (which customarily informs the Committee Chairman of the number and title of the bill reported on), include a brief paragraph summarizing the essentials of the report's position.

B. Description of Bill

1. General description. Normally, a general and very brief (one or two sentences) description of the bill should be set forth in the third paragraph of the report. Where the title of the bill (which will normally be quoted after the bill number in the introductory paragraph) adequately describes the major objective of the bill for purposes of the report, the general description may be omitted.

2. Description of major provisions

- a. Specific provisions of the bill should ordinarily be described in the report only in connection with, and as necessary to an understanding of the discussion of, various points in the body of the report.
- b. If it seems appropriate that the head of the POC or other persons reviewing the report should be made aware of provisions in the bill not described in the report—e.g., to enable them to appreciate fully the significance of a bill or to judge whether provisions not mentioned in the report should or should not have been discussed—there should be attached, under an appropriate tab, a brief summary of the major provisions of the bill insofar as they are pertinent to the Department's interest in the bill and to its position on the bill.

(h:21-92-40.C continued)

C. Discussion and Recommendation

1. Summary statement. In the case of all reports over two pages long, and in shorter reports where it would contribute to a more effective presentation of the Department's position, a summary statement of the Department's general recommendation on the bill, and the essence of reasons therefor, should, preferably, be set forth immediately after a summary description of the bill (see B.1., above) when the subject matter lends itself to that form of presentation.

2. Detailed analysis. Where an adequate report on a bill requires lengthy technical comments on details relatively unimportant from a policy point of view, or requires inclusion of lengthy draft amendatory language, the technical comments or draft language, or both, should be set forth in a separate enclosure rather than in the body of the report. Where practicable, the covering letter should be kept brief and focused on the essentials of the Department's policy position. If the bill is to be opposed the report should not offer technical suggestions. If the bill is to be supported, and it becomes important to adjust its technical features, this should be done in an accompanying staff memorandum or technical enclosure to which the covering letter makes reference. Any such enclosure should be impersonal in tone and shall not commit the Secretary on any policy point not made in the main report (unless that report adopts such policy points).

A report should adopt a constructive and positive tone consistent with the Department's desire to develop a working partnership with the Congress in the development of legislation.

If the report opposes a bill to initiate or expand a program, the report should relate the Department's efforts to achieve the bill's objectives under current authority, or if the Department is not acting on the matter explain why and what are the Department's future intentions.

3. Additional Information

- a. In order (1) that the Department may comply with the provisions of 5 U.S.C. 2953, and (2) to assist Congressional committees to comply with the provisions of P.L. 91-510, if the proposed report recommends enactment of legislation and the Department is the agency principally affected by it, there should be included in the proposed report a five-year estimate of additional expenditures and manpower that would result from the legislation's enactment.
- b. As appropriate, consult (1) the General Administration Manual, Chapter 30-31--Preparation of Environmental Statements to Accompany Proposals, Recommendations and Reports on Proposals, for legislation, and (2) OMB Circular A-107 and the Department draft guidelines promulgated by the Secretary, on an interim basis on April, 1975, on the preparation of Inflation Impact Statements.

h:

21-92-50 CLEARANCESA. POC clearances

1. POC's legislative services officer. Each POC shall designate an officer to serve as its legislative services officer with general responsibility for the processing of legislative reports within the POC, and for liaison with the Division of Legislation and the Office of the Secretary. The legislative services officer should be given authority to clear, by initial or orally, minor changes in proposed reports within general policies already established by the head of the POC. It is assumed that the legislative services officer will have ready access to the head of the POC or acting head to facilitate quick clearance of priority or rush items.
2. Hand delivery. Priority and rush items shall be hand-delivered in transmitting legislative material from office to office.

(h:21-92-50.A continued)

3. Evidence of clearance. Initials or statements affixed by the POC's legislative services officer indicating clearance of legislative material by the POC will be accepted by officials and offices in the Office of the Secretary as evidence of clearance of such material by the head of the POC.
4. Submittal of reports in draft. Normally, proposed reports should be submitted by POCs to the Division of Legislation in final form with the requisite copies attached and initials affixed to box copies. However, on priority and rush items, on items involving difficult legal, technical, or policy problems, and in other cases where this is likely to conserve time of professional and stenographic staff, the POC may arrange with the Division of Legislation for advance review of proposed reports in draft.
5. Clearance with other POCs. In order to hold to the minimum reports which are prepared initially by the Division of Legislation on the basis of comments from the several POCs, the Division of Legislation, wherever possible, will designate one POC to prepare legislative reports even where one or more other POCs are affected by the bill in question. In such cases the Division of Legislation will request the designated POC to secure clearance from the other interested POCs prior to transmission of the completed report to the Division of Legislation, and the responsibility for initiating such consultation and clearance (through the legislative services officer of the other POCs) will be assumed by the designated POC.

B. General Counsel clearances

1. Changes without reclearance. In order to expedite the processing of reports, the Division of Legislation may make changes in proposed reports without reclearance with the POC under the following circumstances:
 - a. Changes not involving any change in the policy set forth in the proposed report; and

h:21-92-50.B.1 continued)

- b. Changes involving changes in policy which are cleared orally with the head of the POC or his legislative services officer.
 2. Disagreements between General Counsel and Principal Operating Component
 - a. In all cases where the Division of Legislation disagrees with the proposed report in a matter involving policy, the Division will generally, if time permits, raise the issues with the POC and seek to reach agreement.
 - b. If time for negotiation with the POC does not permit, or if agreement cannot be reached, the issues will be brought to the attention of the Assistant Secretary for Legislation and an effort will be made to resolve differences (with a conference, if necessary). Other officials in the line of clearance in the Office of the Secretary should note their reservations or comments, if any. The issues should, if possible, be resolved by the Assistant Secretary for Legislation. The file should indicate what any of these major issues are and how they were resolved.
 - c. If the POC desires a meeting with the Secretary on the issues involved, the covering memorandum should so indicate.
 3. General Counsel and Office of the Secretary Clearance

The Division of Legislation will be responsible for getting clearance from the General Counsel and from other interested officials in the Office of the Secretary, and for following up with the latter on rush and priority items.

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

July 31, 1972

CIRCULAR NO. A-19
Revised

TO THE HEADS OF EXECUTIVE DEPARTMENTS AND ESTABLISHMENTS

SUBJECT: Legislative coordination and clearance

1. Purpose. This Circular outlines procedures for the coordination and clearance by the Office of Management and Budget (OMB) of agency recommendations on proposed, pending, and enrolled legislation. It also includes instructions on the timing and preparation of agency legislative programs.

2. Rescission. This revision supersedes and rescinds Circular No. A-19, Revised, dated June 9, 1964, and Transmittal Memorandum No. 1, dated October 18, 1971.

3. Background. OMB performs legislative coordination and clearance functions to (a) assist the President in developing his position on legislation, (b) make known the Administration's position on particular legislation for the guidance of the agencies and information of Congress, (c) assure appropriate consideration of the views of all affected agencies, and (d) assist the President with respect to his action on enrolled bills.

4. Coverage. All executive branch agencies (as defined in paragraph 5b), are subject to the provisions of this Circular. Agencies of the legislative and judicial branches are not covered by its provisions.

5. Definitions. For the purpose of this Circular, the following definitions shall apply:

a. Advice. Information transmitted to an agency by OMB stating the relationship of particular legislation and reports thereon to the program of the President or stating the views of OMB as a staff agency for the President with respect to such legislation and reports.

b. Agency. Any executive department or independent commission, board, bureau, office, agency, Government-owned or controlled corporation, or other establishment of the Government, including regulatory commission or board, and also the municipal government of the District of Columbia.

c. Proposed legislation.* A draft bill with supporting documents which an agency wishes to present to Congress for its consideration. Also, any proposal for or endorsement of legislation included in an agency's annual or special report or in other written form which an agency proposes to transmit to the Congress, or to any member or committee, or to make available to any study group, commission, or the public.

d. Pending bill. Any bill or resolution which has been introduced in Congress or any amendment to a bill or resolution while in committee or when proposed for House or Senate floor consideration during debate. Also, any proposal placed before the conferees on a bill which has passed both houses.

e. Report (including testimony).* Any written expression of official views prepared by an agency on pending bills for (1) transmittal to any committee, member, or officer of Congress, or (2) presentation as testimony before a congressional committee.

f. Enrolled bill. A bill or resolution passed by both Houses of Congress and presented to the President for his action.

6. Agency legislative programs.

a. Submission to OMB. Each agency shall prepare and submit to OMB annually its proposed legislative program for the next session of Congress. These programs must be submitted at the same time as the initial submission of an agency's annual budget request as required by OMB Circular No. A-11. Timely submission is essential for consideration of the items in the programs by Executive Office staff in assisting the President in preparing his budget, legislative program, and annual and special messages.

b. Late submission. Items not included in an agency's legislative program and which have significant upward impact on the annual budget under preparation will not be considered later unless they are the result of circumstances not foreseeable at the time final decisions are made on the budget.

c. Number of copies. Each agency shall furnish 20 copies of its proposed legislative program to OMB. If an agency has no proposals to make, it should submit a statement to this effect.

d. Program content. Each agency shall prepare its legislative program in accordance with Attachment A and its submission should include:

*The terms "proposed legislation" and "report" do not include materials submitted in justification of appropriation requests or proposals for reorganization plans.

(1) All items of legislation which an agency contemplates proposing to Congress (or actively supporting, if already pending legislation) during the coming session, including proposals to extend expiring laws or repeal provisions of existing law. These items should be based on policy-level decisions within the agency and should take into account the President's known legislative, budgetary, and other relevant policies.

(2) A separate list of legislative proposals under active consideration in the agency which have not yet reached the stage of inclusion in its proposed legislative program. For each item in this list, the agency should indicate when it expects to reach a policy-level decision and, specifically, whether it expects to propose the item in time for its consideration for inclusion in the annual budget under preparation.

(3) A separate list of all laws or provisions of law affecting an agency which will expire between the date the program is submitted to OMB and the end of the two following calendar years, whether or not the agency plans to propose their extension. Agencies should propose extensions of expiring laws in the congressional session occurring in the year preceding the expiration date.

(4) All items in the submissions which are proposed, or expected to be proposed, for inclusion in the annual budget shall be accompanied by a tabulation showing amounts for the budget year and for each of the four fiscal years following the budget year as required by section 221(a) of P.L. 91-510, the Legislative Reorganization Act of 1970 (31 U.S.C. 11(a)(12)). (For language of this section, see Attachment B.) The criteria provided in OMB Circular No. A-11 shall be used in preparing these tabulations and are also set forth in Attachment B.

e. Relationship to advice. Submission of a legislative program to OMB does not constitute a request for advice on specific legislative proposals. Such requests should be made in the manner prescribed in paragraph 7 of this Circular.

7. Clearance of agency proposed legislation and reports. The originating agency shall submit to OMB for clearance, proposed legislation or reports (as defined in paragraphs 5c and 5e) before they are transmitted outside the executive branch. Agencies should not commit themselves to testify on pending bills or to submit reports or proposed legislation to Congress on a time schedule which does not allow orderly coordination and clearance to take place. To facilitate congressional action on Administration proposals and to forestall hasty, last-minute clearance requests on pending legislation, agencies should plan

their submissions to OMB on a time schedule which will permit such coordination and clearance to take place. Particular care should be given to ensuring that draft legislation to carry out Presidential legislative recommendations is submitted promptly to OMB with the maximum possible allowance for analysis and review.

a. Timing of agency submissions.

(1) Agencies should submit proposed legislation, reports and testimony to OMB well in advance of the desired date of transmission to the Congress.

(2) Depending on the complexity and significance of the subject matter, the policy issues involved, and the number of agencies affected, an adequate period for clearance by OMB may range from several days to a number of months. Agencies shall consult with OMB staff as to necessary periods for clearance, particularly in cases of major or complex legislation.

(3) On occasion, very short periods for clearances may be unavoidable because of congressional time schedules or other factors. Nevertheless, agencies should make every effort to give OMB a minimum of three full working days for clearance of proposed reports or testimony.

(4) Agencies shall state in their letters of transmittal to OMB any information on congressional schedules or other special circumstances which may require expedited clearance.

b. Copies to be furnished. Agencies should furnish at least six copies of proposed legislation (and supporting materials) and draft reports or testimony to OMB. In cases where wide circulation or expedited action may be required, the originating agency shall consult informally in advance with appropriate OMB staff as to the number of copies to be supplied.

c. Items to be included in agency submissions.

(1) Agencies should identify proposed legislation submitted to OMB by using the number assigned to the proposal in the agency's legislative program submission; e.g., Agriculture, 92-12 (see Attachment A). They shall furnish with each proposal a draft of the transmittal letter to the Speaker of the House and the President of the Senate as well as background information and justification, including where applicable:

(a) an analysis of the provisions of the proposed legislation;

- (b) comparison with existing law;
- (c) comparison with previous agency proposals or related bills introduced in the Congress;
- (d) a statement of other agencies' interests;
- (e) an indication of any consultation with other agencies in the development of the proposal;
- (f) an indication of the impact on State and local governments where significant; and
- (g) information required by statute or by Administration policies, as for example, that noted in paragraph 7d below.

(2) Similarly, in their letters requesting advice on reports or testimony, agencies should identify related bills and set forth any relevant comments not included in the report or testimony itself.

(3) In cases where legislation carries out a Presidential recommendation, agencies should include in the proposed report or the letter transmitting proposed legislation a statement identifying the recommendation and indicating the degree to which the legislation concerned will carry it out.

(4) Agencies shall include in their letters to OMB requesting clearance of proposed legislation and of those reports favoring legislation, an estimate of the budget authority and budget outlays for each of the first five years needed to carry out responsibilities under the legislation involved. The relationship of the first (or second) year's estimate to the President's budget should be described.

(5) Similarly, if the legislation in question would effect savings, increase or decrease Federal revenues, or affect the receipts or outlays of trust or special funds, agencies shall include in their transmittal letters to OMB estimates of these savings or changes.

(6) All estimates should be on a fiscal year basis. Estimates of budget authority and budget outlays shall be projected on the basis of the criteria set forth in Attachment B.

d. Certain statutory requirements and Administration policies. In the preparation of proposed legislation and reports, agencies shall carefully consider and take into account certain

requirements of existing law and Administration policies and directives, which are of general applicability. Agency reports and proposed legislation, shall to the maximum extent possible, contain or be accompanied by, appropriate recommendations, statements, or provisions to give effect to such requirements, including the following:

(1) Civil Rights: Laws, Executive Orders, and other relevant directives in the civil rights area shall receive full consideration. These include Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) providing for equal access to and benefits from programs receiving Federal financial assistance; Titles VIII and IX of Public Law 90-284 (42 U.S.C. 3601ff and 3631) providing for equal opportunity in housing; section 2(8) of Public Law 85-536 (15 U.S.C. 637) providing the basis for channeling Federal agency procurement to minority businesses; the directives relating to equal employment opportunity in the Federal Service and in private employment by Federal contractors (Executive Orders 11246 and 11478); and the directive on planning, acquisition, and management of Federal space (Executive Order 11512).

(2) Environmental impact: Public Law 91-190 (42 U.S.C. 4332) requires that agencies prepare detailed statements concerning the environmental impact of major Federal actions (including recommendations or reports on proposals for legislation) significantly affecting the quality of the human environment. Implementation of this requirement is dealt with generally in guidelines issued by the Council on Environmental Quality. However, information copies of required 102 statements should be submitted to OMB if available at the time clearance is requested.

(3) Cost analysis: Public Law 89-554 (5 U.S.C. 2953) requires that in certain cases agency reports and proposed legislation include five-year estimates of additional expenditures and manpower which would result from enactment of legislation. Public Law 91-510, sections 252(a) and (b), impose a similar requirement on congressional committees and require a comparison of the committee estimates with the five-year estimates of costs provided by executive agencies. (For ready reference, these statutory provisions are set forth in Attachment C.)

e. OMB action on agency submissions.

(1) Upon receipt of an agency's proposed legislation or report, OMB will undertake the necessary coordination with other interested agencies. If congressional committees have not requested reports from all of the interested agencies, OMB will request additional agency views within specified time limits

which must be carefully observed. It will consult with the President, when appropriate, and undertake such staff work for him as may be necessary in cooperation with other Presidential staff. It may request the originating agency to provide additional information; or it may arrange interagency meetings to exchange views, resolve differences of opinion, or to clarify the factual situation.

(2) When coordination is completed, OMB will transmit advice to the appropriate agencies, either in writing or by telephone. In transmitting advice, it may indicate considerations which agencies should or may wish to take into account before submitting proposed legislation or reports to the Congress.

f. Agency action on receipt of advice from OMB.

(1) Agencies shall incorporate in their reports and in their letters transmitting proposed legislation to the Congress, the advice received from OMB.

(2) In the case of reports, receipt of advice contrary to views expressed does not require an agency to change its views. In such cases, however, the agency will review its position. If it decides to modify its views, the agency shall consult with OMB to determine what change, if any, in advice previously received is appropriate. If, after the review, the agency's views are not modified, it shall incorporate the advice received in full in its report.

(3) In the case of proposed legislation, the originating agency shall not submit to Congress any proposal which OMB has advised is in conflict with the program of the President.

(4) Agencies shall furnish to OMB a copy of all proposed legislation, transmittal letters, and reports (including testimony) in the form actually transmitted to the Congress. In cases where reports or testimony cover more than one bill, agencies shall furnish one copy for each bill.

g. Agency action where prior clearance has not been effected.

(1) Agencies shall not submit to Congress proposed legislation which has not been coordinated and cleared within the executive branch in accordance with the provisions of this Circular.

(2) If congressional time schedules do not permit an agency to transmit its proposed report in time for the normal

clearance and advice, the agency shall consult informally with OMB as to the advice to be included in the proposed report. OMB may advise the agency to state in its report that time has not permitted securing advice from OMB as to the relationship of the proposed report to the program of the President. Agencies shall transmit to OMB four copies of such reports at the same time that they are transmitted to the Congress. Where appropriate, OMB will subsequently furnish advice on the report, which the agency shall transmit promptly to the Congress.

(3) In cases where an agency has not submitted a report for clearance and its views on pending legislation are to be expressed in the form of oral, unwritten testimony, OMB will undertake such coordination and give such advice as the circumstances permit. In presenting oral testimony, the agency should indicate what advice, if any, has been received from OMB. If none has been obtained, the agency should so indicate.

h. Drafting service. Agencies need not submit for clearance bills which they prepare as a drafting service for a congressional committee or a Member of Congress, provided that they state in their transmittal letters that the drafting service does not constitute a commitment with respect to the position of the Administration or the agency. Agencies are encouraged to advise OMB of these drafting service requests while the requests are being complied with. A copy of each such draft bill and the accompanying letter should be furnished to OMB at the time of transmittal, together with an explanatory statement of what the bill would accomplish if that is not contained in the transmittal letter.

i. Transmittal of agency communications to the Congress. Agencies should observe the instructions in House and Senate rules to forward proposed legislation or various reports required by law to the Speaker of the House and the President of the Senate. These instructions do not require that reports which have been requested by committee chairmen on bills and resolutions pending before their committees be sent to the Speaker of the House and the President of the Senate. Such reports should be transmitted directly to the requesting committees.

j. Reclearance requirements.

(1) The advice received from OMB generally applies to all sessions of each Congress, but does not carry over from one Congress to the next. Accordingly, agencies do not need to seek reclearance of reports on which they have already received advice before making the same reports on identical bills introduced in the same Congress, unless considerable time has elapsed or

changed conditions indicate that the need for reclearance is appropriate or should be rechecked. Agencies shall, in cases where reclearance does not take place, include in the subsequent report appropriate reference to the advice received on the original report. They shall also transmit one copy of any subsequent report to OMB at the same time that it is transmitted to the Congress. The transmittal letter to OMB should indicate what related report was previously cleared.

(2) Agencies wishing to request reclearance of a draft bill or report, identical or substantially similar to one cleared for transmittal to a previous Congress should transmit their request in a form similar to that illustrated in Attachment D. Submittal of lists of bills or reports will not suffice for this purpose.

(3) Agencies need not submit for clearance reports or written testimony on pending legislation if they have already received advice on the same legislation and the report or testimony simply confirms or enlarges on previously cleared reports or testimony and raises no new issue. However, prior to submitting such reports or testimony, agencies shall consult informally with an appropriate OMB staff member. Where appropriate, OMB may request submission of the report or testimony for clearance even if advice has previously been given with respect to the same legislation. In either case, agencies shall furnish OMB a copy of the report or testimony as sent or delivered.

k. Use of no comment reports. As a general rule, agencies should submit no comment reports only when they have no interest in the pending legislation or nothing to contribute by way of informed comment. Agencies should submit such reports for normal clearance, unless a different procedure is informally arranged with OMB. In either event, they should furnish OMB with one copy of each such report at the time it is transmitted to Congress.

8. Interagency consultation. In carrying out their legislative functions, agencies are encouraged to consult with each other in order that all relevant interests and points of view may be considered and accommodated, where appropriate, in the formulation of their positions. Such consultation is particularly important in cases of overlapping interests, and intensive efforts should be made to reach interagency agreement before proposed legislation or reports are transmitted to OMB. However, in order that the President may have the individual views of the responsible heads of the agencies, any proposed legislation or reports so coordinated shall be transmitted to OMB by the individual agencies involved with appropriate reference to the interagency consultation which has taken place.

9. Enrolled bills. Under the Constitution, the President has 10 days (including holidays but excluding Sundays) to act on enrolled bills after they are presented to him. To provide the fullest possible opportunity for Presidential consideration, agencies shall give enrolled bills top priority handling.

a. Initial OMB action. OMB will obtain facsimilies of enrolled bills from the Government Printing Office and immediately forward one facsimile to each interested agency, requesting the agency's views and its recommendation for Presidential action.

b. Agency action. Each agency receiving such a request shall immediately prepare a letter presenting its views and deliver it in duplicate to OMB not later than two working days after receipt of the facsimile. Different deadlines may be fixed as dictated by circumstances. Agencies shall deliver these letters by special messenger to OMB.

c. Preparation of views letters.

(1) Agencies' views letters on enrolled bills are transmitted to the President and should be written with the objective of assisting him in reaching a decision. Each letter should therefore be complete in itself and should not as a general rule incorporate by reference earlier reports.

(2) Views letters on enrolled bills are privileged communications and agencies shall be guided accordingly in determining their content.

(3) Because of the definitive nature of Presidential action on enrolled bills, agency views letters shall be signed by a Presidential appointee.

(4) Agencies' views letters shall contain:

(a) an analysis of the significant features of the bill including changes from existing law (OMB staff will communicate with the agencies on which one should write the detailed analysis of the bill where more than one agency is substantially affected);

(b) a comparison of the bill with Administration proposals, if any, on the same subject;

(c) such comments, criticisms, analyses of benefits and shortcomings, or special considerations as will assist the President in reaching a decision;

(d) identification of any factors which make it necessary or desirable for the President to act by a particular date;

(e) an estimate of the first-year and recurring costs or savings and the relationship of the first-year estimates to the President's budget; and

(f) a specific recommendation for approval or disapproval by the President.

(5) Agencies recommending disapproval shall submit with their views letters a proposed veto message or memorandum of disapproval, in quadruplicate, prepared on legal-size paper and double-spaced. Such messages or memoranda should be finished products in form and substance which can be used by the President without further revision.

(6) Agencies may wish, in exceptional cases, to recommend issuance of a signing statement by the President. Agencies so recommending shall submit with their views letters a draft of such statement, in the same form and quantity as required for a proposed veto message.

(7) Agencies' views letters on private bills shall cite, where appropriate, precedents which support the action they recommend or which need to be distinguished from the action recommended.

d. Subsequent OMB action. OMB will transmit to the President agencies' views letters, together with a covering memorandum, not later than the fifth day following receipt of the enrolled bill at the White House.

10. Agency legislative liaison officers. As an additional means of effecting interagency coordination, OMB will furnish agencies from time to time with lists of the liaison officers who have been designated by their agencies to handle the coordination of legislative matters. Agencies should promptly notify OMB of any change in their liaison officers.

11. Communications to OMB.

a. Written agency communications to OMB transmitting proposed legislation, proposed reports, views letters on other agencies' proposed legislation or reports, and views letters on enrolled bills should generally be addressed to:

12

Director, Office of Management and Budget
Attention: Assistant Director for Legislative
Reference

The envelopes containing such communications should be addressed:

Legislative Reference Division
Office of Management and Budget
Room 458, Old Executive Office Building

unless a different arrangement is made with an appropriate OMB staff member.

b. Questions on status of proposed legislation, reports, testimony, or enrolled bills should be directed to appropriate OMB staff or to the Legislative Information Center (telephone 395-3900; IDS code 103-3900).

CASPAR W. WEINBERGER
DIRECTOR

Attachments

ATTACHMENT A
Circular No. A-19
Revised

**INSTRUCTIONS RELATING TO THE PREPARATION OF
AGENCY LEGISLATIVE PROGRAMS**

1. Agencies' proposed legislative program should be divided into two parts:

PART I -- PRESIDENT'S PROGRAM PROPOSALS

Those items which the agency believes are of sufficient importance to be included in the President's legislative program and given specific endorsement by him in one of the regular annual messages, such as the budget message, or in a special message.

PART II -- ALL OTHER PROPOSALS

2. Within each Part, agencies should list the items in order of relative priority. Each item of proposed legislation should be given a separate number for purposes of ready identification, using a numbering system which identifies the Congress; e.g., Agriculture, 92-12.

3. With respect to each item, agencies should provide the following information:

a. A brief description of the proposal, its objectives, and its relationship to existing programs. Agencies should include greater detail on the specific provisions of proposals included in Part I, or where the subject matter of the proposal contains new policies or programs or raises complex issues.

b. Pertinent comments as to timing and readiness of draft legislation.

c. Pertinent references to bills and reports concerning the subject of the proposal in current or recent sessions of Congress.

d. An estimate of (1) any budget authority and outlays which would be required during each of the first five years, (2) any savings in budget authority and outlays, or (3) any changes in budget receipts. These estimates should be made for both Federal funds and trust funds.

4. The lists of (a) legislative proposals still under consideration in an agency and (b) expiring laws (see paragraph 6 of

the Circular) should be presented separately from Parts I and II. The following special instructions apply to them:

a. Items still under consideration should be listed in approximate order of priority and each briefly described in terms of subject matter and status.

b. Each expiring law should be described in terms of (1) the subject, (2) the citation, (3) the date of expiration, (4) the agency's views as to whether the law should be extended or permitted to expire, and (5) and other pertinent information. If an agency recommends extension, the proposal should be included in Part I or Part II, as appropriate.

5. The legislative program submission should be prepared on 8 x 10-1/2 size paper. General conformance to the format of the attached exhibit will greatly facilitate the use of these programs.

EXHIBIT FOR ATTACHMENT A
Circular No. A-19
Revised

DEPARTMENT OF GOVERNMENT

PROPOSED LEGISLATIVE PROGRAM FOR THE _____ SESSION OF THE _____
CONGRESS
(Items in each Part are listed in order of priority)

PART I -- PRESIDENT'S PROGRAM PROPOSALS

92-1. "GI Bill" -- authorize increases in educational assistance rate: This proposal would increase educational assistance allowances payable under chapters 31, 34, and 35 of title 38. These programs include vocational rehabilitation training for disabled veterans; education, vocational, cooperative, on-job, farm cooperative, and apprentice training for veterans; and institutional and cooperative training for children, widows and wives of deceased or totally and permanently service-connected disabled veterans.

The suggested new rate for a single veteran with no dependents who is pursuing a full-time institutional program would, for example, be \$190 per month compared with the currently \$175 monthly rate. This represents an increase of approximately 8.6% which is tantamount to the increase in the cost of living which has occurred since the last increase became effective on February 1, 1970. It is believed that substantial increases should be provided in the on-job and apprentice training programs -- areas in which it is felt that larger increases are justified.

Although precise cost data has not been determined, it is believed that the annual increased cost would be of the magnitude of approximately \$175 million.

92-2.

PART II -- ALL OTHER PROPOSALS

92-3. Repeal of Naval Stores, Wool Standards, and Tobacco Seed and Plant Exportation Acts. This proposal would repeal 3 Acts which are no longer necessary. The Agricultural Marketing Act of 1946 provides authorities to effectively carry out the purposes of the Naval Stores Act of 1923 and the Wool Standards Act of 1928. There is no constructive purpose to be served by the Tobacco Seed and Plant Exportation Act of 1940 in its restriction of American exports to tobacco seed and plants for experimental purposes only, since most of the tobacco producing countries of the world have well established research programs in tobacco seed breeding and production. Legislation to repeal these Acts was

introduced in the 91st Congress as S. 568 but no action was taken.

	<u>1973</u>	<u>1974</u>	<u>1975</u>	<u>1976</u>	<u>1977</u>	
		(Dollars in thousands)				
Budget Authority.....	--	-59	-59	-59	-59	
Outlays.....	--	-59	-59	-59	-59	

ATTACHMENT B
Circular No. A-19
Revised

FIVE-YEAR PROJECTIONS FOR LEGISLATIVE PROPOSALS

Section 221(a) of Public Law 91-510, the Legislative Reorganization Act of 1970 (31 U.S.C. 11(a)(12)), requires that the annual budget include projections of appropriation requirements for four years beyond the budget year. The pertinent language of that section is set forth below for ready reference:

"(12) with respect to each proposal in the Budget for new or additional legislation which would create or expand any functions, activity, or authority, in addition to those functions, activities, and authorities then existing or as then being administered and operated, a tabulation showing -

"(A) the amount proposed in the Budget for appropriation and for expenditure in the ensuing fiscal year on account of such proposal; and

"(B) the estimated appropriation required on account of such proposal in each of the four fiscal years, immediately following that ensuing fiscal year, during which such proposal is to be in effect."

Criteria for five-year projections

A. OMB Circular No. A-11 provides that five-year projections for legislative proposals included in the annual budget are to be developed on the basis of the following criteria:

1. The estimates shown for the budget year will be the same as the amounts contained in the regular program and financing schedules for those ongoing activities which require additional authorizing legislation; and the amount contained in schedules headed, "Proposed for separate transmittal under proposed legislation."

2. Estimates should be provided at a high level of program aggregation, avoiding relatively small details and program specifics for which five-year projects would be highly conjectural.

3. The 5-year estimates should be recognized as simple projections of cost (in constant dollars at prices existing at the time the estimates are prepared), which: (a) are not intended to predict future economic conditions, and (b) do not reflect possible changes in the scope or quality of the program which might result from experience gained in actual practice.

4. In the case of legislation authorizing nonrecurring, one-time projects or activities, the estimates should provide for phasing the total cost over the period of time required for completion of the work involved. 2

5. In the case of legislation which extends ongoing programs, the forward projections should reflect only the discretionary program decisions made for the budget year. That is, the future year estimates should be a simple extension of the budget-year program level, with exceptions to be considered only where the program level is determined by statutory or other provisions which make the future year size of the program uncontrollable (e.g., beneficiary population growth); or where the legislation or other provisions clearly add a new component or activity to an ongoing program or significantly revise an ongoing program (in which case the estimates should include an appropriate amount to cover the cost of the added activity).

In the case of such legislation renewing or extending ongoing programs amounts for new substantive activities (i.e., activities not authorized in existing or expiring legislation or proposed reductions in activities) should be shown separately as nonadd entries. These entries should reflect only the increased (or decreased) costs due to policy changes proposed in the reauthorization legislation and should exclude the changes in funding requirements due to factors uncontrollable under current (or expiring) law, such as beneficiary population growth (or decline), etc.

6. Similarly, in the case of legislation authorizing new programs, the forward estimates should reflect only the discretionary decisions made for the budget year. Thus, the forward estimates will be a simple projection of the amount required for continuation on an annual basis of the approved program level that was incorporated in the estimate for the budget year. The projection for future years may, if and only if appropriate, take account of uncontrollable factors such as population growth; for example, population growth (or other demographic factors) may be considered if, and only if, it is clearly recognized in the legislation or other provisions as a determining factor in the size of the program.

B. The Budget of the United States Government, Fiscal Year 1973, Table 16, entitled "Legislative Proposals for Major New and Expanded Programs in the 1973 Budget," contains the following pertinent footnote:

"This table is supplied pursuant to the requirements of sec. 221(a) of the Legislative Reorganization Act of 1970 (Public Law 91-510). Except for cost-of-living adjustments for social security and veterans compensation, the estimates represent simple projections

of cost expressed in constant dollars at prices existing at the time the estimates are prepared. They are not intended to predict future economic conditions; they do not reflect possible changes in the scope or quality of the proposal which might result from experience gained in actual practice; nor do they reflect in all cases possible reductions in the costs of other programs that may come about as a result of adoption of the proposals. Further, the resources which might appropriately be applied in later years will require a reexamination of the relative priorities of these and other Government programs, in the light of economic and other circumstances then prevailing. Thus, the estimates do not represent a commitment as to amounts to be included in future budgets."

ATTACHMENT C
Circular No. A-19
Revised

PUBLIC LAW 89-554 (5 U.S.C. 2953)

"(a) Each report, recommendation, or other communication, of an official nature, of an executive agency which-

"(1) relates to pending or proposed legislation which, if enacted, will entail an estimated annual expenditure of appropriated funds in excess of \$1,000,000,

"(2) is submitted or transmitted to the Congress or a committee thereof in compliance with law or on the initiative of the appropriate authority of the executive branch, and

"(3) officially proposes or recommends the creation or expansion, either by action of the Congress or by administrative action, of a function, activity, or authority of the executive agency to be in addition to those functions, activities, and authorities thereof existing when the report, recommendation, or other communication is so submitted or transmitted; shall contain a statement concerning the executive agency, for each of the first 5 fiscal years during which each additional or expanded function, activity, or authority so proposed or recommended is to be in effect, setting forth the following information:

"(A) The estimated maximum additional -

"(i) man-years of civilian employment, by general categories of positions;

"(ii) expenditures for personal services; and

"(iii) expenditures for all purposes other than personal services;

which are attributable to the function, activity, or authority which will be required to be effected by the executive agency in connection with the performance thereof; and

"(B) such other statement, discussion, explanation, or other information as is considered advisable by the appropriate authority of the executive branch or that is required by Congress or a committee thereof.

- "(b) Subsection (a) of this section does not apply to-
- "(1) the Central Intelligence Agency;
 - "(2) a Government controlled corporation; or
 - "(3) the General Accounting Office."

PUBLIC LAW 91-510, THE LEGISLATIVE REORGANIZATION ACT OF 1970
SECTIONS 252(a) (2 U.S.C. 190j) and 252(b)

Section 252(a) of the Act provides:

"(1) the report accompanying each bill or joint resolution of a public character reported by any committee of the Senate (except the Committee on Appropriations) shall contain -

"(A) An estimate, made by such committee, of the costs which would be incurred in carrying out such bill or joint resolution in the fiscal year in which it is reported and in each of the five fiscal years following such fiscal year (or for the authorized duration of any program authorized by such bill or joint resolution, if less than five years), except that, in the case of measures affecting the revenues, such reports shall require only an estimate of the gain or loss in revenues for a one-year period; and

"(B) a comparison of the estimate of costs described in subparagraph (a) made by such committee with any estimate of costs made by any Federal agency; or

"(C) in lieu of such estimate or comparison, or both, a statement of the reasons why compliance by the committee with the requirements of subparagraph (A) or (B), or both, is impracticable.

"(2) It shall not be in order in the Senate to consider any such bill or joint resolution if such bill or joint resolution was reported in the Senate after the effective date of this subsection and the report of that committee of the Senate which reported such bill or joint resolution does not comply with the provisions of paragraph (1) of this subsection."

Section 252(b) amends the Rules of the House of Representatives by adding similar language applicable to House committees.

**EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503**

**ATTACHMENT D
Circular No. A-19
Revised**

**Director, Office of Management and Budget
Executive Office of the President
Washington, D.C. 20503
Attention: Assistant Director for
Legislative Reference**

Subject: Proposed report on H.R. 10000, 92nd Congress

The Department of Government has been requested to submit a report on the subject bill, which is identical with H.R. 9000 of the 91st Congress.

Will you please advise whether there is any objection to submitting the same report on the subject bill as was cleared by you on June 27, 1970, except for the following modifications:

CHAPTER h:21-93
PREPARATION OF TESTIMONY ON BILLS

- h:21-93-00 Objectives
 - 10 Dates of Hearings
 - 20 Decision as to Who Will Testify
 - 30 Testimony for Secretary or Under Secretary
 - 40 Testimony for Principal Operating Components

h:

21-93-00 OBJECTIVES

- A. To give principal operating components (POCs) ample notice of hearing dates.
- B. To place primary responsibility for preparation and editing of testimony on POCs.
- C. To assure time for clearance by the Division of Legislation and Office of Management and Budget.
- D. To afford the Assistant Secretary for Legislation time for review of testimony to be given by the Secretary.
- E. To afford the Secretary or Under Secretary ample time for reviewing any testimony to be given by him.

h:

21-93-10 DATES OF HEARINGS

- A. Invitations to the Secretary to testify at Congressional hearings shall be routed to the Congressional Liaison Officer for acknowledgment and processing. Other officials in the Office of the Secretary or in the POCs who receive invitations to testify at Congressional hearings should immediately notify the Congressional Liaison Officer and arrange with him for appropriate methods of acknowledgments and processing. See h:21-93-20 below.
- B. The Congressional Liaison Officer will keep a current flow of information on probable hearing dates in memorandums addressed to the heads of POCs with copies to the Division of Legislation, the Assistant Secretary for Legislation, and the Under Secretary.
 - 1. POCs are charged with responsibility for inquiring from the Congressional Liaison Officer as to probable timing, if it has not been covered in a memorandum.

(h:21-93-10B continued)

2. POCs shall be fully familiar with progress of legislation to be administered by them or for which responsibility is assigned to them, and should anticipate well in advance when such bills are likely to come up for hearing.

h:

21-93-20 DECISION AS TO WHO WILL TESTIFY

The Congressional Liaison Officer and the POC concerned should make recommendations to the Assistant Secretary for Legislation at an early date as to who should testify on behalf of the Department, and obtain a decision.

h:

21-93-30 TESTIMONY FOR SECRETARY OR UNDER SECRETARY

- A. Three weeks in advance of the hearing an outline of proposed testimony should be submitted to the Assistant Secretary for Legislation for clearance by him and the Under Secretary, and, where appropriate, the Secretary.
- B. Two weeks in advance of the hearing, two copies of the proposed testimony should be submitted to the Assistant Secretary for Legislation and two copies to the Division of Legislation.
 1. The Division of Legislation will, where necessary, transmit a copy to the Office of Management and Budget.
 2. Charts should be in final form or substantially so.
- C. After review by the Assistant Secretary for Legislation, and at least four days before the hearing, the testimony will be submitted to the Secretary.
- D. POCs should alert Office of the Assistant Secretary for Public Affairs at least four days in advance of hearing dates as to approximately when to expect final copy of testimony for reproduction. Where adherence to these time schedules is not feasible, they should be adhered to as closely as possible.

h:

21-93-40 TESTIMONY FOR PRINCIPAL OPERATING COMPONENTS

- A. At least a week in advance of the hearing, two copies of the proposed testimony should be submitted to the Assistant Secretary for Legislation for clearance, and two copies to Division of Legislation. The Division of Legislation will, where necessary, transmit a copy to the Office of Management and Budget.

- B. Each POC shall assume responsibility for reproduction of testimony of its representatives.



h:21-94-10 General

h:

21-94-10 GENERAL

The responsibility of the Department for reports on enrolled bills is governed by the Office of Management and Budget Circular A-19 (Exhibit h:X21-92-1). Comments to the Office of Management and Budget on enrolled bills (other than appropriation bills) will be processed by the Division of Legislation; appropriation bills will be cleared by the Budget Division of the Department. The Division of Legislation will advise by telephone the head of the POC affected, or such person as he may designate, of the receipt of the request, and obtain by telephone or by messenger such recommendation as the POC may wish to make. Thereupon the Division of Legislation will prepare the report.

REQUESTS FROM PRIVATE PERSONS AND GROUPS FOR
TECHNICAL ASSISTANCE IN DEVELOPING LEGISLATIVE PROPOSALS

h:21-95-00	Purpose and Background
10	General Policy
20	Procedure

h:
21-95-00 PURPOSE AND BACKGROUND

This chapter states Department policy as to the extent to which it and its Principal Operating Components may appropriately respond to requests from non-Governmental individuals or organizations for technical assistance in the development of Federal legislative proposals. In addition, this chapter prescribes the procedure for dealing with such requests.

h:
21-95-10 GENERAL POLICY

The Department cooperates with private individuals and groups seeking assistance, other than legislative drafting assistance, from the Department on matters peculiarly within the Department's knowledge and competence. Such assistance is given within the restrictions imposed by law and to the extent that the Department can do so without impairing its ability to discharge satisfactorily its primary responsibilities. Such time as may be available for this purpose should be distributed equitably among the persons asking the Department's aid. Suitable precautions should be taken so that the rendering of this aid does not, in any way, commit the Department or any of its officers or units to a position with respect to the merits of any proposed legislation.

h:
21-95-20 PROCEDURE

Whenever a request for technical assistance in the development of legislative proposals is received, a memorandum of record of the request and the action taken or proposed to be taken should be sent to the Assistant Secretary for Legislation.

CHAPTER h:22-10

SIGNING AUTHORITY FOR REPLIES TO
CORRESPONDENCE ADDRESSED TO THE SECRETARY

- h: 22-10-00 Purpose
 - 10 Policy
 - 20 Responsibilities
 - 30 Time Limit for Preparation of Replies
 - 40 Preparation of Correspondence Referred for Direct Reply

h:
22-10-00 PURPOSE

This chapter establishes broad policy concerning signing authority for replies to correspondence received from outside HEW and addressed to the Secretary.

h:
22-10-10 POLICY

The Secretary has directed that the authority for signing replies to non-policy correspondence addressed to him, primarily of an informational nature affecting the operations of the Department, should be decentralized to operating agencies and staff offices. Heads of operating agencies and staff offices may likewise decentralize the signing authority for such letters.

h:
22-10-20 RESPONSIBILITIES

- A. Correspondence Control Unit. The Correspondence Control Unit has the initial responsibilities for: determining the operating agency or staff office to prepare the reply to a letter; and determining whether the reply should be prepared for the Secretary's signature or for the signature of another official. This Unit will consult with the Congressional Liaison Officer of the Office of the Secretary or other staff officers as appropriate when supplementary guidance is needed in making referrals for the preparation of replies. Congressional correspondence, whether of a routine nature designated for direct reply by operating agencies or referred for the preparation of a reply for signature by the Secretary, will be routed through the Congressional Liaison Officer enroute to the operating agencies.
- B. Preparing Office. The official to whom a letter is referred for action (the preparing office) has responsibility for assuring that the incoming letter has been referred to the appropriate operating agency or staff office and that the determination of signing level is correct. As provided by present procedures, one carbon copy of all letters to members of Congress shall be sent to the Congressional Liaison Officer.

h:

22-10-30 TIME LIMIT FOR PREPARATION OF REPLIES

- A. The standard time limit for dispatch of a reply to all correspondence addressed to the Secretary is five working days from the date of receipt of the letter in the Secretary's office, unless a briefer period is indicated.
- B. If a complete reply cannot be made within five working days, the preparing office shall write within two working days an acknowledgment for the signature of the official who will sign the complete reply. The acknowledgment shall state the date when a complete reply may be expected.

h:

22-10-40 PREPARATION OF CORRESPONDENCE REFERRED FOR DIRECT REPLY

- A. Replies to all correspondence addressed to the Secretary and referred for direct reply shall open with the statement that the Secretary has asked the signing official to reply to the correspondent's letter. The reply shall also indicate that the correspondent may write again to the Secretary if he has further questions.
- B. In special cases where the tone or nature of the letter so indicates, the preparing office shall write an acknowledgment for the Secretary's signature. The acknowledgment shall contain a statement that the Secretary has asked a specific official of the Department to reply to the correspondence. The preparing office shall then prepare the direct reply to the correspondent.

CHAPTER h.22-20
SUGGESTED GUIDELINES FOR CONCURRENCE AND REVIEW OF
OUTGOING CORRESPONDENCE PREPARED FOR SIGNATURE OF
OFFICE OF THE SECRETARY OFFICIALS

h.22-20-00 PURPOSE

The purpose of this chapter is to suggest guidelines for concurrences and reviews of correspondence prepared for signature of officials in the Office of the Secretary.

h.22-20-10 PREPARING OFFICE

In securing concurrences the preparing office should be guided by the following:

- A. Refer correspondence for concurrence to other offices only if the subject matter goes beyond the responsibility of the preparing office.
- B. Forward information copies to offices who need such information. The need to be informed is not synonymous with the need to concur. Therefore, it is not necessary to send correspondence for concurrence to an office which needs merely to be informed.
- C. Correspondence based on established policy or procedure should ordinarily be reviewed for concurrence by only one organizational level between the preparing office and the Office of the Secretary.
- D. As a general rule, try to limit concurrences to one within a bureau level, exclusive of the preparing office. Normally, a total of four concurring initials should represent a maximum number of concurrences.
- E. Responsibility for editorial and stenographic correctness should rest with the preparing office.

h.22-20-20 REVIEWING AND CONCURRING OFFICES

The reviewing and concurring office should be guided by the following:

- A. As a general rule, do not route correspondence for additional concurrences beyond those originally indicated by the preparing office.
- B. Make every effort to complete your review within four hours of the time of receipt of the correspondence. At times it may not be possible to meet this standard, but normally four hours should suffice.
- C. Try to avoid having a letter rewritten for editorial reasons unless it is truly incorrect, unresponsive, or misleading.

CHAPTER 22-30

INTERNATIONAL CORRESPONDENCE

22-30-00	Purpose
10	Definition
20	Policy
30	Routing and Clearance
40	Special Addressees and Prohibited Areas
50	Miscellaneous Provisions

22-30-00 PURPOSE

To provide policy and procedures for all Department personnel corresponding with addressees in foreign countries and foreign embassies and consular offices in the United States.

22-30-10 DEFINITION

The term "correspondence" includes all official communications such as pamphlets, publications, films, etc.

22-30-20 POLICY

It is the intent of the Department to foster the freest possible communication of HEW staff with foreign individuals and institutions, and to require only the minimum necessary controls to assure that official communications are in consonance with U.S. foreign policy. Authorized Department personnel may carry on official correspondence directly with addressees in foreign countries on the same basis as for domestic addressees except as outlined below.

22-30-30 ROUTING AND CLEARANCE

A. Incoming communications in the international field that are addressed to the Secretary or Under Secretary shall be appropriately referred for action by the Correspondence Control Unit, Executive Secretariat, Office of the Secretary.

B. Outgoing communications in the international field that are prepared for the Secretary's or Under Secretary's signature shall be routed through appropriate agency and/or Departmental channels and the Office of International Affairs Management, with a copy attached for that office.

C. A copy of all communications addressed to officials of foreign governments at the Ministerial or Deputy/Vice-Ministerial level will be sent to the Office of International Affairs Management by the originating office.

22-30-40 SPECIAL ADDRESSEES AND PROHIBITED AREAS

A. Correspondence Sent to Communist Countries and to Diplomatic and Consular Officers of those Countries Assigned in the United States.

Bulgaria	People's Republic of China
Czechoslovakia	Poland
German Democratic Republic	Romania
Hungary	Union of Soviet Socialist Republics
	Yugoslavia

1. Correspondence to the countries listed above and to diplomatic and counselor officers of those countries assigned in the United States that is of a purely technical nature may be sent directly to the addressees, with copies provided to the Department of State and, as appropriate, the American Embassy in the country concerned. Routine replies to requests for publications or reprints of scientific articles may be sent directly without the information copies.

2. Correspondence to the countries listed above or to diplomatic and counselor officers of those countries assigned in the United States that is of a significant policy or administrative nature should be handled in the following manner. The agency originating the communication will include a plain, unsealed envelope addressed to the recipient and additional copies of the communication for the Department of State, and as appropriate for the American Embassy in the country of the addressee, and for the foreign coordinator, if any, of the program involved in that country. The communication, envelope and extra copies will be addressed to the office in the State Department responsible for the program involved or to the country desk officer. The address to be used on the outer envelope is Department of State (appropriate office, which in most cases would be OES/APT/SEP or EUR/EE or EUR/SOV), Washington, D.C. 20520.

3. All correspondence to other countries, or for officers of other countries assigned in the United States will be mailed directly to the addressee. A copy of the correspondence will be forwarded to the appropriate program office or country desk officer at the Department of State, when appropriate.

4. This instruction does not apply to SSA correspondence concerning general inquiries on specific claims.

B. Correspondence with U.S. Government Officials Assigned Abroad

1. All official correspondence addressed to U.S. Government officials in U.S. Embassies should be sent via the appropriate APO rather than via the State Department pouch, when Embassies have APO facilities. Lists of posts and APO numbers are available in the international office of each agency.

2. Correspondence to Embassies without APO facilities should be forwarded by diplomatic pouch, using the following address:

John Doe
American (Embassy, Consulate)
Name of City
c/o Department of State
Washington, D.C. 20520

The notation "UNCLASSIFIED AIR POUCH" must appear on the lower left hand corner of the envelope.

3. SSA should continue to use official Department of State liaison arrangements already established.

C. Prohibited Areas

1. Official correspondence of any kind may not be sent to the following areas except where special permission has been requested through the Office of International Affairs Management and granted by the Department of State:

Albania	North Korea
Cambodia	North Vietnam
Cuba	South Vietnam

2. SSA may acknowledge directly inquiries from Albania and Cuba regarding RSDUI payments.

3. SRS may answer directly inquiries from private individuals in Cuba regarding relocation in the United States.

D. Correspondence of U.S. Recipients of DHEW Contracts and Grants

The above policies also apply to contractors and grantees when their activities involve international correspondence.

20-30-50 MISCELLANEOUS PROVISIONS

A. Bulk mail, -- e.g., books, scientific and technical journals, -- should not be forwarded via diplomatic pouch. This mail should be transmitted through open international mail channels. An exception to this rule may be made for printed material enclosed with letters and small quantities of such material as scientific monographs exchanged between USG scientific agencies and their counterparts in foreign government institutions.

B. Official correspondence to foreign government officials or to private citizens in foreign countries on subjects that will require action by the foreign government and/or the U.S. Embassy should be transmitted in a manner that will ensure that the Department of State and the U.S. Embassy are informed. Such subjects include invitations to visit the United States or to participate in international meetings, grants, contracts, and similar topics.

CHAPTER 22-40

PRINTING AND USE OF LETTERHEAD AND MEMORANDUM STATIONERY

- 22-40-00 Purpose
- 10 Definitions
- 20 Printing and Use of Indicia
- 30 Request for Exceptions

22-40-00 PURPOSE

This chapter sets forth Department policy on the printing and use of letterhead and memorandum stationery.

22-40-10 DEFINITIONS

A. Letterhead Stationery

1. Embossed Letterhead Stationery

Embossed letterhead stationery is stationery of highest quality paper. It contains the embossed Department seal and identifying letterhead designation.

2. Printed Letterhead Stationery

Printed letterhead stationery is stationery that uses good quality paper. It contains the printed Department seal and information identifying the organization.

B. Memorandum Stationery

Memorandum stationery is stationery that uses paper of poorer quality than that used for letterhead. It contains the printed designation "MEMORANDUM" and the printed designation of the Department and operating agency. (See Exhibits X22-40-6 - X22-40-8).

22-40-20 PRINTING AND USE OF INDICIA

A. Embossed Letterhead Stationery

The use of embossed letterhead is limited to letters for the signature of the Secretary.

B. Printed Letterhead Stationery

1. Officers and officials, other than the Secretary, shall use the printed letterhead. Organizational designations down to and including the bureau level may be printed on standard letterhead stationery. Organizational designations below the bureau level, where used, shall be typed on a letterhead at the time a letter is prepared. In organizational designations where an address is included, the ZIP code must be indicated.

(22-40-20B continued)

2. Regional offices and field installations which have a sizeable volume of regular public contacts may print their office name and address on the letterhead.
3. All elements of the Office of the Secretary, other than the Secretary and Under Secretary, shall use letterhead bearing the printed designation "Office of the Secretary." Any additional organizational nomenclature, where required, shall be typed on a letterhead when a letter is prepared.
4. Exhibits X22-40-1 through 4 illustrate approved standards for letterhead format, style, and type face. Blue ink shall be used for all letterhead stationery. (Printing Management Manual Exhibit X1-30-1 contains printing standards and specifications.)

C. Memorandum Stationery

In addition to the general designation "United States Government Memorandum," the organizational designation down to and including the bureau level may be printed on memorandum stationery. Organizational designations below the bureau level, where used, shall be typed on the memorandum stationery at the time a memorandum is prepared.

D. Continuation Sheets

Printing is not authorized on continuation sheets used with letterhead or memorandum stationery.

E. Manifold Sheets

Manifold sheets, commonly called tissues, are used in making carbon copies. Tissues containing printed letterheads are used in making carbon copies that are sent outside the Department when identification of the organization is necessary. The printing is in the same format and ink color as used on regular letterheads. Printing is not authorized on tissues used for internal copies of correspondence, including continuation sheets. The printing on the official file box copy has been approved by the Bureau of the Budget.

F. Envelopes (Mailing)

1. Envelopes used for correspondence signed by the Secretary should match the letterhead.

(22-40-20F continued)

2. Envelopes used by offices and officials (other than the Secretary) shall have the following notation printed in the upper left corner:

Department of
Health, Education, and Welfare
Washington, D. C. 20201

Official Business

3. Envelopes used by all offices outside Washington shall have the following basic notation printed in the upper left corner:

Department of
Health, Education, and Welfare
(Insert appropriate address)

Official Business

The "Appropriate Address" must include the ZIP code.

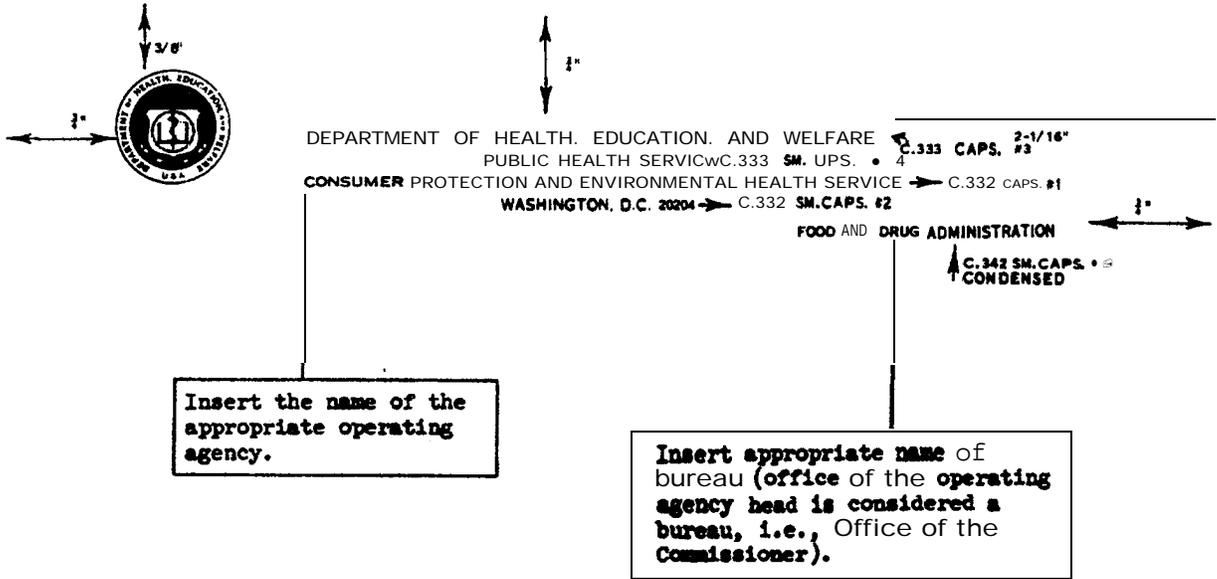
22-40-30 FORM LETTERS, SPECIMEN LETTERS, AND OTHER REPRODUCED MATERIAL

1. In those instances in which letterheads are used on form letters, specimen letters, and other reproduced material, the offices concerned shall use the same format, style, type face, and type size as described in Section 22-40-20.
2. In the interest of economy black ink may be used in these instances for both the letterhead and the body of the material.

22-40-40 REQUESTS FOR DEVIATION

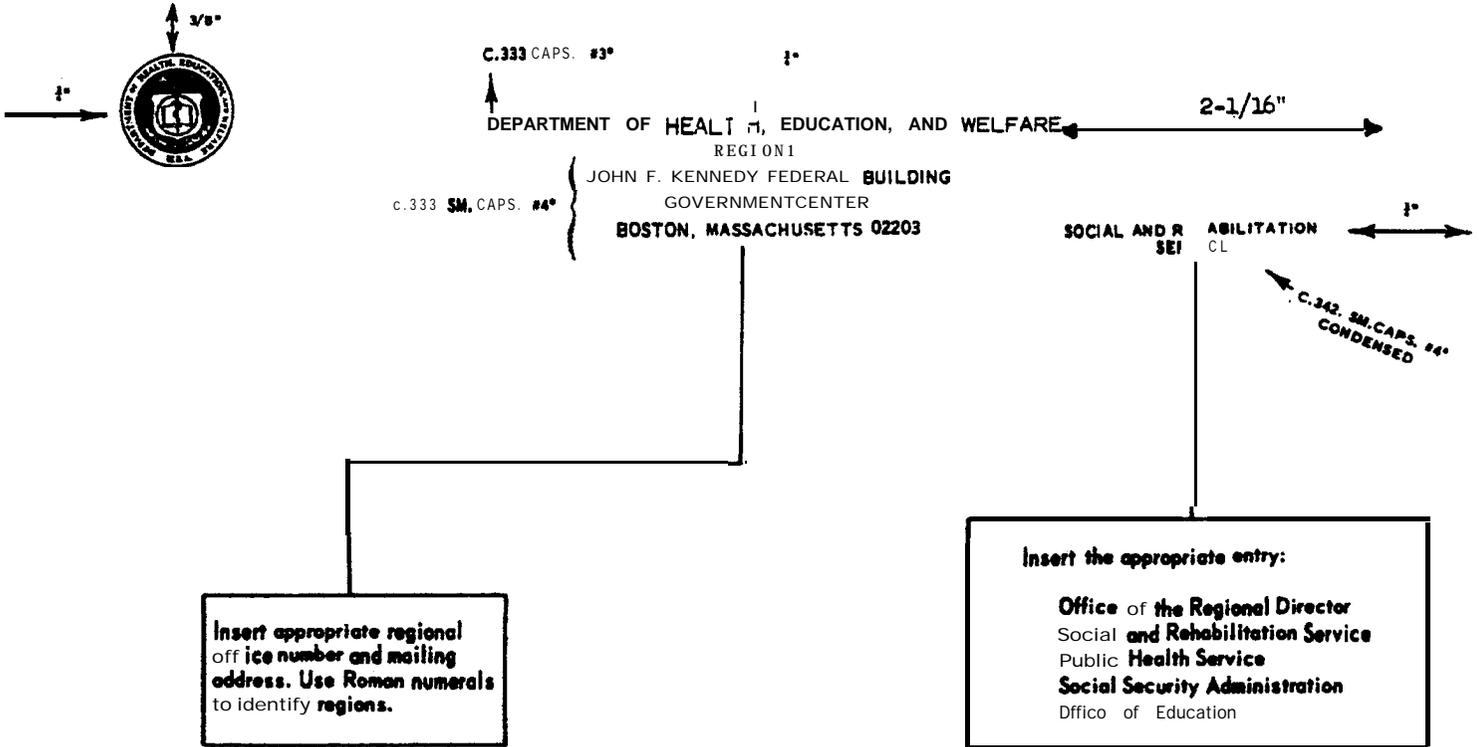
Requests for deviation from any provisions of this chapter shall be made in writing to the Deputy Assistant Secretary for Administration (Management Systems).





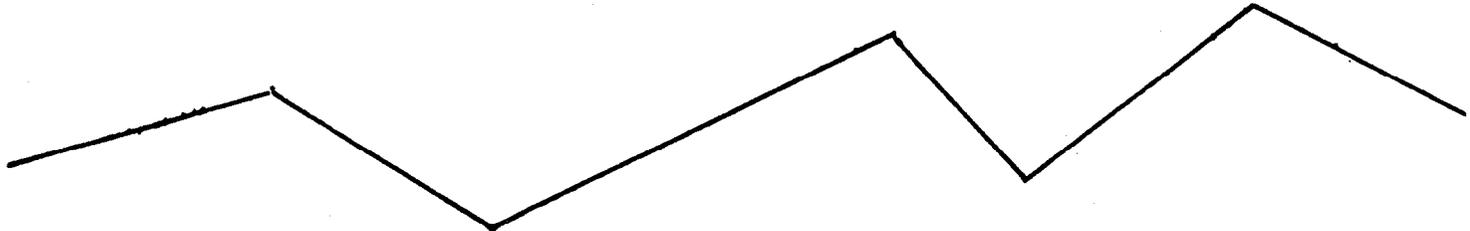
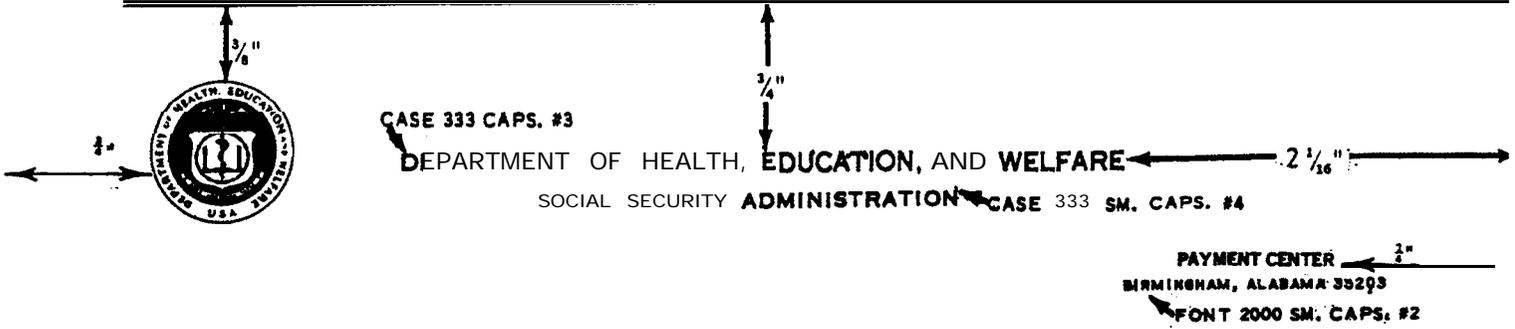
Use the local postal address of the agency or bureau headquarters if located outside Washington, D.C. (i.e., Baltimore, Md. 21235).

For specifications relative to ink color, trim sites, paper standards, see Printing Management Manual Chapter 1-30, and Printing Management Manual Circular HEW-4.

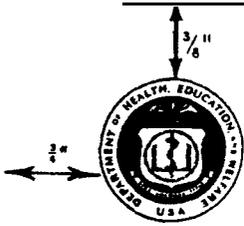


● Recommended type **styles** and **sizes**.

For specifications relative to ink color, trim sites, paper standards, see Printing Management Manual Chapter 1-30, and Printing Management Manual Circular HEW-4.



For specifications, relative to ink color, trim sizes, paper standards, see **Printing Management Manual** Chapter 1-30, and **Printing Management Manual** Circular HEW-4.



CASE 333 CAPS. #3

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE - ; ? 1/16"

SOCIAL SECURITY ADMINISTRATION

CASE 333 SM. CAPS. X4

CASE 34 CAPS. AND SM. CAPS. X2

SOCIAL SECURITY ADMINISTRATION

DISTRICT OFFICE FONT 2000

906 S. FLORIDA AVENUE

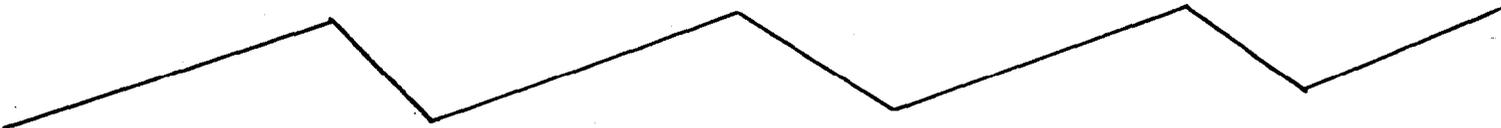
P.O. DRAWER E

LAKELAND, FLORIDA 33802

TELEPHONE: 886-8195

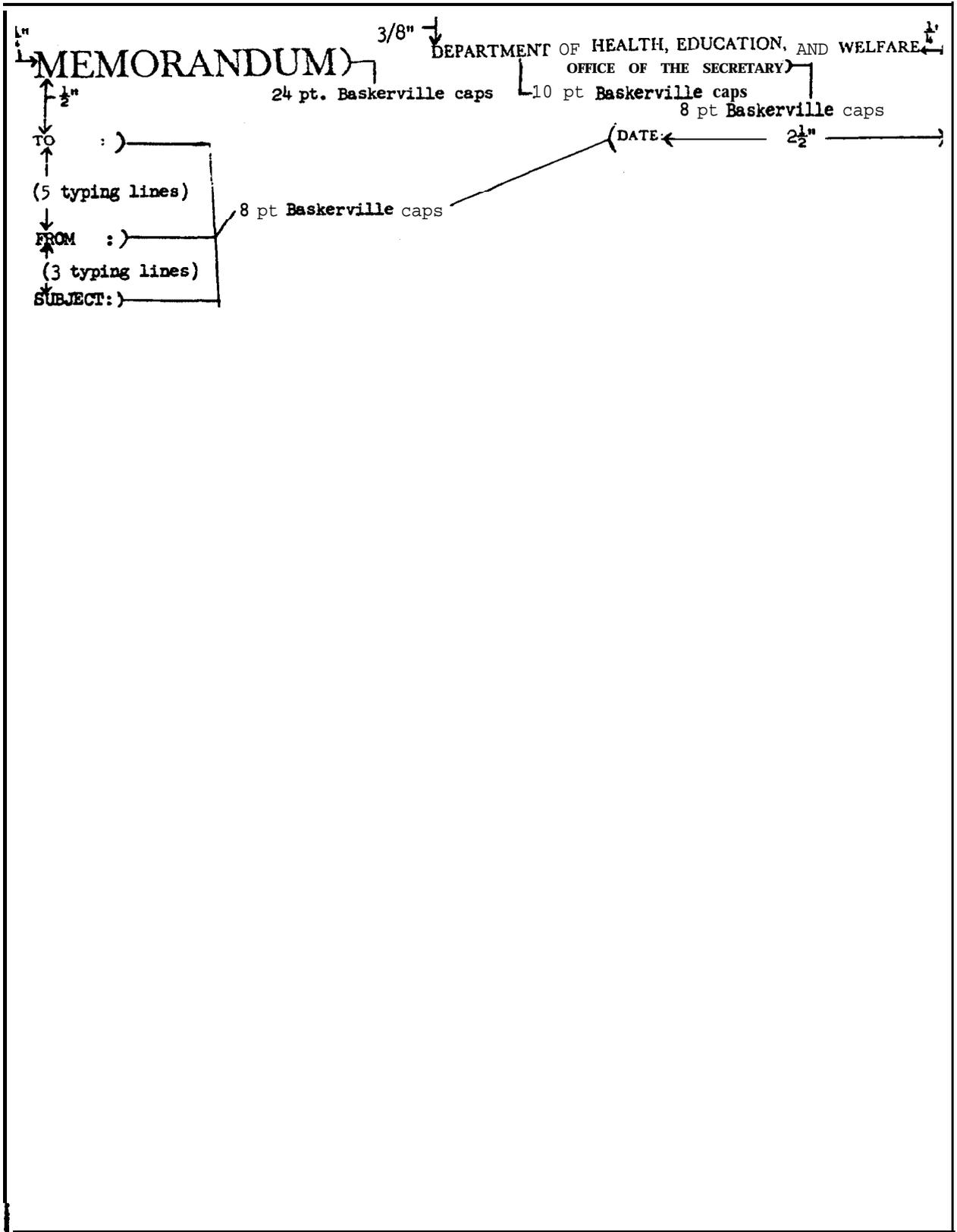
CAPS. #2

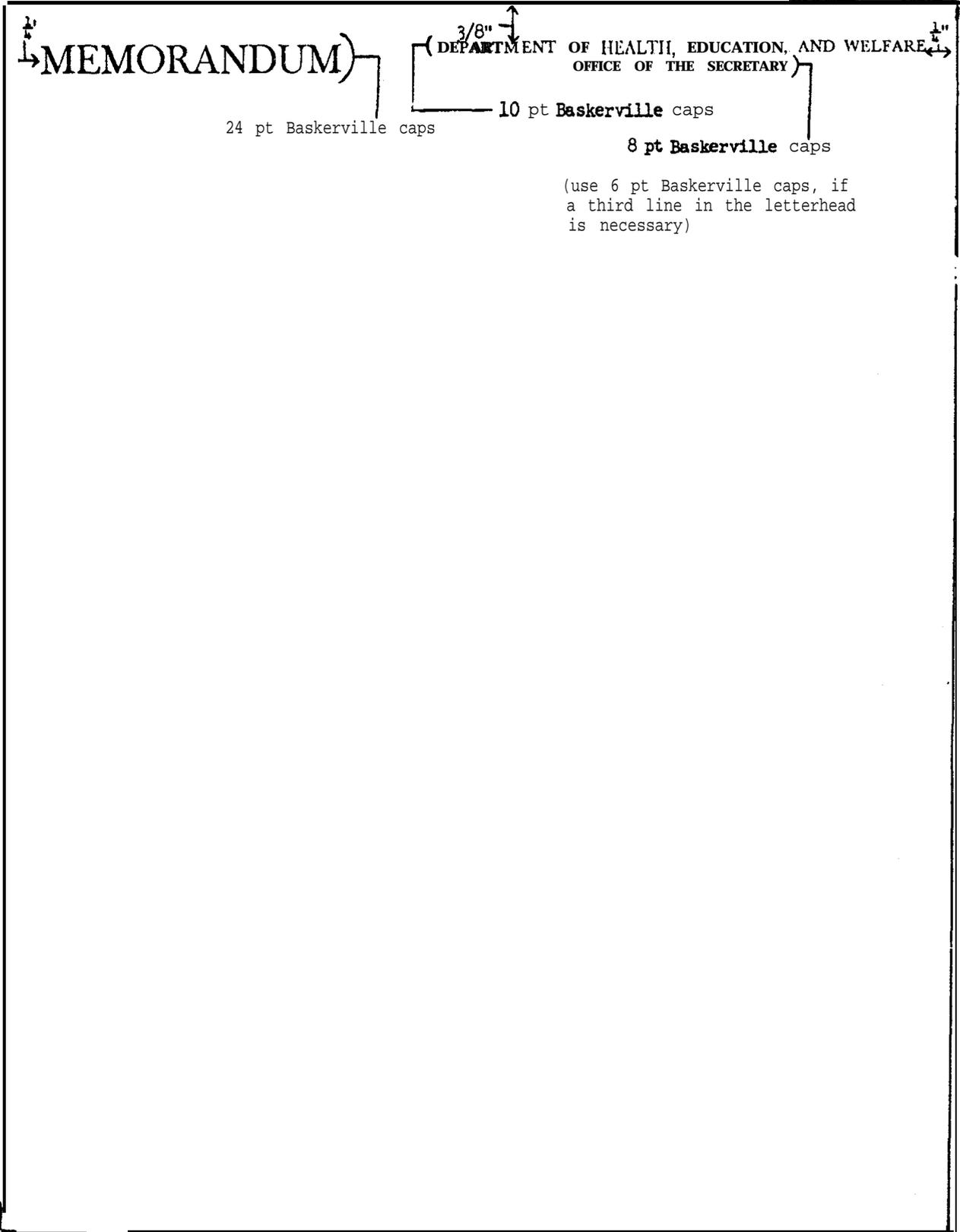
Insert appropriate address (and telephone number where necessary) of field installations which have a sizeable volume of public contacts.



For specifications relative to ink color, trim sizes, paper standards, see Printing Management Manual Chapter I-30, and Printing Management Manual Circular HEW-4.







h:22-50-00	Purpose
10	Policy
20	Referral Procedure
30	Editorial Guidelines
40	Processing Requirements
50	Campaign Mail
60	Weekly Report
70	Responsible Office

h:22-50-00 PURPOSE

This chapter gives instructions on how to answer mail which the White House refers to the Department.

h:22-50-10 POLICY

The President has assigned a high priority to the prompt and thorough answering of citizen mail so that he and his Administration can stay close to the people. The Secretary fully supports this policy and has asked each HEW component and office to process White House mail in a timely and responsive manner.

h:22-50-20 REFERRAL PROCEDURE

The White House sends both controlled mail (called individual referrals) and uncontrolled mail (known as bulk mail) to the Department. It sends controlled mail to the Secretary, whose Executive Secretariat (ES) refers it to HEW components and offices. The White House sends uncontrolled mail directly to the Office of the Secretary and to other HEW offices, primarily at the POC and agency levels. When an HEW office receives such mail, it prepares a reply and sends it either to the citizen (direct reply) or to a higher level office for signature and mailing to the citizen.

h:22-50-30 EDITORIAL GUIDELINES

- A. Begin replies to letters addressed to the President with phrases like "Thank you for *your* letter of _____ to President Carter" or "Thank you for writing to President Carter concerning _____"

Do not use the phrase "President Carter has asked me to respond to _____."

- B. Where possible, program people should prepare the reply so that they may **serve** as contact points for further letters from citizens. As appropriate, they should include their name, address, and telephone number in their replies.

h:20-50-40 PROCESSING REQUIREMENTS

Each POC and OS office will institute necessary arrangements **for** meeting the President's expectations for handling White House mail. While these procedures may be designed to fit the needs of the individual POC or OS staff office, they must meet the following minimum requirements.

A. On All White House Mail (Individual Referrals and Bulk)

1. Control the flow of this mail at all times so that each letter can be rapidly and easily tracked and located.
2. For individual referrals, use due date established by OS/ES. For bulk mail, assign a due date of no more than nine working days from date of receipt in the POC or OS office.
3. Route each incoming letter expeditiously so that it reaches the preparing office within 48 hours after receipt in the POC or OS office.

Note: The expeditious routing of White House mail is essential if we are to meet the nine working day limit.

4. Record and maintain centrally within the POC or OS office information on incoming letters to permit follow up on overdue responses. Such information should include name of writer, subject of letter, date of letter, date of receipt, office preparing the reply, and due date.
5. Follow up within 72 hours on overdue responses.
6. Close out each letter to verify that the preparing office has responded to incoming White House mail. The close out process must provide the POC or OS office with information that the preparing office has responded to each letter received.
7. Ensure that copies of all responses to White House mail are maintained in the preparing office and are available upon request to authorized officials.

8. Maintain data on White House mail for the weekly report to the Executive Secretary on the status of such mail. See Section **h:22-50-60**.
9. Keep interim replies to a minimum, but use them: **(a)** when issues are too complex to respond within nine working days; **(b)** where the incoming letter is referred to a regional or field office for reply; or **(c)** when other comparable situations **occur**. When an interim reply is sent, the final reply is due two weeks from the date of the interim.
10. Include the original incoming letter and any correspondence received with it when sending the reply to another component or office for signature and mailing.

B. On Individual Referrals Only

As soon as a direct reply is mailed, send a copy of it, the original incoming letter, and the White House control form to:

Director, Agency Liaison Staff
Old Executive Office Building
Room 94, Stop 28

Also close the **record for** the letter on the Secretary's Correspondence Control System. Each POC and OS office must decide from which point or points within the component or office these materials will be sent.

Note : This action is important. It avoids **receiving** erroneous overdue reports from the White House.

C. On Bulk Mail Referred to Regional or Field Units

Any POC or OS office that routinely refers bulk mail to its regional or field units for direct reply does not have to track this mail beyond the interim reply. However, it should:

1. Send an interim reply at the same time it forwards the letter to a regional or field unit for direct reply. Include in the interim reply the name of the unit that will answer the letter and the approximate date of reply.
2. Stress to the answering unit the importance of answering within two weeks after the date of the interim reply.
3. Ensure that regional and field units are answering within the prescribed time limits by sampling copies of direct replies or taking other appropriate measures.

h:22-50-50 CAMPAIGN MAIL

When a POC or OS office receives a **sizeable** volume of "campaign" mail from the White House which creates problems in meeting the processing requirements prescribed in section **h:22-50-40**, it should consult immediately with the OS Executive Secretariat. Both parties should jointly decide the most effective method for responding to this mail.

"Campaign" mail is mail received by the Department, generally over a short period of time, in response to a major national or regional issue involving Department programs, plans, operations, etc.

h:22-50-60 WEEKLY REPORT TO THE EXECUTIVE SECRETARY

Each POC and OS office should submit a weekly status report on White House mail by close of business each Monday to the Executive Secretary, Room **606G**, Humphrey Building. The report should reflect the workload during the previous week.

Exhibit X22-50-1 illustrates the weekly report format. Each Monday each **POC** and OS staff office should add a line to its report to reflect the previous week's workload, photocopy the report, and send a copy to the Executive Secretary. Adding a line each week to the same page enables those who review the report to compare weekly workloads and discern trends and significant changes in workload. Remember each line reflects data for one week only. It does not show cumulative data.

The weekly report contains these data items:

Number received. Number of individual referrals and bulk letters requiring a reply received in the previous week. Includes mail received from OS/ES and directly from the White House.

Number pending reply. Number of individual pieces of White House mail received in previous week and prior weeks that are awaiting reply.

Number of replies. Number of final and interim replies made during **the previous** week.

Number overdue. Number of pieces of White House mail whose replies were overdue at end of previous week. Report this information by the time frames shown on the weekly report format.

In addition, if White House mail increased significantly during the previous week, include an explanation of why this occurred.

h:22-50-70 RESPONSIBLE OFFICE

HEW personnel may obtain additional information about the requirements of this chapter from their executive secretariat or from:

OS Executive Secretariat
Room **606G**, Humphrey Building
Telephone: **8-245-9098**

WHITE HOUSE MAIL STATUS REPORT
 (Name of reporting POC or OS Staff Office)

Week Ending	Number Received	Number Pending Reply	Number Of Replies		5 Days or Less	OVERDUE		
			Final	Interim		6 to 15 Days	16 to 30 Days	Over 30 Days
4/21	27	39	12	2	4	0	1	0
4/28	16	28	27	3	2	1	0	1
5/ 5	9	18	19	0	3	0	0	0
5/12	21	22	17	1	7	1	0	0
5/19	32	34	20	0	3	2	0	0
		<u>Sample Only</u>						

Exhibit 22-50-1
 GENERAL ADMINISTRATION
 HEW TN-h:78.2 (10/30/78)

Subject: Compliance with Court Orders

- 23-10-00 Purpose
 - 10 Legal Basis
 - 20 -Definitions
 - 30 Compliance System

23-10-00 PURPOSE

This chapter states Department procedure for assuring compliance with court orders issued against the Department.

23-10-10 LEGAL BASIS

This chapter and its requirements are based on Secretarial memoranda of November 14, 1977 and March 39, 1982 respectively, subject: Compliance with Court orders Against the Department.

23-10-20 DEFINITIONS

For the purposes of this chapter, these definitions apply:

- A. Court order is any temporary restraining order, preliminary injunction, permanent injunction, or other order of a court.
- B. Reporting units are those HHS organizations which are required to monitor and report as indicated in Section 23-10-30 on their court order compliance activities. These units and their reporting areas are:

<u>Reporting Units</u>	<u>Reporting Areas</u>
Health Care Financing Administration Office of Human Development Services Public Health Service	Health Care Financing Administration Office of Human Development Services Public Health Service except Food and Drug Administration
Food and Drug Administration Social Security Administration	Food and Drug Administration Social Security Administration
Office of Community Services office of Child Support Enforcement	Office of Community Services Office of Child Support Enforcement
Office of Assistant Secretary for Management and Budget	Office of the Secretary except Office for Civil Rights and Office of Assistant Secretary for Personnel Administration
Office for Civil Rights Office of Assistant Secretary for Personnel Administration	Office for Civil Rights Office of Assistant Secretary for Personnel Administration

- C. Reporting area includes headquarters, regional, and field activities of each reporting unit.

23-10-30 COMPLIANCE SYSTEM

- A. Each reporting unit will develop, implement, and maintain a system for assuring compliance with court orders issued against it. Its system will enable the reporting unit to:
1. Identify, log, and notify appropriate officials about each court order upon its receipt **in the** Department.
 2. Provide appropriate officials with an early and thorough analysis of what the court order will require from the Department.
 3. Keep appropriate officials fully informed on the progress of the Department's compliance with the court order.
 4. Report **immediately** to appropriate **officials** on substantive, procedural, or other difficulties that may preclude the Department from complying fully with the court order or may create serious problems for the Department if it complies fully with court order.
 5. Monitor and report on its compliance with each court order that imposes obligations of such a character that continuing oversight of compliance activities is required.
- B. To fully implement its compliance activity, each reporting unit will assign overall responsibility for its compliance system to a senior level official. That official will assure that the system is developed, implemented and maintained, and that it effectively **monitors** and reports on compliance activities. He/she will serve as a liaison with the office of the General Counsel on court order compliance.
- c. The Assistant Secretary for Management and Budget, upon request, will assist each reporting unit in developing, implementing, or modifying its compliance system.

- 23-20-00 Purpose
 - 10 Scope
 - 20 Designation of officers and employees to whom process shall be delivered

23-20-00 PLJRPOSE

This chapter provides information about the service of process upon the Secretary of Health, Education, and Welfare and designates the officers and employees **to** whom such process shall be delivered. This information is published in the Federal Register and is codified in Code of Federal Regulations Title 45, Part 4.

23-20-10 SCOPE

This chapter applies to service of summons, complaints, subpoenas and other process in all litigation in which the Secretary must be served.

23-20-20 DESIGNATION OF OFFICERS AND EMPLOYEES TO WHOM PROCESS SHALL BE DELIVERED

Summons, complaints, subpoenas and other process which are required to be served on or delivered to the Secretary of Health, Education, and Welfare shall be delivered to the Deputy General Counsel, the secretary to the Deputy General Counsel, or the secretary to the General Counsel, Office of the General Counsel, 200 Independence Avenue, S.W., Washington, D.C. 20201.

DEPARTMENT OF
HEALTH, EDUCATION, AND WELFARE
WASHINGTON, D.C. 20201

OFFICIAL BUSINESS
PENALTY FOR PRIVATE USE, \$300

POSTAGE AND FEES PAID
U.S. DEPARTMENT OF H.E.W.



391

FIRST CLASS

Subject: MANAGEMENT OF REGIONAL OFFICE SPACE

- 24-01-10 Purpose
 - 20 Policy
 - 30** Applicability
 - 40 Responsibilities
 - 50** Procedures
 - 60 Definitions
 - 70 Reporting Requirements

24-01-10 PURPOSE

The purpose of this chapter is to provide policy directives and procedures for the acquisition and management of regional office space.

24-01-20 POLICY

- A. The reduction of government space on a nationwide basis is an initiative of the Administration and is mandated by **Executive Orders 12411 (Government Work Space Management Reforms - 3/29/83)** and **12512 (Federal Real Property Management - 4/29/85)**. These Executive Orders direct the General Services Administration (GSA) to provide policy oversight and procedures to guide agencies in managing real property assets.
- B. It is the policy of the Department to support and implement this Presidential initiative through the development of space reduction plans and the practice of good space management in conformance with the applicable Executive Orders and GSA Federal Property Management Regulations **(FPMRs)**.
- C. It is the policy of the Department that the Regional Director is responsible for the acquisition and management Of all regional office space for all regional office components.
- D. It **is** the policy of the Department that provisions of GSA FPMR, Temporary Regulation D-73, be followed **explicitly**. All HHS Regional Offices will individually achieve a maximum space utilization of 135 square feet per work station (excluding GSA approved supplemental space) by the end of **FY 1990**. Effective with the publication of D-73 **(02/11/87)**, all regional office moves or major space renovations **in-place** will meet the D-73 requirement **for** a utilization rate of 135 square feet per work station, including supplemental space.

- E. All Regional Office renovations or moves will emphasize the provision of a quality office environment through the use of systems or modular furniture (as funding allows) **particularly** where space utilization rates will be at the **135** square foot level or less, including supplemental **space**. Furniture buys will be coordinated to the maximum **extent** possible to minimize purchase price through large-scale buying. All systems and modular furniture buys require prior approval of the Office of Procurement and Logistics Policy, Office of the Assistant Secretary for Management and Budget (**ASMB**).
- F. The Regional Director is fully responsible for all Space utilized by all departmental elements in the regional office. The Regional Director has the authority to allocate blocks of space to Staff Divisions and Operating Divisions sized in accordance with this policy and applicable GSA **FPMRs**. Each Staff Division and each Operating Division component must meet the required utilization rate within the imposed time frame independent of each other. Averaging of rates for regional components in order to meet the office-wide goal is not authorized.
- G. The Regional Director will manage the regional office **space** **SO as to** insure maximum cooperative use of space and equipment by all components in the regional office. The Regional Director will insure that all conference rooms in the regional office are managed in such a way as to provide Practical availability for any meeting or conference requirement for any regional office component. No conference room will be allocated for the exclusive use of any regional office component.

24-01-30 APPLICABILITY

The provisions of this directive apply to all regional office components of the Office of the Secretary, all regional office components of the Operating Divisions and any "field offices" of OS components. This policy does not apply to any OPDIV field offices Unless said field office is located in an HHS Regional Office Building.

24-01-40 RESPONSIBILITIES

- A. It shall be the responsibility of the Regional Director to acquire and manage all space in the regional office. It is the Regional Director's responsibility to insure the development and implementation of space management plans that will meet the requirements and space reduction goals of the applicable Executive Orders and GSA **FPMRs**.
- B. Heads of all Regional Staff Divisions and Regional Operating Divisions have the responsibility to support the provisions of this directive and to provide assistance, as requested, to the Regional Director for the implementation of regional space management plans.

24-01-50 PROCEDURES

- A. Work Space Management Plans
 - o Each Regional Director will update the Regional Office Work Space Management Plan in preparation for the annual budget cycle each fiscal year and at other such times as specified by headquarters instructions. Formats will be in accordance with applicable GSA FPMRs supplemented by specific instructions from OS Headquarters. The regional office plan will include each regional Staff Division and each regional Operating Division. This plan will show specific progress toward the goal of reducing and maintaining space to the then current acceptable utilization rate for each Staff Division and Operating Division.
 - o Regional Office Work Space Management and Quality Workplace implementation **and** budget plans **requiring** multi-OPDIV and STAFFDIV funding and action coordination shall be submitted to the ASMB for necessary headquarters funding commitments and coordination. Any conflicts or indecision will be resolved by the ASMB.
- B. Space Allocation for Regional Office Components
 - o Upon the request of the Regional Director or his staff representative, the heads of regional Staff Divisions and Operating Divisions are required to certify the accuracy of the number and type of all personnel who work in regional office "office" space.

- o Additionally, upon request of the Regional Director, the headquarters offices of each STAFFDIV and OPDIV are required to certify (in writing) anticipated regional office personnel counts.
- o Allocation of Office Type Space.

The Regional Director will allocate office space to components based on personnel counts and authorized special work station counts. The sum total of "space allowance units" as specified below determines the overall amount of space "allocated" to each regional office component. (NOTE: A "space allowance unit" will be a maximum of either 135 square feet per workstation plus supplemental, 135 square feet per workstation including supplemental, or 122 square feet per workstation including supplemental, per D-73 definitions.)

- . Authorized full-time permanent slots: one space allowance unit per full-time permanent (**FTP**).
- . Stay-in-school students and/or other ceiling exempt staff: one-half space allowance unit per person.
- . Authorized full-time temporary employees: one space allowance unit per employee.
- . Authorized part-time employees: one space allowance unit for employees with a work week greater than 20 hours but less than 40 hours per week. One-half space allowance unit for those working 20 hours per week or less.
- . All contract employees including physicians under contract to SSA: one-half space allowance unit per employee.
- . Computer work stations: one-half space allowance unit for each terminal or PC centrally located and dedicated for the regular use of multiple employees. The number of computer work stations will not exceed one work station per 4 employees who do not have a terminal **or** PC at their own work station.

The above information is only for determining overall space allocations to regional office components. This is not a directive regarding actual work station size, count or configuration. In accordance with GSA FPMRS, individual work station size is to be determined by the furniture and equipment requirements of the specific task to be performed at that work station.

o Allocation of Ancillary Special Type Space.

The Regional Director may allocate special space for the purposes listed below with GSA approval and with the recognition that most types of special Space cost more per square foot than office space.

- . Special conference room space (meeting FPMR definitions) can be allocated to not exceed one conference room per floor or one conference room Per 150 employees - whichever is less. Regional office components may establish additional meeting areas (without any unique architectural treatment), as necessary, within their office space allocation.
 - . Special training room (meeting FPMR definitions) space can be allocated where a component has a regular training function for the training of Personnel who do not work in the regional office. Utilization of these training rooms must be sufficient to be shown cost-effective over the renting or use of other available training facilities outside the regional office.
 - . Special storage space **can** be utilized where feasible for large **dedicated** filing areas or similar purposes.
 - . Special "library" space can be utilized where feasible for the OGC library requirement (only).
 - . Other special type space can be allocated, if required, in accordance with FPMRS.
- o Any unresolved conflict regarding personnel counts or space allocation will be referred to the ASMB for resolution.

24-01-60 DEFINITIONS

The meaning of words and phrases as used in this chapter pertaining to the space management program can be found in FPMR Temporary Regulation D-73 with the exception of the term "space allowance unit" which is defined and used exclusively in HHS Policy as a basis for determining overall space allocation figures. The term "agency bureau" means any departmental reporting entity for which there is a separate appropriation listed in the President's budget submission.

24-01-70 REPORTING **REQUIREMENTS**

Regional Directors will submit the annual Work Space Management **Plans** in the approved format in accordance with OS Headquarters directives. Normally, OPDIV portions of the plan go **to** OPDIV headquarters elements and OS portions go to OS Headquarters. Interim reports regarding specific space management activities will also be submitted, as requested. Plans and reports directed to OS Headquarters will be submitted to the Deputy Assistant Secretary, Administrative and Management Services/ASMB unless otherwise directed. Plans and reports directed to OPDIV and STAFFDIV headquarters elements will first be coordinated with regional OPDIV and STAFFDIV heads.

Subject: MANAGEMENT OF GENERAL SERVICES ADMINISTRATION ASSIGNED
OFFICE SPACE FOR OPERATING DIVISIONS AND STAFF DIVISIONS

24-02-10	Purpose
20	Policy
30	Applicability
40	Responsibilities
50	Procedures
60	Definitions
70	Reporting Requirements.

24-02-10 PURPOSE

The purpose of this chapter is to provide policy directives and procedures for the acquisition and management of General Services Administration (GSA) assigned office space (including ancillary special type space) for Operating Divisions (**OPDIVs**) and Staff Divisions (**STAFFDIVs**).

24-02-20-o POLICY

- A1 The reduction of government space on a nationwide basis is an initiative of the Administration and is mandated by Executive Orders 12411 (Government Work Space Management Reforms - 3/29/83) and 12512 (Federal Real Property Management - 4/29/85). These Executive Orders authorize GSA to **provide policy** oversight and procedures to guide agencies in managing real property assets.
- B. It is the policy of the Department to support and implement this Presidential initiative through the development of space reduction plans and the practice of good space management in conformance with the applicable Executive Orders and GSA Federal Property Management Regulations (**FPMRs**).
- C. It is the policy of the Department that the Head of each OPDIV (except HDS and FSA) is responsible for the acquisition and management of office space for field and headquarters components of that organization, excluding regional office space and space in the southwest Washington complex. Space Management for **HDS** and **FSA** headquarters in the southwest Washington complex is handled by the office of Buildings Management and Telecommunications. Regional space management for **HDS** and **FSA** is the responsibility of the Regional Director of each region. The Regional Director of each region has responsibility for acquisition and management for all regional office space. (See General Administration Manual Chapter 24-01, "Management of Regional Office Space," for details on regional office space management).

- D. It is the policy of the Department that provisions of the GSA FPMR, Temporary Regulation D-73, be followed explicitly. All OPDIV agency bureaus and all STAFFDIVs will individually achieve a maximum space utilization of 135 square feet per work station (excluding GSA approved supplemental space) by the end of FY 1990. Effective with the publication of D-73 (02/11/87), all office moves or major space renovations in-place will meet the D-73 requirement for a utilization rate of 135 square feet per work station, including supplemental space.. ...
- E. OPDIVs (not OS STAFFDIVs) may enter into negotiations with GSA for changes in GSA approved supplemental space factors, to define various types of special work stations, or 'for the purpose of developing special Space Allocation Standards unique to specific types of facilities. Because work **space** management has such a significant and direct impact on OPDIV budgets, OPDIVs must notify the Assistant Secretary for Management and Budget (**ASMB**) that they intend to enter into such negotiations with GSA, must inform the ASNB of progress in said negotiations, and must obtain signature approval of the ASMB on any applicable documentation before seeking GSA signature approval and before using same for space management purposes for OPDIV space.
- F. Emphasis on the use of systems or modular furniture is recommended (as funding allows) for all office renovations or moves, particularly where space utilization rates will be at the 135 square foot level or less, including supplemental space. Furniture buys should be coordinated to the maximum extent possible to minimize purchase price through large-scale buying. All systems and modular furniture buys require prior approval of the Office of Procurement and Logistics Policy, Office of the Assistant Secretary for Management and Budget (**ASMB**).

24-02-30 APPLICABILITY

The provisions of this directive apply to all GSA assigned office space utilized by components of OPDIVs and STAFFDIVs excepting Regional Office Space.

24-02-40 RESPONSIBILITIES

Heads of OPDIVs and STAFFDIVs have the responsibility to acquire and manage **all office** space for their agency bureaus. **It is** his/her responsibility to insure the development and implementation of space management plans that will meet the requirements and space reduction goals of the applicable Executive Orders and GSA FPMRs. Furthermore, Heads of all OPDIVs and STAFFDIVs have the responsibility to support the provisions of this directive.

24-02-50 PROCEDURES

A. Work Space Management Plans

Each OPDIV and STAFFDIV will update the Work Space Management Plan (**WSMP**) for each agency bureau in preparation for the annual budget cycle each fiscal year and at other such times as specified by headquarters instructions.

- Format will be in accordance with applicable GSA **FPMRs** supplemented by specific instructions from OS Headquarters. The summary WSMP for each agency bureau will include plans for each regional office component. **It is** the responsibility of each Regional Director to develop the WSMP for regional OPDIV and STAFFDIV components and to provide copies in a timely fashion to appropriate OPDIV and **STAFFDIV** officials. In a like manner, it is the responsibility of the Director, Office of Buildings Management and Telecommunications (**OBMT/OAMS/ASMB**) to develop and forward the **WSMP** for all OPDIV and STAFFDIV components located in the Southwest Complex, Washington, D. C. OPDIV Work Space Management Plans will be submitted to OS as part of the annual budget call and at such other times as may be requested by the ASMB. All plans will show specific progress toward the goal of reducing and maintaining space to the then current acceptable utilization rate for each agency bureau.

B. Space Allocation

- Heads of OPDIVs and STAFFDIVs are required to certify the accuracy of the number and type of all personnel who require workstations.

o Allocation of Office Type Space.

The responsible OPDIV or STAFFDIV official will allocate office space based on personnel counts and authorized special work station counts. The sum total of "space allowance units" as specified below determines the overall amount of space *allocated" to each **organizational** element (NOTE: A "**space allowance unit**" will be a maximum of either 135 square feet per workstation plus supplemental, 135 square feet per workstation including supplemental, or 122 square feet per workstation including supplemental, per D-73 definitions.)

- . Authorized full-time permanent slots: one space allowance unit per full-time permanent (**FTP**).
- . Stay-in-school students and/or other ceiling exempt staff: one-half space allowance unit per person.
- . Authorized full-time temporary employees: one space allowance unit per employee.
- . Authorized part-time employees: one space allowance unit for employees with a work week greater than 20 hours but less than 40 hours per week. One-half space allowance unit for those working 20 hours per week or less.
- . All contract employees: one-half space allowance unit per employee.
- . Computer work stations: one-half space allowance unit for each terminal or PC centrally located and dedicated for the regular use of multiple employees. The number of computer work **stations** will not exceed one work station per 4 employees who do not have a terminal or PC at their own work station.
- . Other authorized special work stations: As specified in any **HHS** and GSA approved "Space **Allocation Standard**" used for a specific type of facility in lieu of D-73 standards.

The above information is only for determining overall space allocations to organizational components. This is not a directive regarding actual work station size, count or configuration. In accordance with GSA **FPMRs**, individual work station size is to be determined by the furniture and equipment requirements of the specific task to be performed at that work station.

o Allocation of Ancillary Special Type Space.

The responsible OPDIV and STAFFDIV official may **allocate** ancillary special type space as required in accordance with the **FPMRs**. The changing of the designation of office type space to special type space for the purpose of improving the overall office space utilization rate is not authorized. Special type space allocations involve space with unique architectural characteristics designed to meet the needs for conference rooms, training rooms, storage space, library space, etc.

24-02-60 DEFINITIONS

The meaning of words and phrases as used in this chapter pertaining to the space management program can be found in the **FPMR** Temporary Regulation D-73 with the exception of the term "space allowance unit" which is defined and used exclusively in HHS policy as a basis for determining overall space allocation figures. The term "agency bureau" means any-departmental reporting entity for which there is a separate appropriation listed in the President's budget submission.

24-02-70 **REPORTING** REQUIREMENTS

Heads of **OPDIVs** and **STAFFDIVs** will submit the annual Work Space Management Plans in the approved format in accordance with OS Headquarters directives at the time of the annual budget cycle and at such other times as directed. Submissions will include a separate GSA Form 3530, Sections I and II for each agency bureau. Interim reports regarding specific space management activities will also be submitted, as requested.

Subject: **DHHS OWNED AND LEASED REAL PROPERTY**

24-03-00 Purpose and Scope
10 Background
20 Definitions

24-03-00 **PURPOSE AND SCOPE**

- A. This chapter and the following three additional chapters in the General Administration Manual deal with policies regarding real property owned or leased by the United States of America and controlled by the Department of Health and Human Services (DHHS). These will relate to the background and legislative authorities of the Department and the policies controlling the acquisition, **management**, and disposal of **DHHS-owned and -leased** real property.
- B. It is also the intent of this and the succeeding Chapters of this manual to outline the nature of the problems that may be encountered in connection with real property actions and to elucidate the principles to be observed and followed in handling them. The Chapters are not intended to provide a duplication of all of the detailed instructions and operating procedures to be found in other documents. Particular reference should be made to the Federal Property Management Regulations issued by GSA and published in Title 41 CFR Chapter 101, in view of GSA's broad authority and responsibility in the field of real property actions. Note especially that GSA may delegate its authority in this area to DHHS or designate and authorize DHHS to carry out functions for itself under the Federal Property and Administrative Services Act of 1949. (See section 205 at 40 U.S.C. 486.) Moreover, under 31 U.S.C. 1535 (formerly 31 U.S.C. 686, section 601 of the Economy Act of 1932) GSA may by agreement perform certain functions for DHHS. In view of the foregoing, a ready access to the FPMR is a necessity, with the understanding that they are constantly being revised. If questions of legal interpretation arise, the advice of the Office of General Counsel should be obtained.
- C. Policies dealing with real property assigned for Department activities by the General Services Administration (GSA) are contained in GAM chapters 24-01 and 24-02.

24-03-10 **BACKGROUND**

A. **FEDERAL REAL PROPERTY--PUBLIC DOMAIN AND ACQUIRED LANDS**

- 0 The Federal Government owns approximately one-third of the total land area within the 50 States. Aside from land held in trust for Indians or Indian tribes, such land is divided into public domain land and acquired land.
-

- 0 The term public domain, as it applies to land within a State, refers to those lands which were acquired by the United States prior to the creation of the State and which are still retained by the United States, such as lands acquired by the Federal Government by virtue of the Louisiana Purchase and the Alaska Purchase. The term has no application to any land in the original 13 States, or in Texas, which was independent prior to its admission to the Union, and in a few other States. Much of what was originally public domain is now in private ownership through operation of the homestead laws and other similar laws. Other portions of the public domain have been withdrawn or reserved for military or other public purposes.
- 0 The Federal Government has the inherent power to acquire land, but that power can be exercised only at the discretion of the Congress. Thus, section 3738 of the Revised Statutes (41 U.S.C. 14) provides that land may be purchased for the United States only under a law authorizing such a purchase.
- 0 The distinction between public domain and acquired land has in recent years become blunted. It is nevertheless important to know **the source of a property because lands reserved from the public domain, but no longer needed for a federal use, are offered for return to the public domain.**

B. **TITLE TO FEDERAL REAL PROPERTY**

- 0 With certain minor exceptions, title to all Federal real property is held in the name of the United States of America. The Department of Health and Human Services (DHHS) does not hold title to any real property in its own name. That is so because neither the Department nor any official thereof has the statutory authority to hold title to real property, such as do certain Government corporations and officials of certain agencies in connection with their lending authorities.
- 0 Title to real property acquired by DHHS is taken in the name of the United States of America, and the deed transferring such title is recorded in the appropriate local land records. Transfers of control and accountability to or from other Government agencies are not so recorded because title thereto continues to be vested in the United States of America. Such transfers are usually made administratively through the General Services Administration (GSA).
- 0 There is no general repository of Federal land records for lands owned by the United States, although GSA maintains an inventory based on data submitted by the agencies having control and accountability. This emphasizes the importance of each Federal agency, including DHHS, keeping accurate and complete records of its real properties.

C. DHHS-OWNED AND -LEASED REALTY

- 0 The term "DHHS-owned realty" refers to real property over which DHHS has independent control and accountability; it is wed to distinguish such real property from "GSA-assigned realty," which refers to real property the use of which is administratively assigned to DHHS by GSA, and from "DHHS-leased realty," which refers to real property that is leased directly by DHHS.
- 0 There are a few statutes, such as section 321 of the Public Health Service Act (42 U.S.C. 248), authorizing DHHS to acquire sites and to construct facilities so that it may carry out its functions. Such space, wholly or *predominantly* used for the special purposes of an agency such as DHHS and not generally suitable for the use of other agencies, is referred to as "special purpose" space.
- 0 Other space, primarily space wed for office or storage purposes, is called "general purpose" space. Generally, such space is acquired by GSA and administratively assigned to DHHS. In many instances, the Social Security Administration (SSA) is authorized by appropriations Acts to use its trust funds to pay for the acquisition or construction of general purpose space. Nonetheless, the Comptroller General has ruled that such general purpose property falls within those placed under GSA by the Public Buildings Act of 1959. Therefore, property acquired with SSA trust funds has the unique distinction of being both DHHS-owned and m-assigned realty.
- 0 The acquisition of leasehold interests generally or of leasehold interests in space is usually handled by GSA except in certain instances as under specific delegations of the Administrator's authority to the Secretary of DHHS or as permitted by delegations included in GSA's Federal Property Management Regulations (FPMR). One major exception is provided by section 704 of the Indian Health Care Improvement Act of 1976 (P.L. 94-437), wherein the Secretary of DHHS is authorized to enter into leases with Indian tribes for space to be used for serving Indian health needs. Such leases may be for up to 20 years and may provide for reconstruction or renovation of the leased property pursuant to an agreement with the Indian tribe involved.

D. LEGISLATIVE JURISDICTION

- 0 Article I, section 8, clause 17, of the U.S. Constitution provides that, in certain cases, the Federal Government may acquire the power to exercise "exclusive Legislation" over certain areas within the territorial limits of the several States, principally places to which it has acquired title. In present-day terminology the power of "exclusive Legislation" is called exclusive jurisdiction, and the

areas are called *Federal enclaves*. Within such areas, the Federal Government exercises jurisdiction, or police powers, to the exclusion of all other authorities, State and local. This does not embrace Indian reservations, in which the Federal authority over the Indians is based on other Constitutional provisions, nor does it usually apply to public domain land. Limited forms of legislative jurisdiction are often employed. These forms include "concurrent jurisdiction," wherein both the Federal Government and the State exercise full authority concurrently, and "partial jurisdiction," wherein the jurisdiction is neither wholly concurrent nor wholly exclusive, but the State has reserved to itself certain limited authority, such as the right to tax private property. These forms of limited legislative jurisdiction are usually applied only to States, but have been applied elsewhere such as in the Commonwealth of Puerto Rico. If the Federal Government has acquired no special legislative authority over a property it is said to have only 'a proprietorial interest' therein, but that still carries with it the right to impose criminal sanctions to protect its property and the right to be free of State interference over the exercise of its governmental functions therein.

- 0 Prior to February 1, 1940, the Federal Government is presumed to have accepted such legislative jurisdiction over particular areas as the States offered, and that presumption applies to the great bulk of all acquired lands. In a few cases such jurisdiction extends to public domain lands.
- 0 For acquisitions on or after February 1, 1940, no special jurisdiction may be acquired unless the head of the agency first accepts in writing such jurisdiction as the State offers. Once the Federal Government has accepted jurisdiction from the State, it cannot, as a rule, relinquish any portion of it without statutory authority to do so.
- 0 Legislative jurisdiction, like title, is vested in the United States of America. Consequently, properties transferred to DHHS from another agency, such as a military department, continue to be held under the same legislative jurisdiction as that previously made applicable to it unless the jurisdiction ceded is contingent upon the continued use of the property for a specified purpose that has ceased to prevail.
- 0 The decision to accept or not accept legislative jurisdiction rests with the Secretary. In recent times, jurisdiction has been accepted only in certain special cases. For example, jurisdiction may be accepted for an addition to an existing installation in order to secure as much uniformity as possible over the whole of the installation. Federal jurisdiction may be desirable because it

enables Federal officials to enforce as Federal crimes certain major offenses adopted for Federal enclaves by the Assimilative Crimes Act (18 U.S.C. 131 without reliance solely on State enforcement of State criminal laws, although concurrent jurisdiction is often more desirable because it provides alternative means of enforcement for criminal offenses. Federal jurisdiction may also be desirable because it enables the Federal Government, under 40 U.S.C. 318, to proscribe certain minor offenses, particularly traffic offenses, not made applicable by State law. On the other hand, exclusive jurisdiction would be undesirable if its exercise were to deprive residents of the area of certain civil rights and privileges provided by State Governments. That objection, however, has been largely surmounted over the years by State legislation and by judicial interpretation in matters like voting privileges and access to State courts, in particular divorce and probate proceedings, which are not usually provided for by Federal law.

- 0 All actions to acquire, modify, or relinquish legislative jurisdiction should be undertaken only in consultation with the Office of Special Programs Coordination/Office of Administrative and Management Services, (OSPC/OAMS.) In every case, OSPC/OAMS will secure the advice of the Office of General Counsel.

24-03-20 DEFINITIONS

For the purposes of these four General Administrative Manual Chapters the terms used herein shall have the following meanings:

Disposal Agency. The executive agency designated by the Administrator of General Services to dispose of surplus real property.

Easement. An interest in land granted for a specified purpose, such as highway, utility line, etc.

Executive Agency. Any executive department or independent establishment in the executive branch of the Government, including any wholly owned Government corporation.

Federal Agency. Any executive agency or any establishment in the legislative or judicial branch of the Government (except the Senate, the House of Representatives, and the Architect of the Capitol and any activities under his direction).

Holding Agency. The executive agency which has accountability for the property involved.

License. The right to use Federal property for private purposes, revocable at the will of the grantor. It does not convey an interest in the property.

Operating Divisions (OPDIVs). Operating Divisions, i.e., the Public Health Service, Health Care Financing Administration, Office of Human Development Services, Social Security Administration, and Family Support Administration.

Permit. The right of one Government agency to use the property of another agency on a temporary basis. It does not transfer control of the property, but only its temporary use.

Real Property. Any interest in land, together with the improvements, structures, and fixtures located thereon, under control of any Federal agency, except the public domain, or lands reserved or dedicated for national forest or national park purposes.

Right of Entry enter the property of another for the purpose of making repairs: preparing the property for use pending acquisition, or other temporary purposes.

Right of Reentry. An action which occurs because of a condition broken which terminates the grantee's interest in the land.

AMS. Office of Administrative and Management Services

OSPC. Office of Special Programs Coordination

Subject : ACQUISITION OF OWNED OR LEASED REAL PROPERTY

- 24-04-00 Authority of DHHS to Acquire Real Property
 - 10 Methods of Acquiring Real Property
 - 20 Lease of Space by DHHS
 - 30 Factors Governing Acquisition of Real Property
 - 40 DHHS Use of Other Federal Agency Space

24-04-00 AUTHORITY OF DHHS TO ACQUIRE REAL PROPERTY

- A. As noted in 24-03-10A, the Federal Government has the inherent power to acquire land. However, section 3736 of the Revised Statutes (41 U.S.C. 14) provides that land may be purchased for the United States only under a law authorizing such a purchase. Section 3733 of the Revised Statutes (41 U.S.C. 12) prohibits entering into any contract for the erection, repair, or furnishing of any public building which binds the Government to pay a larger sum than the amount specifically appropriated for the particular purpose. The Office of General Counsel should be involved in any acquisition of real property by the Department for the United States.
- B. The principal statutes authorizing the Department of Health and Human Services (DHHS) to acquire land and to provide space are the following:
 - o Section 304(b)(4) of the Public Health Service Act (42 U.S.C. 242b) authorizes the Secretary of DHHS to acquire, construct, improve, repair, operate, and maintain laboratory, research and other necessary facilities and equipment, and such other real or personal property as the Secretary deems necessary for health statistical activities and health services research, evaluation, and demonstrations.
 - o Section 321 of the Public Health Service Act (42 U.S.C. 248) authorizes the Secretary, with the approval of the Resident, to select sites for and to establish such institutions, hospitals, and stations as are necessary to enable the Public Health Service (PHS) to discharge its functions and duties. The Resident's authority to approve facilities has been delegated by him to the Director of the Office of Management and Budget (OMB).
 - o Section 404(b)(2) of the public Health Service Act (42 U.S.C. 285(b)(2)) authorizes the Director of the National Cancer Institute (after consultation with the National Cancer Advisory Board) to acquire such real property and facilities and equipment as the Director deems necessary.

- o Section 413(a) of the Public Health Service Act (42 U.S.C. 287b) authorizes the Director of the **National Heart, Lung, and Blood Institute (after consultation With the National Heart and Lung Advisory Council)** to acquire such real property as may be necessary.
 - o Section 386 of the Public Health Service Act(42U.S.C.280) authorizes the **Administrator of General Services** to *acquire suitable sites*, selected by the Secretary of **DHHS** in accordance with the direction⁶ of the Board of Regents of the National Library of **Medicine**, and to erect **thereon**, furnish, and equip suitable and **adequate** buildings and facilities for the National Library of **Medicine**. It also **authorizes** appropriation⁶ for the erection and **equipment** of **buildings** and facilities for the use of the Library.
 - o Section 7 of Public Law 83-568 (known as the Indian Health Transfer Act) as amended (42 U.S.C. 2004a), authorizes the **construction, improvement, or extension of sanitary facilities to serve Indians and the acquisition of lands, or rights or interests therein**, including sites, rights-of-way, and easements for #at purpose.
 - o Section 201(g) of the Social Security Act (42 U.S.C. 401(g) authorizes the several trust **funds** to be made available in amounts authorized by **Congress** for **certain** costs of the administration of the social Security Act. Various **appropriations Acts** have authorized the **construction** of facilities, including the **acquisition** of sites, for the Social Security **Administration(SSA)**.
- C. Various statutes authorize the acceptance of gift⁶ of real property (usually unconditional but **sometimes conditional**) by or on behalf of **DHHS**. Gifts are **unconditional** unless the applicable **statute** provides otherwise.
- o Section 501 of the Public Health Service Act(42 U.S.C.219) authorize⁶ the Secretary of **DHHS** to accept unconditional gift⁶ or, if **recommended** by the Surgeon General, conditional gifts of **real property** for the benefit of the Public Health Service.
 - o Section 384 of the Public Health Service Act (42 U.S.C. 278) extends the authority under section 501, above, to the acceptance and **administration** of gifts of real property for the benefit of the National Library **of** Medicine.
 - o Section 409 of the Public Health Service Act (42 U.S.C. 286d) authorizes the Director of the National Cancer Institute (after **consultation** with the National Cancer Advisory Board) to accept unconditional gift⁶ of real property, among other **things**.

- o Section 423 of the Public Health Service Act (42 U.S.C. 288b) authorizes the Surgeon General to **recommend** to the Secretary of DHHS the acceptance of **conditional** gifts, pursuant to section 501, for the National Institute of Dental Research.
- o Section 22 of the Occupational Safety and Health Act (29 U.S.C. 671) authorizes the Director of the National Institute of Occupational Safety and Health (NIOSH) to accept property, including real property, donated, bequeathed or devised without condition other than that it be **wed** for the purposes of the Institute.

24-04-10 METHODS OF ACQUIRING REAL PROPERTY

- A. Purchase. This **is** the usual way of acquiring real property. This method **can**, however, no longer be used to acquire real property at a bargain price. Under Title III of the Uniform Relocation **Assistance** and Real Property Acquisition Policies Act of 1970 (P.L. 91-646 as amended), DHHS is required to make every reasonable **effort** to acquire real property expeditiously **by** negotiation. That Act also calls for the making of an offer to pay the owner not less than DHHS' approved appraisal of the fair market value of the property. **Moreover, the owner is to be given an opportunity** to accompany the appraiser **on his/her** inspection of the property and is to be given a written statement of, and **summary** of the basis for, the **amount** established as just compensation. Under section 355 of the Revised Statutes (40 U.S.C. 255), which was based upon an earlier statute enacted in 1841, no public money may be expended on the improvement of a site without a title approval by the Attorney General and, prior to February 1, 1940, the consent to the purchase by the legislature of the State in which the site is located. The consent requirement no longer prevails, but the title approval requirement **is still in** effect. The process of approving title has been vastly developed over the years, and the authority to make such an approval has been delegated to many agencies, but not to DHHS, which acquires only a relatively **small** amount of real property. The approval of title by the Attorney General calls for the submission by the acquiring agency of title evidence that **conforms** to Standards for the Preparation of Title Evidence in Land **Acquisitions** by the United States, issued by the Department of Justice. This often involves the procurement of a Policy of Title Insurance issued by a title company that has **&en** approved specifically by the Department of Justice, together with a Certificate of Inspection and Possession by the acquiring agency? all as outlined in those standards.
- B. Eminent Domain. The power of the Federal Government to acquire land by eminent domain, **i.e.**, by condemnation, was not fully settled by the U.S. Supreme Court until 1876. Condemnation can be exercised in the Federal Courts without the consent of the State, and this power extends even to property used by the State for its governmental purposes. Condemnation is

usually initiated by GSA on behalf of DHHS, and the proceedings are conducted in a Federal Court by the Department of Justice. The Department of Justice requires the procuring agency to produce the evidence of title and related papers. The judicial proceedings and court decree eliminate any need for a separate opinion of title by the Attorney General. If title is needed immediately without waiting for the termination of lengthy court proceedings on the value of the property, this can be done by the filing of a "declaration of taking" and a deposit into the court of the estimated amount of the just compensation for the land taken. The court may fix the time within which and the terms upon which possession shall pass to DHHS. The Office of General Counsel should be the point of contact for the Department with the Department of Justice for acquisition of real property by purchase or through the power of "eminent domain".

C. Withdrawal from the Public Domain. Much of the original public domain has, in the past, been withdrawn and set aside for specific public uses by the President and later by the Secretary of the Interior under a delegation from the President. It is no longer a viable source of land for DHHS, and further withdrawal requires an Act of Congress.

D. Transfers from other Departments. Property that is excess to the needs of a constituent agency of DHHS may be transferred administratively to another constituent agency of DHHS. Property that is excess to the needs of another department or agency may be transferred to DHHS with the approval of GSA through the excess property procedure authorized under section 202(a) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 483). For details see GSA's Federal Property Management Regulation (FPMR). This does not preclude the temporary permitting of real property to DHHS by the agency having control and accountability.

0 The so-called Indian Health Transfer Act (P.L. 83-568) transferring Indian health functions from the Bureau of Indian Affairs (BIA) to the Public Health Service provided for the transfer of properties relating primarily to health matters (42 U.S.C. 2001). Continuing adjustments in property holdings between the two agencies are made under a Memorandum of Understanding approved by the Administrator of General Services on May 3, 1961 and Delegation of Authority number 396 of May 3, 1961 (26 F.R. 4029) pursuant to the Federal Property and Administrative Services Act of 1949.

E. Gifts or Donation of Real Property. A gift of real property to DHHS is not effective until accepted. The Attorney General has ruled (39 Ops. Atty. Gen. 373 (1939)) that there must be general authority for the acquisition of land for the purpose in question before a gift of land may be accepted. Statutory authority to accept gifts is preferred. Some of the statutory authorities authorize the acceptance of conditional gifts; all are subject to certain review requirements, reflecting the fact that some proposed gift deed conditions would commit DHHS to a course of action

that may later turn out to be undesirable. Finally, before any gift of land is accepted on behalf of the United States, an opinion of the Attorney General in favor of the validity of the title to the land should be obtained as provided for in section 355 of the Revised Statutes (40 U.S.C. 255).

24-04-20 LEASE OF SPACE BY DHHS

- A. The lease of space for DHHS is primarily done by GSA. For the most part, DHHS does not have the authority to lease for long periods. That is so because, without express authority in that regard, an agency cannot commit future appropriations, and leases are charged to the then current fiscal year of the lease rather than to the year of entering into the lease commitment. Thus, authority to enter into a 20-year lease, such as GSA has under 40 U.S.C. 490(h) is in effect an authority to commit future appropriations. Without that authority, a multi-year lease can only be regarded as a lease for the current year with successive options to renew the lease for one-year periods. Moreover, a March 3, 1877 statute (40 U.S.C. 34) provides that no building, or part of a building, may be rented in the District of Columbia until an appropriation therefor shall have been made in terms by Congress..
- B. Section 304(b)(4) of the Public Health Service Act (42 U.S.C. 242b) authorizes the Secretary of DHHS to acquire, without regard to the Act of March 3, 1877 (40 U.S.C. 34), by lease or otherwise, through the Administrator of General Services, buildings or parts of buildings in the District of Columbia or adjacent communities for health statistical activities and health services research, evaluations, and demonstrations.
- C. Section 404(b)(2) of the Public Health Service Act (42 U.S.C. 285d(b)(2)) authorizes the Director of the National Cancer Institute to acquire, without regard to the Act of March 3, 1877 (40 U.S.C. 34), by lease or otherwise through the Administrator of General Services, buildings or parts of buildings in the District of Columbia or communities located adjacent to the District of Columbia for the use of the National Cancer Institute for a period not to exceed ten years.
- D. Section 413(c)(2) of the Public Health Service Act (42 U.S.C. 287b(c)(2)) authorizes the Director of the National Heart, Lung, and Blood Institute to acquire, without regard to the Act of March 3, 1877 (40 U.S.C. 34), by lease or otherwise, through the Administrator of General Services, buildings or parts of buildings in the District of Columbia or communities located adjacent to the District of Columbia for the use of the Institute for a period not to exceed ten years.

- E. Section 704 of the Indian Health Care Improvement Act of 1976 (P.L. 94-437) (25 U.S.C. 1674) authorizes the Secretary of **DHHS** to enter into leases with Indian tribes for periods not in **excess** of 20 years. This authority **may** be exercised independently of GSA. In addition, the statute authorizes the Secretary to reconstruct or renovate the leased property pursuant to **an** agreement with the Indian tribe.
- F. Section 524 of the Education Amendments of 1976 (P.L. 94-482) (20 U.S.C. 2564) authorizes **the** Secretary of **DHHS** to provide suitable space for day care centers for children of **employees** of **DHHS**. The Comptroller General has **ruled that under** that statute the **Secretary may**, if necessary, rent suitable **space for** that purpose. Also see P.L. 99-591, Section 101(m) Title VI, Section 616 (40 U.S.C. 490b).
- G. The **FPMRs** issued by GSA **permit DHHS** to lease space to be used for **certain** cases. This authority includes rentals at a nominal consideration, rentals under a specific case delegation, and rentals of not more than 2,500 square feet, for special purposes **spaces**, for a year with renewable options. See **FPMR 101-18**.

24-04-30 FACTORS GOVERNING ACQUISITION OF REAL PROPERTY

As mere existence of statutory authority to acquire real property is not by itself sufficient to justify an **acquisition** of real property. Such an acquisition is subject to a number of **considerations**. The primary consideration is epitomized in section 321 of **the Public Health Service Act**, which states that the acquisition must be "**necessary to enable** the Service to discharge its functions and duties." A number of other considerations are contained broadly in the following:

- A. Executive Order 11512 - Planning, Acquisition, and Management of Federal Space (March 3, 1970). The efficient performance of the missions and programs of the Department should give due regard to the convenience of the public **served and the maintenance and improvement of safe and healthful working conditions** for employees. Other *considerations* include the need for the **development of areas, the maximum use of existing space**, the cost of new facilities, the availability of low-rent housing, **and** the adequacy of housing.
- B. Executive Order 12372 - Intergovernmental Review of Federal Programs (July 14, 1982). This order establishes a new *Federal policy* for **consultation and cooperation with state and local governments** in the administration of Federal *financial assistance and development programs*. (Formerly contained in **OMB Circular A-95**).

- c. The National Environmental Policy Act of 1969 (P.L. 91-190 as amended). This is a very **comprehensive** statute that pervades all aspects of real estate actions **and** is aimed at restoring and maintaining the quality of our **human** environment. Rather than set forth specific requirements to be observed, the Act calls for a broad and comprehensive assessment by the agency itself of the effect of a proposed action, and the mere overlooking of one aspect may be fatal to a proposed action, if it is attacked. It is by no means limited to real estate actions, but applies with special force to any real property actions, whether acquisition, construction, or otherwise.
- D. The National Historic Preservation Act of 1966 (P.L. 89-665 as amended). This Act provide⁸ for the establishment of a **National Register of Historic Places**, and calls for an evaluation of the effect that a proposed action with respect to a facility will have on such Places, and calls for a prior notification to the Advisory Council on Historic Places. Each **DHHS** Operating Division (**OPDIV**) is responsible for nominating properties under its control for inclusion in the National Register.
- E. Executive Order 11296 - Unified National Program for Managing Flood Losses (August 11, 1966). This **Order** does not prohibit construction in areas having a history of flooding, but rather seeks to discourage uneconomic **uses** and **development** of flood plains and to **lessen** the **risk** of flood **losses**.
- F. Section 355 of the Revised Statutes (40 U.S.C. 255). This statute requires the approval of the Attorney General of title to land prior to the improvement of such **land**. It should be observed regardless of the method of acquisition, except that condemnation obviates any such need. See 24-04-10A.
- G. Uniform Relocation Assistance and Land Acquisition Policies Act of 1970 (P.L. 91-646 as amended). This Act is listed among the authorities to be considered in the case of real property acquisitions primarily because of its impact, sometime⁸ substantial, on the cost of acquiring real **property**. It also imposes substantial administrative burdens and may' delay the **obtaining** of possession of real property. Persons displaced by a project, including tenants, are entitled to moving **expenses**, dislocation allowances, payments for loss of earnings in a business or farm operation, and the additional costs of replacement housing. Moreover, **DHHS** must be satisfied that replacement housing is available before a person can be required to move. When **DHHS**'s direct Federal activities cause the displacement of persons from property acquired for **DHHS** use, relocation activities will normally be carried out for **DHHS** by the Federal Highway Administration under government-wide regulations codified by the Department of Transportation at 49 CFR Part 24.

- H. Public Law 90-480 as amended. This Act requires that *Federal* facilities be ~~so~~ designed and constructed ~~as~~ to be accessible to, and usable by, handicapped **persons**, who are *broadly* defined. It applies to facilities designed, **leased**, or financed by the Federal Government. The Act is couched in very broad terms, but the applicable regulations are very specific. Facilities that do not **comply** may have to **be altered**. When facilities that are used only temporarily by the Federal **Government**, facilities that do comply are to be preferred over those that do not. The regulations **governing DHHS** are set forth in **FPMR 101-19.6**.
- I. Occupational Safety and Health Act of 1970 (P.L. 91-596 as amended). This Act calls for the Secretary of Labor to promulgate comprehensive safety and health regulations for the public. **Section 19** of the Act (**29 U.S.C. 668**) requires the several agencies of the Federal Government to provide safe and **healthful working places and conditions** for their employees under standards not inconsistent with the standards set by the Secretary of **Labor**. **DHHS Department Staff Manual -Safety Management adopts the Fire Codes** promulgated by the National *Fire Protection Association*, including the well-known **Life Safety Code (NFPA-101)**, which is specifically *made* applicable to eligible skilled nursing homes by section **1861(j)(13)** of the *Social Security Act*.

In addition, there are a number of recent Federal statutes that subject Federal agencies to State, interstate, and local requirements (as well as Federal **requirements**) and to State procedural *requirements* such as the necessity of permits, as well as to substantive **requirements**. Such agencies are subject to State **administrative** authority and local **courts**.

24-04-40 DHHS USE OF OTHER FEDERAL AGENCY SPACE

DHHS may acquire the right under a temporary permit to use the **property** of another Government agency or, conversely, to **permit** another **Government** agency to use **DHHS property**. Under the **FPMR**, it may acquire the right to use excess *property* prior to its declaration as surplus property or to use surplus property **pending** its disposal. In any event, **DHHS** assumes the responsibility for maintaining *property* while making use of it.

Subject: **DISPOSAL, TRANSFER OR ABANDONMENT/DESTRUCTION OF OWNED OR LEASED REAL PROPERTY**

- 24-05-00 **Disposal Authority**
 - 10 Reporting Recess Real Property
 - 20 **Transfer of Excess** Real Property Between IRS and BIA
 - 30 **Abandonment and Destruction**

24-05-00 DISPOSAL AUTHORITY

- A. **Basic Considerations.** Article IV, section 3, clause 2, of the United States Constitution provides: The Congress shall have *Power to dispose of . . .* belonging to the United States.' Thus, the disposition of *Federal real property or interests therein* is dependent upon Congressional authority, which may be *express* or *implied*, general or united to *specific property*. Real property or **interests therein** are **usually disposed of** by OR through the **General Services Administration (GSA)** under section 203 of the **Federal Property and Administrative Services Act of 1949** as *property surplus to the need* of -the **Government**, after being declared to be **excess** to the need of the agency having custody of and **accountability** for the *property*. **Even** real property disposed of by the **Department of Health and Human Services (DHHS)** for public health **purposes** must first be **assigned** by GSA to **DHHS** for such a disposition.
- B. Both the leasing out of **Government** real property and the granting of an easement constitute a **disposition** of an interest in the *real property* and, hence, can be done only under **statutory** authority. **Until** the enactment of Public Law 87-852, the statutory authority to grant right-of-way easement applied only to certain **agencies** and did not extend to **DHHS** or its predecessor *agencies*. On the **other hand**, the Attorney General of the United States had ruled that executive agencies *having* custody of and **accountability** for real property had **an inherent** right to grant license with respect to real property. Such licenses must, however, **be** revocable at will so that they do not constitute a conveyance of any interest in the **real property** itself. Certain other short-term uses of **DHHS** **real property** are **implied under** 5 U.S.C. 301 as a part of the implied authority thereunder of **DHHS** to manage **its** property. In any event, all actions of that nature with respect to *property* of the United States are subject to such restriction as may be imposed by the Congress. The authority of **DHHS** to dispose of an interest in real property is a very limited one. **Examples** of such authority are as follows:
- o Section 7 of the "so-called* Indian Health Transfer Act, as amended (42 U.S.C. 2004a). Under that section, the Surgeon General may provide essential sanitation facilities for **Indian houses, communities, and lands**. He may transfer such facilities to any State OR Territory or subdivision OR public authority thereof, or to

any Indian tribe, group, band, or community, or, in the case of domestic appurtenances and facilities, to any one or more of the occupants of the Indian homes served thereby.

- 0 Section 704 of the Indian Health Care Improvement Act of 1976 (P.L. 94-437) (25 U.S.C. 1674) in authorizing the entering into of land leases with Indian tribes, allows the Secretary of DHHS, under an agreement with the Indian tribe, to renovate or reconstruct buildings on land leased from that tribe. Such an action amounts to a grant of the renovated or reconstructed buildings to the Indian tribe, as opposed to the grant of money to the tribe to be used for renovation or reconstruction.
- 0 Section 322 of the Economy Act of 1932 (40 U.S.C. 278a) stipulates that the lease of premises by the Federal Government may not provide for alteration, improvement, or repair of the leased premises in excess of 25 percent of the first year's rent, which formerly could not exceed 15 percent of the fair market value of the premises. Under section 210(a)(6) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 490), the Administrator of General Services may authorize a lease exceeding the 25 percent limitation if the total cost to the Government for the expected life of the lease is less than the cost of alternative space needing repairs, alterations, or improvements.
- 0 Section 202(b) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 483) authorizes executive agencies to transfer or dispose of excess property in accordance with authority delegated and regulations prescribed by GSA.
- 0 Section 203(c) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 484) authorizes the Administrator of General Services to designate or authorize DHHS to dispose of surplus property by sale, exchange, lease, permit, or transfer.
- 0 Section 210(a)(13) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 490) authorizes the Administrator of General Services to lease, at a fair rental, sites for Federal buildings until needed for construction purposes. Under section 205(d) of that Act, the Administrator may delegate that authority to DHHS.

24-05-10 REPORTING EXCESS REAL PROPERTY

- A. OPDIVs shall report excess real property to the Office of Special Programs Coordination/CAMS in the Office of the Secretary for screening as to other possible Department needs. Reports shall be submitted at least 120 calendar days in advance of the date such property will become available for transfer or disposal.

- B. When buildings or other **improvements** are **excessed** without the underlying land, an **original** only of **SF 118** and **SF 118A**, Report of Excess Real **Property**, prepared **in** accordance with GSA instructions in **FPMR 101-47.4902**, will be submitted to the GSA Regional Office (original and four copies). The Report will include a request, inserted in Block 18, that **GSA act as the disposal agency for the property** and a statement that **'This property has been screened against the known needs of the Department.'**
- C. Where **Government-owned** land is **involved**, the OPDIV will submit an original of **SF 118** and schedules **A, B, and C**, as necessary, including legible copies of **documents** relating to the **Government's** title to the land, based on the agency records. Also **required is** a report which will contain all the information required in **FPMR 107-47.202-2**, including the legislative jurisdiction, if **any**, of the United States over the land, together with a citation of the basis of such jurisdiction. The report must also certify that the facilities are in compliance with 40 **CFR 761, "Polychlorinated Biphenyls (PCBs) Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions."** This rule severely restricts the use, handling, storage, and disposal of **PCBs**.
- D. **Reports** of **excess** property for lands which are under the custody and responsibility of the Department and which have been withdrawn or reserved **from** the public domain will follow the same procedures outlined **in** paragraph **B.** above, insofar as the **OPDIVs** are concerned. Additionally, the OPDIV will file with the Department of the Interior the required notice of intention to **relinquish** the property, and will mail a copy of the notice to the appropriate GSA **Regional** Office. The **SF 118** will not be completed and processed unless the Secretary of the Interior, with the concurrence of the Administrator of General Services, determines that the land is not suitable for return to the public domain. **See FPMR 101-47.202-6.**
- E. The following excess real **property** under the custody and responsibility of the **Department** is not required to be reported to **GSA**:
- o Buildings or structures to be **dismantled** or **removed** to make way for new **construction on the same site**, provided **the removal is** incorporated in the new construction contract.
 - o Buildings or other structures for relocation to a **new** site where the land underlying the dismantled property is not **excess**.
- F. **Reports** of excess property that is subject to transfer under special provisions as described in **24-05-20** will include the information in paragraph **B.** above, if appropriate, and will also, in the **"Remarks"** column of the **SF 118**, cite the law or delegation under which the property is being **excessed**.

- G. The holding **OPDIV** will be responsible for the expense of physical care, **handling**, protection, maintenance, and **repair** of excess sad surplus real **property**, *pending* transfer or disposal, for not more than 12 months plus the period to the **ff rst day of the** succeeding **quarter** of the fiscal year **after the** date **the property** is available for disposition. In the event the **property** is not transferred to a Federal agency or disposed of during that period, the expense of physical care, handling, protection, maintenance, and repair of such **property thereafter** will be assumed by **GSA**. Guidelines for protection and maintenance contained in **FPMR** 101-47.4913 should be followed. This responsibility will include the minimum services necessary to preserve the **Government's** interest, and will continue to be exercised until the actual *transfer* or disposal of the **property**.

24-05-20 **TRANSFER OF EXCESS REAL PROPERTY BETWEEN IHS AND BIA**

- A. Background. The basic authority of the **Indian Health Service (IHS)** stems from the so-called Indian Health Transfer Act, Public Law **83-568** of August **5, 1954**, which transferred Indian health functions from the Department of the Interior, Bureau of **Indian Affairs (BIA)** to the Public Health Service (**PHS**). Under section 4 of that Act, the properties of BIA relating primarily to health matters were authorized to be transferred to PHS subject to the approval of the then Director of the **Bureau of the Budget**. If trust properties are involved, the transferee agency assumes the trust obligation with respect to the Indian tribes, as well as other authorities and responsibilities. In recognition of the fact that adjustments would from time to time be called for in the respective real property holdings for the benefit of Indian tribes, and in order to simplify transfer procedures, a Memorandum of Understanding was entered into in 1961 by the Secretary of the **Interior**, the Secretary of Health, Education, and Welfare, and the Administrator of General Services to cover such transfers as well as retransfers of property between the two Departments involved. See Exhibit 24-08-A. Delegation of Authority No. 396 of May 3, 1961 (26 P.R. 4029) implemented that Memorandum of Understanding by authorizing the two Secretaries 'to transfer and to retransfer to each other, upon request, any of the property of either agency which is being used and will continue to be used in the administration of any function relating to Indians." Transfers under that Delegation of Authority, which appears in the **FPMR's** at 41 **CFR 101-47.604**, do not require any screening of other agencies. It is in effect except to the extent that it has been superseded by section 202(a)(2) of the Federal Property and Administrative Services Act of 1949, which was added by P.L. 93-599, approved January 2, 1975.

The new section 202(a)(2) of the Federal Property and Administrative Services Act of 1949 provides for the transfer, without compensation, of certain excess real property to the Secretary of the Interior to be held in trust status under BIA in favor of the Indian tribes within whose

boundaries such **excess** property is located or, in Oklahoma, within a **former Indian reservation** or contiguous to real property now held in 'trust for an Indian tribe but only if the property itself was once held in trust by the United States for an Indian tribe. No regulations have been issued by GSA regarding the new section 202(a)(2).

- B. **Authorities and Guidelines.** Section 202(a)(2) of the Federal **Property and Administrative Services Act** applies only to real property that is not held in trust for an Indian tribe. Transfers thereunder are made for the benefit of Indian tribes. The property so **transferred** may be used by

Indian tribes themselves or by BIA for **administrative purposes** for the benefit of Indian tribes. BIA always assumes a trust obligation in favor of Indian tribes for property so transferred. Section 202(a)(2) does not call for **any reimbursement** of the transferring agency. Property already held by IHS in trust for an Indian tribe is not subject to section 202(a)(2), but may be transferred to BIA pursuant to Delegation of Authority No. 396, or, if outside the Delegation, under **excess** property procedures. In the absence of GSA regulation specifically applicable to transfer under section 202(a)(2), SF 118 should be used and the applicability of that section demonstrated by indicating:

- o The name of the **Indian** reservation within which the property is located and the fact that the **Indian tribe** occupying the reservation is recognized by the BIA; or
- o if the **property is within** Oklahoma, the fact that it is within the boundaries of a former Indian reservation and was held in trust for an Indian tribe at the time of its acquisition by the United States, or is contiguous to property now held in trust for an Oklahoma Indian tribe and was itself at one time held in trust by the United States for an Indian tribe.

- C. Delegation of Authority No. 396 applies to properties held in trust by IHS for Indian tribes when it desires to transfer the trust to BIA and it also applies to IHS non-trust properties, such as properties acquired by IHS by purchase, and intended to be transferred to and used by BIA for administrative purposes for the benefit of Indian tribes. Such transfers must: (1) comprise a functional unit and be within the United States, (2) have had an acquisition cost of \$100,000 or less, and (3) not be located in an urban area or place under the most recent decennial census.

- D. Transfers of excess property should first be tested to see whether the property is in a status such as to make P.L. 93-599 applicable. If not, the provisions of FPMR 101-47.604 may, if appropriate, be followed. Normal excess property procedures are to be used in those cases that do not meet the conditions of A. and B. above.

24-05-30 ABANDONMENT AND DESTRUCTION

- A. **Government-owned improvements located on land for which DHHS has control and accountability may be destroyed after it has been determined that the improvement has no commercial value, or that the estimated cost for continued care, protection, and maintenance would exceed the estimated proceeds of its sale. Improvements owned by the Government may also be abandoned on privately-owned property. See FPMR 101-47.5.**
- B. **No property shall be abandoned or destroyed until the above facts have been determined by a Board of Survey designated by the head of the office or installation having management responsibility for the property. Any official who is directly accountable or responsible for the property shall not serve in any surveying capacity. The survey should determine the original cost of the property (estimated if not known), the estimated cost to the Government for its protection and maintenance, and whether it is dangerous to public health or safety.**
- C. **The criteria of health, safety, and security shall be interpreted literally. Buildings and structures which either have structural defects or are contaminated to the extent that it is impracticable to make them safe or sterile for further use are examples of buildings not meeting these criteria. The criteria are also applicable to related materials and equipment which have either been contaminated through use in connection with the treatment or research of infectious and contagious diseases, or have been subjected to radiation, to the extent that it is not practicable to sterilize or neutralize them. The dictates of security policy or regulations require that such property be destroyed when it is no longer of any value or use for the purpose for which it was originally intended.**
- D. **A Survey Report in the format shown in exhibit 24-05B must be prepared in each instance, initiated by the installation head, signed by the survey board members, and submitted to OPDIV head who serves as the reviewing and certification authority.**
- E. **The completed Survey Report signed by the OPDIV head must be submitted to GSA for final approval before destruction of the property when the property either (1) had an original cost of more than \$50,000, (2) is of permanent type construction, or (3) would enhance the value of the underlying land, if retained. After GSA approval, the property may be**
- F. **Public notice shall be given in accordance with the instructions in FPMR 101-47.503.**

Subject: **MANAGEMENT OF DHHS OWNED AND LEASED REAL PROPERTY**

24-06-00 Basements

- 10 Outleasing of Property
- 20 Licenses for the Use of DHHS Property
- 30 Regulations for the Management and Use of Space
- 40 **Employee** Welfare/Service Facilities
- 50 Naming of Buildings and Installations

24-06-00 EASEMENTS

- A. Nature of Right-of-Way Easements. A right-of-way easement through Federal lands is a right granted to another to use a portion of the Federal lands for a specified purpose such as a highway or utility line. It is granted for other than a temporary basis and is not revocable solely at the will of the grantor. In short, it is the grant of an interest in the property of the Government and, under the Constitution, it must be authorized by Congress.
- B. Authority of HHS to Grant Easements. Until the enactment of P.L. 87-852 (40 U.S.C. 319), DHHS and its predecessor agencies were not granted broad statutory authority to grant right-of-way easements over Federal lands. It did have the inherent right to give licenses for the use of Government land that were revocable at the will of the Government. Additional authority to use Government property for short terms under the implied authority of DHHS is granted under 5 U.S.C. 301 or under authority delegated by GSA. Inasmuch as easements granted by DHHS convey a recognized interest in real property, they should be recorded by the grantee in the appropriate local land records.
- c. Section 1 of P.L. 87-852 (40 U.S.C. 319) broadly granted to agencies, including DHHS, having custody and control over real property of the United States, the authority to grant easements in, over, and upon such property (other than public domain property or property held in trust for Indians) rights-of-way for highways and utility lines with or without consideration and upon such terms as are deemed appropriate to protect the interests of the United States. Right-of-way easements for highway purposes may be granted to States or political subdivisions thereof. Right-of-way easements for utility lines may be granted to any person making application therefor. DHHS is authorized to relinquish to States legislative jurisdiction over the real property which is the subject of the easement. Such an action may be important in connection with right-of-way easements for highway purposes: otherwise the State would be unable to enforce its traffic laws over the real property made the subject of the easement.

D. **Terms and Conditions of Easements.** The grant of the right-of-way easement may be made for such period of time as is reasonable considering the nature and purpose of the easement, and may be for an indefinite period of time. P.L. 87-852, however, requires that a grant be terminated, in whole or in part, if there has been:

- o a failure to comply with any term or condition of the grant;
- o a consecutive two-year non-use of the easement for the purpose for which it was granted; or
- o an abandonment of the easement.

The grant instrument is to provide that written notice of such a termination be given to the Grantee, or its successor or assigns; the termination is to be effective as of the date of such a notice; and upon termination, all right, title, and interest in the land shall revert to the United States or its assigns.

E. DHHS may impose other terms or conditions to protect the interests of the United States and of the public. Such additional terms and conditions serve to make more explicit the limited purpose of the grant: protect the rights of the public at large; enlarge the basis for a possible termination of the grant; or otherwise enhance the ability of DHHS to enforce the terms and conditions of the grant. Such other terms and conditions include:

- o The Grantee will neither conduct mining operations nor remove any mineral substances from the land.
- o The Grantee will, at its own expense, construct, mark, keep, and maintain, in good condition and repair, any improvements it makes on the property.
- o The Government reserves the right to enter, on occasion, the premises which are the subject of the grant to assure that the terms of the grant are being complied with.
- o The Grantee will indemnify and save the Government harmless from any liability or responsibility whatever arising directly or indirectly from the Grantee's use of the easement and activities on the premises.
- o The Grantee will minimize damage to the scenic and esthetic values of the premises and otherwise protect the environment.
- o The Grantee will comply with air and water quality standards established by or pursuant to Federal or State law.

- o The Grantee will comply with State standards for public health and safety, environmental protection, and the siting, **construction, operation, and maintenance of**, or for, rights-of-way for similar **purposes** if those *standards* are more **stringent** than applicable Federal standards.
 - o The Grantee will otherwise protect Federal ^{property} and economic interests and the public interest in the lands traversed by the right-of-way or lands adjacent thereto.
 - o Upon **termination** or forfeiture of the grant, the Grantee, if so requested by the **Government**, will remove from the premises all structures or other improvements belonging to the Grantee and **otherwise** restore the ^{premises} to the satisfaction of, and at no cost to, the Government.
- F. 23 U.S.C. 317. In the case of land needed for a right-of-way for a Federal Aid Highway, **DHHS** may transfer lands under the custody and control of **DHHS** to the Secretary of Transportation, who has the authority to make a grant of, and transfer title to, not merely an **easement over**, such lands to State highway departments.

24-06-10 OUTLEASING OF PROPERTY

DHHS has no authority to lease Government land to *another except* for such right to lease excess or surplus property as it may derive from GSA. It ~~es~~ have limited authority to make real property available to *others* as outlined in Chapter 24-06-20. Also, it does have authority under 5 U.S.C. 301 to license property on a revocable-at-will basis.

24-06-20 LICENSES FOR THE USE OF DHHS PROPERTY

- A. Revocable Licenses. The Attorney General has ruled that the **Government** in its control over real property has the inherent right to license the use of such **property** for private purposes provided that the license is revocable at will. **Such** a revocable license does not convey any interest in the real property. **DHHS** has the authority under 5 U.S.C. 301 thus to license the use of property under its control, provided the **license** does not interfere with the **Government's** use of the property and is not otherwise **adverse** to the interests of the United States- Such a license or **permit** must not be issued in a discriminatory manner or otherwise violate any statutory provision.
- B. Revocable Permits. Some temporary uses of **DHHS** property involve the use, for a temporary period, of space that might otherwise be used for Governmental purposes. Such a **temporary** use may be authorized when it is in furtherance of the interests of the Government, such as when it enhances the morale and welfare of employees or patients. Thus, space can

be provided for the use of **employee** unions or for recreational purposes. Space may **also** be provided for the operation of a cafeteria for **employees** if **circumstances** justify such an action. Also included would be the making of space available for day care **centers** for children of **DHHS employees**, but such an action is now governed by statute (P.L. 94-482), which includes the additional authority of providing **equipment** for that purpose.

- C. Other Use of Government Space. The use of non-surplus space by persons outside the Government for a purpose not associated with **DHHS** activities, other than on a revocation-at% basis, must be based on statutory authority. **GSA** may delegate authority to **DHHS** under section 210(a) (13) of the *Federal Property and Administrative Services Act* of 1949 to lease building sites until they are needed for construction. **DHHS** does not have indepeadeat authority to make property available for farming. **GSA** may under section 202 of that Act authorize the leasing of **excess property**. The provision of space for cultural, educational, or recreational activities as provided for by the *Public Buildings Cooperative Use Act (P.L. 94-541)* requires a delegation of authority from **GSA**.
- D. Parking Spaces for Employees. Providing parking spaces for **employees** and visitors is a legitimate use of **DHHS** property. **GSA** regulations in that regard should be applied. It should be noted that penal sanctions do not apply to violations of parking regulations except in the case of Federal enclaves and then only when appropriate authority has been delegated by **GSA**.
- E. The Federal Credit Union Act (12 U.S.C. 1770, formerly 1771) authorizes the Secretary of **DHHS**, at his/her discretion, to provide space, without charge for rent or services, to credit unions 95 percent of whose members are Federal employees.
- F. Randolph-Sheppard Act (20 U.S.C. 107) authorizes the granting of concessions for vending stands in Government buildings, with preference being given to the blind.

24-06-30 REGULATIONS FOR THE MANAGEMENT AND USE OF SPACE

- A. The Department of Health and Human Services' (**DHHS**) authority with respect to space under its custody and control stems basically from 5 U.S.C 301 (formerly contained in 5 U.S.C. 22). That section provides that: "The head of an Executive department . . . may prescribe regulations for the government of his department, the conduct of his employees, the distribution and performance of its business, and the custody, use, and preservation of its records, papers, and property." That authority is, of course, subject to modification by statutory power and responsibility in specific fields. It should also be exercised in a manner consistent with the General Services Administration's (**GSA**) Federal Property Management Regulations (**FPMR**).

- B. Effect of Regulations. The regulations of the Secretary, such as the regulations dealing with smoking on **DHHS-controlled property**, are enforceable against employees and persons using the property only by administrative action. Violators of such regulations, however, are not subject to penal sanctions except in instances specifically provided for by statute.
- 0 Penal sanctions. The regulations of **DHHS** dealing with the conduct of persons and traffic on certain Federal **enclaves (45 CFR Part 3)** provide for fines of not more than \$50 or imprisonment for not more than thirty days, or both. Those regulations were issued pursuant to a statute appearing at 40 **U.S.C. 318-318d**, authority for which was specifically delegated to **DHHS** by GSA pursuant to section 205(d) of the Federal Property and Administrative **Services Act** of 1949. They are intended to be exercised in accordance with the policies, procedures, and controls prescribed by GSA in **FPMR 101-20.3**. That authority can be applied only to properties under the exclusive or concurrent legislative jurisdiction of the United States (Federal enclaves) and only when authority **therefor has been** specifically delegated by **GSA**.
- 0 Police Enforcement. The delegations **from** GSA such as those referred to above carry with them the authority to appoint employee guards as uniformed policemen with the powers of sheriffs and constables. This includes the power to carry firearms and to make arrests. **Guards** of private agencies and employee guards who are not appointed as special policemen do not have such rights. **Employees** are not to be so appointed without first attending an interagency school for that purpose. Until so appointed, employees should never attempt to arrest a private citizen.
- c. It is essential that **DHHS** maintain as **complete** a record as is feasible of the real property under its custody and control and of the uses being made of it. Such records are **indispensible** inasmuch as there is no general repository of Federal real property records. They are necessary for the compilation of **annual** reports for **GSA**, which keeps annual Inventories of Federal Real Property. They play an **important** role in **determining** whether the real property is being used fully and effectively, **as well as** in the process of complying with numerous requests in that regard. Finally, the records are essential for determining whether statutes and regulations are being **complied** with.
- D. Many of the statutes listed in Chapter **24-04**, relating to the acquisition of real property, apply with equal, or even greater, force to the management and use of space on a continuing basis. This is especially true of the Fire Safety Codes promulgated by the Fire Protection Association and adopted by **DHHS** pursuant to section 19 of the Occupational Safety and Health Act.

- E. Executive Order 12088 (October 13, 1978) calls for Federal compliance with various Federal Pollution Control **Standards**, including the following:
- 0 The Toxic **Substance** Control Act, (15 U.S.C. 2601 et seq.).
 - 0 Section 274(h) of the Atomic **Energy** Act, (42 U.S.C. 2021h).
 - 0 The **Marine** Protection, **Research**, and Sanctuaries Act of 1972, (33 U.S.C. 1401, 1402, 1411-1422, 1441-1444, and 16 U.S.C. 1431-1434.)
 - 0 The **Federal Insecticide, Fungicide, and Rodenticide** Act, (7 U.S.C. 136).
- F. State Control. In addition to the **Acts** listed, Executive Order 12088 call for compliance with other Pollution Control **Statutes**, which **themselves** call for **DEHS** compliance with State, interstate, and local requirements, including procedural **requirements** such as the obtaining of permits, as well as **substantive** requirements. They are as follows:
- 0 Section 313 of the Clean Water Act, (33 U.S.C. 1251 et seq. at 1323). This Act is directed primarily at effluent controls.
 - 0 Section 1447 of the Safe **Drinking** Water Act, (42 U.S.C. 300f et seq. at 300j-6). This Act primarily regulate **public** water **systems** for **water consumption** by the public, that is, having **15 service connections** and serving 25 individuals **60 days** out of the year.
 - 0 Section 4 of the Noise Control Act of 1972, (42 U.S.C. 4901 et seq. at **4903**). This Act is no longer enforced at the Federal level and is regarded as a local **matter**. **Nevertheless**, local requirement must be observed.
 - 0 Section 6001 of the **Resource** Conservation and Recovery Act, amending the **Solid Waste** Disposal Act, (42 U.S.C. 6901 et seq. at 6961). This is a broad expansion of the original Act and is directed primarily at the **disposal** of **hazardous wastes**.
 - 0 Section 118 of the Clean Air Act, (42 U.S.C. 7401 et seq. at **7418**). Under this Act, **National Air Quality Standards** are set to **protect** human health and the **public** welfare. They are based on the health and other effect of certain pollutant and are constantly being expanded to cover other **pollutants**. Emission standards are also set for certain hazardous air pollutants, primarily industrial-

24-06-40 EMPLOYEE WELFARE/SERVICE FACILITIES

A. Authority

- 0 As stated in 24-06-30, the use of non-surplus space by persons **outside the Government** for a purpose not associated with Department of Health and Human Services (DHHS) activities, other than on a revocation-at-will basis, **must** be based on statutory authority*
- 0 **Space can be made available under a license or permit provided it does not interfere with the Government's use of the property and provided it is in furtherance of the interests of the Government, such as the enhancement of the morale and welfare of employees or patients.** Such use includes employee welfare and recreation associations, cafeterias and **other concessions, health units, vending stands, dry cleaning establishments, and the like.**
- 0 Where **real property is assigned**, for other than official use a written **statement shall** be prepared, setting forth all **requirements pertaining to the assignment.** The **statement shall** be retained in **installation files** for review and shall include the basis for making the **assignment and the terms and conditions governing the use** of the property.

B. Federal Credit Unions

- 0 The Federal Credit Union Act--**Allotment of Space in Federal Buildings (12 U.S.C. 1770)** states: **"Upon application by any credit union organized under State law or by any Federal credit union organized in accordance with the terms of this chapter, at least 95 percentum of the membership of which is composed of persons who either are presently Federal employees or were Federal employees at the time of admission into the credit union, and members of their families, which application shall be addressed to the officer or agency of the United States charged with the allotment of space in the Federal buildings in the community or district in which such credit union does business, such officer or agency may in his or its discretion allot space to such credit union if space is available without charge for rent or services."**

An Amendment to the Act, adopted October 15, 1982 (Public Law 97-320), **adds** "For the purpose of this section, the term 'services' includes, but is not limited to, the providing of lighting, heating, **cooling, electricity, office furniture, office machines and equipment, telephone service (including installation of lines and equipment and other expenses associated with telephone service), and security systems (including installation and other expenses associated with security systems).** Where there is an agreement for

the **payment** of costs associated with the provision of space or services, nothing in Title 31 or any other provision of law, shall be **construed to prohibit or restrict payment by** reimbursement to the miscellaneous receipts or other appropriate account of the Treasury."

- 0 It shall be Department policy, upon request by officially recognized **credit unions**, to assign space in **Department-controlled buildings** that is available and not required for official purposes by the occupant activity controlling the space. Such space will be assigned without **charge for rent and services**, except where there is **an agreement providing for reimbursement**.
- 0 All **credit unions** shall conform to **standards** set forth in **FPMR 101-20.3, "Conduct on Federal Property,"** as well as the regulations and guidelines instituted by the **Department**. Desk-to-desk distribution of credit union **informational** materials and similar **promotional activities** may be authorized by the installation head, provided such activities do not disrupt agency efficiency. Denied **requests** by credit unions to conduct or **engage** in activities not clearly prohibited by **policy** or regulations may be appealed in writing to the **OPDIV** head. The decision of the **OPDIV** head may be appealed, through proper **channels**, to the **Assistant Secretary for Management** and Budget, whose decision is final.
- 0 The installation head shall, in keeping with these procedures and upon request from officially **recognized credit unions**, reassign available space and services to **credit unions**, limiting the space to that actually *required to conduct effectively the activities* of the **credit unions**. If there is a critical shortage of space at the installation, this will be sufficient reason to **deny** assignment of space to the *credit union*, but only after a review of current space utilization is conducted.
- 0 The space assigned **must conform to the minimum standards** on accessibility for the physically handicapped. (See **FPMR 101-19.6**) Space **assigned should be** in a central location within the building, close to main *corridors* to provide convenient access for all **employees**.
- 0 The installation head shall, within available *resources* and in keeping with these *procedures*, provide the following services without charge to *authorized credit unions*:

Maintain heating, lighting, ventilation, and necessary electrical outlets.

Provide housekeeping and maintenance services such as cleaning and **waxing floors, repairing and replacing floor coverings, cleaning and repairing venetian blinds, and cleaning windows,** all in **accordance** with normal building programs for such **work.**

Maintain and repair the building structure in the vicinity of the credit union.

- 0 The responsibilities of the credit union include, but are not limited to, the following:

The installation and maintenance of internal partitioning and **special equipment.**

The arrangement of furniture and **equipment in a manner that will facilitate operation and will minimize congestion, hazards, and general maintenance problems.**

The **submission** of space layout plans of proposed credit unions to the installation head for advance approval to **assure conformance** with sound buildings management practices, **including consideration of health and safety features, electrical system loading, and handicap barriers.**

- 0 The installation head may prepare agreements in memorandum **form**, or on printed forms, provided that the memoranda or printed forms address the following:

Description of space to be assigned, including building name and address, **room number(s), and square footage assigned.**

Official name of the **credit union** and citation of its charter.

That the license or permit issued to the credit union is not assignable and may be *revoked* at will by the Government.

The services which the **Department** will supply without **charge**, such as services to prepare or recondition the initial space assigned to *the credit union*, as well as the services noted **above.**

The services, equipment, or furniture for which the licensee or permittee will be responsible.

The licensee or **permittee** will not discriminate against employees, applicants for employment or **membership**, or patrons **on** the grounds of **age**, race, **creed**, color, national origin, handicap or **sex**, and will **comply** with Title VI of the Civil Rights Act of 1964, section 504 of the **Rehabilitation** Act of 1973, the Age **Discrimination** Act of 1975, and the Department's **regulations** issued pursuant thereto.

The licensee or **permittee** shall conform to the **GSA** rules and regulations relating to conduct on Federal property as set forth in **FPMR** 101-20.3.

Except for the **foregoing** provisions, the license or **permit** may be **modified** and additional terms and conditions added where necessary to fit the particular circumstances. Care **should be** taken to assure **that any modifications** or additional conditions will not be contrary to law or other regulatory **requirements**, or be detrimental to the mission of the host installation.

All **agreements** shall be signed by the appropriate installation **head** and by **an** authorized credit **union official**. **Executed** agreements will be distributed as follows:

Original to licensee or **permittee**.

Copy for the real property **management** files of the installation head.

C. Vending Stands for the Blind

- o The Randolph-Sheppard Vending Stand Act (**40 Stat. 1559**, as amended by **68 Stat. 663, 20 U.S.C. 107**), provides a priority for blind persons in the location and operation of vending facilities on **Federal** property. It also *directs the assignment of vending machine income* and establishes certain State **licensing** agency responsibilities for effective **management** of the vending facility program *for t&e blind* in each State.
- o Blind persons licensed by State licensing agencies designated by the Secretary of Education, under the provisions of the Act, shall be given preference in the operation of vending stands and machines on any **DHHS-controlled** property. Any limitation on the location or operation of a vending facility by a blind vendor, based on a finding that such location or operation would adversely affect the interests of **DHHS**, shall be fully justified in writing to the Secretary of Education who shall **determine** whether such limitation is warranted. A decision made by the Secretary concerning such limitation shall be binding and shall be published in the Federal Register. (See 34 CFR 395.30(b))

- o Consideration shall be given to the inclusion of vending facilities in the planning and construction of facilities, and in the leasing of space when the population of the building will be sufficient to support such a stand. Where it is determined that vending machines are to be installed on leased property, the necessary approval of the lessor shall be obtained prior to the issuance of a permit.

The licensee or permittee shall conform to the GSA rules and regulations relating to conduct on Federal property as set forth in FPMR 101-20.3.

Except for the foregoing provisions, the license or permit may be modified and additional terms and conditions added where necessary to fit the particular circumstances. Care should be taken to assure that any modifications or additional conditions will not be contrary to law or other regulatory requirements, or be detrimental to the mission of the host installation.

All agreements shall be signed by the appropriate installation head and by an authorized credit union official. Executed agreements will be distributed as follows:

Original to licensee or permittee.

Copy for the real property management files of the installation head.

C. Vending Stands for the Blind

- o The Randolph-Sheppard Vending Stand Act (40 Stat. 1559, as amended by 68 Stat. 663, 20 U.S.C. 107), provides a priority for blind persons in the location and operation of vending facilities on Federal property. It also directs the assignment of vending machine income and establishes certain State licensing agency responsibilities for effective management of the vending facility program for the blind in each State.
- o Blind persons licensed by State licensing agencies designated by the Secretary of Education, under the provisions of the Act, shall be given preference in the operation of vending stands and machines on any DHHS-controlled property. Any limitation on the location or operation of a vending facility by a blind vendor, based on a finding that such location or operation would adversely affect the interests of DHHS, shall be fully justified in writing to the Secretary of Education who shall determine whether such limitation is warranted. A decision made by the Secretary concerning such limitation shall be binding and shall be published in the Federal Register. (See 34 CFR 395.30 (b))

- o Consideration shall be given to the inclusion of **vending** facilities **in the planning and construction of facilities, and in the leasing of space when the population of the building will be sufficient to support such a stand.** Where it is **determined that vending machines are to be installed on leased property,** the **necessary approval of the lessor shall be obtained prior to the issuance of a permit.**

- o A permit shall be issued **in the name of the applicant State licensing agency, and shall prescribe such procedures as are necessary, as set forth in FPMR 101-20.2 and in the Application and Permit.** The permit shall be for **an indefinite term. No charge will be made to the State licensing agency for the use of the Government-furnished space, or for the maintenance and repair of the building structure in and adjacent to the vending stand areas.** This includes **painting and decorating, utilities required to operate the vending stands and vending machines, and other related building services in accordance with the normal level of service.**

- o In the **granting of permits to designated licensing agencies, or by contract with others, such as a necessary basic food service operation, the Department of Education regulations (34 CFR 395) and the procedures contained in GSA's FPMR 101-20.2 should be followed.** The regulations provide that **income collected from vending machines in competition with a blind vending facility shall accrue to the State licensing agency as follows:**
 - 100 **percentum** of **all** income collected from all **vending machines in direct competition with vending facilities operated by blind vendors.**

 - 50 **percentum** of all **income** collected **from** vending machines not **in** direct competition with a **blind** vending facility.

 - 30 **percentum** of all **income** collected from **vending** machines not **in** direct competition with vending facilities operated by blind vendors at which at least 50 **percentum** of the total hours worked on **premises** occurs during a period other than **normal working hours.**

- o It shall be the responsibility of the on-site installation head to determine whether a vending **machine** on the property is **in** direct competition with a **vending** facility operated by a **blind** vendor, subject to the concurrence of the State **licensing agency.**

The collection of vending **machine** income by the responsible property management officer and its disbursement to the appropriate State licensing agency shall be conducted on at least a **quarterly** basis.

All arrangements pertaining to the operation of vending machines on DHHS-owned or -leased property not covered by contract with, or by permits issued to, State licensing agencies, shall be renegotiated upon the expiration of the existing contract or other arrangements so as to satisfy the provisions of this section.

The provisions of this section shall not apply to income from vending machines which are not in direct competition with a blind vending facility on DHHS-owned or -leased property and whose total income does not exceed \$3,000 annually.

D. Day Care Centers

- o In accordance with Public Law 99-591, Section 101(m) [Title VI, Section 616], (40 USC 490b), space in Government buildings may be allotted for day care centers for children of DHHS employees at no cost. Also see Section 524 of the Education Amendments of 1976 (P.L. 94-482) (20 U.S.C. 2564).
- o The officer in charge of the installation will determine whether there is a need for a center, and will be responsible for initiating the revocable permit for use of the space.

E. Federal Employee Health Units

- o The provision for the establishment of health programs for Government employees is contained in P.L. 79-658 (5 U.S.C 7901). The Act provides that employee health units shall be established only after consultation with the Division of Federal Employee Occupational Health, Health Resources and Services Administration, and consideration of its recommendations, and only in localities where there is a sufficient number of Federal employees to warrant the provision of such services.

In most instances, a formally organized health program may be provided in buildings where the number of Federal employees to be served exceeds 300.

Employee health units can also be operated by another agency or agencies, or even by contract with an outside source, subject to the provisions of the aforementioned Act. For employee groups of less than 300, management may make arrangements by contract with private physicians to provide services such as physical examination, health screening, and other preventive services.

- o The administration and operation of health units in Federal buildings by the Division of Occupational and Beneficiary Health Services is based on its agreement for reimbursement with the Federal agency involved.

F. Establishment and Operation of Concessions

0 Concession-type activities are those which sell a commodity or perform a service at an established price. This includes, but is not limited to, barber *and* beauty shops, taxi stands, vending stands **and machines, commissaries, mobile vending stands, canteens, soda fountains, lunch counters, and cafeterias.**

0 It is **DHHS** policy to provide for concessions **which** are both convenient **and** beneficial for employees and patients, and which are likely to increase employee morale and **efficiency**. The installation head will determine whether concessions are needed and feasible by the following criteria:

- sufficient funds **must** be available to *defray* any cost for which DHHS will be **responsible** under the contractual **agreement**.

Sufficient **and** satisfactory space, not required for official purposes, must be available for the **concession**.

It **must** be possible to **establish** and operate each concession in conformance with applicable safety, health, **and** sanitation codes.

The commodities and **services** sold shall be limited to those which are beneficial for employees and patients and which cannot easily be obtained from existing facilities.

Each concession shall be required to **serve** all Federal **employees** or *patients* without regard to their age, race, creed, color, national origin, handicap or **sex**.

0 In granting permission to operate **concession-type** activities, the following activity/use **categories** shall be considered in the order of precedence listed below:

- Activities involving the rehabilitation and therapy of patients under Sections 341-346 of the Public Health Service Act, as amended, 42 U.S.C. 257-261, the employment of Indian labor and the selling of products of Indian Industry under the provision of the Buy Indian Act, as amended, ²⁵U.S.C. 47 **and** the operation of vending facilities for the blind under the Randolph-Sheppard Vending Stand Act, as amended, 20 U.S.C. 107 **et seq.**

Activities of **DHHS Employees Associations**.

Uses by private individuals and **organizations**.

- Questions concerning this order of precedence should be addressed to the Deputy Assistant Secretary for Administrative and Management Services who will secure, when appropriate, the advice of the Office of General Counsel.

- 0 **Commissaries** and similar enterprises involving the use of DHHS facilities for the sale of groceries, household goods, appliances, and any other commodity to employees, will not be established at any installation unless it is isolated or remote and extreme hardship would result if such activities were not permitted. The officer in charge shall submit a statement justifying the need for the commissary to the OPDIV prior to the establishment of the commercial activity. The statement shall include information on the availability of foodstuffs and other supplies, transportation problems (goods and services), special living allowances, a comparison of local prices and those likely to be established at the concession, and other pertinent information.

- 0 The installation head for each installation is responsible for insuring that applicable regulations are complied with and that proper conduct is maintained at each concession. In particular, the installation head must insure that operations are conducted in conformance with the terms and conditions of the license, applicable Federal, State, and local regulations for safety, health, and sanitation, and such other operating standards as may be issued.

Unless otherwise stipulated in the license, the concessionaire shall provide as follows:

Equipment and facilities, unless Government equipment is already installed. All equipment shall be in good condition and operating efficiently.

Space preparations and subsequent alterations required for the installation and operation of the concession, and costs entailed in the removal of equipment, restoration of premises, etc., upon termination of the license.

- Cleaning of the area in an acceptable manner. If cleaning and related services are provided by the Government, the concessionaire shall reimburse the Government at actual cost when known, or otherwise at a cost estimated by the installation head.

- Reimbursement for utilities such as heat, light, power, telephones, as determined by the installation head, based on separately metered or estimated consumption. For vending machines contracted for by employee associations, \$1.00 per month for each vending machine will be charged.

The **concessionaire** will comply with the Equal Opportunity Clause prescribed by **Executive Order 11246**, and "**Rules of Conduct on Federal Property**" as set forth in **FPMR 101-20.3**.

- 0 The concession **agreement**, entered into in **accordance** with the Federal Procurement Regulation (**FPR**) issued by **GSA**, must be signed by a **contracting** officer with delegated **authority**.

24-06-50 NAMING OF BUILDINGS AND INSTALLATIONS

- A. **Naming of Buildings.** Under section 410 of the Public Buildings Act of 1949 (**40 U.S.C. 298d**) the **Administrator** of General **Services** has the authority to **name, rename, or otherwise designate any building** under the custody and control of **GSA** regardless of whether it was **previously renamed by statute**. Likewise, **DHHS assumes the authority, under 5 U.S.C. 301**, to name its own buildings. The *primary* purpose in designating an official **name** for an **DHHS installation or building is to identify the** occupying activity *for the public and official visitors*.
- B. **Signs and Plaques.** All **identifying signs, plaques, doors, etc., shall be lettered** as follows:

- 0

U.S. Department of
Health and Human Services
Operating Division
Bureau
Division, Office, or Program

The size of **lettering** should be in proportion to the size of the sign. The **Department** legend shall be the largest size letters.

- 0 **Grounds and entrance signs or plaques should be of a size to be easily readable** from a passing vehicle and should be placed at the main entrance to field installations.
- 0 Where entrances to installations are properly identified, individual buildings may be identified **according** to their primary use.
- 0 The **General Services Administration** has adopted the following inscription for *all* cornerstones for **Federally-constructed** buildings:

United States of America
President
(Name of President at *the time* **cornerstone is set**)
19--
(Year *construction started*)

Additional names, if any, will be determined on a case-by-case basis.

- o No plaques or tablets which pertain to the construction of the building or to those responsible for the construction will be placed on **the interior** of a building.
- c. The Secretary may name or **rename** (in honor of deceased persons) **installations** or buildings held by **DHHS** in the absence of specific expression by the Congress of its preference for naming the property.
- D. **Deceased persons may be memorialized**, subject to the approval of the **Secretary**, as follows: (1) those who **have distinguished** themselves by making an **outstanding contribution toward the** establishment and accomplishment of major **programs of national or international interest and importance**; (2) those who have **firmly established an eminent position in the Government**; and (3) those who have held positions of high and **extensive responsibility**. **Requests will not be approved** where the naming of the building for the **deceased** person would prevent the identification of the organizational activity to the public.
- E. It is Department policy not to **name an installation** or building under the custody and control of the **Department** in honor of a **living person**.
- F. A memorial or plaque erected on or in **buildings** or on land under the **custody** and control of the **Department** shall be subject to a revocable **permit** issued by the person responsible for the installation. No part of the cost of installation, **maintenance**, or removal shall be borne by the **Government**.

The following **standards** shall be applied in connection with the erection of approved memorial or plaques:

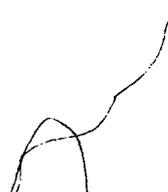
- o Design. The **design** should be of such material, proportion, and detail as will harmonize with its **surroundings** in a dignified and appropriate **manner**.
- o Inscription on Plaques. The **inscription** should be held to the minimum required to **accomplish** the purpose of the plaque.
- G. To process a request for **memorialization honor**, the following information and attachments shall be submitted by the OPDIV to the Office of Special Programs Coordination, **CAMS**, for action in the Office of the **Secretary**:
 - o A biography of the individual to be honored;
 - o copies of pertinent official files concerning the individual;
 - a . photographs of the **installation, building, room, etc.**, to be **named** in honor of the individual;

- o if new construction is involved, completion dates, description of the facility., etc.;
- o **recommendations** as to action to be taken on the memorialization request **and** planning of the **dedication ceremony**;
- o designation of an official to coordinate required actions; and
- o if the request proposes a **memorial** or plaque for an individual or group, the following additional information should be furnished:
 - complete justification for the **memorial** or plaque, including the proposed inscription; and
 - sketches showing the design and location on the site or **building** and **photographs** of the building or site.

The OPDIV will be notified of the action taken on the request.

H. Dedication Ceremonies . The **completion** of a new **DHHS** installation, building, or *major* extension to an existing building is an event of importance to the program and to the **local community**. Therefore, it is the policy of the Department to recognize the occasion by planning and conducting appropriate **dedication ceremonies**. It is also Department **policy** not to hold ground-breaking or **cornerstone-laying ceremonies** unless circumstances dictate otherwise.

The *OPDIV* **Head** is responsible for the planning and execution of dedication ceremonies, and may appoint a dedication **committee** of staff to assist in the ceremonial program, and will determine on a case-by-case basis if there is a need for **headquarters** staff participation. Plans for publicizing the **naming** and/or dedication of Department installations and buildings, including the erection of memorials and plaques, shall be reviewed by the appropriate **DHHS** Regional Director (for field facilities) and by the Office of the **Assistant Secretary for Public Affairs**. This requirement shall include public information clearance of **news** releases for press, radio, and television; printed program¹³ and **commemorative** booklets; and any other printed speeches to be delivered by **DHHS** staff. Requests for assistance concerning dedication ceremonies may also be directed to the Director, Congressional Liaison Office; or the **OSPC/OAMS** as appropriate.



DHEW EMPLOYEE WELFARE AND RECREATION ASSOCIATIONS

- 25-10-00 Purpose
- 10 Scope
- 20 Responsibility and Authority
- 30** Definitions
- 40 Policies
 - A. Authorization
 - B. Membership and Participation
 - C. Organization
 - D. Activities
 - E. Financial Management
 - F. Use of Government Facilities and Services
 - G. Use of Official Time for Employee Association Business
 - H.** Management Relations with Employee Associations

25-10-00 PURPOSE

This chapter establishes policies governing the relationships between the Department and employee welfare and recreation associations; states the responsibilities of Department and employee association officials; and states the authority of the Department officials for making determinations and taking action on the authorization to identify with the Department, organization, operation, review for continued compliance with policies, and withdrawal of authorization to identify with the Department.

25-10-10 SCOPE

These policies apply to formally organized employee associations, clubs, cooperatives, and similar groups whose **primary purpose** is to serve employees' welfare and recreation needs or to provide services to employees and **items** of convenience and necessity not otherwise available from regular commercial sources within a reasonable distance from the worksite. These policies do not apply to professional societies, employee credit unions, labor unions, or informal **groups (i.e., "fiower" or "sunshine" funds).**

25-10-20 RESPONSIBILITY AND AUTHORITYA. Assistant Secretary for Administration and Management:

Responsibility and authority for the issuance of the policies stated in this Chapter are delegated to the Assistant Secretary for Administration and Management by Chapter 1T-30, Part 1 (Office of the Secretary) Staff Manual--ORGANIZATION. The Assistant Secretary for Administration and Management (**ASAM**) is the responsible official for employee associations operating **Department-**wide. The Deputy Assistant Secretary for Personnel and Training (DASPT) is delegated authority to act as the responsible official for the **ASAM**.

B. Operating Agency Heads: The head of each operating agency is the responsible official for employee associations operating in the operating agency.C. Installation Head: The head of each installation is the responsible official for employee associations operating in the installation.D. Delegations of Authority: The **ASAM**, operating **agency** heads, and installation heads may delegate the responsibilities and authorities assigned by this Chapter. Delegations must be in writing and copies must be filed with the DASPT.25-10-30 DEFINITIONS (For purposes of this Chapter)A. Employee Association: Means a formally organized group whose primary purpose is to serve the welfare and recreation needs of, or to provide services to, employees of the Department of Health, Education, and Welfare. (See 25-10-10 above).B. Responsible Management Official: Means the officials identified in 25-10-20 above. When an employee association serves the employees of more than one operating agency, the **DHEW** official, identified in 25-10-20 above, responsible for providing management services in the installation is the responsible **manage-**

(25-10-30B Continued)

ment official. The Assistant Secretary for Administration and Management is the responsible management official for employee associations that operate Department-wide (e.g., the HEW Employees' Association, HEW Employees' Insurance Association, Incorporated).

C. Department: Means the Department of Health, Education, and Welfare, and any organizational component of the Department.

25-10-40 POLICIES

Employee welfare and recreation associations meet definite needs of employees and serve many beneficial purposes, both for the employees and for the Department. The Department as an employer also benefits from activities which promote the morale and welfare of its employees. Accordingly, the Department encourages cooperative activities by employees. At the same time, the Department must ensure that associations are organized and operated in the best interest of their members and in a manner which safeguards the Department's public relations and its reputation as a responsible employer.

Only employee associations authorized under this Chapter may be designated to receive income from **concession** operations or vending machines (See **25-10-40F2a(3)** below). Income received from concession operations or vending machines must be budgeted for activities that are open without any restrictions-regarding membership in the employee association.

The following specific policies shall govern the organization and operation of employee associations and their relations with the Department:

A. Authorization

1. General

- a. Permission to identify with the Department must be authorized, in writing, by the responsible official.

(25-10-40A1 Continued)

- b. Whenever a group of employees of the Department propose to organize an association as defined in 25-10-10 above, they must make their request to identify with the Department in writing. An officer of the employee association authorized to act for the employees association makes the request. Requests must include a copy of the: charter, statement of purpose, constitution, bylaws; list of current board of directors (or other governing body): officers, executive (management) committee, and supervisory (audit) committee: and latest financial statements (balance sheet and income and expenses). As a minimum, the employee association must commit itself to observing the policies stated in this Chapter.
2. Withdrawal of Authorization
 - a. The responsible management official, as a condition of continued permission to identify with the Department, may at any time, require appropriate evidence of compliance with the policies stated in this Chapter.
 - b. Authorization to identify with the Department will be withdrawn whenever the responsible management official finds: (1) that the employee association is not abiding by the policies of this Chapter: and (2) after giving notice of the corrective action that must be taken (including a specified date by which corrective action must be completed) that the employee association has failed to take the necessary corrective action (See 25-10-40 H6 below).

(25-10-40A2 continued)

B. Membership and Participation

1. Membership in DHEW employee associations shall be open to employees without regard to race, color, religion, sex, or national origin.
2. All activities sponsored by employee associations must be open to participation by all qualified employees without regard to race, color, religion, sex, or national origin. Accordingly, no employee association may sponsor any activity or event which is not open to all qualified employees even though the restrictions are not placed by the association but are imposed by the law or custom of the community.
3. No employee association which practices discrimination based on race, color, religion, sex, or national origin, shall be allowed to use the name, sponsorship, or facilities of the Department.

C. Organization

1. Membership Control: Employee associations shall provide in their statement of purpose, charter, or constitutions for a form of organization which ensures democratic control by the association membership. The employee association shall have a governing body (such as a board of directors or council) elected from the association membership. If the association serves more than one operating agency, each operating agency shall have representation on the governing body in proportion to its membership in the association.
2. Association Management: The bylaws of the employee association shall carefully define the functions and authorities of the governing body and officers, Such

(25-10-40C 2 continued)

functions and authorities shall in total provide a comprehensive set of duties and responsibilities for the management of the association's affairs.

3. Conflict of Interest:

In order to assure arms-length dealings and to avoid personal interests influencing the conduct of employee association business, employee associations shall include in their bylaws, a prohibition, that association officers, members of governing bodies, and association employees: (1) shall not accept gratuities or any other benefits, directly or indirectly, from sellers of goods or services, doing or soliciting business with the association and (2) shall not receive special discounts over and above those available to members.

4. Incorporation: Employee associations which are not incorporated should consider the advantages, especially protection of members against individual liability, of incorporating under the laws of the State in which located. If the employee association is not incorporated the membership card must state the members' individual liability.

5. Day-to-Day Business Activities: Employee associations should employ part-time or full-time salaried employees to conduct their day to day business activities. (See 25-10-40G below).

6. Minutes: Employee associations shall make available for inspection by all members of the association, copies of the minutes of meetings of the association and copies of the minutes of meetings of the governing body.

7. Notice to Members: The availability of **copies** of the charter, constitution, bylaws, and minutes of meetings of the association and the governing body, for inspection by members, shall be made known, at least annually, by publication of a notice in the association publication **or** by the posting of a notice on bulletin boards.

D. Activities

1. Authorized Activities: Employee associations **may**, within the limits of applicable Federal, State, and local laws, engage in activities which minister to the welfare and recreational needs of their members without reflecting detrimentally on the Department. (See, however, **25-10-40B**, above).

2. Retail Trade:

- a. Employee associations may, normally, engage in retail trade in order to provide employees with services and **items** of convenience and necessity not otherwise available from regular commercial sources, within a reasonable distance from the worksite.
- b. Employee associations shall not use Government **facilities** for the storage or sale of **alcoholic** beverages or other items which are prohibited by Federal regulations.

3. Determinations:

The responsible management official shall make the determination regarding activities that may reflect detrimentally on the Department and the extent of direct retail trade activities under **25-10-40D2a** above.

E. Financial Management

Every employee association is accountable to its membership for the funds entrusted to it

(25-10-40E continued)

and shall make accounting arrangements appropriate to the size and complexity of its financial affairs.

1. Accounting Systems: Every employee association shall maintain adequate records of receipts and disbursement of association funds as well as a current inventory of association property. The type of accounting system will depend on the volume of funds handled by the employee association. The accounting system shall, as a minimum, be so designed that: (a) it provides adequate controls to assure proper disbursement of and accounting for cash and property; and (b) it permits an accurate and expeditious independent audit (examination) and the preparation of financial reports as indicated in 25-10-40E2 and 25-10-40E3 below.
2. Periodic Audits (Examination): Every employee association shall have its records audited at least once a year. An employee association with gross receipts of \$25,000 or more a year shall have its records examined by a qualified public accountant. An employee association with gross receipts of less than \$25,000 a year may, in lieu of an audit by a qualified public accountant, have an audit made by an audit (supervisory) committee whose members are not officers or employees of the association. The audit must be made in accordance with generally accepted auditing standards for the purpose of expressing an opinion on the financial statements (See 25-10-40E3, 25-10-40H4, and 25-10-40H6 below).
3. Financial and Audit Reports: Every employee association shall brief and publish for association members, the

(25-10-40E3 continued)

financial reports (balance sheet and income and expense statement) resulting from audits. The opinion of the public accountant or the audit committee in respect to the financial statements must be included. A copy of the briefed, financial reports shall be posted on the agency's bulletin boards and **in** the office(s) of the association. The right of members to inspect a copy of the complete audit report shall be stated in the briefed financial reports. A copy of each financial report and audit report (complete and briefed) shall be furnished to the responsible management official as soon as the report is prepared.

4. Physical Security of Funds: Department policies stated in Chapter 29-05-- Protection of Banking Facilities-- General Administration Manual must be followed by employee recreation and welfare associations.
5. Bonding: The elected officers and paid employees of the association who have **access** to association funds in excess of \$500 shall post fidelity bonds in a sufficient amount to protect the association against possible loss. Bond coverage will be reviewed, at least annually, and adjustments made to assure that full protection of the association against possible loss is maintained.
6. Insurance: Employee associations which keep on hand or in transit (not in bank deposits) amounts in excess of \$1,000 shall procure burglary, holdup, robbery and larceny insurance. Other insurance coverage, including fire and liability, to cover other risks shall be carried by each employee association. Insurance coverage will be reviewed, at least annually, and adjustments made

(25-10-40 E6 continued)

to assure that full protection of the association against possible loss is maintained.

7. Limit on Cash Reserves: Employee associations shall avoid accumulating unnecessary reserves. Each employee association, in consultation with the responsible management official, shall establish a limit on the reserves that bear a direct relationship to a definite purpose for which such reserves are being accumulated.

F. Use of Government Facilities and Services

1. General: The Department will provide employee associations such practical assistance in the form of facilities and services as may be feasible on a local basis. Department management officials shall be guided in this by the considerations of public interest which govern the custody and administration of Federal property and facilities.
2. Space:
 - a. The responsible management official shall grant employee associations the use of space controlled by DHEW under the following conditions:
 - (1) Auditoriums, cafeterias and similar space shall be made available for group activities upon request of an employee association, in accordance with Manual Circular-General Administration No. 69-5, Rev.--Use of Department Facilities For Meetings For Non-Official Purposes, dated 7/31/71.
 - (2) Reasonable amounts of space, as may be required for necessary business operations, shall be made available to employee associations for exclusive

occupancy when management finds that setting aside the space for this purpose will not hamper program operations. Requests for space shall be in writing. Occupancy will be on the basis of a formal agreement entered into by the appropriate official and the employee **association**, in accordance with real property management policies as stated in Chapter 3-250 Real Property Management --Facilities Engineering and Construction Manual (FECM) and Chapter 3-336 Assignment of Space to Employee Associations and similar activities (to be issued) FECM.

- (3) Subject to the provisions of the Randolph-Sheppard Act (20 U.S.C. 107-107f); Chapter 3-320 Vending Stands For The Blind On Federal Property In The Custody of **DHEW** (Randolph-Sheppard Act)-FECM; and Title 45 Code of Federal Regulations, Section 20, space for income-producing equipment, such as vending machines, may be provided at a nominal charge to employee associations of \$1.00 per month for each machine in lieu of rental. However, assignment of vending machine income may be made only to employee associations that have been authorized under this Chapter (See 25-10-40A above).

- b. Requests for the use of space controlled by the General Services Administration (GSA) shall be submitted to the responsible management official for review and recommendation for action by GSA.

(25-10-40) continued)

3. Other Management Services: The responsible management official may provide management services (e.g. duplicating, printing, etc.) to employee associations whenever permitted by Department policy and regulations, when this will not interfere with the efficiency of the servicing facility. The employee association shall make reimbursement for services rendered. Reimbursement shall be on an actual cost basis, when adequate **cost records** are available. Reimbursement shall be based on the appropriate price schedules of the Office of the Secretary Working Capital Fund, when adequate cost records are not available.

G. Use of Official Time for Employee Association Business:

1. Management officials may authorize the use of official time (See, also, Federal Personnel Manual-Chapter 630, Subchapter 11--Excused Absence: Supplement 990-2, Book 630, Subchapter 11--Excused Absence: and HEW Personnel Guide for Supervisors, Chapter IV, Guide 5, Supplement 1, paragraph 21) by officers and members of the governing bodies of employee associations for conducting association business in accordance with the following standards:
 - a. Use of official time for conducting association business must not interfere with the proper performance of the employee's regular duties,
 - b. Use of official time will be confined to matters which cannot reasonably be taken care of outside official hours.
2. Official time will not be used for record keeping, conducting day-to-day business activities, or to manage or participate in welfare and recreation activities of the association.

H. Management Relations With Employee Associations:

1. General: Management officials, in their relations with employee associations, shall administer these policies in a spirit of constructive interest in employee affairs and with a view to facilitating the organization and conduct of worthwhile employee services and cooperative activities.
2. Liaison Representative: The responsible management official will designate a liaison representative for each employee association operating in the installation, at the time the employee association is officially authorized by the responsible management official. The proper role of the liaison representative is purely advisory. The employee association should use the liaison representative as a channel for keeping the responsible management official informed of the association's activities and problems, and as a means of obtaining the responsible management official's views as needed.
3. Management Practices: To assist an employee association in evaluating its management policies and procedures, the responsible management official may, at the association's request, designate a qualified employee to survey the association's management requirements (financial, personnel, etc.) and to make recommendations to the association as to the best methods for meeting them. The association shall be responsible for securing the necessary professional services to implement any such recommendations.
4. Financial Audits: Management officials shall avoid any responsibility for the audit of an employee association's accounts or the accuracy of its financial reports (See 25-10-40E2 above).

(25-10-40 H continued)

5. Recognition: Management officials shall not "recognize" employee welfare and recreation **associations** as qualified to represent employees or reflect employee opinion on job-related matters whether or not there exists locally an employee **union**.

6. Management Audit: The internal audit organization responsible for reviewing the **activities** of an installation shall inspect each employee association at that installation at least as frequently as it inspects any organization at the installation. Inspectors shall have ready access to all employee association records. The inspection shall be sufficiently thorough to enable the auditors to express an opinion as to the degree of compliance with the policies set forth in this Chapter. A copy of the inspection report will be **furnished** to the responsible management official and to the employee association inspected. On the basis of the **in-**inspection report, the responsible management official will take whatever action is necessary to assure continued compliance with the policies set forth in this Chapter (See 25-10-40A2 above).

"

CENTRALIZED SERVICES IN FEDERAL BUILDINGS - GENERAL

26-00-00	Scope
05	Applicability
10	Terminology
15	GSA Policy
20	Economic Feasibility of Centralized Services
30	Operation of the Centralized Facility
35	Agency Committees

26-00-00 SCOPE

This part prescribes the methods by which the General Services Administration provides for establishment of centralized services in GSA controlled Federal Buildings occupied by a number of executive agencies.

This chapter states general policies, guidelines, and procedures for the establishment of centralized services in multioccupant Federal buildings. It implements Bureau of the Budget Circular No. A-68, "Establishment of central supporting service facilities in headquarters and field office locations," dated August 28, 1964.

26-00-05 APPLICABILITY

The regulations in this part apply to all executive agencies that occupy space in, or are prospective occupants of, multioccupant GSA controlled Federal buildings located in the United States. In appropriate circumstances, the centralized services provided pursuant to this part may be extended to agencies occupying nearby Federal buildings. For purposes of this part, reference to Federal buildings may be deemed to include, when appropriate, leased buildings under the control of GSA.

26-00-10 TERMINOLOGY

- A. Centralized services means those central supporting services and facilities provided to occupying agencies in Federal buildings in lieu of each agency providing the same services or facilities for its own use. It does not include such common buildings features as cafeterias, blind stands, auditoriums, dumbwaiters, incinerators, loading platforms, or similar facilities. Excluded, also, are interagency motor vehicle pools.
- B. Occupying agency means any Federal agency assigned space in a building for which GSA has responsibility for the functions of operation and maintenance in addition to space assignment.

26-00-15 GSA POLICY

To the extent practicable, GSA will provide or arrange for the provision of centralized services whenever such services ensure increased efficiency and economy to the Government without hampering program activities or essential internal administration of the agencies to be nerved.

26-00-20 ECONOMIC FEASIBILITY OF CENTRALIZED SERVICES**A. General**

GSA is currently providing various centralized services to Federal agencies in such fields as office and storage space, supplies and materials, communications, records management, and transportation services. Centralization of other supporting services or activities such as health units, printing and duplicating plants, use of training devices and facilities, and central facilities for receipt and dispatch of mail, is frequently feasible with resulting economies in personnel, equipment, and space. Opportunities to effect economies through planned consolidation of such services occur particularly during the design stage of the construction of new Federal buildings.

B. Basis for Determining Economic Feasibility

1. Whenever possible, determination of the economic feasibility of a proposed centralized service shall be based upon standard data on the relationship of the size of the Federal building, the number of occupants, location, and other factors pertinent to the type of centralized service being considered.
2. In the absence of standard data on which a determination of economic feasibility may be based, or where such data must be supplemented by additional factual information, a formal feasibility study will be made by GSA prior to a final determination to proceed with the furnishing of a centralized service. Generally, a formal feasibility study will be made only if provision of the proposed centralized service would involve the pooling of staff, equipment, and space which occupying agencies otherwise would be required to utilize in providing the service for themselves. Examples of centralized services which require formal studies include printing and duplicating plants, self-service stores, and similar facilities.
3. On the basis of experience under the centralized services program, GSA will develop criteria as to cost comparisons, production needs, building population, number of agencies involved, and other appropriate factors for consideration in determining the practicability of establishing various types of centralized services.

C. Data Requirements for Feasibility Studies

1. The data requirements for feasibility studies may vary from program to program, but shall be standard within any single program. Such data shall establish the costs resulting from provision of the service on a centralized basis as compared to the same service provided separately by each of the occupying agencies, including the costs of personnel assigned to provide the service, comparative space needs, equipment utilization, and any other pertinent factors.
2. Wherever feasible and appropriate, data will be obtained directly from the prospective occupying agencies, subject to necessary verification procedures. Suitable standard formats and necessary instructions for submission of data will be prescribed in applicable issuances.
3. Agencies required to submit data for a feasibility study will be furnished with copies of the prescribed reporting forms and such assistance as may be needed to assure their accurate and timely completion.

D. Scheduling Feasibility Studies

The schedule of feasibility studies will be coordinated by GSA with its construction, space management, and building management programs. Before initiating the study, the Administrator of General Services, or his authorized designee, will give at least 30 days' notice to the head of each agency that will be served by the proposed centralized facility. Such notice will contain an indication of the cost involved and the general procedures to be followed in the study.

E. Designating Agency Representatives

The head of each agency receiving a GSA notice regarding a scheduled feasibility study will be requested to designate one or more officials at the location where the study will be made who may consult with authorized GSA representatives. Such information and assistance as is required or pertinent for an adequate review of the feasibility of the proposed centralized service shall be made available to GSA through the designated agency representative. The Division of General Services, OA will coordinate studies within the Department.

F. Conduct of Feasibility Studies

An initial meeting of the representatives of prospective occupying agencies will be held to discuss the objectives and detailed procedures to be followed in the conduct of each feasibility study. Arrangements will be made at this meeting for obtaining all necessary data in accordance with subsection C. above.

(26-00-20 continued)

G. Administrator's Determination

1. The Administrator of General Services will determine, on the basis of the feasibility study, whether provision of centralized service meets the criteria for increased economy, efficiency, and service, with due regard to the program and internal administrative requirements of the agencies to be served. The Director of the Bureau of the Budget and the head of each agency affected will be advised of the Administrator's determination and of the reasons therefor. Each determination to provide a centralized service shall include a formal report containing an explanation of the advantage to be gained, a comparison of estimated annual costs between the proposed centralized operation and separate agency operations, and a statement of the date the centralized facility will be fully operational.
2. While a formal appeals procedure is not prescribed, Bureau of the Budget Circular No. A-68 provides that any agency desiring to explain its inability to participate in the use of a centralized service may do so through a letter to the Director of the Bureau of the Budget, with a copy to the Administrator of General Services.

26-00-30 OPERATION OF THE CENTRALIZED FACILITY

- A. GSA will continually appraise the operation of the centralized facilities to ensure their continued justification in terms of economy and efficiency. Centralized service provided pursuant to this regulation may be discontinued or curtailed if no actual savings or operating improvements are realized after a minimum operating period of one year. Occupying agencies will be consulted regarding the timing of curtailment or discontinuance of any centralized services and the heads of such agencies notified at least 60 days in advance of such action.
- B. Where mutual agreement is reached, an agency other than GSA may be designated by the Administrator of General Services to administer a centralized service.
- C. Arrangements with regard to financing will conform to the special requirements of each type of centralized service and to existing law. Normally, reimbursement will be made for the use of established services except where the cost is nominal or where reimbursement may not be practicable.

26-00-35 AGENCY COMMITTEES**A. Establishment**

An occupying agency committee will be established by GSA to assist it, or such other agency may be responsible, in the cooperative utilization of the centralized activities, as defined in 26-00-10A, provided in a Federal building. Generally, such a committee will be established when the problems of a administration and coordination necessitate a formal method of consultation and discussion among occupying agencies.

B. Membership

Each occupying agency of a Federal building is entitled to membership on an agency committee. The chairman of each such committee shall be a GSA employee designated by the appropriate GSA Regional Administrator, except that if another agency has been designated to administer the centralized service, the chairman shall be an employee of such other agency designated by competent authority within that agency.

C. Activities

Agency committees shall be advisory in nature and shall be concerned with the effectiveness of centralized services in the building. Recommendations of an agency committee will be forwarded by the chairman to the appropriate GSA officials for consideration and decision.

D. Reports

A resume of the minutes of each meeting of an agency committee shall be furnished to each member of the committee and to the appropriate GSA Regional Administrator.

CHAPTER 26-10

CENTRALIZED FIELD DUPLICATING SERVICES

- 26-10-00 **Scope**
 - 05 **Applicability**
 - 10 **Types of Centralized Field Duplicating Services**
 - 15 **Economic Feasibility of Centralized Field Duplicating Services**
 - 20 **Operation of Centralized Field Duplicating Plants**

26-10-00 SCOPE

This chapter states general guidelines and procedures for the establishment and operation of centralized field duplicating services on a **reimbursable** basis. These services may be provided in **multi-occupant Federal buildings**.

26-10-05 APPLICABILITY

This chapter is applicable to all executive agencies that occupy space in or are prospective occupants of a **multioccupant** Federal building located in the United States.

26-10-10 TYPES OF CENTRALIZED FIELD DUPLICATING SERVICES

With due regard for the Government Printing and Binding Regulations, the types of centralized field duplicating services made available by GSA to occupying agencies in a Federal building will be as follows:

- A. Services will include various duplicating processes; photographic reproduction; photocopying, mailing lists, bindery services, and other closely related services as necessary.
- B. Qualified specialists will be available for advice and guidance on publications management.

26-10-15 ECONOMIC FEASIBILITY OF CENTRALIZED FIELD DUPLICATING SERVICES

A. Scheduling of Feasibility Studies

1. Based upon available data on the proposed size, location, the number of agencies scheduled for occupancy, and other factors pertinent to a proposed Federal building, GSA will determine whether or not to provide for a centralized field duplicating plant in the space directive covering the new building.

(26-10-15A continued)

A feasibility study thereafter will be scheduled and coordinated with the Federal building program of the Public Buildings Service, GSA, so U to occur during the period following the completion of funds by the Congress for site acquisition and prior to development of final working drawings for the building. The final decision to provide centralized field duplicating services in a new Federal building will be subject to subsequent determination by the Administrator of General Services based upon the formal feasibility study.

2. Feasibility studies may be initiated by GSA in existing Federal buildings. Such studies will be conducted in the same pattern as for new buildings.

B. Notification of Feasibility Studies

The Administrator of General Services, or his authorized designee, will give at least 30 days' notice to the head of each agency that would be served by a proposed centralized field duplicating plant, and will request the designation of agency representatives.

C. Initiation of Feasibility Studies

Each feasibility study will be initiated with a general meeting of designated agency representatives.

D. Survey of Duplicating Services - Individual Agency

Each agency covered by a feasibility study will be requested, through its designated local representative, to complete and furnish to the appropriate GSA regional office one copy of GSA Form 1927, Survey of Duplicating Services - Individual Agency (Exhibit X26-10-1). Completed GSA Forms 1927 will be due two weeks from the date of request. When necessary, representatives of the GSA regional printing and publications activity will be available to assist agencies in the completion of the GSA Form 1927. Copies of the GSA Form 1927 will be furnished to the regional office at the time the request for completion is made.

E. Uniform Space Allowances

The space requirements for printing, duplicating, and related equipment under individual agency use as compared to use in a centralized facility will be based upon uniform space allowances plotted equally under both conditions. The Table of Space Allowances utilized in making this comparative analysis is set forth in Exhibit X26-10-2.

F. Pooling of Equipment and Personnel

1. Arrangements will be made by the appropriate GSA regional office with each prospective occupant of a new Federal building in which a centralized field duplicating plant is to be **established** for transfer to GSA, without **reimbursement** to the contributing agencies, of the duplicating equipment **owned** by such agencies which otherwise would be used at that location. Photocopy and addressing **equipment**, as well as reproduction equipment used in systems operations, **may** be retained by **mutual agreement** with the **owning agencies**. Transferred equipment which is **not** used in the **centralized** plant will be held for a **period** of six months at which time it will be disposed of by GSA in accordance with applicable regulations governing the disposal of excess property.
2. Personnel engaged in the duplicating activity of the affected **agency** will be considered for transfer to GSA upon establishment of a centralized plant, in accordance with civil service regulations governing transfer of function **set** forth in the Federal **Personnel** Manual.
3. Space for duplicating equipment in Federal buildings where use of such equipment would duplicate the service provided by the centralized plant will not be made available by GSA to occupant agencies.
4. The format of Agreement for the Pooling of Equipment and Personnel is prescribed in Exhibit X26-10-3.

G. Determination of Feasibility

The Administrator of General Service will determine the economic feasibility of each proposed centralized field duplicating plant in accordance with subsection **26-00-20G**. The **Director** of the Bureau of the Budget and the head of each affected agency will be advised of the Administrator's determination to establish a centralized plant.

26-10-20 OPERATION OF CENTRALIZED FIELD DUPLICATING PLANTSA. Continuity of Service

Each new centralized field duplicating plant will be established in sufficient time to assure occupants moving into the building that there will be **no** interruption of duplicating service in support of their program activities.

(26-10-20 continued)

B. Announcement of Centralized Services

The appropriate GSA regional office will announce the availability of a centralized field duplicating plant approximately 90 days in advance of its activation including:

1. The date service will be available;
2. The services to be furnished, including technical assistance on reproduction problems;
3. A current price schedule; and
4. Procedures for obtaining service.

C. Appraisal of Operations

1. The appropriate GSA regional office will appraise continually the operation of each centralized field duplicating plant. Proposals to expand, modify, or discontinue a centralized plant shall be made to the appropriate authorities in the Central Office and must be supported by all pertinent information.
2. The Administrator of General Services will give a minimum of 90 days' notice to the heads of agencies concerned before any action to curtail or discontinue centralized services is taken.

7. ANNUAL PRODUCTION AND MANPOWER REQUIREMENTS					
OPERATION		NUMBER OF JOBS PROCESSED BY OPERATION	PRODUCTION		MAN-HOURS EXPENDED
DESCRIPTION			ACTION	TOTAL	
COPY PREPARATION		XXXX	NUMBER OF PAGES PREPARED		XXXX
PLATE			NUMBER OF NEGATIVES MADE		
OTHER			NUMBER OF PLATES MADE		
PRESS SIZE		XXXX	PLATES RUN	MACHINE IMPRESSIONS	XXXX
	TYPE		XXXX	MASTERS RUN	
OTHER		XXXX	ACTION		XXXX
	TYPE		NUMBER OF SHEETS COLLATED		
			NUMBER OF SHEETS COLLATED		
			NUMBER OF COPIES STITCHED		
DESCRIPTION		XXXX	MACHINE IMPRESSIONS	PLATE CHANGES	XXXX
TYPE		XXXX	ACTION		XXXX
OTHER		XXXX	NUMBER OF PRINTS MADE		XXXX
OTHER			NUMBER OF PRINTS MADE		

8. ANNUAL DOLLAR VOLUME OF PROCUREMENT FROM COMMERCIAL SOURCES OR OTHER FEDERAL AGENCIES			
A. PRINTING AND DUPLICATING		B. PHOTOGRAPHIC	
NAME OF COMMERCIAL SOURCE OR FEDERAL AGENCY	ANNUAL DOLLAR VOLUME	NAME OF COMMERCIAL SOURCE OR FEDERAL AGENCY	ANNUAL DOLLAR VOLUME

INSTRUCTIONS FOR PREPARATION OF GSA FORM 1927

PREPARED BY. Enter the signature and title of the individual preparing the form.

TELEPHONE NO. Enter the complete telephone number of the individual who can be contacted regarding preparation of the form.

DATE PREPARED. Enter date prepared.

BLOCK 1, DEPARTMENT OR AGENCY. Enter name of department or agency.

BLOCK 2, ORGANIZATIONAL UNIT. Enter title of organizational unit.

BLOCK 3, ADDRESS. Enter complete address.

BLOCK 4, PRESENT REPRODUCTION EQUIPMENT.

- a. DESCRIPTION OF EQUIPMENT. Enter names of all reproduction and related equipment, in use or in storage, i.e. offset, mimeograph, collator, folder, etc. **NOTE:** Indicate items stored by adding (S).
- b. MANUFACTURER. Enter name of manufacturer for each piece of equipment, i.e. Addressograph-Multilith Company, A.B. Dick Company, etc.
- c. YEAR ACQUIRED. Enter the year each piece of equipment was acquired.
- d. AGE. Enter present age in years of equipment.
- e. CONDITION CODE. Enter appropriate condition code. (See footnote.)
- f. SERIAL NO. Enter serial number for each piece of equipment.
- g. MODEL SIZE. Enter model size of equipment, i.e., for offset press "10x14," for mimeograph machine "8-1/2x14," for folding machine "14x20."
- h. MODEL NO. Enter model number for each piece of equipment, i.e., 1250 for offset press, 100 for mimeograph machine.
- i. ORIGINAL ACQUISITION COST. Enter the cost for each piece of equipment.
- j. ESTIMATED CURRENT VALUE. Enter the estimated current dollar value for each piece of equipment.

BLOCK 5, PERSONNEL ASSIGNED TO REPRODUCTION ACTIVITIES.

- a. POSITION TITLE. Enter position title for each employee assigned to reproduction activity, specify supervisory, operating or clerical.
- b. GRADE. Enter the General Schedule (GS) or Wage Board (WP or WB).
- c. ANNUAL SALARY RATE. Enter the annual salary rate.
- d. NUMBER OF FULL-TIME POSITIONS. Enter the number of full-time positions assigned to the reproduction activity.
- e. PART-TIME POSITIONS. Enter the number of part-time positions assigned to the reproduction activity.
- f. ESTIMATED PERCENT UTILIZATION. Enter the estimated percent of time spent by part-time employees in reproduction activities.

BLOCK 6, SPACE REQUIRED FOR REPRODUCTION ACTIVITIES (Sq. Ft.).

- a. EQUIPMENT. Enter the number of square feet required for all equipment in use.
- b. SUPPLY STORAGE. Enter the number of square feet of space required for supply storage necessary for the reproduction activity.
- c. OFFICE. Enter the square feet of space required for office space related to the reproduction activity.
- d. TOTAL. Enter sum of a, b, and c.

BLOCK 7, ANNUAL PRODUCTION AND MANPOWER REQUIREMENTS.

- a (1). COPY PREPARATION. Enter number of jobs processed, number of pages prepared, and man-hours expended in lines (1) b, c, and d.
- a (2). CAMERA. Enter number of jobs processed, number of negatives made, and man-hours expended in lines (2) b, c, and d.
- a (3). PLATE MAKING. Enter number of jobs processed, number of plates made, and man-hours expended in lines (3) b, c, and d.
- a (4). OFFSET. Enter size of offset press, number of jobs processed, number of plates run, number of press impressions printed, and man-hours expended in lines (4) a, b, c, and d.
- a (5). STENCIL. Enter number of jobs processed, number of masters run, number of machine impressions printed, and man-hours expended in lines (5) b, c, and d.
- a (6). HECTOGRAPH. Enter number of jobs processed, number of masters run, number of impressions printed, and man-hours expended in lines (6) b, c, and d.
- a (7). COLLATING (Hand). Enter number of jobs processed, number of sheets collated by hand, and man-hours expended in lines (7) b, c, and d.
- a (8). COLLATING (Machine). Enter number of jobs processed, number of sheets collated by machine, and man-hours expended in lines (8) b, c, and d.
- a (9). STITCHING. Enter number of jobs processed, number of copies stitched, and man-hours expended in lines (9) b, c, and d.
- a (10). FOLDING. Enter number of jobs processed, number of sheets folded, and man-hours expended in lines (10) b, c, and d.
- a (11) and (12). OTHER (Specify). Enter any operation not provided for above, and the appropriate information for each.
- a (13). ADDRESSING. Enter number of jobs processed, number of machine impressions, number of plate changes, and man-hours expended in lines (13) b, c, and d.
- a (14). WHITEPRINT. Enter number of jobs processed, number of prints made, and man-hours expended in lines (14) a, c, and d.
- a (15). PHOTOSTAT. Enter number of jobs processed, number of prints made, and man-hours expended in lines (15) b, c, and d.
- a (16), (17), and (18). OTHER (Specify). Enter any operation not provided for above, and the appropriate information for each.

BLOCK 8, ANNUAL DOLLAR VOLUME OF PROCUREMENT FROM COMMERCIAL SOURCES OR OTHER FEDERAL AGENCIES.

- a (1) and (2). PRINTING AND DUPLICATING. Enter the name of each commercial and/or Federal agency from which printing and duplicating is procured, and the annual dollar volume expended for such procurement.
- b (1) and (2). PHOTOGRAPHIC. Enter the name of each commercial and/or Federal agency from which photographic service is procured, and the annual dollar volume expended for such procurement.

BLOCK 9, REMARKS. Enter number of individual jobs processed (number of individual requisitions, work orders, etc.).

SPACE ALLOWANCES
PRINTING, DUPLICATING, AND RELATED EQUIPMENT

Allowances are based on a single machine operation up to 17-1/2 x 22-1/2 inches sheet size capacity and include related equipment.

Names of commercial manufacturers and trade names are examples only, and their inclusion does not imply endorsement.

The allowances include the following:

Total Work Area:

1. Actual square feet of the area occupied by the equipment;
2. Work area required to operate and service the equipment; and
3. Aisle area required to transport supplies and completed work to and from the equipment.

Storage and Office Space:

1. Storage area needed for working supplies and normal backup stock; and
2. Office area required for paperwork support of material produced.

	<u>Total Work- ing Area (Square Feet)</u>	<u>Storage and Office Space (Square Feet)</u>	<u>Total Square Feet</u>
<u>Cold Type Composing Machines</u>			
(Such as Varitype, IBM Executive, and Headliner)	95	25	120
<u>Cameras • Process, etc., Including Darkroom Space</u>			
20 Inches	665	35	700
24 Inches	760	40	800
<u>Arc Lamp, Vacuum Frame, and Whirler Unit for Plate- making</u>			
20 x 24 Inches	350	25	375
26 x 30 Inches	375	25	400
30 x 40 Inches	405	30	435
<u>Off set Platemaking Unit, No Darkroom Required</u>			
(Such as Itek, Xerox, Ektalith, A-M 705, etc.)	90	30	120
<u>Offset Lithographic Press</u>			
Small Table Models	50	30	80
10-3/4 x 14 and 11 x 17 Inches	85	40	125
Tandem (10-3/4 x 14 Inches)	110	40	150
14 x 20 Inches	120	55	175
17 x 22 Inches	135	65	200
<u>Stencil Process</u>			
Hand-operated	40	20	60
Power-operated	45	35	80

	<u>Total Work- ing Area (Square Feet)</u>	<u>Storage and Office Space (Square Feet)</u>	<u>Total Square Feet</u>
<u>Spirit Process</u>			
Hand-operated	40	20	60
Power-operated	45	35	80
<u>Cutter - Paper - Lever Type</u>			
Hand-operated	80	20	100
Power-operated (up to 35-1/2 Inches)	100	25	125
<u>Collating Machine</u>			
Manually-operated	45	15	60
Power-operated			
Small Office Type	95	25	120
Sheet and/ or Signatures	130	30	160
<u>Drilling Machine - Paper - Power</u>			
	45	15	60
<u>Jogging Machine - Power-operated</u>			
	16	4	20
<u>Folding Machine</u>			
Table Top (up to 14 x 20 Inches)	30	10	40
Power (up to 14 x 20 Inches)	85	25	110
Power (over 14 x 20 Inches)	170	30	200
<u>Stitching Machine - Power</u>			
(Floor -type, Heavy-duty)	45	15	60
<u>Copy-Processing Machine -</u>			
<u>Hand-operated or Continuous</u>			
(Such as Photostat, 914 Xerox)			
10 x 14 Inches	120	30	150
14 x 18 Inches	170	30	200
18 x 24 Inches	185	40	225
<u>Whiteprinting Machine (Diazo)</u>			
Small	60	20	80
Large (30 to 54 Inches)	130	30	160
<u>Drier, Photo, Print and Film</u>			
Table, Electric or Gas	38	10	48
Floor, Electric or Gas	65	15	80
<u>Packaging and Tying Machines</u>			
	27	15	42
<u>Addressing and Mailing Machines</u>			
(Graphotype, Addressograph, Elliott, etc.)			
	50	30	80

Name _____
Agency _____
Address _____

Dear _____:

During the period _____ through _____, this office conducted a study to determine the feasibility of establishing a centralized duplicating (printing) facility in the (new) Federal building at _____.

Based on the results of this study, the General Services Administration intends to establish a centralized facility to service all occupants of the building.

At the time of the study, you completed and submitted to this office GSA Form 1927, Survey of Duplicating Services - Individual Agency, indicating that you were using the following equipment: (List)

(Use the following statement if applicable:)

The survey form also showed that you employed _____ (title and grade) in your duplicating activity. At the time the centralized facility is established, GSA will consider acceptance of this (these) employee(s) in accordance with civil service regulations governing transfer of functions set forth in the Federal Personnel Manual.

Although photo copying and addressing services will usually be offered by the new facility, such equipment may be retained by mutual agreement. In addition, reproduction equipment used in systems operations also may be retained. However, in keeping with the concept of a single centralized service and in accordance with Sections 201(a)(2), (3) of the Federal Property and Administrative Services Act of 1949, as amended, and with Bureau of the Budget Circular No. A-68, authorization is requested to pool all other reproduction equipment reported above without reimbursement to the new facility at the time of the move. Our staff will work closely with members of your office to effect an orderly transfer and continuous operation to satisfy your duplicating (printing) requirements.

It would be appreciated if you would authorize or secure the appropriate authorization in the space provided below and return two (2) copies of this letter no later than _____.

General Services Administration

By: _____
Assistant Regional Administrator
for Finance and Administration

Transfer of the equipment listed above in accordance with the terms of this letter is acceptable.

(Agency Name) _____

(Signature) _____

(Title) _____

(Date) _____

(If appropriate:) Acceptance by GSA of the following employee also is to be planned:

Name _____

Address _____

Grade and Position _____

Annual Salary _____



**NONDISCRIMINATION IN EMPLOYMENT BY GOVERNMENT CONTRACTORS
AND SUBCONTRACTORS AND BY FEDERALLY ASSISTED CONSTRUCTION
CONTRACTORS AND SUBCONTRACTORS**

34 FR 1276 1/25/69

34 FR 1276 1/25/69

OFFICE FOR CIVIL RIGHTS

Nondiscrimination in Employment by Government Contractors and Subcontractors and by Federally Assisted Construction **Contractors and Subcontractors**

Chapter 27-10 of the Department of Health, Education, and Welfare General Administration Manual is revised to read as follows:

- Sec.
27-10-10 Purpose.
27-10-20 Definitions
27-10-30 Responsibilities
27-10-40 Award of Contracts.
27-10-50 Compliance Reviews
27-10-60 Complaints.
27-10-70 Exemptions.
27-10-60 USC of department funds by another agency.
27-10-90 Rulings and Interpretations.
27-10-100 Operating agency regulations.

SEC. 27-10-10 Purpose. The purpose of this chapter is (1) to prescribe policies, standards and procedures for carrying out the Department's responsibilities under Parts II and III of Executive Order 11246, dated September 24, 1965 (30 F.R. 12319, 12935; hereinafter called the "Order"), the rules and regulations of the Secretary of Labor (41 CFR Chapter 60; hereinafter called the rules and regulations) and the orders, instructions, designations, and other directives issued by the Office of Federal Contract Compliance, Department of Labor thereinafter called the "OFCC directives") and (2) to describe the responsibility of operating agencies and Department personnel for promoting and ensuring equal opportunity in employment for all qualified persons, without regard to race, color, religion, sex, or national origin, who are employed or are seeking employment with Government contractors and subcontractors and with federally assisted construction contractors and subcontractors.

Sec. 27-10-20 Definitions. The terms used in this chapter have the same meaning as terms used in the order, the rules and regulations, and the OFCC directives.

Sec. 27-10-30 Responsibilities—A General. The Department of Health, Education, and Welfare is responsible for (1) implementing the requirements of the order, the rules and regulations, the OFCC directives and all other rules, regulations, and orders issued pursuant thereto as they relate to the award and administration of contracts and the granting and management of Federal financial assistance which may involve construction; and (2) obtaining the compliance of (a) colleges, universities, hospitals and insurance intermediaries and carriers having contracts with any department or agency of the Federal Government, (b) its recipients of Federal financial assistance which may involve construction and all contractors and subcontractors which perform under contracts related to such construction and (c) any other contractors for which the Department has been designated the "Compliance Agency" by the Director, OFCC.

B. Director, Office for Civil Rights. The Secretary of Health, Education, and Welfare has designated the Director, Office for Civil Rights as the Contract Compliance Officer (CCO) for the Department and has assigned to him the responsibility for administering the Department's program under the order.

C. Director, Contract Compliance Division. The Director, Contract Compliance Division (CCD) is the principal advisor and staff assistant to the CCO on the Department's contract compliance programs and is responsible for the formulation of plans, policies and procedures necessary to effectively carry out the responsibilities and obligations of the Department under the order, rules and regulations, and OFCC directives. He (1) maintains technical surveillance over, provides guidance to, and reviews and coordinates plans, policies, and programs relating to the insurance compliance program assigned to the Social Security Administration and the construction compliance program assigned to the Office of Education, (2) manages, through Contract Compliance Branches located in the Regional Offices, Office for Civil Rights, a compliance program covering hospitals, colleges, universities, and other contractors for which the Department is designated the Compliance Agency or is otherwise, responsible, and (3) serves as the Departmental Deputy Contract Compliance Officer, Departmental DCCO.

NONDISCRIMINATION IN EMPLOYMENT BY GOVERNMENT CONTRACTORS
AND SUBCONTRACTORS AND BY FEDERALLY ASSISTED CONSTRUCTION
CONTRACTORS AND SUBCONTRACTORS

Page 2

(27-10-30 continued)

34 FR 1276-7 1/25/69

D. Heads of the procuring activity. Each official of the Department who is designated "Head of the Procuring Activity" shall be responsible for effectuating the requirements of the order, rules and regulations, OFCC directives, and all other rules, regulations, and orders issued pursuant thereto as they relate to the performance of his procurement function. He shall designate an official from within his organization to serve as liaison with the Office for Civil Rights on contract compliance matters and to assist him in discharging his obligations under this chapter.

E. Agency heads. The head of any operating agency who is authorized to extend Federal financial assistance which may involve construction work shall be responsible for effectuating the order, rules and regulations, OFCC directives, and all other rules, regulations, and orders issued pursuant thereto as they relate to the performance of his grant approval and management functions and the approval of construction contract awards under agreements for Federal financial assistance. He shall designate an official from within his organization to serve as liaison with the Office for Civil Rights and with the Division of Construction Support, Office of Education on contract compliance matters and to assist him in discharging his obligations under this chapter.

F. Office of Construction Services, Office of Education. The Division of Construction Support, Office of Construction

Services, Office of Education is responsible for planning and implementing a Department-wide program for promoting and ensuring equal opportunity in employment on all construction projects receiving Federal financial assistance from the Department or any of its operating agencies and on all construction projects for which the Department has been designated the Compliance Agency. The Director, Division of Construction Support shall serve as Deputy Contract Compliance Officer (Construction).

G. Special Staff, Social Security Administration. The Special Staff, Office of Administration, Social Security Administration (SSA) is responsible for planning and implementing a program for promoting and ensuring equal opportunity in employment with all Medicare insurance intermediaries under contract with SSA and other insurance carriers holding contracts with the Federal Government. The Director, Special Staff shall serve as Deputy Contract Compliance Officer (Insurance).

34 FR 1277 1/25/69

SEC. 27-10-40 Award of Contracts—
A. Government contracts. Prior to the award or modification of each non-exempt Government contract identified under subparagraph 3, of this paragraph, the Contracting Officer shall obtain and provide, in writing, the following information to the Director, CCD:

(a) The dollar amount of the contract;

(b) The anticipated time of performance;

(c) Name and address of the prospective contractor and each known subcontractor;

(d) The number of employees at the contractor establishment(s) where the contract is to be performed;

(e) Whether the contractor and each known subcontractor have previously held contracts subject to Executive Orders 10925, 11114, or 11246.

(f) Whether the contractor and each known subcontractor have previously filed a Compliance Report (SF-40, SF-41, or EEO-1) required by Executive Orders 10925, 11114, or 11246 or by regulations issued pursuant to title VII of the Civil Rights Act of 1964;

(g) Whether the contractor and each known subcontractor have submitted the Certification of Nonsegregated Facilities required by § 60-1.8 of the rules and regulations;

(h) For each contract to be executed on or after December 29, 1968, a copy of the written affirmative action compliance program required by § 60-1.40 of the rules and regulations for the contractor establishment(s) where the contract is to be performed, or a statement of the reasons why the contractor has not developed or is not required to develop such a program.

The Contracting Officer shall not execute any contract subject to this procedure until notified by the Director, CCD that the prospective contractor and all known subcontractors appear to be able to conform to the requirements of the equal opportunity clause or have made specific commitments, in writing, to correct any deficiencies found to exist in their equal opportunity compliance &h. If the Director, CCD, so requests, any commitments made by the prospective contractor shall be stated in the contract.

2. Within 7 workdays of receipt of the above listed information the Director, CCD will notify the Contracting Officer that:

(a) The prospective contractor appears to be able to conform to the requirements of the equal opportunity clause;

34 FR 1277 1/25/69

(b) Deficiencies have been found to exist in the prospective contractor's equal opportunity compliance status and that the Contracting Officer should notify the prospective contractor of these deficiencies and direct the prospective contractor to negotiate with the Director, CCD or his designee and take such actions as he may require; or

(c) An on-site preaward compliance review of the prospective contractor is required, has been scheduled and the Contracting Officer will be notified of the results of the review within 30 calendar days.

3. The following listed Government contracts are covered by the procedures contained in this paragraph.

(a) Contracts of \$100,000 or more with colleges, universities, and hospitals;

(b) All other Government contracts of \$500,000 or more except contracts with financial intermediaries and insurance carriers under sections 1816 and 1842 of the Social Security Act, "(§ 42 U.S.C. 1395 (h) and (u)).";

(c) Any funding modification to a contract whose original monetary value exceeded the amounts specified in subparagraphs (a) and (b) above, and awarded prior to the effective date of this procedure;

(d) Any funding modification to a contract which increases the monetary value to the amounts specified in subparagraphs (a) and (b) above;

(e) Such other Government contracts as may be specified by the Director, CCD.

4. Operating agency personnel assigned to the Regional Offices who have been delegated responsibility and authority for procurement functions shall, with respect to contracts they propose to award, obtain, and provide to the Contract Compliance Branch Chief in the respective Regional Office, the information specified in subparagraph 1 of this Paragraph. The Contract Compliance Branch Chief shall act for the Director, CCD in carrying out the procedures of this paragraph with respect to such contracts.

B. Medicare contracts. Prior to the award or modification of each Government contract under section 1816 or 1842 of the Social Security Act "(42 U.S.C. 9 1395 (h) and (u)).," the Director Special Staff, Social Security Administration, shall certify that the prospective contractor appears to be able to conform to the requirements of the equal opportunity clause or has made specific commitments, in writing, to correct any deficiencies found to exist in their equal opportunity compliance status.

C. Federally assisted construction contracts. Prior to approval of the award of each federally assisted construction contract in areas designated by the Office of Federal Contract Compliance or the CCO, the Approving Officer shall be responsible for assuring that all requirements and conditions established for contractors in the designated area are met, including conducting preaward re-

34 FR 1277 1/25/69

views, holding preaward conferences, obtaining written affirmative action plans and, as required, securing the concurrence of the OFCC Area Coordinator. His approval shall be based upon certification by the Regional EEO Specialist, or, where otherwise provided, the Chief, EEO Branch, Division of Construction Support, Construction Services, OE, that the prime contractor and subcontractors meet the established requirements. For purposes of this procedure, Approving Officer shall mean the Office of Education Regional Engineer, the Director, Regional Hospital Program, Public Health Service, or the Construction Engineer, Division of Research Facilities and Resources, National Institutes of Health.

Sec. 27-10-50 Compliance Reviews.

A. Each DCCO shall institute a regular systematic program of compliance reviews to assure that the contractors and subcontractors for which he is assigned responsibility understand and comply with the requirements of the order and all rules, regulations, directives, and orders issued pursuant thereto. The program shall include the conduct of reviews both prior to and after the award of contracts and federally assisted construction contracts.

B. Purpose and objective. The purpose of a compliance review is to thoroughly investigate, analyze and evaluate the employment policies and practices of successful bidders or offerers, contractors, and subcontractors to ensure that applicants are employed and employees placed, trained, upgraded, promoted, and otherwise treated during employment, and in the condition of employment, without regard to race, color, religion, sex, or national origin, end that the bidder, offerer, contractor, or subcontractor has, or is taking necessary action to establish and implement an affirmative program of equal employment opportunity sufficient to achieve compliance. The compliance review shall include reasonable efforts, within a reasonable time limit, to recommend and negotiate corrective action on the part of the bidder, offerer, contractor, or subcontractor in affirmatively eliminating discriminatory employment practices and in developing or improving an affirmative action program which includes specific provisions for eliminating the effects of past discriminatory policies or practices and for furtherance of the employment and effective utilization of minority group persons. Commitments secured through negotiation shall be confirmed by the bidder, offerer, contractor, or subcontractor in writing and shall include specific time periods for their accomplishments. Where deficiencies are found to exist and corrective action cannot be negotiated or written commitments which are sufficient to achieve

**NONDISCRIMINATION IN EMPLOYMENT BY GOVERNMENT CONTRACTORS
AND SUBCONTRACTORS AND BY FEDERALLY ASSISTED CONSTRUCTION
CONTRACTORS AND SUBCONTRACTORS**

(27-10-50B continued)

34 FR 1278 1/25/69

compliance secured, recommendations will be made to the Director, Contract Compliance Division, or the CCO for the holding of a compliance conference or the imposition of sanctions.

C. Special compliance reviews. Upon request of the Director, OFCC, the CCO or the Director, CCD special compliance reviews will be conducted of bidders, offerers, contractors and subcontractors to determine their compliance or ability to comply with the order and with such other conditions as may be prescribed in the request.

D. Compliance review reports. A report of each compliance review shall be forwarded to the Director, CCD within 30 days after the compliance review is conducted unless otherwise provided by the Director, CCC. Reports shall be prepared in the format and content prescribed by the Director, CCD.

E. Compliance conference. On the basis of the findings of a compliance review the Director, CCD or a DCCO, with the approval of the Director, CCD, may call a compliance conference for the purpose of determining the equal opportunity status of any bidder, offerer, contractor, or subcontractor and attempting, through negotiation, conciliation, and Persuasion, to secure required corrective or remedial actions on the part of any noncomplying bidder, offerer, contractor, or subcontractor. Participants in such conference shall be notified in writing of the time and place of the conference and shall be requested to bring such documents and records as may be relevant to the purpose of the conference.

F. Sanctions and penalties. If the results of a compliance review show the existence of deficiencies in a contractor's equal employment opportunity program which cannot be resolved through the informal means described above, a formal hearing may be convened in accordance with the procedures provided in the rules and regulations. If it is found that any deficiencies have not been corrected, the Director, OFCC, shall be notified, and the Department may cause the cancellation, termination, or suspension of the contract or subcontract pursuant to section 209 of the Order, or may, with the approval of the Director, OFCC, impose such other sanctions as are necessary and appropriate to carry out the purposes of the order.

Sec. 27-10-60 Complaints-A. General. Any employee of any contractor or subcontractor or any applicant for employment with any contractor or subcontractor may, directly or through his designated representative, file with the Department or OFCC a complaint of employment discrimination on account of race, color, religion, sex, or national origin against the contractor or subcontractor.

34 FR 1278 1/25/69

B. Reception and processing of complaints. Any Department employee receiving a complaint of alleged discrimination in employment against a contractor or subcontractor shall forward the complaint to the Director, CCD.

If the complaint is against a contractor or subcontractor for which the Department is the Compliance Agency, the Director, CCD shall request an investigation by the appropriate DCCO or contract Compliance Branch Chief and notify the Director, OFCC. Any complaint received by the Department against a contractor or subcontractor for which the Department is not the Compliance Agency shall be referred to the Director, OFCC for appropriate disposition.

If the complaint statement, lacks sufficient information to initiate an investigation, a written notice shall be sent to the complainant requesting the necessary information. Such notice shall be sent by the appropriate DCCO or the Contract Compliance Branch Chief. The information shall be transmitted to the Director, CCD along with the original complaint. In the event the complainant does not respond within 60 days, the complaint and a copy of the notice shall be transmitted to the Director, CCD who may close the complaint and notify the Director, OFCC.

C. Investigation of complaints. Complaints will be assigned to the DCCO or Contract Compliance Branch Chief responsible for the contractor against whom the complaint is filed. He shall institute a prompt investigation which shall include holding a personal interview with the complainant, any witnesses identified by the complainant, and with responsible contractor officials, and making a thorough investigation of related employment records and actions.

D. Resolution and disposition of complaints. If the investigation of a complaint shows no violation of the equal opportunity clause, a written report of findings and conclusions, with supporting information attached, shall be prepared and forwarded to the Director, CCD.

If the investigation reveals a violation of the equal opportunity clause, the investigator shall proceed by informal negotiations to obtain prompt corrective action by the contractor involved. Upon resolution of the complaint, a report on the case shall be submitted to the Director, CCD. The investigator shall advise the complainant and the contractor involved of the terms of adjustment, with the provision that such terms of adjustment are subject to the approval of the Director, CCD and the Director, OFCC.

34 FR 1278 1/25/69

If a valid complaint cannot be adjusted by informal negotiation within a reasonable time between the investigator, the DCCO or Contract Compliance Branch Chief and the contractor involved, a report of the findings and conclusions and efforts to negotiate adjustment shall be submitted to the Director, CCD. The Director, CCD shall provide the contractor with a written notice of the terms of adjustment and shall schedule a compliance conference with the contractor. If the contractor, either as a result of the notice or conference, implements the terms of adjustment but believes them to be erroneous, he may, within ten (10) days, request a hearing to review the merits of the adjustment.

If the above specified informal procedures fail to achieve adjustment of a violation the contractor shall be afforded an opportunity for an informal hearing to determine whether a violation of the equal opportunity clause has taken place. If the decision is that a violation has taken place, the contractor shall be notified of the sanctions or penalties which the agency proposes to impose and shall be offered an opportunity for a formal hearing. If the contractor does not request a formal hearing or the decision following such hearing is that the contractor is not complying with provisions of the equal opportunity clause, the Department shall notify the Director, OFCC and proceed with imposing the proposed sanctions or penalties.

SEC. 27-10-70 Exemptions. Request for exemptions from the equal opportunity clause for specific contracts or categories of contracts or for a contractor's or subcontractor's facilities not involved in the performance of Government contracts shall be submitted to the Director, CCD by the Contracting Officer with complete justification. He shall forward all such requests with recommendations to the CCO for his consideration and, as appropriate, transmittal to the Director, OFCC. Request for the withdrawal of exemptions shall be processed in the same manner.

SEC. 27-10-80 Use of department funds by another agency. Where funds to finance construction are made available by the Department through another Federal department or agency, it shall be deemed compliance with the requirements of this chapter if such funds are made available pursuant to and in compliance with the approved regulations of the Federal department or agency administering the contract. "Approved regulations" as used in the preceding sentence shall mean regulations issued pursuant to the order, rules and regulations, and OFCC directives.

34 FR 1278 1/25/69

SEC. 27-10-90 Rulings and interpretations. The Director, CCD shall advise all appropriate personnel regarding any rulings and interpretations of OFCC which involve the Department's contract compliance programs. All questions relating to rulings and interpretations of the order, the rules and regulations, or the OFCC directives shall be referred to the Director, CCD.

SEC. 27-10-100 Operating agency regulations. Operating agencies may issue such implementing regulations, procedures, and instructions as are considered necessary provided they are not inconsistent with the provisions of the order, the rules and regulations, the OFCC directives, and this chapter. A copy of such regulations, procedures, and instructions shall be forwarded to the Director, CCD, for approval prior to issuance.

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

Dated: January 18, 1969.

WILBUR J. COHEN,
Secretary.

[F.R. Doc. 69-1064; Filed, Jan. 24, 1969;
8:49 a.m.]

CHAPTER 29-05
PROTECTION OF **BANKING** FACILITIES

- 29-05-00 **General**
- 10 Policy
- 20 Applicability
- 30 Responsibilities
- 40 Guidelines for Protecting
Ranking Operations

29-05-00 GENERAL

This chapter prescribes; (a) Department policy for the establishment and maintenance of an effective security program to protect the banking operations of Federal and State Credit Unions, **Employee** Associations, and other non-official activities; (b) responsibilities of officers-in-charge of **DHEW** offices and installations; (c) recommended security measures; and (d) guidelines to assist in the identification and apprehension of persons who **commit** acts of robbery, burglary, and larceny.

29-05-10 POLICY

- A. The Department is responsible for the protection of Government property under DREW jurisdiction and control. Within this framework it shall be Department policy to: (1) assure that security measures are included in the overall security programs of **DHEW** offices and installations to protect the banking operations of credit union offices, employee associations, and other non-official activities housed within their facilities (leased or **Government-**owned) against robbery, burglary, and larceny; and (2) encourage other Federal agencies that have such activities in **space**, in buildings under **HEW** jurisdiction and control to adopt a similar security program.

29-05-20 APPLICABILITY

- A. The provisions of this chapter are applicable to all credit unions that have a majority membership of HEW employees, and the banking operations of employee associations, and other non-official activities.
- B. The provisions do not apply to school buildings constructed on Federal property under P.L. 815, with permitted custody to others, or school buildings constructed on non-Federal property by local educational agencies with assistance under P.L. 815.

- C. As used in this chapter, the following terms shall have the meanings set forth below:
1. Federal buildings, as referred to in the Federal Credit Union Act (~~12~~ U.S.C. 1770), includes Government-owned buildings and Government leased space.
 2. Assignment of Space to credit Unions, means space assigned to such activities under the provisions of the Federal Credit Union Act.
 3. Employee Association, as used in this chapter, means a **formally** organized group, not a part of official activities, whose primary purpose is to serve the welfare and recreational needs of **DHEW** members, The term does not include professional societies, credit unions, labor unions, or **informal** "flower fund" groups.

29-05-30 RESPONSIBILITIES

- A. The Administrator, National Credit Union Administration, has primary responsibility for assuring that adequate protection measures are taken to protect Federal credit unions.
- B. Appointed or elected officials of employee associations and other non-official activities that have banking operations shall be responsible for assuring that adequate protection measures are taken to protect their activities.
- C. Officers-in-charge of **DHEW** offices and installations will be responsible for coordinating the installation, maintenance, and operation of security devices and procedures with the credit union, employee association or other activity involved. The Director of General Services, **OASA-OS**, will be responsible for the coordination within the **HEW** headquarters building complex.
- D. The above officials will also be responsible for establishing and maintaining liaison with the General **Services** Administration and other regulatory and enforcement agencies to assure **that** such **activities** are adequately protected.
- E. The installation and maintenance of security devices shall be at the expense of credit unions, **employee** associations, and other non-official activities, **and** not the Department.

29-05-40 GUIDELINES FOR PROTECTING BANKING OPERATIONS

- A. General. It is incumbent on all **HEW** management officials, credit union and other officials to utilize the following guidelines, as may be applicable, to assure that security measures are taken to protect the activities within **their** areas of jurisdiction.
- B. Security Guidelines. The following protection measures should be taken to **adquately** protect banking operations:

Actions to be Taken to Discourage Robbery

1. Relocate to upper floors those facilities currently located on ground floor.
2. Install clear wired glass in doors leading to corridors so that passers-by have a clear view of the banking office.
3. Employ and strategically position armed uniformed guards.
4. Install burglar, hold-up, bell, microphone or buzzer systems for immediate alerting of guards, central stations, or police department. (Consideration should also be given to the **instal-**lation of movie cameras, loaded and maintained in readiness to photograph robberies and/or hold-ups. Such systems should be tested at least monthly.)
5. Publicize the fact, without going into detail, that the bank or credit union is fully protected by burglar and hold-up alarms systems and that the FBI has jurisdiction to investigate robberies, burglaries, and larcenies committed against banks and credit unions.
6. Keep only a minimum of cash in tellers' cages. Instruct cashiers not to leave currency and securities unattended.
7. Plant, in advance, decoy money such as a series of recorded bills in tellers' tills, in vaults or safes, and in messenger bags.
8. Employ money handling agencies to deliver and remove large sums of money. If this is not adopted, arrange for pick-up and delivery of money to be made by no less than two employees. **Conspicuous** moneybags should not be used.
9. Store only small sums of money overnight and **only** in safes **sufficiently** durable to withstand ordinary attempts at jimmying. Safes should also be sufficiently large or affixed to prevent **easy** removal.

(29-05-40 continued)

10. **Make necessary arrangements to "split"** the combination of vaults and safes to require more than one person to open..
11. Confine information regarding the **vault** and safe combinations; amounts of funds handled, etc., to as few persons **as** possible.
12. Keep close security on all required keys.
13. Install steel bars over all windows and **skylights**.
14. Lock and double check **all** vaults and premises after hours. A double check system should be instituted for safes and locked file cabinets using a record system, whereby one person locks the **safe** or **cabinet** and a second person checks to insure that it is locked. These persons and alternates should be specifically designated. The record, covering a one-month period, should be affixed to the safe or cabinet and the signature or initials of the person locking and the person checking the safe or cabinet should be recorded.
15. A responsible person or persons should be designated to inspect the office after the closing hour to assure that all money and valuables have been put under locked protection, that the vault or safe and all doors and windows are securely locked, and that no unauthorized persons are present in the office. A similar inspection is needed immediately prior to the opening hours of the office.
16. During hours of darkness the lighting system should provide for illumination of the area around the vault or safe. Outside **visibility** of **the** vault is important. Consideration should **also** be given to use of floodlights to illuminate the dark areas around the building, especially when doors or windows are located in **the** dark areas.
17. If feasible, arrangements should be made for the GSA guard force or local police to inspect the exterior of the office with reasonable frequency and to be present before opening and just after closing hours.
18. Keep number of open entrances to a minimum during open hours.
19. Reduce to a **minimum** the official open hours of business.
20. **Where** applicable, consolidate activities to reduce the number of locations.
21. Establish and post lists of instructions to be followed in **t** event of an emergency. Lists should include the telephone number of guard offices, FBI, police and fire departments.

22. Instruct employees to report strangers and other suspicious persons loitering in or near the premises, and to offer security suggestions.

23. Employees should be fully instructed as to procedures and actions to follow during the course of a robbery, including the importance of obtaining a good description of the robber. They should be thoroughly familiar with the importance of refraining from **any** actions or reactions that might endanger their lives or the lives of any persons who may be in the office at the time.

24. **Employees should** be given initial training and periodic retraining in **their** responsibilities under the security program, including **the** proper use of security devices.

25. A glass panel in the main entrance door, with a mirror mounted and correctly angled on the opposite corridor-wall, **will permit** observing suspicious persons hidden by either side of the door prior to opening the office for business.

26. Display the decal obtainable from the Federal Bureau of Investigation which states that the F. B. I. has jurisdiction to investigate robberies, burglaries and larcenies committed against the Federal credit unions.

27. Have a representative from the General Services Administration Protection Division, or the local police, if available, conduct a survey of conditions in your area and make recommendations.

Actions During a Robbery

1. Adopt **the** concept of safeguarding of life above all.
2. Do not offer resistance and obey the bandit's instructions.
3. To the extent possible activate hold-up alarm devices unobtrusively.
4. Give **the** robber no more money than the amount he demands, and include "bait" money in the amount given.
5. Scrutinize bandits' appearances for description purposes.
6. Obtain description of get-a-way vehicle and direction of travel.

Actions After Robbery

1. **Notify** law enforcement agencies.
2. Take steps to preserve the scene of crime from accidental destruction of finger prints and other potential evidence.

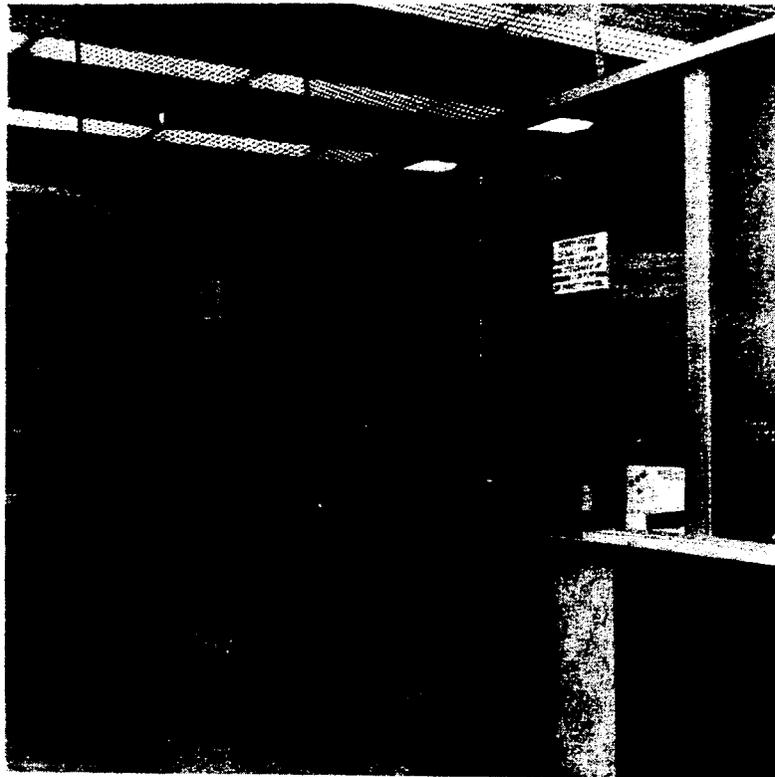
(29-05-40B continued)

3. Secure names and addresses of all witnesses.
 4. Instruct bank employees not to discuss incident even among themselves, until after questioned by police.
 5. Notify the proper authorities in the event of a malfunction of an alarm system.
 6. Do not release information to the press, except through the Manager, and/or other designated person.
 7. Do not release names of witnesses to press (for safety of witnesses).
 8. Do not discuss bank's security alarm system to avoid compromising such systems.
- C. Security Construction Measures. Examples, photographs, and information concerning construction measures taken by a typical credit union and an agent cashier's office are contained in Exhibit X-29-05-1 of this manual.

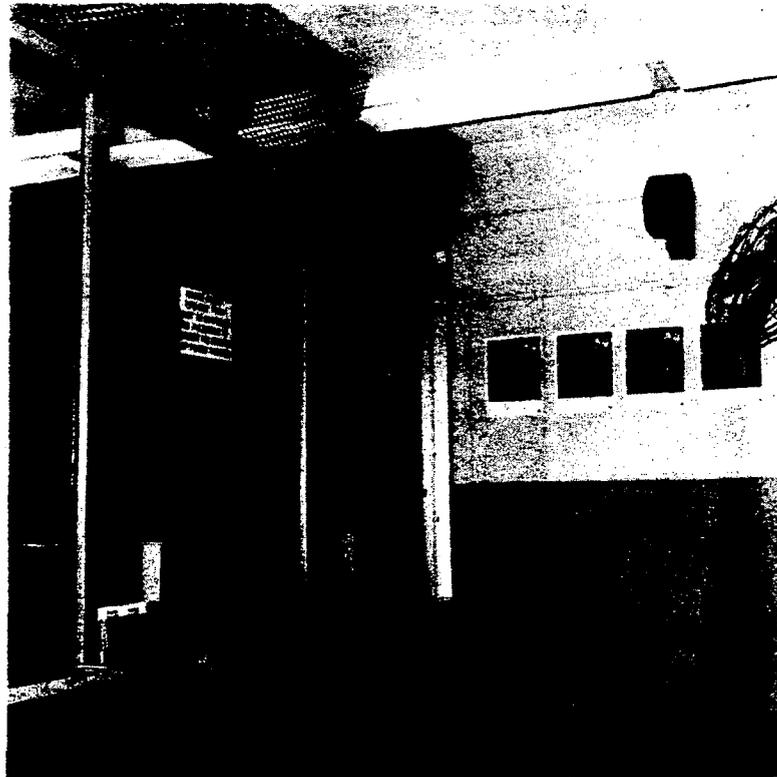
- A. GENERAL. The following are examples, with photographs, of security construction measures taken in a typical credit union office, and an agent cashier's office, to prevent robberies:

1. Credit Union Office

- a. The office shown in the photograph below has windows trimmed in stainless steel and are made of bullet **proof plastic**. The front of the office partition is **faced** with a bullet resistant metal. Any steel plate **1/8** inch thick, backed up by **3/4** inch plywood will stop or render ineffective a bullet discharged by a hand gun. The partition extends only to an eight foot height, above that is a wire grill to aid ventilation and at the same time prevents *anyone* from climbing over or throwing tear gas, bombs, etc. Note mirror on the wall which **is** angled so that security personnel can look through glass in main door when office is closed and observe anyone around the safe.

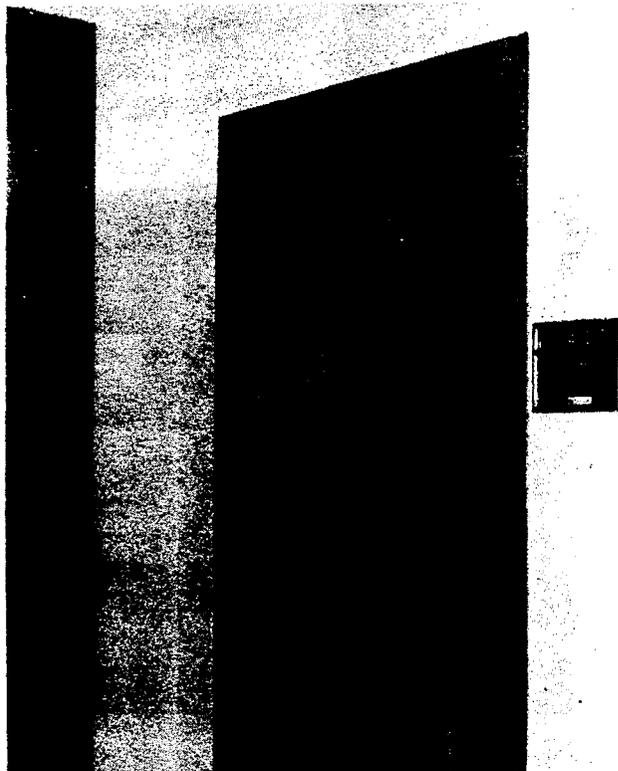


- b. The following is another view of the same office showing a movie camera mounted on the wall. The camera is angled to photograph all cashiers' windows, and is loaded and maintained in readiness to photograph robberies and hold-ups. Also note that the pass tray built into the counter will permit the passage of money and papers, but will prevent a robber from pushing his gun through to threaten a teller.

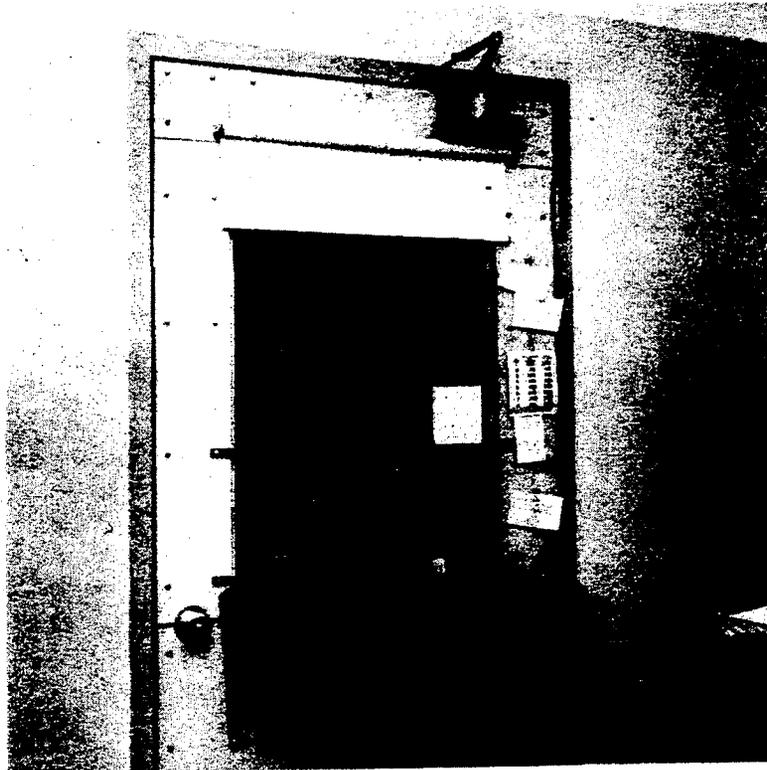


2. Agent Cashier's Office

- a. Shown in the photograph below is an **example** of a protected cashier window in an agent cashier's office. The installation involved a prefab bullet proof glass window, one inch thick and trimmed in stainless steel, and a "pass through box."



- b. The following is a view of the other side of the window. Note the steel plating mounted on the door to stop or render ineffective a bullet discharged by a hand **gun**.



GENERAL ADMINISTRATION MANUAL

Part 30 Environmental Protection

Contents

<u>Chapter</u>	<u>Title</u>
30-00	Environmental Protection
30-10	Policy
30-20	Administrative requirements
30-30	General Review Procedures for All Environmental Acts
30-40	Cultural Asset review
30-50	Natural Asset Review
30-60	NEPA Review
30-70	reviewing External EISs

Subject: ENVIRONMENTAL PROTECTION

30-00-00	Purpose
10	Chapter Organization and Content
20	Summary Requirements for Departmental Components
30	Public Laws, Executive Orders and Regulations Implemented by Part 30
40	Definitions

30-00-00 PURPOSE

Part 30 of the General Administration Manual establishes Departmental policy and procedures with respect to protection of the environment, and the preservation of historic properties and other valuable national resources. Under Federal laws, regulations and Executive Orders, all Federal Departments and agencies must take into account the environmental consequences of their activities. Included are the activities of non-Federal organizations which operate under the authority or with the support of Federal Departments or agencies. The terminology in this Part differs in some respects from that associated with any particular environmental law due to the fact that this Part is intended to implement a number of laws with varying requirements.

30-00-10 CHAPTER ORGANIZATION AND CONTENT

The chapters of Part 30 are **organized** as follows:

- Chapter 30-00 provides a summary of major **procedural** requirements, a list of Public Laws, Executive Orders, Federal regulations and other authorities covered **by** Part 30, and a list of **definitions**.
- Chapters 30-10 and 30-20 provide overall Departmental policy with **respect** to environmental protection and a summary of internal administrative **procedures** which Departmental components **must** implement.

- o Chapter 30-30 provides a general summary of the environmental review process for Departmental activities under all the environmental acts covered by Part 30.
- o Chapters 30-40, 30-50 and 30-60 provide detailed requirements for each of the different environmental acts covered by Part 30.
- o Chapter 30-70 provides Departmental procedures for reviewing environmental documents prepared outside of the Department.

30-00-20 SUMMARY REQUIREMENTS FOR DEPARTMENTAL COMPONENTS

The following is a summary of the principal requirements established by the Part.

A. Administrative Requirements

1. **POCs** must review all their activities and determine:
 - a. those activities which normally do not cause an environmental effect (as **defined by the** environmental acts), and therefore can be categorically excluded from subsequent environmental review or documentation requirements;
 - b. those activities which require an environmental review because they may cause a significant environmental effect under NEPA or may affect an asset; and
 - c. those activities which normally do cause a significant environmental effect **under NEPA** or affect a cultural or natural asset and therefore require preparation of an **environmental** document.
2. An activity may be categorically excluded from review and documentation requirements under one or more environmental acts, even though they may not be so excluded from all such acts. (See 30-20-30, -40.)
3. **POCs** shall adopt operating procedures for **conducting** environmental **reviews** of those proposed actions which have not been categorically excluded.

B. Review Procedures for Individual Proposed Actions

1. Environmental Reviews - Prior to taking an action not categorically excluded from review requirements, conduct an **environmental review** to determine the probably **environmental effects** of the proposed action.

2. Consultation - Carry out the requirements for public involvement and intergovernmental consultation as prescribed in the applicable environmental acts.
3. Documentation - Prepare any required documentation depending on the applicable environmental act and the kind and degree of environmental effects caused by a proposed action. Finalize any draft documents on the basis of public comments and intergovernmental consultation, as appropriate.
4. Decision-making - Take environmental effects and values, discussed in the final statement, into account in decision-making. Prepare a public "record of decision" or other final documentation if required by an environmental act.

30-00-30 PUBLIC LAWS, EXECUTIVE ORDERS AND REGULATIONS
IMPLEMENTED BY PART 30

The following list contains the various Public Laws, Executive Orders, Federal regulations and other authorities covered by Part 30:

- A. The National Environmental Policy Act (NEPA) (1) establishes a comprehensive policy for protection and enhancement of the environment by the Federal government, (2) creates the Council on Environmental Quality (CEQ), and (3) directs Federal agencies to carry out the policies and procedures of the act.
- b. Executive Order 11514, March 5, 1970, directs the heads of Federal agencies to monitor, evaluate and control their **agencies'** activities so as to protect and enhance the quality of the environment.
- C. Executive Order 11941, May 24, 1977, directs CEQ to **issue** regulations to Federal agencies for the implementation of the procedural provisions of NEPA.

- D. Executive Order 12114, January 4, 1979, directs Federal agencies to further the purpose of NEPA with respect to the environment outside the United States, its territories and possessions.
 - E. regulations of the Council on Environmental Quality, November 24, 1978, require Federal agencies to adopt procedures to supplement CEQ regulations for implementing the provisions of NEPA.
 - F. The Coastal Zone Management Act, 16 U.S.C. 1456 et. seq., directs Federal agencies to conduct activities consistent with an approved State coastal zone management program.
 - G. The Wild and Scenic Rivers Act, 16 U.S.C. 1278, directs Federal agencies to consider and preserve the values of wild and scenic areas in the use and development of water and land resources.
 - h. Executive Order 11990, May 24, 1977, directs heads of Federal agencies to avoid (1) the long- and short-term adverse impacts associated with the destruction or modification of wetlands and (2) direct or indirect support of new construction in wetlands whenever there is a practical alternative.
 - I. Executive Order 11988, May 24, 1977, directs Federal agencies to take action to avoid the occupancy or modification of floodplains and to avoid direct or indirect support of development in floodplain areas whenever there is a practical alternative.
 - J. U.S. Water Resources Council Floodplain Management Guidelines, February 10, 1978, provides guidance to Federal agencies for implementing Executive Order 11988.
 - K. Marine Protection, Research and Sanctuaries Act, 33 U.S.C. 1432f, provides for establishment of marine sanctuaries and directs Federal agencies to insure that their actions are consistent with the intended use of such areas.
-

- L. The Safe Drinking Water Act, 42 U.S.C. 300f et seq., authorizes EPA to determine if an **action** which will have an environmental effect on a sole or principal drinking water source would also constitute a significant hazard to a human population and, if so, to prohibit such an action.
- M. The Clean Air Act, 42 U.S.C. 1857 h-7, requires EPA to review and comment on a Federal agency action which would create a significant environmental impact.
- N. Executive Order 11987, May 24, 1977, directs Federal agencies to prevent the introduction of exotic species into the natural ecosystems of the **United States**.
- O. The Endangered Species Act, 16 U.S.C. 1536, directs Federal agencies to conserve endangered and threatened species and their critical habitats.
- P. Fish and Wildlife Coordination Act, 16 U.S.C. 661-666c, directs Federal agencies to prevent loss and damage to, and provide for, development and improvement of wildlife resources.
- Q. The National Historic Preservation Act of 1966, 16 U.S.C. 470 as amended, directs heads of Federal agencies to preserve cultural heritage, particularly with respect to sites on/or eligible for listing on the National Register of Historic Places.
- R. Executive Order 11593, May 5, 1971, implements portions of the National Historic Preservation Act of 1966 and require Federal agencies to nominate eligible properties which it owns, leases or otherwise controls.
- S. Regulations of the Advisory Council on Historic Preservation (36 CFR Part 800) establish procedures for the protection of historic and cultural properties.
- T. Regulations of the Department of the Interior (36 CFR Parts 60 and 63) concern nominations to and determinations of eligibility for the National Register of Historic Places.

- U. The Archaeological and- Historic **Preservation** Act, 16 U.S.C. 469 a-1 et seq., directs Federal agencies to preserve **significant** scientific, prehistorical, historical and archaeological data.

All **components** of the Department are responsible **for** complying with the specific requirements **of** each of the above environmental acts. The procedures which follow supplements and provide guidance toward meeting the requirements.

30-00-40 DEFINITIONS

- A. Action - a signed decision by a responsible **Department** official resulting in:
1. approval, award, **modification**, cancellation, termination, use or commitment of Federal funds or property by means of a grant, contract, purchase, loan, guarantee, deed, lease, license or by any other means;
 2. approval, amendment or revocation of any policy, procedures or **regulations** including the establishment or elimination of a **Department** program; or
 3. submission to Congress of proposed legislation which, if enacted, the Department would administer.
- B. Asset - an entity, group of entities or specific environment as defined in the **individual** related acts and which the individual related acts seek to protect or preserve. Assets include cultural assets (e.g., historic properties) and natural assets (**e.g.**, wild and scenic rivers, and endangered species);

- C. environmental acts - all authorities listed in Section 30-00-30;
- D. environmental effect - a change which a proposed action will cause either within the human environment (in accordance with NEPA) or to a cultural or natural asset (as defined in one or more of the related acts);
- E. environmental review* - the process, including necessary documentation, which a Departmental component uses to determine whether a proposed action will cause an environmental effect, and whether to prepare a limited statement, full statement or no statement;
- F. environmental statement - either a limited statement or a full statement at either the draft or final stage (see G and H **below**);
- G. full statement* - a document which discusses a proposed action in terms of its purpose and environmental consequences and includes a discussion of alternatives to a proposed action;
- H. limited statement* - a brief concise analysis which **pro-**vides written evidence sufficient to meet the documentation requirements of the environmental acts or which supports a determination not to prepare a full statement;
- I. **POC** - Principal Operating Component, e.g., Office of Human Development Services, Public Health Service;
- J. program review - a review by **POCs** of all their actions to determine:
 - 1. those categories of actions which normally do not cause **environmental** effects sufficient to require environmental documentation and therefore may be categorically excluded from further environment⁴ review; and

* Some **environmental** acts use different terms which are referenced in the section addressing such acts.

2. those categories of actions which require an environmental review **because** they may **cause a** significant environmental effect under NEPA or may affect an asset.
3. those categories of actions **which** normally do cause significant **environmental** effects under NEPA **or do** affect a cultural or **natural** asset and therefore require the preparation of an environmental document

POCs should complete an initial program review as soon as practicable following publication of this Part and should undertake subsequent program reviews when deemed appropriate.

- K. related acts - All Public Laws, Executive Orders, Federal regulations and other authorities listed in Section 30-00-30, **but** not including NEPA.

Subject: POLICY

30-10-00 Policy

Most of the contents of Part 30 address procedural **or** documentation requirements specified in the environmental acts. These procedures and documents are necessary in order for HHS components, before proceeding with an action, to take into account the environmental consequences of that action.

HHS components must also give weight to preservation of the environment and protection of historic or cultural assets in reaching substantive program decisions. All HHS components shall assess environmental costs and benefits as well as program goals and objectives in determining a particular course of action. In conducting this assessment, HHS components should afford reasonable time, effort and resources to a deliberation of environmental risks associated with a **program-** related course of action.

Subject: ADMINISTRATIVE REQUIREMENTS

30-20-00	Background
10	Responsibilities
20	Approval Authority and Redelegations
30	Process for Establishing Categorical Exclusions
40	Categories of Exclusion
50	Environmental Review Procedures

30-20-00 **BACKGROUND**

This chapter establishes an administrative framework in the Department for environmentally-related activities. Specifically, this chapter (1) describes the assignment of relative responsibilities in the Department regarding environmental activities, (2) establishes procedures for program reviews and (3) establishes other on-going administrative requirements,

30-20-10 **RESPONSIBILITIES**

A. Office of the Secretary

The Secretary shall designate an official, as the Departmental Environmental Officer, who will be responsible for:

1. **preparing** of Departmental guidelines and other policy documents for issuance by the Secretary or other appropriate Departmental official pertaining to environmental protection and preservation of natural or cultural assets;
2. **approving** of lead agency agreements having Department-wide **applicability**;
3. providing training to **HEW program** officials with **respect** to carrying out the **requirements** of the environmental acts;
4. maintaining liaison with CEQ, **EPA** and other **Federal** agencies charged with direct **responsibility** for administering the environmental acts;

5. coordinating **the** review of environmental statements originating from outside of HEW; and
6. reviewing and making recommendations to the Assistant Secretary for Xanagement and Budget with respect to determinations by **POCs** that certain activities are categorically excluded from **environ-mental** review.

B. Principal Operating Components

Heads of **POCs** are responsible for ensuring that organizational units under their authority comply with all Provisions of the **environmental** acts and with the procedures of this Part. A **POC** head may designate a **POC** environmental officer, who may act in either a **full-time** capacity or in addition to other duties, to assist in fulfilling these responsibilities.

c. Regional Offices

Principal Regional Officials (**PROs**) are responsible for complying with the provisions of the environmental acts and the **policies** in this part for those specific program responsibilities delegated to them.

In addition, the **PROs** shall:

1. serve as principal HEW regional liaison official with other Federal, State, and local agencies on matters pertaining **to** environmental preservation or protecting environmental, cultural or natural assets;
2. coordinate the timely **review** by regional program personnel of environmental impact statements forwarded to HEW by other agencies; and

3. periodically verify with the **POCs** that their regional program staff are aware of and are complying with the requirements of this Part.

30-20-20 APPROVAL AUTHORITY AND REDELEGATIONS

- A. The POC head and PRO may redelegate all their environmental responsibilities to subordinate program managers except for approving the designation of actions as categorically excluded by the POC head. POC heads shall obtain concurrence from the Assistant Secretary for Management and Budget with respect to activities designated to be categorically excluded from environmental reviews.
- B. The exclusion of material from environmental statements on the basis of national security and trade secrets requires approval by the HEW General Counsel. (See Section **30-30-40.**)
- c. Proposed actions which will have an effect on certain natural assets require concurrence or approval from other Federal agencies (see 30-50) prior to taking the action.
- D. POC heads shall sign determinations pursuant to Executive Order 11988 on Floodplain Management and Executive Order 11990 on Wetlands except:
 1. The Secretary shall approve proposed actions requiring full statements on projects affecting floodplains; and
 2. The Secretary **shall approve** proposed **actions** requiring limited or full statements for new construction in wetlands.

30-20-30 PROCESS FOR ESTABLISHING CATEGORICAL EXCLUSIONS

- A. All HEW activities which can be defined as "actions" (see Definitions, Section 30-00-40) require an environmental review unless a POC has determined, through a program review, that the activity will not cause a significant environmental effect under **NEPA** or will not affect any of the assets protected by the related acts.

B. Program Reviews

In a program review, a POC evaluates actions it will be taking in order to determine the potential of these actions to cause an environmental effect under any of the environmental acts. **POCs shall** complete an initial program review of all their actions as soon as practicable following publication of this Part. **POCs** may undertake additional program reviews subsequently whenever they deem it appropriate.

As a result of program review, a POC shall divide each of its actions in one of three groups:

- | | |
|---|---|
| <u>Group 1</u>
(Categorically
Excluded) | --- those actions which normally <u>do not</u> cause a significant environmental effect under NEPA or affect one or more of the assets protected by the related acts |
| <u>Group 2</u> | --- those actions which require an environmental review because they may cause a significant environmental effect under NEPA or may affect an asset. |
| <u>Group 3</u> | --- those actions which normally do cause a significant environmental effect under NEPA or <u>do</u> affect one of the assets protected by the related acts. |

An activity may be categorically excluded from review and documentation requirements under one or more environmental acts, even though they may not be so excluded from all such acts.

In grouping each of its actions, **POCs** shall use the exclusion categories described in Section 30-20-40. If action falls within one of these exclusion categories, then it may be included in Group 1. Such actions do not require further environmental reviews. If action does not fall within one of these exclusion categories, then a POC must perform an environmental review prior to taking this action. Chapter 30-30 describes the procedures for conducting an environmental review.

Each POC shall maintain as part of its administrative issuance system lists of those actions which it has determined fall under **Groups 1, 2 and 3**. These lists shall **supplement** other internal directives or instructions relating to **environment-related** responsibilities.

C. Approval

A determination by a POC that an action falls within Group 1 (Categorically Excluded) is effective upon approval by the POC head. However, POCs must forward these determinations to the Assistant Secretary for Management and Budget for concurrence. Determination that an action falls within Group 1 (Categorically Excluded) is effective for the shorter of (1) five years or (2) until rendered inapplicable because of changes in the underlying program authority.

30-20-40 CATEGORIES OF EXCLUSION

- A. POCs may exclude a proposed action from the environmental review process if it determines that the proposed action falls within one of the four exclusion **Categories** described in **this Section**. This determination may take **place** as the result of a program review of a **POC's** actions, in which case the action is listed in the **POC's** administrative issuance **system** as being categorically excluded from further environmental reviews.
- B. Categories of Actions Which May Be Excluded From Environmental Review
1. Category #1 - General Exclusions

POCs do not need to perform environmental reviews in the following instances:

- a. When a law grants an exception:
- b. When the courts have found that the action does not require environmental review (i.e., HHS is not required to prepare environmental statements concerning the termination of a hospital's status as a Medicare "provider" if termination **is statutorily** required because of a hospital's non-compliance with Federal fire safety regulations);
- c. When an action implements actions outside the territorial jurisdiction of the United States and such actions are excluded from review by Executive Order 12114.

2. Category #2 - Functional Exclusions

Actions associated with the following types of activities normally are not **subject** to environmental review requirements:

- a. **Routine** administrative and management support, including legal counsel, public affairs, program evaluation, monitoring and individual personnel actions;
- b. Appellate reviews when HHS was the plaintiff in the lower court decision (e.g., a case involving failure **by** a nursing home to comply with fire and safety regulations);
- c. **Data** processing and systems analysis;

- d. Education and training grants and contracts (e.g., grants for remedial training programs or teacher training) except projects involving construction, renovation and/or changes in land use;
- e. Grants for administrative overhead support (e.g., regional health or income maintenance program administration);
- f. Grants for social services (e.g., support for Headstart, senior citizen programs or drug treatment programs) except projects involving construction, renovation and changes in land use;
- g. Liaison functions (e.g., serving on task forces, ad hoc committees or representing HEW interests in specific functional areas in relationship with other governmental and non-governmental entities);
- h. Maintenance (e.g., undertaking repairs necessary to ensure the functioning of an existing facility), except for properties on or eligible for listing on the National Register of Historic Places;
- i. Statistics and information collection and dissemination (e.g., collection of health and demographic data and publication of compilations and summaries);
- j. Technical assistance by HEW program personnel (e.g., providing assistance in methods for reducing error rates in State public assistance programs or in determining the cause of a disease outbreak); and
- k. Adoption of regulations and guidelines pertaining to the above activities (except technical assistance and those resulting in population changes).

3. Category X3 - Program Exclusions

These exclusions result from a substantive review and determination by a POC that certain programs or certain activities within a program will not normally (a) significantly **affect** the human environment (as defined in NEPA) or (b) affect an asset (as defined in the related acts) regardless of the location or magnitude of the action. For example, a POC, following its review, might determine that the following are unlikely to cause an environmental effect: assigning a member of the Health Service Corps to *a* locality to supplement existing medical personnel or providing funds to support expansion of emergency medical services in existing hospitals.

4. Category #4 - Partial Exclusions

- a. A POC may determine that certain programs or elements may cause environmental effects with respect to some, but not all, of the environmental acts. For example, a POC may determine that actions associated with a particular program might affect historical properties (e.g., the renovation of an SSA district office in an historical district), but would never "significantly affect the quality of the human environment" (NEPA) or affect cultural and natural assets addressed by other related acts. The component may then limit the environmental reviews to the provisions of the National Historic Preservation Act.
- b. An environmental review conducted previously may be broad to satisfy environmental review requirements for future similar to related actions. For instance, a POC may conduct an environmental review with respect to a particular type of biological research, no matter where the research is conducted. Environmental reviews of future similar or related research activities are not necessary if the effects of this new research have been already addressed in the previous environmental review.
- c. There are some programs which must take an action *in* thirty days in response to an emergency health situation or because a law requires a Department official to act within thirty days. Such circumstances must be identified in the Categorical Review process and appropriate measures provided *to* comply with *the* intent of the laws, including appropriate consultations as required by NEPA and the related environmental acts.

30-20-50 ENVIRONMENTAL REVIEW PROCEDURES

A POC must conduct environmental reviews with respect to all proposed actions which do not fall under categorical exclusions #1, #2 or #3. Chapter 30-30 discusses the process for conducting an environmental review with respect to a specific proposed action and for fulfilling documentation and other requirements. Each POC shall ensure that its programs have appropriate procedures for conducting environmental reviews, for completing required documentation and for ensuring public involvement and intergovernmental consultation. These procedures must be in writing and be included in the internal administrative issuance system. These procedures must, at a minimum, address the following:

- A. A list of those actions which the POC has categorically excluded from further environmental review requirements.
- B. A list of those actions which require an environmental review prior to taking the action.
- C. Designation of officials responsible for **environment-**related activities including determinations as to whether to prepare a full statement or a limited statement, if one is required.
- D. Procedures for preparing and circulating environmental statements (including data required by the applicable environmental act for the **type** of action covered).
- E. Procedures for ensuring the **coordination** of environmental review with program decision-making, including concurrent development and circulation of environmental documents with program documents and the identification of key decision-making points.
- F. Procedures for consulting with other Federal agencies responsible for the environmental acts, if necessary.
- G. Procedures for developing lead agency agreements (as described in 30-30-20 B below).
- H. A prohibition against precluding **or** prejudicing selection **of** alternatives in a full statement without regard to environmental risks.

- I. Procedures for establishing a **reviewable** record, including making environmental statements and **related** decision-making materials part of the record of formal rulemaking and adjudicatory proceedings.
- J. Provision for early consultation and assistance to potential applicants and non-Federal entities in planning actions and developing **information necessary** for later Federal involvement (as **described in 30-30-20C** below).
- K. Descriptions of circumstances which preclude completion of environmental reviews within reasonable time frames because of public health and safety considerations and procedures for after-the-fact completion.
- L. Provision for ensuring that applications and other materials from **potential grantees** or other recipients of Departmental funds, on a program-by-program basis, include information necessary to conduct an environmental review. Such information shall include the identification of any properties which may be eligible for listing on the National Register of Historic Places.
- M. Provision for identifying cultural assets **which** a program controls through leases or Federal ownership, and for nominating any eligible historical **properties** to the National Register of Historic Places...

Subject: **GENERAL** REVIEW PROCEDURES FOR ALL ENVIRONMENTAL
ACTS

30-30-00 Overview
 10 Summary Description
 20 Environmental Review
 30 Environmental Statements
 40 Intergovernmental Consultation and Document
 Review

Exhibit 30-30-A Requirements of NEPA and the Related Acts
Exhibit 30-30-B Flow Chart-Environmental Review Procedures

30-30-00 OVERVIEW

The environmental acts require a review of proposed Federal actions whenever they will bring about environmental effects, either within a human environment (as defined under N&PA) or **to an** historic property, endangered species or other asset (as defined in the related acts).

The purpose of this Chapter is to describe overall the steps which Department officials must take in conducting environmental reviews of specific proposed actions. Within these general steps, the individual environmental acts differ significantly with respect to **public** involvement, intergovernmental consultation and documentation required. The Chapters at 30-40, 30-50 and **30-60** following (entitled Cultural Asset Review, Natural Asset Review and NEPA Review) **discuss** these specific requirements in greater detail. Exhibit **30-30-A** summarizes these differences.

30-30-10 SUMMARY DESCRIPTION

The following is a summary description of the general types and sequence of activities which Departmental officials should carry out in reviewing specific proposed actions under this Part. Exhibit **30-30-B** summarizes these activities.

A. Determine that a proposed activity constitutes an action **as** defined under Section 30-00-40 (Definitions).

- B. Determine whether the proposed action is categorically excluded from all environmental review requirements. If so, no further environmental review is necessary.
- c. **For** proposed actions not categorically excluded, conduct an environmental review in accordance with applicable program environmental review procedures to determine whether the proposed action will cause an environmental effect under one or more of the environmental acts.
- D. Determine whether it is necessary to prepare a draft statement and, if so, circulate the statement among the public, Federal and non-Federal agencies and other interested parties, as appropriate.
- E. Carry out the requirements for public involvement and intergovernmental consultation as required under the applicable environmental acts, including any necessary approvals.
- F. Prepare a final statement **and** proceed with the program decision-making process.

30-30-20 ENVIRONMENTAL REVIEW

A. General

POCs must perform an environmental review for each proposed action not categorically excluded in accordance with the **POC's** environmental procedures. The purpose of an environmental review is to answer the following general questions. (Individual environmental acts differ with respect to the specific scope and methodology required in conducting an environmental review.):

1. Will a proposed action have an environmental effect under any of the environmental acts as defined in regulation or by court interpretation?

2. Which environmental acts apply to the proposed action?
3. Do any previous environmental reviews exist on similar or related actions which could satisfy the review requirements of a particular proposed action?
4. Should the HHS component prepare a limited statement or a full statement given the environmental acts involved and the kinds and degree of environmental effects anticipated?

B. Agreements with Other Agencies

When two or more agencies are engaged in the same action, a lead agency agreement provides one agency with the authority to conduct the environmental review. These agreements determine the content and type of statement and specify which Federal agency will prepare it. The agreement includes a schedule for the preparation and circulation of the document, as well as an assignment of important tasks among the agencies involved. Lead agency agreements may be signed with other agencies for individual actions or for a **particular** type of action.

C. Non-Federal Agencies

Whenever an HHS program requests or permits a **non-Federal** agency to perform an environmental review, the program shall outline the type of information required, perform an independent evaluation and assume responsibility for the scope and content of the material.

30-30-30 ENVIRONMENTAL STATEMENTS

- A. On the basis of the environmental review! POCs shall determine whether to prepare a limited environment&i statement or a full environmental statement.
-

The designations "limited statement" and "full statement" refer to categories of documents as defined earlier under 30-00-40 G and H. Each of the environmental acts specifies different documentation and public involvement and consultation requirements within these two general categories.

Full statements are prepared in two stages: draft and final. A final statement includes a consideration of comments submitted by persons or organizations reviewing the draft statement. Under some laws covered by this Part, a limited statement may also have to be prepared in draft for review and comment, before being finalized.

The Chapters at 30-40, 30-50, and 30-60 following (Natural Asset Review, Cultural Asset Review and NEPA Review) discuss these different requirements in greater detail and **must** be consulted to ascertain the specific requirements of NEPA and each of the related acts.

B. Description

1. Full Statements

A full statement identifies the proposed action, its purpose and its associated environmental effects in comparison with no action **by** any organization to achieve the underlying purpose. It further compares no action with other alternative actions, including their environmental effects. Draft full statements shall not exhibit **biases** in favor of the proposed action. A final statement may include a recommendation with a rationale for a preferred action.

2. Limited Statements

A limited statement is generally a short concise **document** which describes the proposed action, identifies its environmental effects and lists any mitigating measures or safeguards that will lessen or **prevent certain** environmental changes from occurring. POCs generally can **use** a draft limited statement in order to satisfy any review, consultation and public notice requirements of the environmental acts and to otherwise inform individuals and organizations who **may** be interested in or affected by the proposed action (see Chapter 30-60 for correct NEPA terminology).

C. Validity

Statements for continuing actions are valid for three years, unless a change occurs in carrying out the actions or pivotal new data concerning the effects of each action is identified.

Statements for an individual action are valid for a period of 18 months after the issuance of the documentation. Reviews for individual actions not initiated within 18 months require review and reissuance.

D. Alternatives

Full statements must explore and evaluate reasonable alternatives to the proposed action in terms of their environmental consequences, benefits and costs and contribution to the underlying purpose or goal. Discussion of alternatives must be sufficiently in-depth to permit a meaningful comparison of alternative courses of action.

Full statements shall consider the following categories of alternatives, as appropriate:

1. No action by any organization - This alternative serves as a baseline against which to measure the environmental consequences, costs and benefits of the proposed action and other alternatives.
2. Action Alternatives - One or more alternative courses of **action** directed at achieving the underlying purpose or goal. The full statement cannot automatically exclude actions.
 - o outside of the expertise or jurisdiction of Departmental components, e.g., examining the possible use of other real properties other than that proposed for transfer by HEW; or
 - o which only partially achieve an underlying goal or objective, e.g., funding a health care facility at a lower capacity for patient care.

However, action alternatives considered must be reasonably available, practicable and be related to the underlying purpose or goal. A full statement must include all reasonable alternatives.

3. Alternative Safeguards - These are alternative actions which could mitigate the adverse environmental consequences of one or more of the action alternatives.
4. Delayed Action Alternative - This alternative is to postpone or delay a proposed action in order to conduct more research or for other reasons.
5. Alternative Uses - When a proposed action would affect a scarce or valuable resource (e.g., prime agricultural farmland), the potential alternative uses of the resource must be identified so that they may be compared with the value of the proposed action.

30-30-40 INTERGOVERNMENTAL CONSULTATION AND DOCUMENT
REVIEW

POCs are responsible for meeting the various requirements under environmental acts for intergovernmental consultation and public involvement. These requirements differ significantly. POCs should refer to the more detailed descriptions in Chapters 30-40, 30-50, and 30-60 and should consult an environmental officer for guidance.

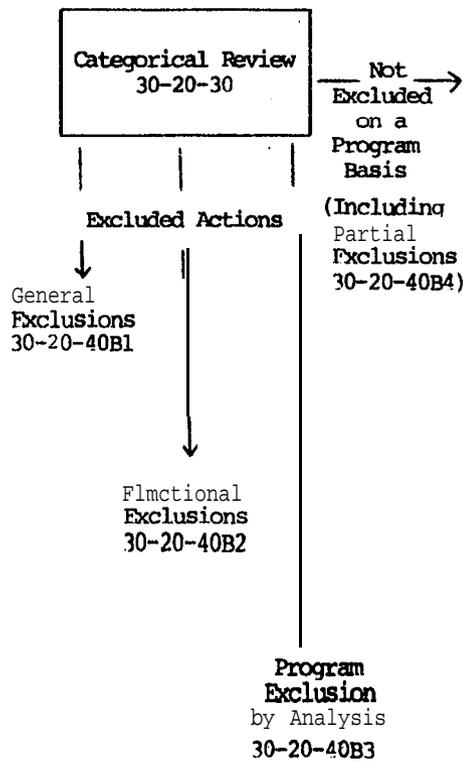
As required, POCs shall circulate draft statements for review and comment, and otherwise make them available to the public upon request. Statements should be circulated to the Federal Agency responsible for administering the applicable environmental act, involved non-Federal agencies at the State or local level, including A-95 clearinghouses, and interested public persons or groups within the geographic area of the environment affected. The review period is generally no less than 30 days for a draft limited statement and no less than 60 days for a draft full statement. Whenever a draft statement is significantly revised because of comments received or because the nature or scope of the proposed action changes significantly, POCs shall prepare a new draft statement for circulation. Circulation of certain portions of the document is not necessary when it involves the following:

- A. National Security. Circulation of classified sections of environmental documents are subject to regulations pertaining to matters of national security.
- B. Trade Secrets. Circulation of sections of environmental documents that disclose a trade secret is limited to those who need to have access in order to take appropriate action.

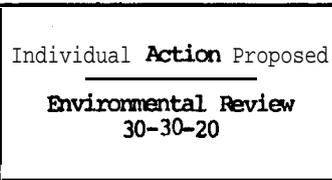
AUTHORITY	DOCUMENTATION AND CIRCULATION				TYPE OF RESPONSE OR PERMISSION REQUIRED
	#1 Draft Limited* Statement	#2 Final Limited Statement or	Draft Full Statement	#3 Final Full Statement	
National Historic Preservation Act	a) Finding of Effect (but not Adverse) b) Finding of Adverse Effect	(Finalize - if Council does not object) (Finalize - if Council concurs with mitigation measures)	- Preliminary Case Report (as requested by the Council)	- Case Report	Yes. The Council Staff (or Chairman must concur or the issue is brought to the full Council at a quarterly meeting. The final decision belongs to the agency.
National Archeological Data Preservation Act	Information Provided to Secretary of Interior	(Finalize)	-		None, but delay is possible if the Secretary of the Interior wants to pay for recovery.
Coastal Zone Management Act	To State CZM Agency To Secretary of Commerce	(Finalize)	As Requested by the Secretary of Commerce		Yes. For certain projects no further action may be taken until the Secretary of Commerce determines that it is consistent with CZM or needed for national security.
Floodplains E.O. 11987	-		For Review by the Secretary (Of HEW)	(Finalize)	Yes. By the Secretary (of HEW) (applies to capitol improvements only)
Endangered Species Act	To DCC or DOI	(Finalize)		-	Yes. Response required from DOI and action prohibited if species endangered by the project.
Fish and Wildlife Act	To DOI	(Finalize)	-	-	Yes. Response from DOI required before #2.
Wild and Scenic Rivers Act	To Ag or DOI	(Finalize)	-	-	Yes. Prohibited without approval of appropriate Secretary (Ag or DOI)
Wetlands E.O. 11990	For POC Review	(Finalize)	For Review by the Secretary (construction actions) and as requested by the POC	(Finalize)	Yes. By the Secretary (of HEW) if new construction. By POC for all others.
Safe Drinking Water Act (Aquifers)	To EPA	(Finalize)	-	-	Yes. Administrator of EPA may prohibit the action if it will contaminate a sole source aquifer.
Marine Sanctuaries Act	To DOC	(Finalize)	-	-	Yes. The Secretary of Commerce must certify that action is consistent with purposes of Act.
National Environmental Policy Act		Finding of No Significant Impact (Publish notice when appropriate)	Draft Environmental Impact Statement (Program Decision)	Final Environmental Impact Statement	Agency may make own decision after issuing final EIS except when another federal agency requests CEQ intervention.

FLOW CHART - ENVIRONMENTAL REVIEW PROCEDURES

PROGRAM-WIDE REVIEW



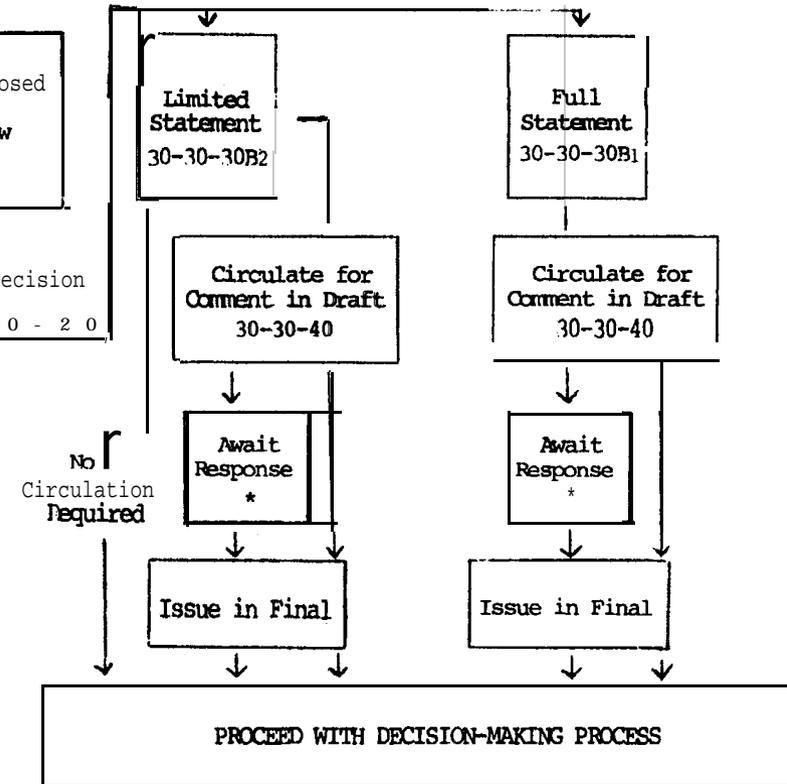
Distribution



Document Decision
30-30-20

* Several Related Acts require the Department to receive comments from or gain the permission of other Departments before taking actions which will have certain types of effects (e.g., the Safe Drinking Water Act). Exhibit. 30-30-A

INDIVIDUAL ACTION REVIEW



No Circulation Required

PROCEED WITH DECISION-MAKING PROCESS

Subject: CULTURAL ASSET REVIEW

- 30-40-00 Historic Preservation
 - 10 Applicability
 - 20 Identification of Historic Properties
 - 30 How a Property is Affected
 - 40 Limited Statement
 - 50 Full statement
 - 60 Disagreement
 - 70 Archeological Data: Notification
 - 80 Archeological Data: Recovery

30-40-00 HISTORIC PRESERVATION

section 106 of the National Historic Preservation Act **states** that the Advisory Council for Historic Preservation (ACHP) will have an opportunity to comment on any proposed Federal undertaking which will affect a historic property which is listed on or is eligible for listing in the National Register of Historic Places. The Archeological Data Preservation Act states that the Secretary of the Interior shall have an opportunity to recover significant historical **or** scientific data irrevocably lost through a Federal undertaking. In addition, the latter permits agencies to spend up to one percent of project funds for the recovery of data.

30-40-10 APPLICABILITY

Unless a categorical exclusion applies, each proposed HEW action must be reviewed in order to determine whether it will affect a property which is on or eligible for the National Register of Historic Places.

30-40-20 IDENTIFICATION OF HISTORIC **PROPERTIES**

Each Federal agency has a responsibility for identifying potential properties for the National Register of Historic Places. It must nominate to the National Register of Historic Places, eligible properties which it owns or otherwise controls and seek eligibility determinations from the Secretary of the Interior for potentially eligible properties which it will affect by a proposed action. (See 35 CFH 60.6.) Implementation of a proposed action may not occur until the completion process, and any appropriate additional requirements, are met (e.g., consultation with the Advisory Council).

A. Eligible Properties

1. Properties are districts, sites, buildings, structures or objects.
2. Properties may be eligible because of their association with significant historical events, or the lives of persons significant in our past; because of distinctive artistic characteristics; or because they are likely to yield important historical information.

B. Eligibility Determinations

Departmental components, in consultation with the State Historic Preservation Officer (SHPO), shall apply the National Register Criteria for Eligibility to each property to determine which may be affected by a proposed action. If either party concludes that the property may be eligible, components shall submit a letter to the Department of the Interior requesting the Keeper of the National Register to make a decision concerning eligibility. The Keeper may request additional information. The action cannot be taken until the Keeper responds or until 45 days have passed, whichever occurs first. Consultation with the Advisory Council can be conducted simultaneously. If the Keeper finds the property eligible, Cultural Asset Review procedures apply. If the Keeper finds the property ineligible, the cultural identification process is complete.

C. Nominations

Each Federal agency is responsible for nominating to the National Register those eligible properties which it owns or otherwise controls. Each POC head shall develop and implement procedures for nominating all such eligible properties which it currently administers or controls.

30-40-30 HOW A PROPERTY IS AFFECTED

An historical review is an examination and analysis of changes in an historic property which occur as a result of the proposed action. (See 36 CFR 800.3(a).) An historic property is affected whenever one or more of the following changes occurs:

30-40-30 HOW A PROPERTY IS AFFECTED

A historical review is an examination and analysis of changes in a historic property which occur as a result of the proposed action. (See 36 CFR 800.3(a).) A historic property is affected whenever one or more of the following changes occur:

- A. altering or destroying its physical characteristics;
- B. altering the physical setting (normally the boundary of a setting does not extend beyond a circle having a 500 yard radius);
- C. moving the property;
- D. altering the type or level of use; or
- E. altering the type of level of activity occurring in the physical setting.

30-40-40 LIMITED STATEMENT

If a proposed action will affect a property which is on or determined eligible for the Register by the Secretary of the Interior, **POCs** shall develop a draft limited statement and submit it to the appropriate State Historic Preservation Officer (SHPO). Following the receipt of comments from the SHPO (or after a period of 30 calendar days) the statement is then sent to the Advisory Council for comment. A cover letter shall state whether the program considers the effects to be adverse within the context of the historic value of the property (see 36 CFR 800.3(b)). If the Advisory Council fails to respond within 30 days, the review is complete. The Council can request additional data from the program whenever it finds the statement incomplete. If the Council concurs that the proposed action will not adversely affect the property, the review is complete. The Chairman of the Council may choose to develop a Memorandum of Agreement for actions which will affect a property adversely in order to mitigate the effect. Such memoranda will specify the various mitigation measures (e.g., record data prior to destruction) that the various involved parties agree to follow.

30-40-50 FULL STATEMENT

The Advisory Council may request the POC to prepare a full statement (known as a draft case report) prior to discussing a Memorandum of Agreement. **POCs** shall submit a full statement, if required, to the SHPO and the Council. HEW or the Council may develop a Memorandum of Agreement after discussing the statement. Among the **alternatives** in a full statement which **POCs** must include are alternative uses of a historic property other than for the underlying purpose of the proposed action.

30-40-60 DISAGREEMENT

If the Council staff cannot find a common ground upon which to develop a Memorandum of Agreement or if one or more of the parties fail to sign the Memorandum, the proposal must go to the members of the full Council for their review during a public meeting. The review is complete when the Council provides its advice or it has been 15 days since the review by the Council members, whichever is less. HEW **must** respond to the Council's comments.

30-40-70 ARCHEOLOGICAL DATA: NOTIFICATION

If the proposed action will bring about the irretrievable loss of significant scientific, archeological, historic or prehistoric data, program personnel shall inform the Secretary of the Interior. If the Secretary does not respond within 60 days, the review is complete. If the Secretary offers to pay for the recovery of the data, he shall have a least six months to effect recovery.

30-40-80 ARCHEOLOGICAL DATA: RECOVERY BY HEW

If a proposed action involves a Federal construction project or a Federally-licensed project, and the action will result in the irretrievable loss of scientific, archeological, historic or prehistoric data, up to one percent of the project costs **may be** used to recover the data.

Subject: NATURAL ASSET **REVIEW**

- 30-50-00** Natural Assets
- 05** Applicability
- 10** Coastal **Zone Management Act (CZMA)**
- 20 Floodplain Management
- 30 Endangered **Species Act**
- 40** Fish and Wildlife Coordination **Act**
- 50** Wild and Scenic Rivers **Act**
- 60 Protection of Wetlands
- 70 Safe Drinking Water Act (Sole Source Aquifers)
- 80 **Marine Sanctuaries Act**

30-50-00 NATURAL ASSETS

The related acts require the consideration of the effects of **a proposed** action on specific types of places, on specific places and on specific species. **Most of these acts prohibit** further action until the agency responsible for administering the act provides advice or gives permission to proceed with the action. The species requiring consideration are listed by the Department of the Interior. The places requiring consideration are:

- A. Coastal Zones (as identified in a State **CZM** plan):
- B. Floodplains (as identified on HUD floodplain maps);
- C. Habitats of Endangered Species {as identified by the Department of the **Interior**};
- D. Streams and other bodies of water (in excess of 10 surface acres);
- E. Wild and Scenic Rivers (as identified by the Departments of the Interior and Agriculture);
- I?. Wetlands (all);
- G. Sole Source Aquifers (as **identified by** the **Environmental Protection Agency**); and

H. Marine Sanctuaries (as identified by the Secretary of Commerce).

30-50-05 APPLICABILITY

Unless a categorical exclusion ● applies, POCs are responsible for reviewing all proposed actions to determine whether they will affect places and species referenced above.

30-50-10 ZONE MANAGEMENT ACT (CZMA)

A. Purpose

The Coastal Zone Management Act of 1972 declares that it is the national policy "to preserve, protect, develop, and where possible, to restore ● enhance, the resources of the Nation's coastal zone." The term "coastal zone" means that area which is identified as such in a State CZM plan. In furtherance of this policy, the Act provides Federal assistance to States for developing and implementing coastal zone management programs. The Act also requires that "Each Federal agency conducting or supporting activities directly effecting the coastal zone shall conduct or support those activities in a manner which is, to the maximum extent practicable, consistent with approved State management programs." Federal agencies are specifically prohibited from undertaking or assisting certain activities without a determination by the State or local coastal management agency that the activity is consistent with the State management program. The CZM Act excludes from the definition of coastal zone lands the use of which is by law subject solely to the direction of or which is held in trust by the Federal Government, its officers or agencies (e.g., non-terminated California Indian rancherias).

B. Responsibilities and Consultation Requirements

1. If the proposed action will affect a place which is within or contains a geographical area that is part of an approved CZM plan, POCs shall forward a draft limited statement to the State CZM agency for comment and a determination as to whether the proposed action is consistent with the approved CZM plan. The review period is at least 30 days for a limited statement and 60 days for a full statement,

except where an applicant for a Departmental license or permit submits a Certification of Compliance to the State CZM agency. In the latter case, the minimum period is the amount of time remaining on the six month review period, but not less than the 30 or 60 days referred to above.

2. If the CZM agency fails to respond within the appropriate time period, or states that the proposed action is consistent with the CZM plan, a program is in compliance with the review requirements of the Act:
 - a. unless the proposed action is an application for a license or permit to conduct an activity affecting land or water use that is not accompanied by an applicant's certification that it complies with the CZM plan; or
 - b. unless the proposed action involves an application for Federal assistance from a State or local government agency which is not accompanied by the views of the CZM agency.
 3. If the State CZM agency states that the proposed action is not consistent with the approved CZM plan and the proposed action involves one of the types of actions described in 2a or b above, POCs shall forward the draft limited statement to the Secretary of Commerce. The Secretary may request additional data in the form of a full statement. In any case, no further action will take place until and unless the Secretary of Commerce finds that the proposed action is consistent with the purposes of the CZM Act or is necessary for national security.
 4. If the State CZM agency states that the proposed action is not consistent with the approved CZM plan, and the proposed action does not involve one of the types of actions described in 2 above, the proposed action must have the approval of the responsible POC before proceeding.
 5. The above requirements shall not apply to those types of actions which are specifically excluded by the approved CZM plan.
-

30-50-20 FLOODPLAIN MANAGEMENT

A. Purpose

Executive Order 11988 of May 24, 1977, directs each Department to avoid **long-** and short-term adverse impacts associated with the occupancy and modification of floodplains, including the direct and indirect support of floodplain development, whenever there is a practicable alternative. Floodplains are those areas identified as such according to a Department of Housing and Urban Development floodplain map. (See U.S. Water Resources Council Floodplain Management Guidelines for further information.)

B. Responsibilities and Circulation Requirements

1. If a proposed action will result in a capital improvement occurring within a floodplain, the cost of which will exceed 50% of the estimated reconstruction costs of an entire facility or \$100,000, or clearly will provide direct or indirect support of subsequent floodplain development, **POCs** will prepare a draft full statement. (A limited statement is not acceptable in this instance.)
2. The draft full statement shall contain, in addition to identifying practicable alternatives to avoid affecting a floodplain, the following information:
 - a. the reasons for locating the proposed action in a floodplain; and
 - b. a statement indicating whether the action conforms to applicable State or local floodplain protection standards.

For those actions subject to OMB Circular A-95, the **POC** shall send the notice to the State and **areawide** clearinghouses for the geographical area affected and include a location map.

3. **Circulation** of draft full statements shall include the public and other interested individuals, including concerned Federal, non-Federal and private organizations. Interested parties shall have a period of 60 days for the review and comment on **draft** full statements.

4. **No** action shall take place without a finding **by the Secretary** that the only practicable alternative **requires** siting in a floodplain and until 30 days after the issuance of the final statement which shall constitute a notice of finding as required **by** the WRC guidelines.
5. An action taken in a floodplain **must** incorporate design features consistent with the standards in the Flood Insurance Program of the Federal Insurance Administration to minimize substantial harm to the floodplain.

30-50-30 ENDANGERED SPECIES ACT

The Endangered Species Act establishes a policy to conserve endangered and threatened species, both within the U.S. and elsewhere.

A. Purpose

Section 7 of the Endangered Species Act requires each Department to take "such action necessary to insure that their actions . . .do not jeopardize the continued existence of endangered or threatened species..." as listed in the Federal Register from **time** to time **by** the **Secretaries of Commerce** and Interior. Federal Departments shall, in consultation with these Secretaries, carry **out** the purpose of the Act.

B. Responsibilities and Consultation Requirements

1. a. If the proposed action is a construction project which requires the preparation of an environmental impact statement (EIS) '(see Chapter **30-60**) program personnel shall contact the Office of Endangered Species (OES), Department of Interior, and provide a brief description, including the location of the proposed project. The OES will provide program personnel with a list **of** endangered species and critical habitats for the specific geographic area to use in determining whether the action will have an effect upon a member of an endangered or threatened species or an identified critical habitat. If it will, program personnel will prepare a draft limited statement.

trolled or modified for **any purpose**, the Department shall consult first with the U.S. Fish and Wildlife Service, Department of the Interior, and the State agency head responsible for administering wildlife resources.

2. Program personnel shall prepare **a draft** limited statement, describing the effects of an action which will result in effects described in **1** above and submit it to the Secretary of the Interior.
3. No further action shall take place pending receipt of a report from the Secretary of the Interior.
4. **POCs** shall consider the report of the Secretary of the Interior, together with its recommendations in developing the project plan. The plan shall include such justifiable means and measures as are necessary to obtain maximum overall project benefits.
5. All reports and recommendations of the Secretary of the Interior and State wildlife agencies constitute an integral part of any environmental report prepared pursuant to the action.

30-50-50 WILD AND SCENIC RIVERS ACT

A. Purpose

The purpose of the Act is to preserve selected **free-flowing** rivers, along with their immediate environments, for **the** benefit of immediate and future generations. These include river components and potential components of the National Wild and Scenic River System and study areas designated by the Secretaries of Agriculture and Interior. (Environmental officers keep a list of these rivers and related study areas.) Designations used to describe these components, or parts thereof, include the following: (1) wild, (2) scenic, and (3) recreational.

B. Responsibilities and Consultation Requirements

1. When a proposed action will have an effect upon an environment within or including a portion of a component, potential component or study area, program personnel shall **send a** draft limited statement to the Heritage Conservation and Recreation Service (**HCRS**), Department of Interior for review.

The following are examples of circumstances which can affect a river component or study area:

- a. Destruction or alteration of all or part of the **free** flowing nature of the river;
 - b. Introduction of **visual**, audible, or other sensory intrusions which are **out of** character with the river or alter its setting;
 - c. Deterioration of water quality; or
 - d. Transfer or sale of property adjacent to an inventoried river without adequate conditions or restrictions for protecting the river and its surrounding environment.
2. If HCRS does not respond within 30 calendar days or states that the proposed action will not **directly** or adversely affect the area, the Department is in compliance with the review requirements of the Act. However, in those instances where HCRS does not respond, programs shall take care to always avoid or mitigate adverse effects on river components and study areas*
 3. If the HCRS determines that the proposed action will directly and adversely affect the area, no further action shall take place whenever the proposed action involves the construction of a water resources project.
 4. The above requirements do not apply to types of actions excluded from the review process by appropriate Department of Interior or Agriculture regulations.

30-50-60 PROTECTION OF WETLANDS

A. Purpose

Executive Order 11990 of May **24**, 1977, directs each Department to minimize the destruction, loss, or degradation of wetlands and to preserve and enhance such wetlands **in carrying out, their program responsibilities**. Consideration must include a variety of

factors, such as water supply, erosion and flood prevention, maintenance of natural systems and potential scientific benefits. Wetlands generally include swamps, marshes, bogs and similar **areas** inundated by water to a degree which permits the support of aquatic life.

B. Responsibilities and Circulation Requirements

1. If a proposed action will have an environmental effect upon a wetland, the draft limited statement shall contain a section which compares the purpose of the proposed action with the purposes of this Executive Order.
2. No further action shall take place until the POC makes a decision that the proposed action includes all reasonable measures to minimize harm to the wetlands as a result of the proposed action.
3. Draft limited statements and draft full statements for actions involving changes in title to wetlands or leases, easements or permits, shall contain, as mitigation measures, proposed restrictions and reservations developed pursuant to the purpose of the Executive Order.
4. Draft full statements are required for proposed actions involving new construction in or on wetlands. No further action shall take place until the Secretary of HEW determines that there is no **practicable** alternative to such construction and that the proposed action includes all practicable measures to minimize harm to the wetlands.
5. These requirements do not apply to the issuance to individuals of permits and licenses and the allocation of funds made to individuals.

30-50-70 SAFE DRINKING WATER ACT (SOLE SOURCE AQUIFERS)

A. Purpose

Section 1424(e), the Safe Drinking Water Act, provides for the protection of those aquifers which have been designated by the Administrator of the Environmental Protection Agency as the sole or principal source of drinking water for a community.

B. Responsibilities and Consultation Requirements

1. A review shall determine if a proposed action will directly or indirectly affect a designated aquifer.
2. If the action will affect an aquifer, program personnel shall send a draft limited statement to the Regional Administrator, Environmental Protection Agency, who shall review the action in order to determine if it will create a public health hazard.
3. The action shall not proceed any further unless and until the Administrator of the Environmental Protection Agency determines that the proposed action will not contaminate the designated aquifer so as to create a hazard to public health,

30-50-80 MARINE SANCTUARIES ACT

A. Purpose

Title III of the Marine Protection, Research and Sanctuaries Act prohibits Federal Departments from taking actions which will affect a Marine Sanctuary **unless** the Secretary of Commerce certifies that the activity is consistent with the purposes of the Act. Listings of sanctuaries are designated by the Secretary of Commerce **and** maps of sanctuaries appear in the Federal Register.

B. Responsibilities and Consultation Requirements

1. If the proposed action will create an environmental effect on a marine sanctuary, program personnel shall prepare a draft limited statement and forward it to the Secretary of Commerce.
2. No further action **shall** take place unless and until the Secretary certifies that the action is consistent with the purposes of the Act.

Subject: NEPA REVIEW

- 30-60-00** Background
- 05 Applicability
- 10 Responsibilities
- 20 Determining Appropriate NEPA Documentation
- 30 Findings of No Significant Impact
- 40 Environmental Impact Statements
- 50 Contents of an EIS
- 60 Public Involvement and Circulation of NEPA
Environmental Statements

30-60-00 BACKGROUND

The National Environmental Policy Act of 1969 (**P.L. 91-190**), as amended, establishes policy and requirements governing all Federal Departments and agencies with respect to protecting the environment. This chapter supplements Specific requirements established by NEPA and by the associated implementing regulations promulgated by the Council on Environmental Quality (CEQ). (40 CFR **1500-1508**)

NEPA requires **all** Federal Departments and agencies to take into account all potential environmental consequences of their activities prior to initiation of these activities. Specifically, Section 102(2)(c) of NEPA requires all **agencies** of the Federal government to include an environmental statement **"in every** recommendation or report on proposals **for** legislation and other major Federal actions significantly affecting the quality of the human environment." The purpose of this and other requirements is to ensure that environmental information is available to public officials and citizens before Federal agencies make decisions to take actions which could significantly affect the environment.

30-60-05 APPLICABILITY

Unless a categorical exclusion applies, **POCs** are responsible for reviewing all proposed actions. **CEQ** regulations require each Department to establish criteria for determining categorical exclusions. A POC must determine that the action taken by a program would never significantly affect the quality of the human environment in accordance with the criteria discussed in 30-60-20.

30-60-10 'RESPONSIBILITIES

POCs shall review each of their programs to determine those which may be categorically excluded and provide the Office of Environmental Affairs with a list which shall be submitted to CEQ **for** approval pursuant to 40 CFR 1507.3 (b) (2) and then published. The **POCs** shall develop procedures for each program not categorically excluded in order to determine the data needed for environmental assessments* and a system for acquiring such data. The **POCs** shall prepare an environmental assessment for each proposed action not categorically excluded and, as a result, prepare a Finding of No Significant Impact (**FONSI**)* or an Environmental Impact Statement (EIS)*.

30-60-20 DETERMINING APPROPRIATE NEPA DOCUMENTATION

A. General

In order to identify the required documentation, an environmental assessment must be performed. This assessment eventually will be used to prepare a FONSI **or** EIS. An action will result in a series of consequences. One or more **of** these consequences may change the manner in which an environment would function without the action. In preparing the assessment, it is necessary to clearly identify the consequences, the environments affected, and the changes that would occur if the action were taken.

B . Criteria

In determining whether a proposed action **will or** will not "significantly affect the quality of the human environment," **POCs** should evaluate the expected environmental consequences of a proposed action **by** means of the following steps:

* **CEQ** terminology is used in this chapter. For purposes of coordination with other previous sections, an "environmental assessment" is an "environmental review", a "**FONSI**" is a "limited statement" and an "**EIS**" is a "full statement."

Step One - Identify those things that will happen as a result of the proposed **action**

An action normally produces a number of consequences. For example, a grant to construct a hospital...

may terminate human services;
will involve destruction and construction;
will provide a service.

Step Two - Identify the 'human environments' that the proposed **action will affect**

In accordance with Section 1508.27 pertaining to context, the human environments **affected** by the action must be identified. These include terrestrial, aquatic, subterranean and aerial environments, such as islands, cities, rivers **or** parts thereof. However, a human environment must be of reasonable size in order to require an EIS. (Note that a mud puddle is an environment and that, if destroyed, it would be "significantly affected".) Therefore, the environmental assessment need not address the **significance** of effects pertaining to environments which are smaller than the following:

<u>Type of Environment</u>	<u>with clearly defined boundaries</u>	<u>without clearly defined boundaries</u>
Terrestrial Space	1 acre	160 acres
Subterranean Space	1,000 cubic yards	500,000 cubic yards
Aquatic Space	5,000 cubic yards	50,000 cubic yards
Aerial Space	1 'cubic mile	10 cubic miles
Human Settlements (density exceeding one person per acre)	160 acres	160 acres

A proposed action may affect both smaller and larger "human environments" (e.g., part of a city, the whole city, the metropolitan area, the State, the region). In determining the environmental consequences of a proposed action under NEPA, **POCs** should identify barriers (e.g., a river or a highway) which tend to give geographic definition to an environment (e.g., a super-highway or river **may** tend to separate one terrestrial ecosystem from another).

Step Three - Identify the kinds of effects that the proposed action will cause on these "human environments."

A change occurs when a proposed action causes the "human environment" to be different in the future than it would have been absent the proposed action. These changes involve the introduction of various "resources" (including those often characterized as waste).

Example: an increase in a human or wild animal population; a decrease in the amount of soil entering a stream; the introduction of a new chemical compound to natural environments.

In **addition** to organisms, substances, and compounds, the term "resources" include energy (in various forms), elements, structures, and systems (such as a trash collection service in a city). Time periods in both the near term and long term must be considered.

Example: a change in regulations permits the use of a new compound in small quantities. In the near term the compound does not affect any organisms. However, the compound eventually becomes concentrated in specialized localities and **does** affect organisms.

Example: a hospital is renovated, requiring a detour in traffic through residential neighborhoods and an increase in the number of patients in other hospitals. However, following completion of the work, the traffic flow and patient loads resemble those that would have occurred **without** the renovation.

In identifying changes caused by the proposed action, **POCs** should identify the magnitude of the changes likely to be caused within smaller and larger "human environments" affected (e.g., part of a city, the whole city, the metropolitan area, etc.).

Example: the closure of a hospital in a neighborhood may not only affect that neighborhood but the delivery of health services to the city as a whole.,

Step Four - Identify whether these changes are
significant

Determining whether **or** not a proposed action will cause **significant change** in the human environment involves a **subjective judgment**. The following points should be considered in conjunction with 40 CFR 1508.8 (effects) and 40 CFR 1508.14 (human environment) in making a decision concerning **significance**:

- 0 a change in the characterization of an environment is significant (e.g., from terrestrial to aquatic);
- 0 the establishment of a species in or removal of a species from an environment is significant;
- 0 the more **dependent** an environment becomes on external resources, the larger the magnitude of change (and the more likely to be significant);
- 0 the larger the environment under consideration, the lower the amount of change needed before the change should be judged significant;
- 0 changes which do not produce direct, indirect, or cumulative effects which will last beyond one year would not be judged significant; and
- 0 changes which are remotely possible and involve a relatively small environment should not be judged significant.

NOTE: The above criteria considers and supplements the CEQ definition of "**significantly**" at 40 CFR 1508.27, except for the following terms which shall follow requirements issued by CEQ pursuant to 40 CFR 1506.7:

1. "affected interests" as used in 40 CFR 1508.27(a);
2. "public health or safety" as used in 40 CFR 1508.27(b) (2);
3. "highly controversial" as used in 40 CFR 1508.27(b)4;

4. actions affecting cultural assets as described in 40 CFR 1508.27(b)(8) except as such changes may significantly affect the environment of the cultural resource; and
5. applicable Federal, State or local laws or requirements in 40 CFR **1508.27(b)(10)**, except as listed in Subsection 30-10-20.

30-60-30 Finding of No Significant Impact - FONSI (Limited Statement)

For the purposes of NEPA, a FONSI is used to document, per section 1508.13, a POC judgement that a proposed action-not categorically excluded from NEPA requirements (see **30-60-10A** above) will not significantly affect the quality of the human environment. A FONSI should meet the criteria described in Chapter 30-30-3082 and, in addition,

- A. include a list of agencies and persons consulted during its preparation;
- B. discuss why the proposed action will not significantly affect the human environment, including the environmental assessment **or** a summary thereof;
- C. discuss alternatives whenever an unresolved conflict exists with respect to alternative uses of available natural resources; and
- D. be made available to the public and other interested parties including, when appropriate, publication of a notice announcing its availability consistent with 40 CFR 1506.6(b) and 1501.4 (e) (2).

30-60-40 Environmental Impact Statement - **EIS** (Full Statement)

A. General

A POC responsible for carrying out a specific action is responsible for preparation of an EIS, if one is required.

B. Intolvement of Other Federal Agencies

In cases in which **HHS** participates with other Federal agencies in a proposed action, one agency will be the lead agency and will supervise preparation of an EIS if one is required. A Memorandum of Understanding among all involved agencies may be useful in summarizing the relative responsibilities of all involved agencies. Lead agency responsibility should be determined in accordance with Section 1501.5.

C. Involvement of States

In cases in which a POC participates with State and local governments in a proposed action, the POC is responsible for preparing an EIS except that a State agency may jointly prepare the statement if it has State-wide jurisdiction, and **HHS** participates in its preparation including soliciting the views of other State or Federal agencies affected by the statement.

D. Notice of Intent

Upon deciding to prepare an EIS, a POC shall publish a Notice of Intent in the Federal Register in accordance with **Section 1508.22**.

E. Draft and Final Statements

Except for proposals for **legislation**, POCs shall prepare **EISS** in two stages: draft and final.

Statements relating to proposals for legislation shall be submitted to Congress at the time the legislation is proposed to Congress or up to 30 days afterwards. Except under certain circumstances described in CEQ regulations (see 40 CFR **1506.8**), draft statements shall accompany legislative proposals.

F. Supplements

POCs shall prepare supplements to either draft or final statements if there is substantial change in the proposed action or if significant new information **becomes** available or new circumstances occur. Preparation and circulation of supplements is the same as that for draft and final **EISS**.

30-60-50 CONTENTS OF AN EIS

An EIS consists of three sections: a forward, main text and appendices. If a proposed action will also affect a cultural or natural asset (as defined in the related acts), the statement shall incorporate the material required by the applicable related acts.

A. Cover Sheet

This shall be one page and state whether the document is a draft or final, the title and location of the proposed action, the name of the agency responsible for the EIS, including the lead agency and any cooperating agencies, the name, address and telephone number of a knowledgeable agency contact, a one paragraph abstract, and the date by which comments must be received.

B. Summary

The summary summarizes the main text, lists the names of those who assisted in preparing the statement and lists the government and private agencies or organizations requested to comment on the draft statement.

c. Main Text

The main text describes the proposed action, its underlying purpose and need, alternatives considered to the proposed action and, in conjunction with these alternatives, the environments which would be affected. (See the discussion of alternatives at Chapter 30-30.) It contains an analysis of the environmental, economic and social consequences of the proposed action and the alternative actions and a discussion of alternative safeguards which could mitigate these environmental consequences. If the proposed action involves using a scarce resource (e.g., prime agricultural land), the text will address alternative uses of that resource, including uses which may not contribute to the underlying purpose of the proposed action. The text shall list the preparers.

The text of a draft and final statement are the same (with appropriate revisions and additions) except that a final statement:

1. shall identify the preferred alternatives;
2. shall identify alternatives which are environmentally preferable with a rationale; and
3. shall respond to comments made by reviewers of the draft statement; all comments by Federal and other public agencies must **appear** in their entirety in the **appendix**.

D. Appendices

Appendices contain supporting documentation, if **needed**, and any scientific information that **is** too technical **or** detailed for complete presentation in the **main** text of the statement.

30-60-60 PUBLIC INVOLVEMENT AND CIRCULATION OF NEPA
ENVIRONMENTAL STATEMENTS

A. Public Notice

POCs must give public notice in the following instances:

1. prior to preparing a draft statement in order to solicit public participation; and
2. prior to any public hearings.

EPA will publish in the Federal Register notice of the availability of **HHS draft and final EISs**.

Notice shall **be** made through direct mail, the Federal Register, local media or other means appropriate **to** the scope, **issues** and extent of public concern. **Public** notices shall include the name and location of **a contact** official through whom additional material may be obtained.

B. Public Hearings

HHS components shall hold public hearings as part of the NEPA environmental review process when hearings will assist substantially in forming environmental judgements and when hearings correspond with **customary** practice of the component.

C. Draft EISs

Copies of draft statements shall **be** provided to:

Environmental Protection Agency;

Council on Environmental Quality;

Other Federal agencies having related special expertise or jurisdiction by law;

Appropriate local and national organizations;
including A-95 clearinghouses;

Appropriate State and local agencies, including those authorized **to** develop and enforce environmental standards;

Indian tribes **as appropriate**; and

Others requesting a copy of the draft statement.

There shall be a **45-day** minimum comment period for draft statements after EPA publishes a notice of availability in the Federal Register.

If a draft statement is substantially revised, it must be recirculated as a draft statement. If revisions to a draft statement are minor, only the comments, responses and revisions need be recirculated.

D. Final EISs

Copies of final statements shall be provided in accordance with the above list and to all agencies, persons or organizations who submitted comments regarding the draft statement.

E. Record of Decision

When a POC reaches a decision on a proposed action after preparing an EIS, the POC shall prepare a public record of decision which includes:

- o the decision;
- o alternatives considered;
- o a discussion of factors which were involved in the decision;
- o a discussion of steps **to be** taken to minimize potential environmental harm; and
- o a public record of decision pursuant to 40 CFR 1502.2.

Subject: REVIEWING EXTERNAL EISS

30-70-00 Reviewing External EISS
10 Jurisdiction by law
20 Jurisdiction by Special Expertise
30 Types of Comments

30-70-00 REVIEWING EXTERNAL EISS

HEW has a **responsibility** under Section 102(2)C of the National Environmental Policy Act (NEPA) to review and **comment** on draft Environmental Impact Statements (EISS) developed by other Federal Departments. In accordance with CEQ regulations at 40 CFR 1503.2, HEW **must** comment on each EIS on issues for which it has "jurisdiction by law or special expertise."

30-70-10 JURISDICTION BY LAW

Jurisdiction **by** law reflects the Department's statutory responsibilities. An operating component reviewing a draft EIS should review each alternative action **discussed** in an EIS in terms of:

- A. Potential effects on the delivery or quality of health, social or welfare services.
- B. Potential effects associated with the manufacture, transportation, use and disposal of chemicals or other hazardous materials.
- C. Potential effects associated with the mining, milling, production, use, transportation, and disposal of radioactive materials.
- D. Potential **changes** in plant or animal populations. This includes examination of the potential effects the **proposed** action may have on human health. Changes in natural predator populations may upset the ecological balance to the extent that an increased incidence of

morbidity or mortality will occur unless offsetting safeguards are instituted.

- E. Potential changes in the physical environment that could affect human health or welfare (e.g., air pollution, change in land use). This shall also include an examination of the availability and quality of water, sewage and solid waste disposal facilities.

30-70-20 JURISDICTION BY SPECIAL EXPERTISE

Individuals reviewing EISs may comment, in addition, in areas beyond their immediate job responsibilities when they have special expertise which may be appropriate. For example, a veterinarian employed in a disease prevention program can comment on an EIS discussion about the effects of a forestry project on animal populations.

30-70-40 TYPES OF COMMENTS

- A. A reviewer's comment on an external EIS can address one or more of the following:
1. That data are missing or inaccurate;
 2. That the organization of the EIS precludes a valid review;
 3. That the projections or descriptions of effects are not complete or are inaccurate;
 4. That the reviewer does not concur with the projections (for stated reasons);
 5. That certain safeguards will lessen the extent of an effect and/or the magnitude of an impact;
 6. State a preference for an action alternative (or no action); and

7. Object to an agency's preferred alternative (if one is identified in the draft CIS) and recommend adoption of new or existing alternatives. Such objections should be lodged on the basis of the direct or indirect effects of effects on HEW programs and/or mission. (See b below concerning referral of such objections to CEQ.)
- b. If a reviewing component objects to all or part of an agency's proposed action and, after consultation with the agency, is unable to resolve its differences, it shall determine if the proposed action meets the criteria for referral in Section 1502.4 of the CEQ regulations. If the criteria are met, the component shall request the POC head to refer its objection to CEQ within 25 days of the date that the final EIS is made available to EPA in accordance with Section 1504.3.



Subject: PRIVACY ACT - BASIC REQUIREMENTS AND RELATIONSHIPS

45-10-00	Purpose
10	Policy
20	Scope and Applicability
30	Legal Authority and Administrative Guidelines
40	Definitions
50	Organization for Administration of the Privacy Act Within HHS
60	Basic Requirements of the Privacy Act
70	Penalties
80	Other Directives Pertinent to the Privacy Act

45-10-00 PURPOSE

- A. The Privacy Act of 1974 affects the ways in which the Department and its employees collect, maintain, use, and disseminate information concerning individuals. The prime purpose of the Act is to safeguard personal privacy by limiting and controlling the use of information that Federal agencies collect and maintain on individuals and by providing individuals access to, and the right to amend, records that Federal agencies maintain on them. Chapters 45-10 through 45-19 of the General Administration Manual set forth policies, practices, and procedures for administering those provisions of the Act that apply to Department operations.
- B. This initial chapter describes the general framework of responsibility and organization for carrying out these policies, practices, and procedures. It also summarizes the basic requirements of the Act and indicates where in the Department Staff Manual System other instructions applicable to the Privacy Act are located. Other chapters of this Part (45-11 through 45-19) describe specific requirements of the Act and provide guidance for meeting them.

45-10-10 POLICY

- A. Department policy is to protect the privacy of individuals to the fullest extent possible while at the same time permitting disclosure of records necessary to fulfill the Department's administrative and programmatic responsibilities.
- B. In deciding whether to disclose records under the Privacy Act without the written permission of the record subject, the Department is guided by the twelve "conditions of disclosure" exceptions set forth in section (b) of the Act. The most

frequently used of these exceptions **by** the Department are disclosures made:

1. to Department employees who need the records in the performance of their duties.
2. because the FOIA requires **the** disclosure. When disclosure under the FOIA may be appropriate, a FOIA Officer, in consultation with the system of records manager, will decide **whether** to release or withhold records. Normally this involves a balancing process. That is, does the public interest in disclosure outweigh the personal privacy considerations? Public interest in this context is limited to the kind of public interest for which Congress enacted the FOIA, i.e., to shed light on an agency's performance of its statutory duties.
3. for a routine use, as defined and described in the Privacy Act.

45-10-20 SCOPE AND APPLICABILITY

This chapter applies to any group of records under the control of the Department from which data on a subject individual are retrieved by a **personal** identifier assigned to the individual. The identifier may be the name of the subject individual, a number, a symbol, or any other specific retriever assigned to such individual. (See Exhibit 45-10-A for the definition of "individual" within the meaning of this Part.)

45-10-30 LEGAL **AUTHORITY** AND ADMINISTRATIVE GUIDELINES

The provisions of this chapter are based primarily on the following legal authorities and administrative guidelines.

- A. Public Law 93-579, known as the Privacy Act of 1974, primarily Sections 3 and 7 of the Act. Section 3 of the Act is codified in the United States Code, Title 5, Section **552a**, Records Maintained on Individuals (**5 USC 552a**). Section 7 **relates** to the disclosure by individuals of their social security account number.
- B. **Public Law 100-503**, the Computer **Matching and** Privacy Protection Act of 1988, amended the Privacy **Act** by adding new provisions regulating the use of computer matching. Records produced during the conduct of a matching program are subject to a separate set of requirements.

- C. OMB Privacy Act Guidelines of 1975 implementing the provisions of the Privacy Act of 1974 (Federal Register July 9, 1975, p. 28948).
- D. OMB Final Guidance of 1989 interpreting the Computer Matching and Privacy Protection Act of 1988 (Federal Register June 19, 1989, p. 25818).
- E. OMB Circular No. A-130: Management of Federal Information Resources (Appendix I - Federal Agency Responsibilities for Maintaining Records About Individuals).
- F. Department Regulations on the Privacy Act published in the Code of Federal Regulations, Title 45, Part 5b (45 CFR 5b).

45-10-40 DEFINITIONS

Key definitions applicable to this chapter and the other chapters on the Privacy Act in Part 45 are located in Exhibit 45-10-A: KEY DEFINITIONS APPLICABLE TO THE PRIVACY ACT. Additional definitions and clarifying information are contained in the definitions paragraphs of section 552a of Title 5 U.S. Code: Records Maintained on Individuals, and the OMB Final Guidance of 1989 Interpreting the Computer Matching and Privacy Protection Act of 1988.

45-10-50 ORGANIZATION FOR ADMINISTRATION OF THE PRIVACY ACT WITHIN HHS

- A. The Secretary has charged the Assistant Secretary for Public Affairs with the general responsibility for Department-wide implementation and administration of the Privacy Act. The head of each Operating Division (OPDIV) and Staff Division (STAFFDIV) has specific responsibility for the operation of the Act within his organization.-The Secretary, however, has retained approval authority for exempting any system of records from certain requirements of the Privacy Act, in accordance with sections (j) and (k) of the Act.
- B. In providing policy guidance, technical assistance, and **general oversight**, the Assistant Secretary for Public Affairs is assisted by the Director of the FOIA/Privacy Act Division and the **HHS** Privacy Act Officer within that Division. The HHS Privacy Act Officer coordinates (and serves as a resource to) a network of Privacy Act Officers and Coordinators designated by components of the Department.
- C. A system manager, who must be a Department employee, is designated for each Privacy Act system of records maintained

by the Department. This responsible Department official (who is identified in each system of records notice) ensures compliance with the Privacy Act in administering the system of records. If a system of records is relatively small and located in one place, the system manager ordinarily controls access to the records. If the system **is** large or located in more than one place, the system manager may designate other responsible Department officials to control access to the records. Nevertheless, the system manager remains responsible and accountable for the system. Also, an HHS component or office may centralize at one point the control and access to its systems of records. The notice published in the Federal Register for each system of records describes the system and how it is administered.

- D. The Secretary of HHS has established an HHS Data Integrity Board to coordinate the implementation of major provisions of the Computer Matching and Privacy Protection Act of 1988. Membership of the Board consists of the Heads of the **OPDIVs** and the following **STAFFDIVs**, or their designated senior level officials:

The Assistant Secretary for Management and Budget

The Inspector General

The Assistant Secretary for Public Affairs.

The Assistant Secretary for Management and Budget (ASMB) serves as Chairperson of the Board. In general, the Board meets at the call of the Chairperson to accomplish duties set forth in the Computer Matching and Privacy Protection Act of 1988 (codified at 5 USC **552a(u)(3)**), establish computer matching policy, and issue guidance to components of the Department.

45-10-60 BASIC REQUIREMENTS OF THE PRIVACY ACT

- A. The basic requirements the Privacy Act places on the Department are summarized here to provide the reader with an understanding of the scope and complexity of the Act and its provisions. They are described in more detail in other chapters **of this Part 45** and in the administrative guidelines cited in **45-10-30 above**. An agency must:
1. Maintain only information that is relevant and necessary to accomplish an agency purpose required by statute or executive order of the President.

2. Collect information to the greatest extent practicable directly from the subject individual when the information **may** result in adverse determinations about an individual's rights, benefits, and privileges under Federal programs.
 3. Inform each individual of the purpose and use of the information, **and** any adverse effects of not providing the information sought.
 4. Permit an individual to gain **access** to his record (except in the case of an exempt system of records) and request correction of it.
 5. Publish a notice in the Federal Register of the existence and character of each system of records upon establishment or revision.
 6. Ensure that all records are sufficiently accurate, timely, relevant, and complete to give the individual a reasonable assurance of fairness in agency uses of the records.
 7. Maintain no record describing rights guaranteed by the First Amendment unless expressly authorized by statute or by the individual about whom the record is maintained, or unless pertinent to and within the scope of an authorized law enforcement activity.
 8. Notify an individual of any record made available under compulsory legal process when the legal process becomes a matter of public record.
 9. Establish employee rules of conduct (and penalties) for persons involved in the design and operation of a system of records, or in maintaining any record.
 10. Establish appropriate administrative, technical, and physical safeguards for systems of records.
 11. Publish in the Federal Register for public comment any new routine use of the information in **a** system of records.
- B. Computer matching is the computerized comparison of information about individuals for the purpose of determining eligibility for federal benefit programs. In general, matching programs involving federal records must be conducted under a matching agreement between the source and recipient

agencies. The matching agreement describes the purpose and procedures of the match and establishes protections for the records and the individuals involved in the match. The HHS Data Integrity **Board** must approve the matching program before the match may be conducted. A matching agreement may remain in effect for up to eighteen months, and may be renewed for not more than twelve additional months if the matching will be conducted without any change, and each party to the agreement certifies to the Board in writing that the program has been conducted in compliance with the agreement. The Secretary of the Data Integrity Board, ASMB, can provide additional information **and** records relating to computer matching requirements and the computer matching programs operating within the Department.

45-10-70 PENALTIES

- A. The Privacy Act imposes criminal penalties directly on individuals if they knowingly and willfully violate certain provisions of the Act. Any Federal employee, for instance, is subject to a misdemeanor charge and a fine of not more than \$5000 whenever such employee:
1. Discloses in any manner records in a system of records to any person or agency not entitled to such records.
 2. Maintains a system of records without publishing the prescribed public notice of the system in the Federal Register.
 3. Requests or obtains any record from any system of records under false pretenses. (This provision also applies to non-Federal employees.)
- B. All HHS employees, especially those who work with a system of records, should be made fully and continually aware of these provisions and their corresponding penalties.

45-10-80 OTHER DIRECTIVES PERTINENT TO THE PRIVACY ACT

Additional and more specific instructions for carrying out the provisions of the Privacy Act are located in certain other manuals of the HHS staff manual system, such as the Acquisition Manual, the Information Resources Management Manual, and the Personnel Manual. The subject and location of these instructions **are** listed in Exhibit 45-10-B to this chapter. Questions on privacy materials located in HHS staff manuals should be directed to the responsible HHS staff office. Likewise, whenever HHS employees have questions about the Privacy Act they should

consult with their Privacy Act Officer, **Coordinator, or System** Manager. Legal questions may be brought to the attention of the General Counsel.

KEY DEFINITIONS APPLICABLE TO THE PRIVACY ACT

The following key definitions are applicable to the Privacy Act and its implementation by this Department. Additional definitions and clarifying information are contained in the definitions paragraphs of section 552a of Title 5, U.S. Code: Records Maintained on Individuals, and the OMB final Guidance of 1989 Interpreting the Computer Matching and Privacy Protection Act of 1988.

1. Access : availability of a record to a subject individual.
2. Agency: the Department of Health and Human Services.
3. Disclosure: the availability or release of a record to anyone other than the subject individual.
4. Individual: a living person who is a citizen of the United States or an alien lawfully admitted for permanent residence. It does not include persons such as sole proprietorships, partnerships, or corporations. A business firm which is identified by the name of one or more persons is not an individual within the meaning of this Part.
5. Maintain: maintain, collect, use, or disseminate when used in connection with the term "record" and to have control over or responsibility for a system of records when used in connection with the term "system of records."
6. Matching program: at its simplest, the comparison of records using a computer. The records must themselves exist in automated form in order to perform the match. Manual comparisons of, for example, printouts of two automated data bases are not included within this definition.
7. Notification: communication to an individual whether he is a subject individual.
8. Recipient agency: any agency, or contractor thereof, receiving records contained in a system of records from a source agency for use in a computer matching program.
9. Record: any item., collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, education, financial transactions, medical history, and criminal or employment history and that contains the individual's name, or the

identifying number, symbol, **or** other identifying particular assigned to the individual, such as a finger or voice print or a photograph.

10. Responsible Department official: that official who is identified in a notice of a system of records as the system manager for the system, or another individual identified in the notice to whom requests *may* be made, or the designee **of** such officials.
11. Routine use: with respect to the disclosure of a record, the use of such record for a purpose which is compatible with the purpose for which it was collected.
12. Secretary: the Secretary of the Department of Health and Human Services.
13. Source agency: any agency which discloses records contained in a system of records to be used in a computer matching **program**, or any State or local government, *or* agency thereof, which **discloses** records to be used in a computer matching **program**.
14. System of records: a group of **any** records under the control of the Department from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual.
15. Subject individual: that individual to whom a record pertains.

HHS DIRECTIVES APPLICABLE TO THE PRIVACY ACT

The additional HHS directives identified below contain further information on the applicability of the Privacy Act to HHS operations. The directives are identified first by the HHS manual in which they are located and then by their specific location within that manual.

Acquisition Manual

Part 324: Protection of Privacy and Freedom of Information

Forms Management Manual

Chapter 2-30: Forms Control

General Administration Manual

Chapter 10-19: Reports Management Compliance with the Privacy Act

Information Resources Management Manual

Chapter 6-00: Exhibit 6-00-A (Authorities)

Personnel Manual

HHS Personnel Instruction 297-1: Protection of Privacy in
Personnel Records Systems

Records Management Manual

Chapter 4-10: Use of Federal Records Centers



Subject: SAFEGUARDING RECORDS CONTAINED IN SYSTEMS OF RECORDS

45-13-00	Purpose
10	Scope
20	Responsibilities
30	Definitions
40	Waiver Procedure
50	Minimum Safeguarding Standards
60	Audit

45-13-00 PURPOSE

- A. The Privacy Act of 1974 requires that each Federal agency establish administrative, technical, and physical safeguards to insure the security and confidentiality of records contained in systems of records and to protect the security and integrity of such records against anticipated threats or hazards. This chapter sets forth minimum safeguarding standards for all such records except records maintained in Automated Information Systems (AIS), i.e., records processed by computer.
- B. AIS security requirements are described in the Automated Information Systems Security Program Handbook (issued as Part 6 of the HHS Information Resources Management Manual).

45-13-10 SCOPE

The provisions of this chapter apply to all components of the Department, including their contractors, carriers, and intermediaries, that maintain one or more non-automated systems of records, as defined in HHS Exhibit 45-10-A, which are subject to the Privacy Act.

45-13-20 RESPONSIBILITIES

- A. Each OPDIV, STAFFDIV, and Regional Office is responsible for the application of the minimum standards set forth in this chapter to its non-automated systems of records and for the development and application of any additional standards which are essential to the safeguarding of the records in such systems. These responsibilities include ensuring that subordinate officials and employees carry out the provisions of this chapter.'

- B. Each designated system manager has the primary responsibility for the implementation of these standards for the system(s) of records of which he is manager.
- c. Each employee who controls physical access to records or disclosure of information contained in the records is responsible for the specific application of these standards to the records under his control.
- D. Each OPDIV or STAFFDIV Privacy Act Officer or Coordinator is responsible for providing overall policy guidance and for ensuring that the published notices of systems of records are periodically updated to properly reflect the implementation of appropriate safeguards, including records disposal schedules and methods.

45-13-30 DEFINITIONS

The definitions applicable to this chapter are contained in Chapter 45-10 (HHS Exhibit 45-10-A: KEY DEFINITIONS APPLICABLE TO THE PRIVACY ACT).

45-13-40 WAIVER PROCEDURE

- A. OPDIV and STAFFDIV Heads and Regional Directors may request waivers of specific provisions of these standards. A memorandum requesting a waiver should be addressed to the Assistant Secretary for Public Affairs who is charged with the implementation of the Privacy Act in this Department. The memorandum should describe the nature of the requested waiver, setting forth the rationale supporting the request. This procedure should not be interpreted as providing for a waiver of any provisions of the Privacy Act.
- B. The Assistant Secretary for Public Affairs will acknowledge receipt of all requests for such waivers. If the requester does not receive a response within fifteen work days from date of receipt, the waiver should be considered approved.

45-13-50 MINIMUM SAFEGUARDING STANDARDS

- A. Risk Analysis
 - 1. An analysis of risks to the records in a system of records should be made not less than once every three years to determine what safeguards are essential to maintain the confidentiality and integrity of the records. Such analysis should be updated whenever: there is a significant change in the sensitivity of the

records: new major **uses** are made of the records; the records **are** moved from one storage location to another; new equipment is used to process or store the records; or other circumstances indicate possible increased risk to the records. Some factors to be considered in making a risk analysis are:

- a. Sensitivity of the records.
 - b. Nature of facilities, equipment, and total environment in **which** the records are maintained.
 - c. Grade level, experience, and training of personnel who **are** permitted access to the records.
 - d. Uses which are made of the records, especially decisions on rights, benefits, and privileges.
 - e. Uses which others could make of the records if they were inadvertently or intentionally disclosed.
 - f. Harm that disclosure might cause the record subject.
 - g. Cost of implementing additional safeguards.
2. Any decisions on safeguards should be based on a judgement that considers such factors. The manager of each system of records should maintain a copy of the last risk analysis on which such decisions are based.

B. Access Restrictions

1. Only those employees who have an immediate need for the records in the performance of their official duties are to **have** access to such records. As a minimum, access to records must be controlled by an arrangement of the following or equivalent standards:
 - a. Physically locating **the records** in **areas** which are not accessible to unauthorized persons.
 - b. Stationing security personnel or authorized persons at key access locations.
 - c. Requiring presentation of an authorized form of identification.

2. Before an employee who will control access to records can work with the records, the supervisor or local official in charge must ensure that the employee is familiar with the safeguards applicable to the records, the access standards in effect, and the Employee Standards of Conduct contained in Appendix A to the Department Privacy Act Regulation (45 CFR 5b).
3. Before any other employee can have access to records, the employee must be fully informed about the safeguards in effect while he has possession of the records. The provisions of Appendix A also apply here.
4. The local official who controls access to records contained in a system of records shall:
 - a. Maintain a written procedure for restricting access to the records and a list of employees who control access to the records.
 - b. Ensure that each employee who controls access to these records is familiar with this written procedure.
 - c. Periodically discuss the procedure with these employees to reinforce their understanding and enforcement of access control.

C. Storage Requirements

1. Very sensitive records, such as those relating to a criminal investigation, are to be kept in lockable metal filing cabinets or in a secured room at all times when not in use during working hours, and at all times during non-working hours. (Each system manager should determine whether the records in a system of records are sensitive to this degree.)
2. Other sensitive records are to be kept in closed containers (e.g., filing cabinets or desk drawers) at all times when not in use during working hours and at all times during non-working hours.
3. Alternative storage facilities may be used provided they furnish an equivalent or greater degree of physical security.

4. Records are not to be left unattended and exposed at any time unless the entire work area is secured from entry by unauthorized persons.

D. Transfer of Records

1. Records are to be transferred in such a way that no accidental dissemination will occur. Small volumes of records are to be transferred by mail in sealed opaque envelopes, including interoffice mail. Sealed containers are to be used to transfer large volumes of records.
2. An employee must not transmit information from records by telephone or fax machine to any employee until the employee's identity and need to know are fully established. Call-back or any other effective procedure for establishing identity may be used. Moreover, highly sensitive information should never be transmitted by these means (unless secure telecommunications technology is available) since there is a considerable risk of unauthorized disclosure.

E. Disposal-of Records

Records are to be disposed of in accordance with the General Records Schedules published by the National Archives and Records Service, or in accordance with the supplementary schedules published by components of the Department.

F. Emergency Operating Plan

A plan for protecting and recovering records in the event of a natural disaster, civil disturbance, or other emergency situation should be maintained for each system of records. The plan should provide for sufficient data back-up capability to ensure continuity of office operations. Employees who work with the records should be made aware of their duties under the plan.

45-13-60 AUDIT

- A. Each OPDIV, STAFFDIV, and Regional Office shall audit each of its systems of records at least once every three years for compliance with the standards set forth in this chapter. This audit may be combined as appropriate with the annual review of record keeping practices required by Appendix I to OMB Circular A-130 (Federal Agency Responsibilities for Maintaining Records About Individuals.).

- B. Whenever any standard is not being fully met, the system manager must take action during the audit or immediately thereafter to achieve compliance. The system manager shall maintain a copy of the the last audit report as well as a description of corrective actions taken.