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PART 701—ORGANIZATION AND FUNCTIONS OF THE COMMISSION

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AUTHORITY: Secs. 2-8, 97 Stat. 1301-1307 (42 U.S.C. 1975-1975f).

SOURCE: 50 FR 16261, Apr. 25, 1985, unless otherwise noted.

Subpart A—Organizations and Functions

§ 701.1 Establishment.

The United States Commission on Civil Rights (hereinafter referred to as the "Commission") is a bipartisan agency of the executive branch of the Government. The predecessor agency to the present Commission was established by the Civil Rights Act of 1957, 71 Stat. 634. This Act was amended by the Civil Rights Act of 1960, 74 Stat. 86; the Civil Rights Act of 1964, 78 Stat. 241; by 81 Stat. 582 (1967); by 84 Stat. 1356 (1970); by 86 Stat. 813 (1972); and by the Civil Rights Act of 1978, 92 Stat. 1067. The present Commission was established by the United States Commission on Civil Rights Act of 1983, 97 Stat. 1301. The statutes are codified in 42 U.S.C. 1975 through 1975f. (Hereinafter, the 1983 Act will be referred to as "the Act.")

§ 701.2 Responsibilities.

(a) The Commission's authority under section 5 of the Act may be summarized as follows:

(1) To investigate allegations in writing under oath or affirmation that certain citizens of the United States are being deprived of their right to vote and have that vote counted by reason of color, race, religion, sex, age, handicap, or national origin;

(2) To study and collect information concerning legal developments constituting discrimination or a denial of

equal protection of the laws under the Constitution because of race, color, religion, sex, age, handicap or national origin or in the administration of justice;

(3) To appraise the laws and policies of the Federal Government with respect to discrimination or denials of equal protection of the laws under the Constitution because of race, color, religion, sex, age, handicap, or national origin or in the administration of justice;

(4) To serve as a national clearinghouse for information in respect to discrimination or denials of equal protection of the laws because of race, color, religion, sex, age, handicap, or national origin;

(5) To investigate sworn allegations that citizens are being accorded or denied the right to vote in Federal elections as a result of patterns or practices of fraud or discrimination;

(6) To appraise the laws and policies of the Federal Government with respect to denials of equal protection of the laws under the Constitution involving Americans who are of eastern and southern European ethnic groups and report its findings to the Congress.

(b) Under section 5(c) of the Act, the Commission is required to submit reports to the President and to the Congress at such times as the Commission, the Congress or the President shall deem desirable.

(c) In fulfilling these responsibilities the Commission is authorized by the Act to hold hearings and to issue subpoenas for the production of documents and the attendance of witnesses; to consult with governors, attorneys general, other representatives of State and local governments, and private organizations; and is required to establish an advisory committee in each State. The Act also provides that all Federal agencies shall cooperate fully with the Commission so that it may effectively carry out its functions and duties.

Subpart B—Organization Statement

§ 701.10 Membership of the Commission.

(a) The Commission is composed of eight members, not more than four of

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whom may be of the same political party. Four members are appointed by the President: Two members are appointed by the President pro tempore of the Senate and two members are appointed by the Speaker of the House of Representatives.

(b) The Chairman and Vice Chairman of the Commission are designated by the President with the concurrence of a majority of the Commission's members. The Vice Chairman acts as Chairman in the absence or disability of the Chairman or in the event of a vacancy in that office.

(c) No vacancy in the Commission affects its powers and any vacancy is filled in the same manner and is subject to the same limitations with respect to party affiliations as previous appointments.

(d) Five members of the Commission constitute a quorum.

§ 701.11 Commission meetings—duties of the Chairman.

(a) At a meeting of the Commission in each calendar year, the Commission shall, by vote of the majority, adopt a schedule of Commission meetings for the following calendar year.

(b) In addition to the regularly scheduled meetings, it is the responsibility of the Chairman to call the Commission to meet in a special open meeting at such time and place as he or she shall deem appropriate; *provided however*, that upon the motion of a member, and a favorable vote by a majority of Commission members, a special meeting of the Commission may be held in the absence of a call by the Chairman.

(c) The Chairman, after consulting with the Staff Director, shall establish the agenda for each meeting; *provided however*, that at the meeting of the Commission such agenda may be modified by the addition or deletion of specific items pursuant to the motion of a member and a favorable vote by a majority of the members.

(d) In the event that after consulting with the members of the Commission and consideration of the views of the members, the Chairman determines that there are insufficient substantive items on a proposed meeting agenda to warrant holding a scheduled meeting,

the Chairman may cancel such meeting.

§ 701.12 Staff Director.

A Staff Director for the Commission is appointed by the President with the concurrence of a majority of the Commissioners. The Staff Director is the Chief Executive Officer of the agency.

§ 701.13 Staff organization and functions.

The Commission staff organization and function are as follows:

(a) *Office of the Staff Director.* Under the direction of the Staff Director, this Office defines and disseminates to staff, policies established by the Commissioners; develops program plans for presentation to the Commissioners; evaluates program results; supervises and coordinates the work of other agency offices; manages the administrative affairs of the agency and conducts agency liaison with the Executive Office of the President, the Congress and other Federal agencies.

(b) *Office of the Deputy Staff Director.* Under the direction of the Deputy Staff Director, this Office is responsible for the day-to-day administration of the agency; evaluation of quantity and quality of program efforts; personnel administration and the supervision of Office Directors who do not report directly to the Staff Director. Units reporting directly to the Office of Deputy Staff Director are:

(1) *Equal Employment Opportunity Unit.* Under the direction of the Equal Employment Opportunity Officer, this Unit is responsible for the conduct of the agency's inhouse Equal Employment Opportunity Program.

(2) *Solicitor's Office.* Under the direction of the Solicitor, this Office is responsible for administrative law matters, including contracts, openness in government and government ethics, and the legal aspects of personnel, and labor relations issues.

(3) *Planning and Coordination Unit.* Under its Director, this unit is responsible for: coordinating the presentation of project proposals and coordinating the assignment of resources to approved projects; developing goals and priorities for projects and evaluating

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their implementation and coordinating periodic program reports.

(c) *Office of the General Counsel.* Under the direction of the General Counsel, who reports directly to the Staff Director, this Office serves as legal counsel to the Commissioners and to the agency; plans and conducts hearings and consultations for the Commission; conducts legal studies; prepares reports of legal studies and hearings; drafts or review proposals for legislative and executive action and reviews all agency publications and congressional testimony for legal sufficiency.

(d) *Office of Program and Policy.* Under the direction of an Assistant Staff Director, who reports directly to the Staff Director, this Office is responsible for the development of concepts for programs, projects and policies directed toward the achievement of Commission goals; program management and the preparation of the publication *New Perspectives*.

(e) *Office of Management.* Under the direction of an Assistant Staff Director, this Office is responsible for all administrative, management and facilitative services necessary for the efficient operation of the agency, including financial management, personnel, publications and the National Clearing House Library.

(f) *Office of Federal Civil Rights Evaluation.* Under the direction of an Assistant Staff Director, this Office is responsible for: monitoring, evaluating and reporting on the civil rights enforcement effort of the Federal Government; preparing documents which articulate the Commission's views and concerns regarding Federal civil rights to Federal agencies having appropriate jurisdiction.

(g) *Office of Research.* Under the direction of an Assistant Staff Director, this Office is responsible for: conducting or stimulating studies to advance basic knowledge of the extent, causes and consequences of civil rights denials; preparing monographs dealing with subjects which are current national civil rights issues; monitoring, planning and conducting consultations on the civil rights implications of Federal programs and policies and current civil rights issues.

(h) *Office of Congressional and Public Affairs.* Under the direction of an Assistant Staff Director, this Office is responsible for liaison with the news media and the preparation of periodical publications on civil rights issues; liaison with committees and members of Congress, monitoring legislative activities relating to civil rights and preparing testimony for presentation before committees of Congress when such testimony has been requested by a committee; planning and managing conferences at which the Commission receives information regarding civil rights issues; establishing and maintaining liaison with government and private civil rights agencies; representing the Commission at government and private organization conferences and conventions; managing the Commission's consumer affairs program.

(i) *Office of Regional Programs.* Under the direction of an Assistant Staff Director, this Office is responsible for: Directing and coordinating the programs and work of the regional offices and State Advisory Committees to the Commission on Civil Rights and maintaining liaison between the regional offices and the various headquarters offices of the Commission.

(j) *Regional Offices.* The addresses of the Regional Offices of the Commission and the States which they serve are:

Region I: New England Regional Office, 55 Summer Street, Eighth Floor, Boston, Massachusetts 02110, (617) 223-4671

Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont

Region II: Eastern Regional Office, Jacob K. Javits Building, 26 Federal Plaza, Room 1639, New York, NY 10278, (212) 264-0400
New Jersey and New York

Region III: Mid-Atlantic Regional Office, 2120 L Street NW., Room 510, Washington, DC 20037, (202) 254-67177

Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, and West Virginia

Region IV: Southern Regional Office, Citizens Trust Bank Building, 75 Piedmont Avenue NE., Room 362, Atlanta, Georgia 30303, (404) 221-4391

Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee

Region V: Midwestern Regional Office, 230 South Dearborn Street, 32nd Floor, Chicago, Illinois 60604, (312) 353-7371

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Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin
Region VI: Southwestern Regional Office, Heritage Plaza, 418 South Main, First Floor, San Antonio, Texas 78204, (512) 229-5570
Arkansas, Louisiana, Oklahoma, Texas, and New Mexico
Region VII: Central States Regional Office, 911 Walnut Street, Room 3103, Kansas City, Missouri 64106, (816) 374-5253
Iowa, Kansas, Missouri, and Nebraska
Region VIII: Rocky Mountain Regional Office, The Executive Tower Building, 1405 Curtis Street, Suite 2950, Denver, Colorado 80202, (303) 844-2211
Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming
Region IX: Western Regional Office, 3660 Wilshire Boulevard, Suite 810, Los Angeles, California 90010, (213) 688-3437
Arizona, California, Hawaii, and Nevada
Region X: Northwestern Regional Office, 915 Second Avenue, Room 2854, Seattle, Washington 98174, (206) 442-1246
Alaska, Idaho, Oregon, and Washington.

702.56 Records.
702.57 Administrative review.

Subpart A—Hearings and Reports

AUTHORITY: Secs. 101-106, 71 Stat. 634-636, as amended; 42 U.S.C. 1975-1975e; Pub. L. 94-409, 90 Stat. 1241.

SOURCE: 32 FR 4063, Mar. 15, 1967, unless otherwise noted. Designated Subpart A at 42 FR 14108, Mar. 15, 1977.

§ 702.1 Definitions.

For purposes of the following Rules on Hearings of the United States Commission on Civil Rights, the following definitions shall apply, unless otherwise provided:

(a) *The Act* shall refer to the Civil Rights Act of 1957, 71 Stat. 634, as amended.

(b) *The Commission* shall refer to the United States Commission on Civil Rights or, as provided in § 702.2, to any authorized subcommittee thereof.

(c) *The Chairman* shall refer to the Chairman of the Commission or authorized subcommittee thereof or to any acting Chairman of the Commission or of such subcommittee.

(d) *Proceeding* shall refer collectively to any public session of the Commission and any executive session held in connection therewith.

(e) *Hearing* shall refer collectively to a public session of the Commission and any executive session held in connection therewith, but shall not include a session held for the sole purpose of receiving subpoenaed documents.

(f) *The rules in this part* shall refer to the Rules on Hearings of the Commission.

(g) *Report* refers to statutory reports or portions thereof issued pursuant to Section 104(c) of the Civil Rights Act of 1957, as amended.

(h) *Verified answer* refers to an answer the truth of which is substantiated by oath or affirmation attested to by a notary public or other person who has legal authority to administer oaths.

[32 FR 4063, Mar. 15, 1967, as amended at 36 FR 5702, Mar. 27, 1971. Designated at 42 FR 14108, Mar. 15, 1977, and further amended at 44 FR 75149, Dec. 19, 1979]

PART 702—RULES ON HEARINGS, REPORTS AND MEETINGS OF THE COMMISSION

Subpart A—Hearings and Reports

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- 702.1 Definitions.
- 702.2 Authorization for hearing.
- 702.3 Notice of hearing.
- 702.4 Subpenas.
- 702.5 Conduct of proceedings.
- 702.6 Executive session.
- 702.7 Counsel.
- 702.8 Evidence at Commission proceedings.
- 702.9 Cross-examination at public session.
- 702.10 Voluntary witnesses at public session of a hearing.
- 702.11 Special executive session.
- 702.12 Contempt of the Commission.
- 702.13 Intimidation of witnesses.
- 702.14 Transcript of Commission proceedings.
- 702.15 Witness fees.
- 702.16 Attendance of news media at public sessions.
- 702.17 Communications with respect to Commission proceedings.
- 702.18 Commission reports.

Subpart B—Meetings

- 702.50 Purpose and scope.
- 702.51 Definitions.
- 702.52 Open meeting requirements.
- 702.53 Closed meetings.
- 702.54 Closed meeting procedures.
- 702.55 Public announcement of meetings.

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§ 702.2 Authorization for hearing.

Under section 105(f) of the Act the Commission or, on the authorization of the Commission, any subcommittee of two or more members, at least one of whom shall be of each major political party, may, for the purpose of carrying out the provisions of the Act, hold such hearings and act at such times and places as the Commission or such authorized subcommittee may deem advisable; and the holding of hearings by the Commission or the appointment of a subcommittee to hold hearings pursuant to this section must be approved by a majority of the Commission, or by a majority of the members present at a meeting at which at least a quorum of four members is present.

§ 702.3 Notice of hearing.

At least 30 days prior to the commencement of any hearing, the Commission shall cause to be published in the FEDERAL REGISTER notice of the date on which such hearing is to commence, the place at which it is to be held, and the subject of the hearing.

§ 702.4 Subpenas.

(a) Subpenas for the attendance and testimony of witnesses or the production of written or other matter may be issued by the Commission over the signature of the Chairman and may be served by any person designated by the Chairman.

(b) A witness compelled to appear before the Commission or required to produce written or other matter shall be served with a copy of the rules in this part at the time of service of the subpoena.

(c) The Commission shall not issue any subpoena for the attendance and testimony of witnesses or for the production of written or other matter which would require the presence of the party subpoenaed at a place outside the State wherein the witness is found or resides or is domiciled or transacts business, or has appointed an agent for receipt of service of process except that, in any event, the Commission may issue subpoenas for the attendance and testimony of witnesses and the production of written or other matter at a place within 50 miles of the place where the witness is found or resides or

is domiciled or transacts business or has appointed an agent for receipt of service of process.

(d) The Chairman shall receive and the Commission shall dispose of requests to subpoena additional witnesses except as otherwise provided in § 702.6(e).

(e) Requests for subpoena shall be in writing, supported by a showing of the general relevance and materiality of the evidence sought. Witness fees and mileage, computed pursuant to § 702.15, shall be paid by the person at whose instance a witness is subpoenaed.

(f) Subpenas shall be issued at a reasonably sufficient time in advance of their scheduled return, in order to give subpoenaed persons an opportunity to prepare for their appearance and to employ counsel, should they so desire.

(g) No subpoenaed document or information contained therein shall be made public unless it is introduced into and received as part of the official record of the hearing.

[32 FR 4063, Mar. 15, 1967. Designated at 42 FR 14108, Mar. 15, 1977, and amended at 44 FR 75149, Dec. 19, 1979]

§ 702.5 Conduct of proceedings.

(a) The Chairman shall announce in an opening statement the subject of the proceeding.

(b) Following the opening statement, the Commission shall first convene in executive session if one is required pursuant to the provisions of § 702.6.

(c) The Chairman shall, subject to the approval of the Commission—

(1) Set the order of presentation of evidence and appearance of witnesses;

(2) Rule on objections and motions;

(3) Administer oaths and affirmations;

(4) Make all rulings with respect to the introduction into or exclusion from the record of documentary or other evidence;

(5) Regulate the course and decorum of the proceeding and the conduct of the parties and their counsel to insure that the proceedings are conducted in a fair and impartial manner.

(d) Proceedings shall be conducted with reasonable dispatch and due regard shall be had for the convenience and necessity of witnesses.

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(e) The questioning of witnesses shall be conducted only by Members of the Commission, by authorized Commission staff personnel, or by counsel to the extent provided in § 702.7.

(f) In addition to persons served with a copy of the rules in this part pursuant to §§ 702.4 and 702.6, a copy of the rules in this part will be made available to all witnesses.

(g) The Chairman may punish breaches of order and decorum by censure and exclusion from the proceedings.

§ 702.6 Executive session.

(a) If the Commission determines that evidence or testimony at any hearing may tend to defame, degrade, or incriminate any person, it shall receive such evidence or testimony or summary of such evidence or testimony in executive session.

(b) The Commission shall afford any persons defamed, degraded, or incriminated by such evidence or testimony an opportunity to appear and be heard in executive session, with a reasonable number of additional witnesses requested by them, before deciding to use such evidence or testimony.

(1) Such person shall be served with notice in writing of the date, time, and place made available for the appearance of witnesses at executive session, at least 10 days prior to such date, or where service is by mail at least 14 days prior to such date. This notice shall be accompanied by a copy of the rules in this part and by a brief summary of the information which the Commission has determined may tend to defame, degrade, or incriminate such person.

(2) The notice, summary, and rules in this part shall be served personally by depositing the same in the United States mail as certified mail, or by leaving a copy thereof at the last known residence or business address of such person.

(3) The date of service, for purposes of this section, shall be the day when the material is deposited in the United States mail or is delivered in person, as the case may be. When service is made by certified mail, the return post office receipt shall be proof of service; in all other cases, the acknowledgment of the

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party served, or the verified return of the one making service shall be proof of the same.

(c) If a person receiving notice under this section notifies the Commission within five days of service of such notice, or where service is by mail within eight days of service of such notice, that the time scheduled therein constitutes a hardship, the Commission may, in its discretion, set a new time for such person's appearance at the executive session.

(d) In the event such persons fail to appear at executive session at the time and place made available under paragraph (b) or (c) of this section, they shall not be entitled to another opportunity to appear at executive session, except as provided in § 702.11.

(e) If such persons intend to submit sworn statements of themselves or others, or if they intend that witnesses appear in their behalf at executive session, they shall, no later than 48 hours prior to the time set under paragraph (b) or (c) of this section, submit to the Commission, all such statements and a list of all witnesses. The Commission will inform such persons whether the number of witnesses requested is reasonable within the meaning of paragraph (b) of this section. In addition, the Commission will receive and dispose of requests from such persons to subpoena other witnesses. Requests for subpoenas shall be made sufficiently in advance of the scheduled executive session as to afford persons subpoenaed reasonable notice of their obligation to appear at that session. Subpoenas returnable at executive session shall be governed by the provisions of § 702.4.

(f) Persons for whom an executive session has been scheduled, and persons compelled to appear at such session, may be represented by counsel at such session to the extent provided by § 702.7.

(g) Attendance at executive session shall be limited to Members of the Commission, authorized Commission staff personnel, witnesses and their counsel at the time scheduled for their appearance, and such other persons whose presence is requested or consented to by the Commission.

(h) In the event the Commission determines to release or to use evidence

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or testimony which it has determined may tend to defame, degrade, or incriminate any persons, in such a manner as to reveal publicly their identity, such evidence or testimony, prior to such public release or use, will be presented at a public session, and the Commission will afford them an opportunity to appear as voluntary witnesses or to file a sworn statement in their own behalf and to submit brief and pertinent sworn statements of others.

[32 FR 4063, Mar. 15, 1967. Designated at 42 FR 14108, Mar. 15, 1977, and amended at 44 FR 75150, Dec. 19, 1979]

§ 702.7 Counsel.

(a) Persons compelled to appear in person before the Commission and any witness appearing at a public session of the Commission will be accorded the right to be accompanied and advised by counsel, who will have the right to subject their clients to reasonable examination, and to make objections on the record and to argue briefly the basis for such objections.

(b) For the purpose of this section, *counsel* shall mean an attorney at law admitted to practice before the Supreme Court of the United States, or the highest court of any State or Territory of the United States.

(c) Failure of any persons to obtain counsel shall not excuse them from attendance in response to a subpoena, nor shall any persons be excused in the event their counsel is excluded from the proceeding pursuant to §702.5(g). In the latter case, however, such persons shall be afforded a reasonable time to obtain other counsel, said time to be determined by the Commission.

[32 FR 4063, Mar. 15, 1967. Designated at 42 FR 14108, Mar. 15, 1977, and amended at 44 FR 75150, Dec. 19, 1979]

§ 702.8 Evidence at Commission proceedings.

(a) The rules of evidence prevailing in courts of law or equity shall not control proceedings of the Commission.

(b) Where a witness testifying at a public session of a hearing or a session for return of subpoenaed documents offers the sworn statements of other persons, such statements, in the discretion of the Commission, may be in-

cluded in the record, provided they are received by the Commission within 24 hours in advance of the witness' appearance.

(c) The prepared statement of a witness testifying at a public session of a hearing, in the discretion of the Commission, may be placed into the record, provided that such statement is received by the Commission 24 hours in advance of the witness' appearance.

(d) In the discretion of the Commission, evidence may be included in the record after the close of a public session of a hearing, provided the Commission determines that such evidence does not tend to defame, degrade, or incriminate any person.

(e) The Commission will determine the pertinency of testimony and evidence adduced at its proceedings, and may refuse to include in the record of a proceeding or may strike from the record any evidence it considers to be cumulative, immaterial, or not pertinent.

[32 FR 4063, Mar. 15, 1967. Designated at 42 FR 14108, Mar. 15, 1977, and amended at 44 FR 75150, Dec. 19, 1979; 44 FR 76798, Dec. 28, 1979]

§ 702.9 Cross-examination at public session.

If the Commission determines that oral testimony of a witness at a public session tends to defame, degrade, or incriminate any person, such person, or through counsel, shall be permitted to submit questions to the Commission in writing, which, in the discretion of the Commission, may be put to such witness by the Chairman or by authorized Commission staff personnel.

[44 FR 75150, Dec. 19, 1979]

§ 702.10 Voluntary witnesses at public session of a hearing.

A person who has not been subpoenaed and who has not been afforded an opportunity to appear pursuant to §702.6 may be permitted, in the discretion of the Commission, to make an oral or written statement at a public session of a hearing. Such person may be questioned to the same extent and in the same manner as other witnesses before the Commission.

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§ 702.11 Special executive session.

If, during the course of a public session, evidence is submitted which was not previously presented at executive session and which the Commission determines may tend to defame, degrade, or incriminate any person, the provisions of § 702.6 shall apply, and such extensions, recesses or continuances of the public session as it deems necessary shall be ordered by the Commission, except that the time and notice requirements of § 702.6 may be modified by the Commission provided reasonable notice of a scheduled executive session is afforded such person, and except that the Commission may, in its discretion, strike such evidence from the record, in which case the provisions of § 702.6 shall not apply.

§ 702.12 Contempt of the Commission.

Proceedings and process of the Commission are governed by section 105(g) of the Act, which provides:

In case of contumacy or refusal to obey a subpoena, any district court of the United States or the United States court of any territory or possession, or the District Court of the United States for the District of Columbia, within the jurisdiction of which the inquiry is carried on or within the jurisdiction of which said person guilty of contumacy or refusal to obey is found or resides or is domiciled or transacts business, or has appointed an agent for receipt of service of process, upon application by the Attorney General of the United States shall have jurisdiction to issue to such person an order requiring such person to appear before the Commission or a subcommittee thereof, there to produce pertinent, relevant and nonprivileged evidence if so ordered, or there to give testimony touching the matter under investigation; and any failure to obey such order of the court may be punished by said court as a contempt thereof.

§ 702.13 Intimidation of witnesses.

Witnesses at Commission proceedings are protected by the provisions of 18 U.S.C. 1505, which provide:

Whoever corruptly, or by threats of force, or by any threatening letter or communication, endeavors to influence, intimidate, or impede any witness in any proceeding pending before any department or agency of the United States, or in connection with any inquiry or investigation being had by either House, or any Committee of either House, or any joint committee of the Congress; or

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Whoever injures any party or witness in his person or property on account of his attending or having attended such proceeding, inquiry, or investigation, or on account of his testifying or having testified to any matter pending therein; or

Whoever, with intent to avoid, evade, prevent, or obstruct compliance in whole or in part with any civil investigative demand duly and properly made under the Antitrust Civil Process Act willfully removes from any place, conceals, destroys, mutilates, alters, or by other means falsifies any documentary material which is the subject of such demand; or

Whoever corruptly, or by threats of force, or by any threatening letter or communication influences, obstructs, or impedes or endeavors to influence, obstruct, or impede the due and proper administration of the law under which such proceeding is being had before such department or agency of the United States, or the due and proper exercise of the power of inquiry under which such inquiry or investigation is being had by either House, or any committee of either House or any joint committee of the Congress—

Shall be fined not more than \$5,000 or imprisoned not more than five years, or both.

§ 702.14 Transcript of Commission proceedings.

(a) An accurate transcript shall be made of the testimony of all witnesses at all proceedings of the Commission. Transcripts shall be recorded solely by the official reporter, or by any other person or means designated by the Commission.

(b) Every person who submits data or evidence shall be entitled to retain or, on payment of lawfully prescribed costs, procure a copy or transcript thereof, except that witnesses in a hearing held in executive session may for good cause be limited to inspection of the official transcript of their testimony. Transcript copies of public sessions may be obtained by the public upon the payment of the cost thereof.

(c) Persons who have presented testimony at a proceeding may ask within 60 days after the close of the proceeding to correct errors in the transcript of their testimony. Such requests shall be granted only to make the transcript conform to their testimony as presented at the proceeding.

[32 FR 4063, Mar. 15, 1967. Designated at 42 FR 14108, Mar. 15, 1977, and amended at 44 FR 75150, Dec. 19, 1979]

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§ 702.15 Witness fees.

Pursuant to section 102(j) of the Act: A witness attending any session of the Commission shall be paid the same fees and mileage that are paid witnesses in the courts of the United States. Mileage payments shall be tendered to the witness upon service of a subpoena issued on behalf of the Commission or any subcommittee thereof.

[32 FR 4063, Mar. 15, 1967. Designated at 42 FR 14108, Mar. 15, 1977, and amended at 37 FR 23185, Oct. 31, 1972]

§ 702.16 Attendance of news media at public sessions.

Reasonable access for coverage of public sessions shall be provided to the various communications media, including newspapers, magazines, radio, newsreels, and television, subject to the physical limitations of the room in which the session is held and consideration of the physical comfort of Commission members, staff, and witnesses. However, no witnesses shall be televised, filmed, or photographed during the session nor shall the testimony of any witness be broadcast or recorded for broadcasting, if the witness objects.

[44 FR 75150, Dec. 19, 1979]

§ 702.17 Communications with respect to Commission proceedings.

During any proceeding held outside Washington, D.C., communications to the Commission with respect to such proceeding must be made to the Chairman or authorized Commission staff personnel in attendance. All requests for subpoenas returnable at a hearing, requests for appearance of witnesses at a hearing, and statements or other documents for inclusion in the record of a proceeding, required to be submitted in advance, must be submitted to the Chairman, or such authorized person as the Chairman may appoint, at an office located in the community where such hearing or proceeding is scheduled to be held. The location of such office will be set forth in all subpoenas issued under the rules in this part and in all notices prepared pursuant to § 706.2.

[44 FR 75150, Dec. 19, 1979]

§ 702.18 Commission reports.

(a) If a Commission report tends to defame, degrade, or incriminate any person, the report or relevant portions thereof shall be delivered to such person at least thirty (30) days before the report shall be made public in order that such person may make a timely verified answer to the report. The Commission shall afford such person an opportunity to file with the Commission a verified answer to the report or relevant portions thereof not later than twenty (20) days after service of the report or relevant portions thereof upon such person as provided by the regulations in this part.

(1) Such person shall be served with a copy of the report or relevant portions thereof, with an indication of the section(s) that the Commission has determined tend to defame, degrade, or incriminate such person, a copy of the Act and a copy of the regulations in this part.

(2) The report or relevant portions thereof, the Act, and regulations in this part shall be served by depositing the same in the U.S. mail via certified mail, return receipt requested, or by leaving a copy thereof at the last known residence or business address of such person.

(3) The date of service for the purposes of this section shall be the day the material is delivered either by the post office or otherwise, to such person or the agent of such person or at the last known residence or business address of such person. The acknowledgement of the party served, or the verified return of the one making service shall be proof of service except that when service is made by certified mail, the return post office receipt may also constitute proof of same.

(b) If a person receiving a Commission report or relevant portions thereof under this part requests an extension of time from the Commission within 7 days of service of such report, the Commission may, upon a showing of good cause, grant the person additional time within which to file a verified answer.

(c) A verified answer shall plainly and concisely state the facts and law constituting the person's reply or defense to the charges or allegations contained in the report.

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(d) Such verified answer shall be published as an appendix to the report: *Provided, however,* That the Commission may except from the answer such matter as it determines to be scandalous, prejudicial or unnecessary.

[36 FR 5702, Mar. 27, 1971. Designated at 42 FR 14108, Mar. 15, 1977, and amended at 44 FR 75151, Dec. 19, 1979]

Subpart B—Meetings

AUTHORITY: 5 U.S.C. 552b, Pub. L. 94-409, 90 Stat. 1241.

SOURCE: 42 FR 14108, Mar. 15, 1977, unless otherwise noted.

§ 702.50 Purpose and scope.

This section contains the regulations of the U.S. Commission on Civil Rights implementing sections (a)-(f) of 5 U.S.C. 552b, the "Government in the Sunshine Act." They are adopted to further the principle that the public is entitled to the fullest practicable information regarding the decision-making processes of the Commission. They open to public observation meetings of the Commissioners of the U.S. Commission on Civil Rights except where the rights of individuals are involved or the ability of the Commission to carry out its responsibilities requires confidentiality.

§ 702.51 Definitions.

(a) *Commission* means the U.S. Commission on Civil Rights and any Subcommittee of the Commission authorized under 42 U.S.C. 1975d(f).

(b) *Commissioner* means a member of the U.S. Commission on Civil Rights appointed by the President under 42 U.S.C. 1975(b).

(c) *Solicitor* means the Solicitor of the U.S. Commission on Civil Rights.

(d) *Meeting* means the deliberations of at least the number of Commissioners required to take action on behalf of the Commission where such deliberations determine or result in the joint conduct or disposition of official Commission business.

(1) The number of Commissioners required to take action on behalf of the Commission is four, except that such number is two when the Commissioners

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are a Subcommittee of the Commission authorized under 42 U.S.C. 1975d(f).

(2) Deliberations among Commissioners regarding the setting of the time, place or subject matter of a meeting, whether the meeting is open or closed, whether to withhold information discussed at a closed meeting, and any other deliberations required or permitted by 5 U.S.C. 552b (d) and (e) and § 702.54 and § 702.55 of this subpart, are not meetings for the purposes of this subpart.

(3) The consideration by Commissioners of Commission business which is not discussed through conference calls or a series of two party calls by the number of Commissioners required to take action on behalf of the Commission is not a meeting for the purposes of this subpart.

(e) *Public announcement* or *publicly announce* means the use of reasonable methods, such as the posting on Commission public notice bulletin boards and the issuing of press releases, to communicate information to the public regarding Commission meetings.

(f) *Staff Director* means the Staff Director of the U.S. Commission on Civil Rights.

[42 FR 14108, Mar. 15, 1977, as amended at 44 FR 75151, Dec. 19, 1979]

§ 702.52 Open meeting requirements.

(a) Every portion of every Commission meeting shall be open to public observation, except as provided in § 702.53 of this subpart. Commissioners shall not jointly conduct or dispose of agency business other than in accordance with this subpart.

(b) This subpart gives the public the right to attend and observe Commission open meetings; it confers no right to participate in any way in such meetings.

(c) The Staff Director shall be responsible for making physical arrangements for Commission open meetings which provide ample space, sufficient visibility and adequate acoustics for public observation.

(d) The presiding Commissioner at an open meeting may exclude persons from a meeting and shall take all steps necessary to preserve order and decorum.

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§ 702.53 Closed meetings.

(a) The Commission may close a portion or portions of a meeting and withhold information pertaining to such meeting when it determines that the public interest does not require otherwise and when such portion or portions of a meeting or the disclosure of such information is likely to:

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

(2) Disclose information relating solely to the internal personnel rules and practices of the Commission;

(3) Disclose matters specifically exempted from disclosure by statute (other than 5 U.S.C. 552), provided, that such statute (i) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (ii) establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(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 (i) interfere with enforcement proceedings, (ii) deprive a person of a right to a fair trial or an impartial adjudication, (iii) constitute an unwarranted invasion of personal privacy, (iv) disclose the identity of a confidential source and, in the case of a record received by the Commission from 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 fur-

nished only by the confidential source, (v) disclose investigative techniques and procedures, or (vi) endanger the life or physical safety of law enforcement personnel;

(8) Disclose information received by the Commission and 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;

(9) Disclose information the premature disclosure of which would (i) In the case of information received by the Commission from an agency which regulates currencies, securities, commodities, or financial institutions, be likely to (A) lead to significant financial speculation in currencies, securities, or commodities, or (B) significantly endanger the stability of any financial institution; or (ii) be likely to significantly frustrate implementation of a proposed action, except that paragraph (a)(9)(ii) of this section shall not apply in any instance where the Commission has already disclosed to the public the content or nature of its proposed action, or where the Commission 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 Commission's issuance of a subpoena, or the Commission's participation in a civil action or proceeding, an action in a foreign court or international tribunal, or an arbitration.

§ 702.54 Closed meeting procedures.

(a) A meeting or portion thereof will be closed, and information pertaining to a closed meeting will be withheld, only after four Commissioners when no Commissioner's position is vacant, or three Commissioners when there is such a vacancy, or two Commissioners on a subcommittee authorized under 42 U.S.C. 1975d(f), vote to take such action.

(b) A separate vote shall be taken with respect to each meeting, a portion or portions of which is proposed to be closed to the public under § 702.53, and with respect to any information to be withheld under § 702.53.

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(1) A single vote may be taken with respect to a 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:

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

(ii) Is scheduled to be held no more than thirty (30) days after the initial meeting in such series.

(c) The Commission will vote on the question of closing a meeting or portion thereof and withholding information under paragraph (b) of this section if one Commissioner calls for such a vote. The vote of each Commissioner participating in a vote to close a meeting shall be recorded and no proxies shall be allowed.

(1) If such vote is against closing a meeting and withholding information, the Staff Director, within one working day of such vote, shall make publicly available by putting in a place easily accessible to the public a written copy of such vote reflecting the vote of each Commissioner.

(2) If such vote is for closing a meeting and withholding information, the Staff Director, within one working day of such vote, shall make publicly available by putting in a place easily accessible to the public a written copy of such vote reflecting the vote of each Commissioner, and:

(i) A full written explanation of the decision to close the meeting or portions thereof (such explanation will be as detailed as possible without revealing the exempt information);

(ii) A list of all persons other than staff members expected to attend the meeting and their affiliation (the identity of persons expected to attend such meeting will be withheld only if revealing their identity would reveal the exempt information which is the subject of the closed meeting).

(d) Prior to any vote to close a meeting or portion thereof under §702.54(c) the Commissioners shall obtain from the Solicitor his or her opinion as to whether the closing of a meeting or portions thereof is in accordance with paragraphs (1) through (10) of §702.53(a).

(1) For every meeting closed in accordance with paragraphs (1) through (10) of §702.53(a), the Solicitor shall publicly certify in writing that, in his or her opinion, the meeting may be closed to the public and shall cite each relevant exemptive provision.

(2) A copy of certification by the Solicitor, together with a statement from the presiding officer of the closed meeting setting forth the time and place of the meeting and the persons present, shall be retained by the Commission.

(e) For all meetings closed to the public, the Commission shall maintain a complete verbatim transcript or electronic recording adequate to record fully the proceedings of each meeting, or portion of a meeting which sets forth the time and place of the meeting and the persons present.

(1) In the case of a meeting, a portion of a meeting, closed to the public pursuant to paragraphs (8), (9)(i)(A), or (10) of §702.53(a), the Commission may retain a set of minutes;

(i) 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 roll call vote (reflecting the vote of each member on the question). All documents considered in connection with any action shall be identified in such minutes.

(f) Any person whose interests may be directly affected by a portion of a meeting may request that such portion be closed to the public under §702.53 or that it be open to the public if the Commission has voted to close the meeting pursuant to §702.53(a) to §702.53(a)(5), (6) or (7). The Commission will vote on the request if one Commissioner asks that a vote be taken.

(1) Such requests shall be made to the Staff Director within a reasonable amount of time after the meeting or vote in question is publicly announced.

[42 FR 14108, Mar. 15, 1977, as amended at 44 FR 75151, Dec. 19, 1979]

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§ 702.55 Public announcement of meetings.

(a) *Agenda:* The Staff Director shall set as early as possible but in any event at least eight calendar days before a meeting, the time, place and subject matter for the meeting.

(1) Agenda items will be identified in detail adequate to inform the general public of the specific business to be discussed at the meeting.

(b) *Notice:* The Staff Director, as early as possible but in any event at least eight calendar days before a meeting, shall make public announcement of:

- (1) The time of the meeting;
- (2) Its place;
- (3) Its subject matter;
- (4) Whether it is open or closed to the public; and
- (5) The name and phone number of a Commission staff member who will respond to requests for information about the meeting.

(c) *Changes:* (1) The time of day or place of a meeting may be changed following the public announcement required by § 702.55(b) of this subpart, if the Staff Director publicly announces such change at the earliest practicable time subsequent to the decision to change the time of day or place of the meeting.

(2) The date of a meeting may be changed following the public announcement required by § 702.55(b), or a meeting may be scheduled less than eight calendar days in advance, if:

(i) Four Commissioners when no Commissioner's position is vacant, or three Commissioners when there is such a vacancy, or two Commissioners on a Subcommittee authorized under 42 U.S.C. 1975d(f), determine by recorded vote that Commission business requires such a meeting at an earlier date; and

(ii) The Staff Director, at the earliest practicable time following such vote, makes public announcement of the time, place and subject matter of such meeting, and whether it is open or closed to the public.

(3) The subject matter of a meeting or the determination to open or close a meeting or a portion of a meeting to the public, may be changed following

the public announcement required by 702.55(b) of this subpart if:

(i) Four Commissioners when no Commissioner's position is vacant, or three Commissioners when there is such a vacancy, or two Commissioners on a Subcommittee authorized under 42 U.S.C. 1975d(f), determine by recorded vote that Commission business so requires; and

(ii) The Staff Director publicly announces such change and the vote of each Commissioner upon such change at the earliest practicable time subsequent to the decision to make such change.

(d) *Federal Register:* Immediately following all public announcements required by § 702.55(b) and (c) of this subpart, notice of the time, place and subject matter of a meeting, whether the meeting is open or closed to the public, any change in one of the preceding, and the name and phone number of the official designated by the Commission to respond to requests for information about meeting, shall be submitted for publication in the FEDERAL REGISTER.

(1) Notice of a meeting will be published in the FEDERAL REGISTER even after the meeting which is the subject of the notice has occurred in order to provide a public record of all Commission meetings.

§ 702.56 Records.

(a) The Commission shall promptly make available to the public in an easily accessible place at Commission headquarters the following materials:

(1) A copy of the certification by the Solicitor required by § 702.54(e)(1).

(2) A copy of all recorded votes required to be taken by these rules.

(3) A copy of all announcements published in the FEDERAL REGISTER pursuant to this subpart.

(4) Transcripts, electronic recordings and minutes of closed meetings determined not to contain items of discussion or information which may be withheld under § 702.53.

(i) Copies of such material will be furnished to any person at the actual cost of transcription or duplication.

(b) Requests to review or obtain copies of records compiled under this Act,

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other than transcripts, electronic recordings or minutes of a closed meeting, will be processed under the Freedom of Information Act and, where applicable, the Privacy Act regulations of the Commission (parts 704 and 706, respectively, of this title). Nothing in this subpart expands or limits the present rights of any person under these rules with respect to such requests.

(1) Requests to review or obtain copies of transcripts, electronic recordings or minutes of meetings of a closed meeting maintained under § 702.54(e) and not released under § 702.56(a)(4) shall be directed to the Staff Director who shall respond to such requests within ten (10) working days.

(c) The Commission shall maintain a complete verbatim copy of the transcript, a complete copy of minutes, or a complete electronic recording of each meeting, or portion of a meeting, closed to the public, for a period of 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.

[42 FR 14108, Mar. 15, 1977, as amended at 44 FR 75151, Dec. 19, 1979]

§ 702.57 Administrative review.

(a) Any person who believes a Commission action governed by this subpart to be contrary to the provisions of this subpart shall file in writing with the Staff Director an objection specifying the violation and suggesting corrective action. Whenever possible, the Staff Director shall respond within ten (10) working days of the receipt of such objections.

PART 703—OPERATIONS AND FUNCTIONS OF STATE ADVISORY COMMITTEES

- Sec.
- 703.1 Name and establishment.
- 703.2 Functions.
- 703.3 Scope of subject matter.
- 703.4 Advisory Committee Management Officer.
- 703.5 Membership.
- 703.6 Officers.
- 703.7 Subcommittees—Special assignments.
- 703.8 Meetings.
- 703.9 Reimbursement of members.

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703.10 Public availability of documents and other materials.

AUTHORITY: Sec. 105(c) of the Civil Rights Act of 1957, 71 Stat. 634, as amended.

§ 703.1 Name and establishment.

Pursuant to Section 105(c) of the Act, the Commission has chartered and maintains Advisory Committees to the Commission in each State and the District of Columbia. All relevant provisions of the Federal Advisory Committee Act of 1972 (Pub. L. 92-463 as amended) are applicable to the management, membership and operations of such committees and subcommittees thereof.

[44 FR 75151, Dec. 19, 1979]

§ 703.2 Functions.

Under the Commission's charter each State advisory committee shall:

(a) Advise the Commission in writing of any knowledge or information it has of any alleged deprivation of the right to vote and to have the vote counted, by reason of color, race, religion, sex, age, handicap or national origin, or that citizens are being accorded or denied the right to vote in Federal elections as a result of patterns or practices of fraud or discrimination;

(b) Advise the Commission concerning legal developments constituting discrimination or a denial of equal protection of the laws under the Constitution, and the effect of the laws and policies of the Federal Government with respect to equal protection of the laws;

(c) Advise the Commission upon matters of mutual concern in the preparation of reports of the Commission to the President and the Congress;

(d) Receive reports, suggestions, and recommendations from individuals, public and private organizations, and public officials upon matters pertinent to inquiries conducted by the State committee;

(e) Initiate and forward advice and recommendations to the Commission upon matters which the State committee has studied;

(f) Assist the Commission in the exercise of its clearinghouse function and with respect to other matters which the State committee has studied;

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(g) Attend, as observers, any open hearing or conference which the Commission may hold within the State.

[42 FR 14108, Mar. 15, 1977, as amended at 44 FR 75151, Dec. 19, 1979]

§ 703.3 Scope of subject matter.

The scope of the subject matter to be dealt with by State advisory committees shall be those subjects of inquiry or study with which the Commission itself is authorized to deal, pursuant to section 104(a) of the act. Each State advisory committee shall confine its studies to the State covered by its charter. It may, however, subject to the requirements of § 703.4, undertake to study within the limitations of the act, subjects other than those chosen by the Commission for study.

[38 FR 15446, June 12, 1973]

§ 703.4 Advisory Committee Management Officer.

(a) The Assistant Staff Director for the Office of Regional Programs is designated as Advisory Committee Management Officer pursuant to the requirements of the Federal Advisory Committee Act of 1972, (Pub. L. 92-463).

(b) Such officer shall carry out the functions specified in Section 8(b) of the Federal Advisory Committee Act.

(c) Such officer shall with respect to each State Advisory Committee, appoint an employee, subject to the supervision of the Regional Director of the Commission having responsibility for the State within which said Committee has been chartered, to provide services to the Committee and to be responsible for supervising the activity of the Committee pursuant to section 10 of the Federal Advisory Committee Act.

[44 FR 75151, Dec. 19, 1979]

§ 703.5 Membership.

(a) Subject to exceptions made from time to time by the Commission to fit special circumstances, each State Committee shall consist of at least 11 members appointed by the Commission. Members of the State Committee shall serve for a fixed term to be set by the Commission upon the appointment of a member subject to the duration of Advisory Committees as prescribed by the

charter, provided that members of the State Committee may, at any time, be removed by the Commission.

(b) Membership on the Advisory Committee shall be reflective of the different ethnic, racial, and religious communities within each State and the membership shall also be representative with respect to sex, political affiliation, age and handicap status.

[44 FR 75151, Dec. 19, 1979]

§ 703.6 Officers.

(a) The officers of each State Advisory Committee shall be a Chairperson, Vice Chairperson and such other officers as may be deemed advisable.

(b) The Chairperson shall be appointed by the Commission.

(c) The Vice Chairperson and other officers shall be elected by the majority vote of the full membership of the Committee.

(d) The Chairperson, or in his/her absence the Vice Chairperson, under the direction of the Commission staff member appointed pursuant to § 703.4(b), shall:

(1) Call meetings of the Committee;

(2) Preside over meetings of the Committee;

(3) Appoint all subcommittees of the Committee;

(4) Certify for accuracy the minutes of Committee meetings prepared by the assigned Commission staff member; and

(5) Perform such other functions as the Committee may authorize or the Commission may request.

[44 FR 75151, Dec. 19, 1979]

§ 703.7 Subcommittees—Special assignments.

Subject to the approval of the designated Commission employee, a State Advisory Committee may:

(a) Establish subcommittees, composed of members of the Committee to study and report upon matters under consideration, and it may authorize such subcommittees to take specific action within the competence of the Committee; and

(b) Designate individual members of the Committee to perform special projects involving research or study on

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matters under consideration by the Committee.

[44 FR 75151, Dec. 19, 1979]

§ 703.8 Meetings.

(a) Meetings of a Committee shall be convened by the designated Commission employee, or, subject to his/her approval, by the Chairperson, or by a majority of the Committee members. The agenda for such Committee or subcommittee meeting shall be approved by the designated Commission employee.

(b) A quorum shall consist of one-half or more of the members of the Committee, or five members, whichever is the lesser, except that with respect to the conduct of factfinding meetings as authorized in paragraph (e) of this section, a quorum shall consist of three members.

(c) Notice of all meetings of a Committee shall be given to the public.

(1) Notice shall be published in the FEDERAL REGISTER at least 15 days prior to the meetings, provided that in emergencies, such requirement may be waived.

(2) Notice of meetings shall be provided to the public by press releases and other appropriate means.

(3) Each notice shall contain a statement of the purpose of the meeting, a summary of the agenda, and the time, place, and location of such meeting.

(d) Except as provided for in paragraph (d)(1) of this section, all meetings of committees or subcommittees shall be open to the public.

(1) The Assistant Staff Director for Regional Programs may authorize a committee or subcommittee to hold a meeting closed to the public if he/she determines that the closing of such meeting is in the public interest: *Provided*, That prior to authorizing the holding of a closed meeting the Assistant Staff Director will have requested and received the opinion of the Solicitor of the Commission with respect to whether the meeting may be closed under one or more of the exemptions provided in the Government in the Sunshine Act, 5 U.S.C. 552b(c).

(2) In the event that any meeting or portion thereof is closed to the public, the Committee shall publish, at least annually, in summary form a report of

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the activities conducted in meetings not open to the public.

(e) Advisory Committees and subcommittees may hold factfinding meetings for the purpose of inviting the attendance of and soliciting information and views from government officials and private persons respecting subject matters within the jurisdiction of the Committee or subcommittee.

(f) Any person may submit a written statement at any business or factfinding meeting of a Committee or subcommittee.

(g) At the discretion of the designated Commission employee or his/her designee, any person may make an oral presentation at any business or factfinding meeting, provided that such presentation will not defame, degrade or incriminate any other person as is prohibited by the Act.

[44 FR 75151, Dec. 19, 1979]

§ 703.9 Reimbursement of members.

(a) Advisory Committee members may be reimbursed by the Commission by a per diem subsistence allowance and for travel expenses at rates not to exceed those prescribed by Congress for Government employees, for the following activities only:

(1) Attendance at meetings, as provided for in § 703.8; and

(2) Any activity specifically requested and authorized by the Commission to be reimbursed.

(b) Members will be reimbursed for the expense of travel by private automobile on a mileage basis only to the extent such expense is no more than that of suitable public transportation for the same trip, unless special circumstances justify the additional expense of travel by private automobile.

[44 FR 75152, Dec. 19, 1979]

§ 703.10 Public availability of documents and other materials.

Part 704 of these rules and regulations shall be applicable to reports, publications, and other materials prepared by or for State advisory committees.

[38 FR 15446, June 12, 1973] 8

PART 704—INFORMATION DISCLOSURE AND COMMUNICATIONS

Sec.

704.1 Material available pursuant to 5 U.S.C. 552.

704.2 Complaints.

704.3 Other requests and communications.

704.4 Restrictions on disclosure of information.

AUTHORITY: 42 U.S.C. 1975-1975(f); 5 U.S.C. 552.

§ 704.1 Material available pursuant to 5 U.S.C. 552.

(a) *Purpose, scope, and definitions.* (1) This section contains the regulations of the U.S. Commission on Civil Rights implementing 5 U.S.C. 552. These regulations inform the public with respect to where and how records and information may be obtained from the Commission. Officers and employees of the Commission shall make Commission records available under 5 U.S.C. 552 only as prescribed in this section. Nothing contained in this section, however, shall be construed to prohibit officers or employees of the Commission from routinely furnishing information or records which are customarily furnished in the regular performance of their duties.

(2) For the purposes of these regulations the terms listed below are defined as indicated:

Commission means the United States Commission on Civil Rights;

Solicitor means the Solicitor of the United States Commission on Civil Rights or his/her designee;

FOIA Freedom of Information Act, 5 U.S.C. 552;

FOIA Request means a request in writing, for records pursuant to 5 U.S.C. 552 which meets the requirements of 704.1(d) herein. These regulations do not apply to telephone or other oral communications and requests not complying with § 704.1(d)(1)(i);

Staff Director means the Staff Director of the United States Commission on Civil Rights.

(b) *General policy.* In order to foster the maximum participation of an informed public in the affairs of Government, the Commission will make the fullest possible disclosure of its identi-

fiable records and information consistent with such considerations as those provided in the exemptions of 5 U.S.C. 552, which are set forth in paragraph (f) of this section.

(c) *Material maintained on file pursuant to 5 U.S.C. 552(a)(2).* Material maintained on file pursuant to 5 U.S.C. 552(a)(2) shall be available for inspection during regular business hours at the offices of the Commission at 1121 Vermont Avenue, NW., Washington, DC 20425. Copies of such material shall be available upon written request, specifying the material desired, addressed to the Solicitor's Unit, U.S. Commission on Civil Rights, Washington, DC 20425, and upon the payment of fees, if any, determined in accordance with paragraph (e) of this section.

(1) *Current index.* Included in the material available pursuant to 5 U.S.C. 552(a)(2) shall be an index of:

(i) All other material maintained on file pursuant to 5 U.S.C. 552(a)(2); and

(ii) All material published by the Commission in the FEDERAL REGISTER and currently in effect.

(2) *Deletion of identifying details.* Wherever deletions from material maintained on file pursuant to 5 U.S.C. 552(a)(2) are required in order to prevent a clearly unwarranted invasion of privacy, justification for the deletions shall be placed as a preamble to documents from which such deletions are made.

(d) *Materials available pursuant to 5 U.S.C. 552(a)(3)—(1) Request Procedures.*

(i) Each request for records pursuant to this subsection shall be in writing over the signature of the requester, addressed to the Solicitor's Unit, U.S. Commission on Civil Rights, Washington, DC 20425 and: (A) Shall clearly and prominently be identified as a request for information under the Freedom of Information Act [if submitted by mail or otherwise submitted in an envelope or other cover, be clearly and prominently identified as such on the envelope or other cover—e.g., FOIA]; and (B) shall contain a sufficiently specific description of the record requested with respect to names, dates, and subject matter to permit such record to be identified and located; and (C) shall contain a statement that whatever costs involved pursuant to

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§ 704.1(e) will be paid, that such costs will be paid up to a specified amount, or that waiver or reduction of fees is requested pursuant to § 704.1(e).

(ii) If the information submitted pursuant to § 704.1(d)(1)(i)(B) is insufficient to enable identification and location of the records, the Solicitor shall as soon as possible notify the requester in writing indicating the additional information needed. Every reasonable effort shall be made to assist in the identification and location of the record sought. Time requirements under these regulations are tolled from the date notification under this subsection is sent to the requester until an answer in writing to such notification is received from requester.

(iii) A request for records which is not in writing or does not comply with § 704.1(d)(1)(i) is not a request under the Freedom of Information Act and the 10 day time limit for agency response under the Act will not be deemed applicable.

(iv) Except as otherwise provided herein, the Solicitor shall immediately notify the requester of noncompliance with § 704.1(d)(1)(i)(C) and § 704.1(e).

(2) *Agency determinations.* (i) Responses to all requests pursuant to 5 U.S.C. 552(a)(3) shall be made by the Solicitor in writing to the requester within 10 working days after receipt by the Solicitor of such request except as specifically exempted under § 704.1(d)(1)(ii), (iii) and (iv), and shall state: (A) Whether and to what extent the Commission will comply with the request; (B) the probable availability of the records or that the records may be furnished with deletions or that records will be denied as exempt pursuant to 5 U.S.C. 552(b) (i) through (ix); (C) the estimated costs, determined in accordance with 704.1(e) herein, including waiver or reduction of fee as appropriate and any deposit or prepayment requirement; and (D) when records are to be provided, the time and place at which records or copies will be available determined in accordance with the terms of the request and with § 704.1(d)(3). Such response shall be termed a determination notice.

(ii) In the case of denial of requests in whole or part the determination notice shall state: (A) Specifically what

records are being denied; (B) the reasons for such denials; (C) the specific statutory exemption(s) upon which such denial is based; (D) the names and titles or positions of every person responsible for the denial of such request; and (E) the right of appeal to the Staff Director of the Commission and procedures for such appeal as provided under § 704.1(g).

(iii) Each request received by the Solicitor's Unit for records pursuant to these regulations shall be recorded immediately. The record of each request shall be kept current, stating the date and time the request is received, the name and address of the person making the request, any amendments to such request, the nature of the records requested, the action taken regarding the request, including waiver of fees, extensions of time pursuant to 5 U.S.C. 552(a)(6)(B), and appeals. The date and subject of any letters pursuant to § 704.1(d)(1) or agency determinations pursuant to paragraph (d)(2)(i) of this section, the date(s) any records are subsequently furnished, and the payment requested and received.

(3) *Time limitations.* (i) Time limitations for agency response to a request for records established by these regulations shall begin when the request is recorded pursuant to § 704.1(d)(2)(iii). A written request pursuant to FOIA but sent to an office of the Commission other than the Solicitor's Unit shall be date stamped, initialed and redirected immediately to the Solicitor's Unit. The required period for agency determination shall begin when it is received by the Solicitor's Unit in accordance with § 704.1(d)(2)(iii).

(ii) In unusual circumstances, pursuant to 5 U.S.C. 552(a)(6)(B), the Solicitor may, in the case of initial determinations under these regulations, extend the 10 working day time limit in which the agency is required to make its determination notification. Such extension shall be communicated in writing to the requesting party setting forth with particularity the reasons for such extension and the date on which a determination is expected to be transmitted. Such extensions may not exceed 10 working days for any request and may only be used to the extent

necessary to properly process a particular request. Such extension is permissible only where there is a demonstrated need: (A) To search for and collect the requested records from field facilities or other establishments that are separate from the Solicitor's Unit; (B) to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or (C) 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 same agency having substantial subject matter interest therein.

(e) *Fees*—(1) *Definitions*. The following definitions apply to the terms when used in this section:

(i) *Direct costs* means those expenditures which the Commission actually incurs in searching for and duplicating (and in the case of commercial requesters, reviewing) documents to respond to a request made under § 704.1(d) of this part. Direct costs include, for example, the salary of the employee(s) performing the work (the basic rate of pay for the employee(s) plus 16 percent of that rate to cover benefits) and the cost of operating duplicating machinery. Not included in direct costs are overhead expenses such as costs of space, and heating or lighting the facility in which the records are stored.

(ii) *Search* means all time spent looking for material that is responsive to a request, including page-by-page or line-by-line identification within documents. However, an entire document will be duplicated if this would prove to be a more efficient and less expensive method of complying with a request than a more detailed manner of searching. *Search* is distinguished from *review* of material in order to determine whether the material is exempt from disclosure.

(iii) *Duplication* means the process of making a copy of a document necessary to respond to a request for disclosure of records. Such copies can take the form of paper or machine readable documentation (e.g., magnetic tape or disk), among others.

(iv) *Review* means the process of examining documents located in response to an information request to determine whether any portion of any document is permitted to be withheld. It also includes processing any documents for disclosure, e.g., doing all that is necessary to prepare them for release. Review does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(v) *Commercial use request* means a request from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made. In deciding whether a requester properly belongs in this category, the Solicitor will determine the use to which a requester will put the documents requested. When the Solicitor has reasonable cause to doubt such intended use, or where such use is not clear from the request itself, the Solicitor will see additional clarification before assigning the request to a specific category.

(vi) *Educational institution* means a school, an institution of higher education, an institution of professional education or an institution of vocational education, which operates a program or programs of scholarly research.

(vii) *Noncommercial scientific institution* means an institution that is not operated on a commercial basis and which is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry.

(viii) *Representative of the news media* means any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term *news* means information that is about current events or that would be of current interest to the public. News media entities include television or radio stations broadcasting to the public at large, and publishers of periodicals (but only in those instances when they can qualify as disseminators of "news") who make their products available for purchase or subscription by the general

public. "Freelance" journalists may be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through that organization, even though not actually employed by it.

(2) *Costs to be included in fees.* The direct costs included in fees will vary according to the following categories of requests:

(i) *Commercial use requests.* Fees will include the Commission's direct costs for searching for, reviewing, and duplicating the requested records.

(ii) *Educational and noncommercial scientific institution requests.* The Commission will provide documents to requesters in this category for the cost of duplication alone, excluding charges for the first 100 pages. To be eligible for inclusion in this category, requesters must show that the request is being made under the auspices of a qualifying institution and that the records are sought in furtherance of scholarly (if the request is from an educational institution) or scientific (if the request is from a noncommercial scientific institution) research.

(iii) *Requests from representatives of the news media.* The Commission will provide documents to requesters in this category for the cost of duplication alone, excluding charges for the first 100 pages. To be eligible for inclusion in this category a requester must meet the criteria in paragraph (e)(1)(viii) of this section.

(iv) *All other requests.* The Commission will charge requesters who do not fit into any of the categories in paragraphs (e)(2)(i) through (iii) of this section fees which cover the direct costs of searching for and duplicating records that are responsive to the requests, except for the first two hours of search time and the first 100 pages duplicated. However, requests from persons for records about themselves will continue to be treated under the fee provisions of the Privacy Act of 1974 and § 705.10 of this chapter.

(3) *Fee calculation.* Fees will be calculated as follows:

(i) *Manual search.* At the salary rate (basic pay plus 16 percent) of the employee(s) making the search.

(ii) *Computer search.* At the actual direct cost of providing the search, in-

cluding computer search time directly attributable to search for records responsive to the request, runs, and operator salary apportionable to the search.

(iii) *Review (commercial use requests only).* At the salary rate (basic pay plus 16 percent) of the employee(s) conducting the review. Only the review necessary at the initial administrative level to determine the applicability of any exemption, and not review at the administrative appeal level, will be included in the fee.

(iv) *Duplication.* At 20 cents per page for paper copy. For copies of records prepared by computer (such as tapes or printouts), the actual cost of production, including operator time, will be charged.

(v) *Additional services; certification.* Express mail and other additional services that may be arranged by the requester will be charged at actual cost. The fee for certification or authentication of copies shall be \$3.00 per document.

(vi) *Assessment of interest.* The Commission may begin assessing interest charges on the 31st day following the day the fee bill is sent. Interest will be at the rate prescribed in 31 U.S.C. 3717 and will accrue from the date of billing.

(vii) No fee shall be charged if the total billable cost calculated under paragraphs (e)(2) and (3) of this section is less than \$10.00.

(4) *Waiver or reduction of fees.* (i) Documents will be furnished without charge, or at a reduced charge, where 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.

(ii) Whenever a waiver or reduction of fees is granted, only one copy of the record will be furnished.

(iii) The decision of the Solicitor on any fee waiver or reduction request shall be final and unappealable.

(5) *Payment procedures*—(i) *Fee payment.* Payment of fees shall be made by cash (if delivered in person), check or money order payable to the United States Commission on Civil Rights.

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(ii) *Notification of fees.* No work shall be done that will result in fees in excess of \$25.00 without written authorization from the requester. Where it is anticipated that fees will exceed \$25.00, and the requester has not indicated in advance a willingness to pay fees as high as are anticipated, the requester will be notified of the amount of the projected fees. The notification shall offer the requester an opportunity to confer with the Solicitor in an attempt to reformulate the request so as to meet the requester's needs at a lower cost. The administrative time limits prescribed in 5 U.S.C. 552(a)(6) will not begin until after the requester agrees in writing to accept the prospective charges.

(6) *Advance payment of fees.* When fees are projected to exceed \$250.00, the requester may be required to make an advance payment of all or part of the fee before the request is processed. If a requester has previously failed to pay a fee in a timely fashion (i.e. within 30 days of the billing date), the requester will be required to pay the full amount owed plus any applicable interest, and to make an advance payment of the full amount of the estimated fee before a new or pending request is processed from that requester. The administrative time limits prescribed in 5 U.S.C. 552(a)(6) will not begin until after the requester has complied with this provision.

(7) *Other provisions—(i) Charges for unsuccessful search.* Charges may be assessed for time spent searching for requested records, even if the search fails to locate responsive records or the records are determined, after review, to be exempt from disclosure.

(ii) *Aggregating requests to avoid fees.* Multiple requests shall be aggregated when the Solicitor reasonably determines that a requester or group of requesters is attempting to break down a request into a series of requests to evade fees.

(iii) *Debt Collection Act.* The Debt Collection Act, including disclosure to consumer reporting agencies and use of collection agencies, will be used to encourage payment where appropriate.

(f) *Exemptions (5 U.S.C. 552(b))—*

(1) *General.* The Commission may exempt from disclosure matters that are:

(i)(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.

(ii) Related solely to the internal personnel rules and practices of an agency;

(iii) Specifically exempted from disclosure by statute;

(iv) Trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(v) Interagency or intra-agency memoranda or letters which would not be available by law to a party other than an agency in litigation with the agency;

(vi) Personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(vii) 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) Could 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,

(E) Could disclose techniques and procedures for all enforcement investigations or prosecutions, or could 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;

(viii) 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

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regulation or supervision of financial institutions; and

(ix) Geological and geophysical information and data, including maps, concerning wells.

(2) Investigatory records or information. (5 U.S.C. 552(b)(7)). (i) Among the documents exempt from disclosure pursuant to § 704.1(f)(1)(vii) shall be records or information reflecting investigations which either are conducted for the purpose of determining whether a violation(s) of legal right has taken place, or have disclosed that a violation(s) of legal right has taken place, but only to the extent that production of such records or information would fall within the classifications established in paragraphs (f)(1)(vii)(B) through (F) of this section.

(ii) Among the documents exempt from disclosure under paragraphs (f)(1)(vii)(D) and (f)(2)(i) of this section concerning confidential sources shall be documents which disclose the fact or the substance of a communication made to the Commission in confidence relating to an allegation or support of an allegation of wrongdoing by certain persons. It is sufficient under this subsection to indicate the confidentiality of the source if the substance of the communication or the circumstances of the communication indicate that investigative effectiveness could reasonably be expected to be inhibited by disclosure.

(iii) Whenever a request is made which involves access to records described in paragraph (f)(1)(vii)(A) of this section and the investigation or proceeding involves a possible violation of criminal law; and there is reason to believe that the subject of the investigation or proceeding is not aware of its pendency, and disclosure of the existence of the records could reasonably be expected to interfere with enforcement proceedings, the Commission may, during only such time as that circumstance continues, treat the records as not subject to the requirements of 5 U.S.C. 552 and this section.

(3) 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.

(g) *Administrative appeals.* (1) These procedures apply whenever a requester is denied records under § 704.1(d)(2)(i).

(2) Parties may appeal § 704.1(d)(2)(i) decisions within 90 days of the date of such decision by filing a written request for review addressed to the Staff Director, U.S. Commission on Civil Rights, Washington, DC 20425, by certified mail, including a copy of the written denial, and may include a statement of the circumstances, reasons or arguments advanced in support of disclosure. Review will be made by the Staff Director on the basis of the written record.

(3) The decision on review of any appeal filed under this subsection shall be in writing over the signature of the Staff Director, will be promptly communicated to the person requesting review, and will constitute the final action of the Commission.

(4) Determinations of appeals filed under this subsection shall be made within 20 working days after the receipt of such appeal. If, on appeal, denial of records is in whole or part upheld, the Staff Director shall notify the persons making such request of the provisions for judicial review of that determination under 5 U.S.C. 552(a)(4).

(5) An extension of time may be granted under this subsection pursuant to criteria established in § 704.1(d)(3)(ii) (A) to (C), except that such extension together with any extension which may have been granted pursuant to § 704.1(d)(3)(ii) may not exceed a total of 10 working days.

[40 FR 22833, May 27, 1975, as amended at 44 FR 75152, Dec. 19, 1979; 55 FR 9884, 9886, Mar. 16, 1990]

§ 704.2 Complaints.

Any person may bring to the attention of the Commission a grievance which he believes falls within the jurisdiction of the Commission, as set forth in section 104 of the Act. This shall be done by submitting a complaint in writing to the Office of Federal Civil Rights Evaluation, U.S. Commission on Civil Rights, Washington, DC 20425. Allegations falling under section 104(a) (1) and (5) of the Act (discrimination or fraud in voting) must be under oath or affirmation. All complaints should set forth the pertinent facts upon which

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the complaint is based, including but not limited to specification of (a) names and titles of officials or other persons involved in acts forming the basis for the complaint; (b) accurate designations of place locations involved; (c) dates of events described in the complaint.

[34 FR 7577, May 10, 1969, as amended at 44 FR 75152, Dec. 19, 1979]

§ 704.3 Other requests and communications.

Requests for information should be addressed to Press and Communications Division and requests for Commission literature should be directed to Publications Management Division, U.S. Commission on Civil Rights, Washington, DC 20425. Communications with respect to Commission proceedings should be made pursuant to § 702.17 of this chapter. All other communications should be directed to Office of Staff Director, U.S. Commission on Civil Rights, Washington, DC 20425.

[44 FR 75152, Dec. 19, 1979]

§ 704.4 Restrictions on disclosure of information.

(a) By the provisions of section 102(g) of the Act, no evidence or testimony or summary of evidence or testimony taken in executive session may be released or used in public sessions without the consent of the Commission, and any person who releases or uses in public without the consent of the Commission such evidence or testimony taken in executive session shall be fined not more than \$1,000 or imprisoned for not more than 1 year.

(b) Unless a matter of public record, all information or documents obtained or prepared by any Member, officer, or employee of the Commission, including members of State Advisory Committees, in the course of his official duties, or by virtue of his official status, shall not be disclosed or used by such person for any purpose except in the performance of his official duties.

(c) Any Member, officer, or employee of the Commission including members of State Advisory Committees, who is served with a subpoena, order, or other demand requiring the disclosure of such information or the production of

such documents shall appear in response to such subpoena, order, or other demand and, unless otherwise directed by the Commission, shall respectfully decline to disclose the information or produce the documents called for, basing his refusal upon this section. Any such person who is served with such a subpoena, order, or other demand shall promptly advise the Commission of the service of such subpoena, order, or other demand, the nature of the information or documents sought, and any circumstances which may bear upon the desirability of making available such information or documents.

[32 FR 9684, July 4, 1967]

PART 705—MATERIALS AVAILABLE PURSUANT TO 5 U.S.C. 552a

Sec.

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AUTHORITY: Secs. 101–106, 71 Stat. 634–636 as amended (42 U.S.C. 1975–1975c); 5 U.S.C. 552a.

SOURCE: 40 FR 45727, Oct. 2, 1975, unless otherwise noted. Redesignated at 44 FR 75152, Dec. 19, 1979.

§ 705.1 Purpose and scope.

(a) The purpose of this part is to set forth rules to inform the public regarding information maintained by the Commission on Civil Rights about identifiable individuals and to inform those individuals how they may gain

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access to and correct or amend information about themselves.

(b) The rules in this part carry out the requirements of the Privacy Act of 1974 (Pub. L. 93-579) and in particular 5 U.S.C. 552a as added by that Act.

(c) The rules in this part apply only to records disclosed or requested under the Privacy Act of 1974, and not to requests for information made pursuant to the Freedom of Information Act, 5 U.S.C. 552.

§ 705.2 Definitions.

For the purpose of this regulation:

(a) The terms *Commission* and *agency* mean the U.S. Commission on Civil Rights;

(b) The term *individual* means a citizen of the United States or an alien lawfully admitted for permanent residence;

(c) The term *maintain* includes maintain, collect, use, or disseminate;

(d) The term *record* means any item, collection, or grouping of information about an individual that is maintained by the Commission, including, but not limited to, his or her education, financial transactions, medical history, and criminal or employment history and that contains his or her name, or the identifying number, symbol, or other identifying particular assigned to the individual;

(e) The term *system record* means a group of any records under the control of the Commission from which information may be retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to that individual;

(f) 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 in section 8 of title 13; and

(g) 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.

(h) For purposes of these Rules, a *confidential source* means a source who furnished information to the Govern-

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ment under an express promise that the identity of the source would remain confidential, or, prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence.

§ 705.3 Procedures for requests pertaining to individual records in a system of records.

(a) An individual seeking notification of whether a system of records contains a record pertaining to him or her or an individual seeking access to information or records pertaining to him or her which is available under the Privacy Act of 1974, shall present his or her request in person or in writing to the Solicitor of the Commission.

(b) In addition to meeting the requirements set forth in § 705.4(c) or (d), any person who requests information under these regulations shall provide a reasonably specific description of the information sought so that it may be located without undue search or inquiry. If possible, that description should include the nature of the records sought, the approximate dates covered by the record, and, if known by the requester, the system in which the record is thought to be included. Requested information that is not identified by a reasonably specific description is not an identifiable record, and the request for that information cannot be treated as a formal request.

(c) If the description is insufficient, the agency will notify the requester and, to the extent possible, indicate the additional information required. Every reasonable effort shall be made to assist a requester in the identification and location of the record or records sought.

[40 FR 45727, Oct. 2, 1975, as amended by 42 FR 12046, Mar 2, 1977. Redesignated at 44 FR 75152, Dec. 19, 1979]

§ 705.4 Times, places, and requirements for identification of individuals making requests and identification of records requested.

(a) The Solicitor is the designated Privacy Act Officer for the Commission.

(b) An individual making a request to the Solicitor in person may do so at the Commission's headquarters office,

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1121 Vermont Avenue, NW., Washington, DC 20425, on any business day during business hours. Persons may also appear for purposes of identification only, at any of the regional offices of the Commission on any business day during business hours. Regional offices are located as follows:

Region I: U.S. Commission on Civil Rights, 55 Summer Street, 8th Floor, Boston, Massachusetts 02110, (617) 223-4671 (8:45 a.m.-5:30 p.m.)

Region II: U.S. Commission on Civil Rights, 26 Federal Plaza, Room 1639, New York, NY 10007, (212) 264-0543 (9:00 a.m.-5:30 p.m.)

Region III: U.S. Commission on Civil Rights, 2120 L Street, N.W., Room 510, Washington, DC 20037, (202) 254-6670 (8:45 a.m.-5:30 p.m.)

Region IV: U.S. Commission on Civil Rights, Citizens Trust Bank Building, 75 Piedmont Avenue, NE., Atlanta, Georgia 30303, (404) 221-4344 (9:00 a.m.-5:30 p.m.)

Region V: U.S. Commission on Civil Rights, 230 South Dearborn Street, 32nd Floor, Chicago, Illinois 60604, (312) 353-7371 (8:45 a.m.-5:30 p.m.)

Region VI: U.S. Commission on Civil Rights, Heritage Plaza, 418 South Main, First Floor, San Antonio, Texas 78204, (512) 225-4810 (8:45 a.m.-5:30 p.m.)

Region VII: U.S. Commission on Civil Rights, 911 Walnut Street, Kansas City, Missouri 64106, (816) 374-5253 (8:00 a.m.-5:30 p.m.)

Region IX: U.S. Commission on Civil Rights, 312 North Spring Street, Room 1015, Los Angeles, California 90012, (213) 688-5705 (8:45 a.m.-5:00 p.m.)

Region X: U.S. Commission on Civil Rights, Federal Building, 915 Second Avenue, Room 2852, Seattle, Washington 98174, (206) 442-1246 (8:00 a.m.-5:00 p.m.)

(c) An individual seeking access to records in person may establish his or her identity by the presentation of one document bearing a photograph (such as a driver's license, passport, or identification card or badge) or by the presentation of two items of identification which do not bear a photograph, but do bear both a name and address (such as a credit card). When identification is made without photographic identification the Commission will request a signature comparison to the signature appearing on the items offered for identification, whenever possible and practical.

(d) An individual seeking access to records by mail shall establish his or

her identity by a signature, address, date of birth, and one other identification, such as a copy of a driver's license, passport, identification card or badge, credit card or other document. The words "Privacy Act Request" should be placed in capital letters on the face of the envelope in order to facilitate requests by mail.

(e) An individual seeking access in person or by mail who cannot provide the required documentation of identification may provide a notarized statement, swearing or affirming to his or her identity and to the fact that he or she understands that there are criminal penalties for the making of false statements.

(f) The parent or guardian of a minor or a person judicially determined to be incompetent, in addition to establishing the identity of the minor or incompetent person he or she represents as required by paragraphs (a) through (c) of this section, shall establish his or her own parentage or guardianship by furnishing a copy of a birth certificate showing parentage or court order establishing guardianship.

(g) An individual seeking to review information about himself or herself may be accompanied by another person of his or her own choosing. In all such cases, the individual seeking access shall be required to furnish a written statement authorizing the discussion of his or her record in the presence of the accompanying person.

[40 FR 45727, Oct. 2, 1975, as amended at 42 FR 12046, Mar 2, 1977. Redesignated and amended at 44 FR 75152, Dec. 19, 1979]

§ 705.5 Disclosure of requested information to individuals.

The Solicitor, or one or more assistants designated by him or her, upon receiving a request for notification of the existence of a record, or for access to a record shall (a) determine whether such record exists; (b) determine whether access is available under the Privacy Act; (c) notify the requesting person of those determinations within 10 (ten) working days (excluding Saturdays, Sundays, and legal public holidays); and (d) provide access to information pertaining to that person which has been determined to be available.

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§ 705.6 Request for correction or amendment to record.

(a) Any individual who has reviewed a record pertaining to him or her that was furnished to him or her under this part may request the agency to correct or amend all or part of that record.

(b) Each individual requesting a correction or amendment shall send the request to the Solicitor.

(c) Each request for a correction or amendment of a record shall contain the following information:

(1) The name of the individual requesting the correction or amendment.

(2) The name of the system of records in which the record sought to be amended is maintained.

(3) The location of the record system from which the record was obtained.

(4) A copy of the record sought to be amended or a description of that record.

(5) A statement of the material in the record that should be corrected or amended.

(6) A statement of the specific wording of the correction or amendment sought.

(7) A statement of the basis for the requested correction or amendment including any material that the individual can furnish to substantiate the reasons for the amendment sought.

§ 705.7 Agency review of request for correction or amendment of the record.

Within ten (10) working days (excluding Saturdays, Sundays and legal public holidays) of the receipt of the request for the correction or amendment of a record, the Solicitor shall acknowledge receipt of the request and inform the individual that his or her request has been received and inform the individual whether further information is required before the correction or amendment can be considered. Further, the Solicitor shall promptly, and, under normal circumstances, not later than thirty (30) working days after receipt of the request, make the requested correction or amendment or notify the individual of his or her refusal to do so, including in the notification the reasons for the refusal, and the procedures established by the Commission by which the individual may

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initiate a review of that refusal. In the event of correction or amendment, an individual shall be provided with one copy of each record or portion thereof corrected or amended pursuant to his or her request without charge as evidence of the correction or amendment. The Commission shall also provide to all prior recipients of such a record, the corrected or amended information to the extent that it is relevant to the information previously furnished to a recipient pursuant to the Privacy Act.

[40 FR 45727, Oct. 2, 1975, as amended at 42 FR 12046, Mar. 2, 1977. Redesignated at 44 FR 75152, Dec. 19, 1979]

§ 705.8 Appeal of an initial adverse agency determination.

(a) Any individual whose request for access or for a correction or amendment which has been denied, in whole or in part, by the Solicitor may appeal that decision to the Staff Director of the Commission, 1121 Vermont Avenue, NW., Room 800, Washington, DC 20425, or to a designee of the Staff Director.

(b) The appeal shall be in writing and shall:

(1) Name the individual making the appeal;

(2) Identify the record sought to be amended or corrected;

(3) Name the record system in which that record is contained;

(4) Contain a short statement describing the amendment or correction sought; and

(5) State the name of the person who initially denied the correction or amendment.

(c) Not later than thirty (30) working days (excluding Saturdays, Sundays, and legal public holidays) after the date on which the agency received the appeal, the Staff Director shall complete his or her review of the appeal and make a final decision thereon, unless, for good cause shown, the Staff Director extends the appeal period beyond the initial thirty (30) day appeal period. In the event of such an extension the Staff Director shall promptly notify the individual making the appeal that the period for a final decision has been extended.

(d) After review of an appeal request, the Staff Director will send a written

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notice to the requester containing the following information:

(1) The decision, and if the denial is upheld, the reasons for the decision;

(2) The right of the requester to institute a civil action in a Federal District Court for judicial review of the decision, if the appeal is denied; and

(3) The right of the requester to file with the Commission a concise statement setting forth the reasons for his or her disagreement with the Commission's decision denying the request. The Commission shall make this statement available to any person to whom the record is later disclosed, together with a brief statement, if the Commission considers it appropriate, of the agency's reasons for denying the requested correction or amendment. These statements shall also be provided to all prior recipients of the record to the extent that it is relevant to the information previously furnished to a recipient pursuant to the Privacy Act.

[40 FR 45727, Oct. 2, 1975, as amended at 42 FR 12047, Mar. 2, 1977. Redesignated at 44 FR 75152, Dec. 19, 1979]

§ 705.9 Disclosure of records to a person other than the individual to whom the record pertains.

(a) Any individual who desires to have his or her record disclosed to or mailed to a third person may authorize that person to act as his or her agent for that specific purpose. The authorization shall be in writing, signed by the individual, and notarized. The agent shall also submit proof of his or her own identity as provided in § 705.4.

(b) The parent of any minor individual or the legal guardian of any individual who has been declared by a court to be incompetent, due to physical or mental incapacity, may act on behalf of that individual in any matter covered by this part. A parent or guardian who desires to act on behalf of such an individual shall present suitable evidence of parentage or guardianship, by birth certificate, copy of a court order or similar documents, and proof of the individual's identity as provided in § 705.4.

(c) An individual to whom a record is to be disclosed, in person, pursuant to this part may have a person of his or

her own choosing accompany the individual when the record is disclosed.

§ 705.10 Fees.

If an individual requests copies of his or her records the charge shall be three (3) cents per page, *Provided, however*, That the Commission shall not charge for copies furnished to an individual as a necessary part of the process of disclosing the record to an individual. Fees may be waived or reduced in accordance with § 704.1(e) of the Commission's regulations (45 CFR part 704) because of indigency, where the cost is nominal, when it is in the public interest not to charge, or when waiver would not constitute an unreasonable expense to the Commission.

§ 705.11 Penalties.

Any person who makes a false statement in connection with any request for a record, or in any request for an amendment to a record under this part, is subject to the penalties prescribed in 18 U.S.C. 494 and 495.

§ 705.12 Special procedures: Information furnished by other agencies.

When records or information sought from the Commission include information furnished by other Federal agencies, the Solicitor shall consult with the appropriate agency prior to making a decision to disclose or to refuse to disclose the record, but the decision whether or not to disclose the record shall be made by the Solicitor.

§ 705.13 Exemptions.

(a) Under the provision of 5 U.S.C. 552a(k), it has been determined by the agency that the following exemptions are necessary and proper and may be asserted by the agency:

(1) *Exemption (k)(2) of the Act.* Investigatory material compiled for law enforcement purposes, other than material within the scope of subsection (j)(2) of the Privacy Act: *Provided, however*, That if any individual is denied any right, privilege, or benefit that he or she would otherwise be eligible for, 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.

(2) *Exemption (k)(4) of the Act.* Statistical personnel records that are used only to generate aggregate data or for other evaluative or analytical purposes and which are not used to make decisions on the rights, benefits, or entitlements of individuals.

(3) *Exemption (k)(5) of the Act.* Investigatory material maintained solely for the purposes of determining an individual's qualifications, eligibility, or suitability for employment in the Federal civilian service, Federal contracts, or access to classified information, but only to the extent that disclosure of such material would reveal the identity of the 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 September 27, 1975, under an implied promise that the identity of the source would be held in confidence.

(4) Testing or examination material used solely to determine individual qualifications for promotion or appointment in the Federal service the disclosure of which would compromise the objectivity or fairness of the testing or examination process.

(b) Following are Commission systems of records which are partially exempt under 5 U.S.C. 552a(k)(2), (4), (5), and (6) and the reasons for such exemptions:

(1) *Appeals, Grievances and Complaints (staff)—Commission Project, CRC-001.* Exempt partially under 5 U.S.C. 552a(k)(2)—The reasons for possibly asserting the exemptions are to prevent subjects of investigation from frustrating the investigatory process, to prevent disclosure of investigative techniques, to maintain the ability to obtain necessary information, to fulfill commitments made to sources to protect their identities and the confidentiality of information and to avoid endangering these sources.

(2) *Complaints, CRC-003—Exempt partially under 5 U.S.C. 552a(k)(2).* The rea-

sons for possibly asserting the exemptions are to prevent subjects of investigation from frustrating the investigatory process, to prevent disclosure of investigative techniques, to maintain the ability to obtain necessary information, to fulfill commitments made to sources to protect their identities and the confidentiality of information and to avoid endangering these sources.

(3) *Commission projects, CRC-004—Partially exempt under 5 U.S.C. 552a(k)(a).* The reasons for asserting the exemptions are to prevent subjects of investigation from frustrating the investigatory process, to prevent disclosure of investigative techniques, to maintain the ability to obtain necessary information, to fulfill commitments made to sources to protect their identities and the confidentiality of information and to avoid endangering these sources.

(4) *Other Employee Programs: EEO, Troubled Employee, and Upward Mobility, CRC-006—Partially exempt under 5 U.S.C. 552a(k)(4), (5), and (6).* The reasons for asserting the exemptions are to maintain the ability to obtain candid and necessary information, to fulfill commitments made to sources to protect the confidentiality of information, to avoid endangering these sources and, primarily, to facilitate proper selection or continuance of the best applicants or persons for a given position.

(5) *State Advisory Committees Projects, CRC-009—Partially exempt under 5 U.S.C. 552a(k)(2).* The reasons for possibly asserting the exemptions are to prevent subjects of investigation from frustrating the investigatory process, to prevent disclosure of investigative techniques, to maintain the ability to obtain necessary information, to fulfill commitments made to sources to protect their identities and the confidentiality of information and to avoid endangering these sources.

§ 705.95 Accounting of the disclosures of records.

(a) All disclosures of records covered by this part 705, except for the exemptions listed in § 705.95(b), shall be accounted for by keeping a written

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record of the particular record disclosed, the name and address of the person or agency to whom or to which disclosed, and the date, nature and purpose of the disclosure.

(b) No accounting is required for disclosures of records to those officials and employees of the Commission who have a need for the record in the performance of their duties, or if disclosure would be required under the Freedom of Information Act. 5 U.S.C. 552.

(c) The accounting shall be maintained for 5 years or until the record is destroyed or transferred to the National Archives and Record Service for storage, in which event, the accounting pertaining to those records, unless maintained separately, shall be transferred with the records themselves.

(d) The accounting of disclosures may be recorded in any system the Commission determines is sufficient for this purpose, however, the Commission must be able to construct from its system a listing of all disclosures. The system of accounting of disclosures is not a system of records under the definition in §705.2(e) and no accounting need be maintained for disclosure of the accounting of disclosures.

(e) Upon request of an individual to whom a record pertains, the accounting of the disclosures of that record shall be made available to the requester, provided that he/she has complied with §705.3(a) and with §705.4(c) or (d).

[42 FR 12047, Mar. 2, 1977]

PART 706—EMPLOYEE RESPONSIBILITIES AND CONDUCT

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- 706.24 Public access to financial disclosure reports.

AUTHORITY: Secs. 101-106, 71 Stat. 634-636, as amended (42 U.S.C. 1975-1975e) Pub. L. 95-521, as amended, 5 CFR 735.

SOURCE: 44 FR 75152, Dec. 19, 1979, unless otherwise noted.

Subpart A—General Provisions

§ 706.1 Adoption of regulations.

Pursuant to 5 CFR 735.104(f) and 735.502, the U.S. Commission on Civil Rights (hereinafter referred to as the Commission) hereby adopts, with appropriate modifications, relevant sections of Part 735 of Title 5 of the Code of Federal Regulations as renumbered and set forth below.

§ 706.2 Purpose.

The maintenance of unusually high standards of honesty, integrity, impartiality, and conduct by Government employees and special Government employees is essential to assure the proper performance of the Government's business and the maintenance of confidence by citizens in their Government. The avoidance of misconduct and conflicts of interest on the part of Government employees and special Government employees through informed judgment is indispensable to the maintenance of these standards. To accord

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with these concepts, this part sets forth the United States Commission on Civil Rights' regulations covering the agency's employees and special Government employees, prescribing standards of conduct and responsibilities, and governing statements reporting employment and financial interests.

§ 706.3 Definitions.

In this part:

Commission means the United States Commission on Civil Rights, an Executive agency as defined by Section 105 of Title 5, United States Code.

Employee means an officer or employee of the Commission including a special Government employee, as defined in 18 U.S.C. 202.

Executive order means Executive Order 11222 of May 8, 1965.

Person means an individual, a corporation, a company, an association, a firm, a partnership, a society, a joint stock company, or any other organization or institution.

§ 706.4 Distribution.

(a) Within 90 days after publication of these regulations in the FEDERAL REGISTER the Commission shall furnish each employee with a copy of the regulations.

(b) The Commission shall furnish all new employees with a copy of the regulations at the time of their entrance on duty.

(c) The Commission shall bring the regulations to the attention of each employee annually, and at such other times as circumstances warrant.

(d) The Commission shall have available for review by employees copies of relevant laws, the Executive order, and pertinent Commission instructions relating to ethical and other standards of conduct.

§ 706.5 Counseling.

The Solicitor of the Commission shall serve as the agency's ethical conduct counselor and is the designated agency official for the purposes of the Ethics in Government Act of 1978, Pub. L. 95-521. The Solicitor shall respond to requests by employees and special Government employees for advice and guidance respecting questions of ethical conduct, conflicts of interest, re-

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porting of financial interests and other matters of law covered by these regulations.

§ 706.6 Disciplinary and other remedial action.

An employee of the Commission who violates any of the regulations in this part may be disciplined. The disciplinary action may be in addition to any penalty prescribed by law for the violation. In addition to or in lieu of disciplinary action, remedial action to end conflicts or appearance of conflicts of interests may include but is not limited to:

- (a) Changes in assigned duties;
- (b) Divestment by an employee of any conflicting interest; or
- (c) Disqualification for a particular assignment.

§ 706.7 Outside employment and other activity.

Employees of the Commission may engage in outside employment or other outside activity not incompatible with the full and proper discharge of the duties and responsibilities of their Government employment. Employees who wish to engage in outside employment shall first obtain the approval, in writing, of their supervisor.

§ 706.8 Prohibition against disclosure of evidence.

All employees of the Commission are subject to the prohibition on disclosure of evidence taken in executive session contained in Section 102(g) of the Civil Rights Act of 1957, 71 Stat. 634, as amended.

Subpart B—Ethical and Other Conduct and Responsibilities of Employees

§ 706.9 Proscribed actions.

An employee shall avoid any action, whether or not specifically prohibited by this subpart, which might result in, or create the appearance of:

- (a) Using public office for private gain;
- (b) Giving preferential treatment to any person;
- (c) Impeding Commission efficiency or economy;

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(d) Making a Commission decision outside official channels;

(e) Losing complete independence or impartiality; or

(f) Affecting adversely the confidence of the public in the integrity of the Commission.

§ 706.10 Gifts, entertainment and favors.

(a) Except as provided in paragraphs (b) and (e) of this section, an employee shall not solicit or accept, directly or indirectly, any gift, gratuity, favor, entertainment, loan, or any other thing of monetary value from a person who:

(1) Has, or is seeking to obtain, contractual or other business or financial relations with the Commission;

(2) Conducts operations or activities that are regulated by the Commission; or

(3) Has interests that may be substantially affected by the performance or nonperformance of the employee's official duty.

(b) Exceptions from the prohibitions contained in paragraph (a) of this section are as follows:

(1) Gifts, entertainment and favors which derive from family or personal relationships (such as those between parents, children, or spouse of the employee and the employee) when the circumstances make it clear that it is those relationships rather than the business of the persons concerned which are the motivating factors;

(2) Acceptance of food and refreshments of nominal value on infrequent occasions in the ordinary course of a luncheon or dinner meeting or other meeting or on an inspection tour where an employee may properly be in attendance;

(3) Acceptance of loans from banks or other financial institutions on customary terms to finance proper and usual activities of employees, such as home mortgage loans; and

(4) Acceptance of unsolicited advertising or promotional material, such as pens, pencils, note pads, calendars, and other items of nominal intrinsic value.

(c) Employees shall not solicit a contribution from another employee for a gift to an official superior, make a donation as a gift to an official superior, or accept a gift from an employee re-

ceiving less pay than themselves. This paragraph, however, does not prohibit a voluntary gift of nominal value or donation in a nominal amount made on a special occasion such as marriage, illness, or retirement.

(d) An employee shall not accept a gift, present, decoration, or other thing from a foreign government unless authorized by Congress as provided by the Constitution and 5 U.S.C. 7342.

(e) Neither this section nor § 706.11 precludes an employee from receipt of bona fide reimbursement, unless prohibited by law, for expenses of travel and such other necessary subsistence as is compatible with this part, for which no Government payment or reimbursement is made. This paragraph, however, does not allow employees to be reimbursed, or payment to be made on their behalf, for excessive personal living expenses, gifts, entertainment or other personal benefits.

§ 706.11 Proscribed outside employment and other activities.

(a) An employee shall not engage in outside employment or other outside activity not compatible with the full and proper discharge of the duties and responsibilities of Government employment. Incompatible activities include but are not limited to:

(1) Acceptance of a fee, compensation, gift, payment of expense, or any other thing of monetary value in circumstances in which acceptance may result in, or create the appearance of conflicts of interest; or

(2) Outside employment which tends to impair mental or physical capacity to perform Governmental duties and responsibilities in an acceptable manner.

(b) An employee shall not receive any salary or anything of monetary value from a private source as compensation for service to the Government as prohibited by 18 U.S.C. 209.

(c) Employees are encouraged to engage in teaching, lecturing, and writing that is not prohibited by law, the Executive order, or Commission regulations. An employee shall not, either for or without compensation, engage in teaching, lecturing, or writing, including teaching, lecturing, or writing for the purpose of the special preparation

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of a person or class of persons for an examination of the Office of Personnel Management or Board of Examiners for the Foreign Service, that depends on information obtained as a result of Government employment, except when that information has been made available to the general public or will be made available on request, or when the agency head gives written authorization for use of nonpublic information on the basis that the use is in the public interest. In addition, an employee who is a Presidential appointee covered by section 401(a) of the order shall not receive compensation or anything of monetary value for any consultation, lecture, discussion, writing, or appearance the subject matter of which is devoted substantially to the responsibilities, programs, or operations of the Commission or which draws substantially on official data or ideas which have not become part of the body of public information.

(d) This section does not preclude an employee from:

(1) Participation in the activities of national or State political parties not proscribed by law;

(2) Participation in the affairs of or acceptance of an award for a meritorious public contribution or achievement given by a charitable, religious, professional, social, fraternal, non-profit educational and recreational public service, or civic organization; or

(3) Outside employment permitted under these regulations.

§ 706.12 Financial interests.

(a) Employees shall not:

(1) Have a direct or indirect financial interest that conflicts substantially, or appears to conflict substantially, with their Government duties and responsibilities; or

(2) Engage in, directly or indirectly, a financial transaction as a result of, or primarily relying on, information obtained through their Government employment.

(b) This section does not preclude an employee from having a financial interest or engaging in financial transactions to the same extent as a private citizen not employed by the Government, so long as it is not prohibited by

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law, the Executive order, or Commission regulations.

§ 706.13 Use of Government property.

Employees shall not directly or indirectly use, or allow the use of, Government property of any kind, including property leased to the Government, for other than officially approved activities. Employees have a positive duty to protect and conserve Government property, including equipment, supplies, and other property entrusted or issued them.

§ 706.14 Misuse of information.

For the purpose of furthering a private interest, employees shall not directly or indirectly use, or allow the use of, official information obtained through or in connection with their Government employment, which has not been made available to the general public.

§ 706.15 Indebtedness.

An employee shall pay each just financial obligation in a proper and timely manner, especially one imposed by law such as Federal, State, or local taxes. For the purpose of this section, a "just financial obligation" means one acknowledged by the employee or reduced to judgment by a court, and "in a proper and timely manner" means in a manner which the agency determines does not, under the circumstances, reflect adversely on the Government as the employer. In the event of dispute between an employee and an alleged creditor, this section does not require the Commission to determine the validity or amount of the disputed debt.

§ 706.16 Gambling, betting and lotteries.

Employees shall not participate while on Government-owned or leased property or while on duty for the Government, in any gambling activity including the operation of a gambling device, in conducting a lottery or pool, in a game for money or property, or in selling or purchasing a numbers slip or ticket.

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§ 706.17 General conduct prejudicial to the Government.

Employees shall not engage in criminal, infamous, dishonest, immoral, or notoriously disgraceful conduct, or other conduct prejudicial to the Government.

§ 706.18 Miscellaneous statutory provisions.

Employees shall acquaint themselves with each statute that relates to their ethical and other conduct as an employee of the Commission and of the Government. The attention of Commission employees is directed to the following statutory provisions:

(a) House Concurrent Resolution 175, 85th Congress, 2d session, 72 Stat. B12, the "Code of Ethics for Government Service";

(b) Chapter II of Title 18, United States Code, relating to bribery, graft, and conflicts of interest, as appropriate to the employees concerned;

(c) The prohibition against lobbying with appropriated funds (18 U.S.C. 1913);

(d) The prohibitions against disloyalty and striking (5 U.S.C. 73811; 18 U.S.C. 1918);

(e) The prohibition against the employment of a member of a Communist organization (50 U.S.C. 784);

(f) The prohibitions against the disclosure of classified information (18 U.S.C. 798; 50 U.S.C. 1905);

(g) The provision relating to the habitual use of intoxicants to excess (5 U.S.C. 7352);

(h) The prohibition against the misuse of a Government vehicle (31 U.S.C. 638a(c));

(i) The prohibition against the misuse of the franking privilege (18 U.S.C. 1719);

(j) The prohibition against the use of deceit in an examination or personnel action in connection with Government employment (18 U.S.C. 1917);

(k) The prohibition against fraud or false statements in a Government matter (18 U.S.C. 1001);

(l) The prohibition against mutilating or destroying a public record (18 U.S.C. 2071);

(m) The prohibition against counterfeiting and forging transportation requests (18 U.S.C. 508);

(n) The prohibitions against (1) embezzlement of Government money or property (18 U.S.C. 641); (2) failing to account for public money (18 U.S.C. 643); and (3) embezzlement of the money or property of another person in the possession of the employee by reason of his/her employment (18 U.S.C. 654);

(o) The prohibition against unauthorized use of documents relating to claims from or by the Government (18 U.S.C. 285);

(p) The prohibitions against political activities in subchapter III of chapter 73 of Title 5, United States Code and 18 U.S.C. 602, 603, 607, and 608;

(q) The prohibition against an employee acting as the agent of a foreign principal registered under the Foreign Agent Registration Act (18 U.S.C. 219).

Subpart C—Financial Reporting Requirements

§ 706.19 Statements of financial and property interests and outside employment.

Pursuant to the Ethics in Government Act of 1978 (Pub. L. 95-521, referred to hereinafter in this subpart as "the Act"), the following officers and employees of the Commission are required to file annual reports of financial and property interests and outside employment if they have served 61 days or more in their positions during the preceding calendar year:

(a) Officers and employees (including special government employees, as defined in 18 U.S.C. 202) whose positions are classified at GS-16 or above of the General Schedule, or whose basic rate of pay (excluding "step" increases) under other pay schedules is equal to or greater than the rate for GS-16 (step 1);

(b) Employees in the excepted service in positions which are of a confidential or policy-making character, unless their positions have been excluded by the Director of the Office of Government Ethics; and

(c) Each designated agency ethics official.

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§ 706.20 Time and place for filing of reports.

(a) Annual reports are to be filed no later than May 15 of each calendar year, except that persons assuming a position for which reports are required who have not immediately prior to this assumption occupied a covered position in another agency, must file a report within 30 days after assuming the position at the Commission. In the event an individual terminates employment with the Commission and does not accept another position for which reporting is required, the report must be filed no later than the 30th day after termination, covering:

(1) The preceding calendar year if the annual May 15 report has not been filed; and

(2) The portion of the present calendar year up to the date of termination.

(b) Reports shall be filed with the designated ethics officer (Solicitor) of the Commission. The reports of the designated ethics officer and nominees to and holders of positions which require confirmation by the Senate shall be transmitted by the Solicitor to the Office of Government Ethics of the Office of Personnel Management.

§ 706.21 Exclusion of certain positions from reporting requirements.

(a) Under section 201(f)(5) of the Act, a report is required of any person in the executive branch in a position excepted from the competitive service by reason of being of a confidential or policymaker character. An exemption is available, as provided below, for a person in any such position classified below GS-16 (or the rate of basic pay for which is less than the minimum rate of basic pay fixed for GS-16) who has no role in advising or making policy determinations with respect to agency programs or policies. Such persons may include chauffeurs, private secretaries, stenographers and those who hold positions of similar nature, consistent with the basic criterion set forth in the preceding sentence.

(b) The exclusion of any position will be effective as of the time the Commission files with the Office of Government Ethics a list and description of each position for which exclusion is

sought, and the identity of its current occupant. Such a list must be filed with the Office of Government Ethics on or before the date on which such reports are due under the Act.

(c) In the event that the Office of Government Ethics finds that one or more positions have been improperly excluded, it will so advise the Commission and set a date for the filing of the report.

§ 706.22 Information required to be reported—reporting forms.

Information required to be reported by the Act shall be set forth in the manner specified in, and in accordance with the instructions contained in, Standard Forms issued by the Office of Personnel Management, to be used as follows:

(a) Standard Form 278—for use by an officer or employee filing (1) an annual report pursuant to section 201(d) of the Act, or (2) a departure report upon termination of employment, pursuant to section 201(e) of the Act;

(b) Standard Form 278A—for use by (1) an individual assuming a position for which reporting is required pursuant to section 201(a) of the Act; or (2) an individual whose nomination has been transmitted by the President to the Senate, pursuant to section 201(b) of the Act.

§ 706.23 Review of reports.

(a) Financial reports are reviewed by the Commission's designated Ethics official or the Director of the Office of Government Ethics, as appropriate. Reports are to be reviewed within 60 days after the date of their filing or transmittal to the Office of Government Ethics.

(b) After reviewing a report, the reviewing official is required to:

(1) State upon the report that the reporting individual is in compliance with applicable laws and regulations and to sign the report;

(2) Notify the reporting individual that additional information is required to be submitted and the time by which it must be submitted; or

(3) Notify the reporting individual that the report indicates noncompliance and afford the individual a reasonable opportunity for a written or oral

response after which the reviewing official reaches an opinion whether the individual is in compliance.

(c) If the reviewing official determines that the reporting individual is not in compliance with applicable laws and regulations, the reviewing official will notify the individual of that opinion, and after an opportunity for personal consultation, notify the individual of the steps which should be taken to assure compliance and the date by which such steps should be taken.

(d) The use of any steps to bring the individual in compliance are to be in accordance with regulations issued by the Director of the Office of Government Ethics.

(e) To assist employees in avoiding situations in which they would not be in compliance with applicable laws and regulations, the designated Commission ethics official is to maintain a list of those circumstances or situations which have resulted or may result in noncompliance and the lists are to be periodically published and furnished to individuals required to file reports under this Act.

§ 706.24 Public access to financial disclosure reports.

(a) Pursuant to section 205(b) of the Act, each report will be made available for public inspection within 15 days after the report is received by the agency, whether or not the review of the report prescribed by section 206 of the Act has been completed.

(b) Pursuant to section 205(b) of the Act, as amended by Pub. L. 96-19, the following rules are applicable to public access to financial reports:

(1) A financial disclosure report may not be made available to any person nor may a copy thereof be provided to any person except upon written application by such person stating:

(i) That person's name, occupation, and address;

(ii) The name and address of any other person or organization on whose behalf the inspection or copy is requested; and

(iii) That such person is aware that it is unlawful to obtain or use a report:

(A) For any unlawful purpose;

(B) For any commercial purpose, other than by news and communications media for dissemination to the general public;

(C) For determining or establishing the credit rating of any individual; or

(D) For use, directly or indirectly, in the solicitation of money for any political, charitable, or other purpose. Any application for a report shall be available to the public during the period in which the requested report is available to the public.

(c) Requests for copies of financial disclosure reports of officers appointed by the President by and with the advice and consent of the Senate, as well as nominees to such offices and designated Commission ethics officials, may be directed to the Director of the Office of Government Ethics.

(d) To gain access to or to obtain a copy of a report filed with the Commission, an individual should appear in person at the office of the Solicitor of the Commission, 1121 Vermont Avenue, NW., Washington, DC 20425, during the hours 8:30 a.m. to 4:30 p.m., and complete an application form. Requests by mail should contain the information described in paragraph (b) of this section, together with the signature of the requester. Requests which do not contain the required information will be returned. Notice of the statutory prohibitions on use will be attached to copies of reports provided in response to a request otherwise properly filled out.

PART 707—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY U.S. COMMISSION ON CIVIL RIGHTS

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707.12 Compliance procedures.

AUTHORITY: 29 U.S.C. 794.

SOURCE: 55 FR 5786, Feb. 16, 1990, unless otherwise noted.

§ 707.1 Purpose.

The purpose of this part is to effectuate section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of handicap in programs or activities conducted by Executive agencies or the United States Postal Service.

§ 707.2 Application.

This part applies to all programs and activities, including employment, conducted by the Agency.

§ 707.3 Definitions.

For the purposes of this part, the term—

(a) *Agency* means the U.S. Commission on Civil Rights and its State Advisory Committees.

(b) *Auxiliary aids* means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in, and enjoy the benefits of, programs or activities conducted by the Agency. For example, auxiliary aids useful for persons with impaired vision include readers, Brailled materials, audio recordings, and other similar services and devices. Auxiliary aids useful for persons with impaired hearing include telephone handset amplifiers, telephones compatible with hearing aids, telecommunication devices for deaf persons (TDD's), interpreters, notetakers, written materials, and other similar services and devices.

(c) *Complete complaint* means a written statement that contains the complainant's name and address and describes the Agency's alleged discriminatory action in sufficient detail to inform the Agency of the nature and date of the alleged violation of section 504. It shall be signed by the complainant or by someone authorized to do so on his or her behalf. Complaints filed on behalf of classes or third parties shall

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describe or identify (by name, if possible) the alleged victims of discrimination.

(d) *Facility* means all or any portion of buildings, structures, equipment, roads, walks, parking lots, vehicles, or other real or personal property.

(e) *Individual with handicaps* means any person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment. As used in this definition, the phrase:

(1) *Physical or mental impairment* includes—

(i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological, musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or

(ii) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term *physical or mental impairment* includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, drug addiction, and alcoholism.

(2) *Major life activities* includes functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(3) *Has a record of such an impairment* means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(4) *Is regarded as having an impairment* means—

(i) Has a physical or mental impairment that does not substantially limit major life activities but is treated by the Agency as constituting such a limitation;

(ii) Has a physical or mental impairment that substantially limits major

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life activities only as a result of the attitudes of others toward such impairment; or

(iii) Has none of the impairments defined in paragraph (e)(1) of this definition but is treated by the Agency as having such an impairment.

(f) *Qualified individual with handicaps* means—

(1) With respect to any Agency program or activity under which a person is required to perform services or to achieve a level of accomplishment, an individual with handicaps who meets the essential eligibility requirements and who can achieve the purpose of the program or activity without modifications in the program or activity that the Agency can demonstrate would result in a fundamental alteration in its nature; and

(2) With respect to employment, an individual with handicaps who meets the definition set forth in 29 CFR 1613.702(f), which is made applicable to this part by § 707.7 of this rule.

(3) With respect to any other Agency program or activity, an individual with handicaps who meets the essential eligibility requirements for participation in, or receipt of benefits from, that program or activity.

(g) *Section 504* means section 504 of the Rehabilitation Act of 1973 (Pub. L. 93-112, 87 Stat. 394 (19 U.S.C. 794), as amended by the Rehabilitation Act Amendments of 1974 (Pub. L. 93-516, 88 Stat. 1617); the Rehabilitation, Comprehensive Services, and Developmental Disabilities Act of 1978 (Pub. L. 95-602, 92 Stat. 2955); the Rehabilitation Act Amendments of 1986 (Pub. L. 99-506, 100 Stat. 1810); and the Civil Rights Restoration Act of 1987 (Pub. L. 100-259, 102 Stat. 28). As used in this part, section 504 applies only to programs or activities conducted by the Agency. The Agency does not operate any programs of Federal financial assistance to other entities.

§ 707.4 Self-evaluation and remedial measures.

(a) The Agency shall, within one year of the effective date of this part, evaluate its current policies and practices, and the effects thereof, that do not or may not meet the requirements of this part, and, to the extent modification of

any such policies and practices is required, the Agency shall proceed to make the necessary modifications.

(b) The Agency shall provide an opportunity to interested persons, including individuals with handicaps and organizations representing individuals with handicaps, to participate in the self-evaluation process by submitting comments (both oral and written).

(c) The Agency shall, for at least three years following completion of the evaluation required under paragraph (a) of this section, maintain on file and make available for public inspection:

(1) A description of areas examined and any problems identified; and

(2) A description of any modifications made.

§ 707.5 Notice.

(a) The Agency shall make available to all employees, applicants, and other interested persons, as appropriate, information regarding the provisions of this part and its applicability to the programs or activities conducted by the Agency, and such information shall be made available to the extent the Staff Director finds necessary to apprise such persons of the protections against discrimination assured them by section 504 and this part.

(b) The Agency shall ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of accessible services, activities, and facilities.

(c) The Agency shall take appropriate steps to provide individuals with handicaps with information regarding their section 504 rights under the Agency's programs or activities.

§ 707.6 General prohibitions against discrimination.

(a) No qualified individual with handicaps shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity conducted by the Agency.

(b)(1) The Agency, in providing any aid, benefit, or service, shall not, directly or through contractual, licensing, or other arrangements, on the basis of handicap—

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(i) Deny a qualified individual with handicaps the opportunity to participate in or benefit from the aid, benefit, or service;

(ii) Afford a qualified individual with handicaps an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

(iii) Provide a qualified individual with handicaps with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;

(iv) Provide different or separate aid, benefits, or services to individuals with handicaps or to any class of individuals with handicaps than is provided to others unless such action is necessary to provide qualified individuals with handicaps with aid, benefits, or services that are as effective as those provided to others;

(v) Deny a qualified individual with handicaps the opportunity to participate as a member of planning or advisory boards or committees; or

(vi) Otherwise limit a qualified individual with handicaps in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service.

(2) The Agency shall not deny a qualified individual with handicaps the opportunity to participate in programs or activities that are not separate or different, despite the existence of permissibly separate or different programs or activities.

(3) The Agency shall not, directly or through contractual or other arrangements, utilize criteria or methods of administration the purpose or effect of which would—

(i) Subject qualified individuals with handicaps to discrimination on the basis of handicap; or

(ii) Defeat or substantially impair accomplishment of the objectives of a program or activity, with respect to individuals with handicaps.

(4) The Agency shall not, in determining the site or location of a facility or activity make selections the purpose or effect of which would—

(i) Exclude individuals with handicaps from, deny them the benefits of,

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or otherwise subject them to discrimination under any program or activity conducted by the Agency; or

(ii) Defeat or substantially impair the accomplishment of the objectives of a program or activity with respect to individuals with handicaps.

(5) The Agency, in the selection of procurement contractors, shall not use criteria that subject qualified individuals with handicaps to discrimination on the basis of handicap.

(c) The exclusion of nonhandicapped persons from the benefits of a program limited by Federal statute or Executive order to individuals with handicaps or the exclusion of a specific class of individuals with handicaps from a program limited by Federal statute or Executive order to a different class of individuals with handicaps is not prohibited by this part.

(d) The Agency shall administer programs and activities in the most integrated setting appropriate to the needs of qualified individuals with handicaps.

§ 707.7 Employment.

No qualified individual with handicaps shall, on the basis of handicap, be subjected to discrimination in employment under any program or activity conducted by the Agency. The definitions, requirements, and procedures of section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791), as established by the Equal Employment Opportunity Commission in 29 CFR part 1613, shall apply to employment in programs or activities conducted by the Agency.

§ 707.8 Physical access.

(a) *Discrimination prohibited.* Except as otherwise provided in this section, no qualified individual with handicaps shall, because the Agency's facilities are inaccessible to or unusable by individuals with handicaps, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity conducted by the Agency.

(b) *Existing facilities-program access—*
(1) *Existing facilities defined.* For the purpose of this section, "existing facilities" means those facilities owned, leased or used through some other arrangement by the Agency on March 28, 1990.

(2) *General.* The Agency shall operate each program or activity conducted in an existing facility so that the program or activity, when viewed in its entirety, is readily accessible to and usable by individuals with handicaps. This paragraph does not—

(i) Necessarily require the Agency to make each of its existing facilities accessible to and usable by individuals with handicaps.

(ii) Require the Agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where Agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the Agency has the burden of proving that compliance with this paragraph would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the Staff Director or his or her designee after considering all Agency resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action would result in such an alteration or such burdens, the Agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that individuals with handicaps receive the benefits and services of the program or activity.

(3) *Methods.* (i) The Agency may comply with the requirements of this section through such means as redesign of equipment, reassignment of services to accessible buildings, assignment of aides to individuals with handicaps, delivery of services at alternative accessible sites, alteration of existing facilities and construction of new facilities, use of accessible vehicles, or any other methods that result in making its program or activities readily accessible to and usable by individuals with handicaps.

(ii) The Agency is not required to make structural changes in existing facilities where other methods are effective

in achieving compliance with paragraph (b)(2) of this section. The Agency, in making alterations to existing buildings to achieve program accessibility, shall meet accessibility requirements imposed by the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151 through 4157), as established in 41 CFR 101-19.600 to 101-19.607.

(iii) In choosing among available methods for meeting the requirements of this section, the Agency shall give priority to those methods that offer programs and activities to qualified individuals with handicaps in the most integrated setting appropriate to the needs of qualified individuals with handicaps.

(4) *Time period for compliance.* The Agency shall comply with the obligations established under this section within sixty days of the effective date of this part, except that where structural changes in facilities are undertaken, such changes shall be made within three years of the effective date of this part, but in any event as expeditiously as possible.

(5) *Transition plan.* In the event that structural changes to facilities will be undertaken to achieve program accessibility, the Agency shall develop, within 6 months of the effective date of this part, a transition plan setting forth the steps necessary to complete such changes. The Agency shall provide an opportunity to interested persons, including individuals with handicaps and organizations representing individuals with handicaps, to participate in the development of the transition plan by submitting comments (both oral and written). A copy of the transition plan shall be made available for public inspection. The plan shall, at a minimum—

(i) Identify physical obstacles in the Agency's facilities that limit the accessibility of its programs or activities to individuals with handicaps;

(ii) Describe in detail the methods that will be used to make the facilities accessible;

(iii) Specify the schedule for taking the steps necessary to achieve compliance with this paragraph and, if the time period of the transition plan is longer than 1 year, identify steps that

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will be taken during each year of the transition period; and

(iv) Indicate the official response for implementation of the plan.

(6) The Agency shall provide signs at a primary entrance to each of its inaccessible facilities, directing users to a location at which they can obtain information about accessible facilities. The international symbol for accessibility shall be used at each primary entrance of an accessible facility.

(c) *New purchases, leases or other arrangements.* (1) Any building or facility acquired after March 28, 1990, whether by purchase, lease (other than lease renewal), or any other arrangement, shall be readily accessible to and usable by individuals with handicaps.

(2) Nothing in this paragraph requires the Agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where Agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the Agency has the burden of proving that compliance with this paragraph would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the Staff Director or his or her designee after considering all Agency resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action would result in such an alteration or such burdens, the Agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that individuals with handicaps receive the benefits and services of the program or activity.

(d) *New construction and alterations.* Each building or part of a building that is constructed or altered by, on behalf of, or for the use of the Agency shall be designed, constructed, or altered so as to be readily accessible to and usable by individuals with handicaps in accordance with the requirements imposed by the Architectural Barriers

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Act of 1968, as amended (42 U.S.C. 4151 through 4157), as established in 41 CFR 101–19.600 to 101–19.607.

707.9 Access to communications.

(a) *Discrimination prohibited.* Except as otherwise provided in this section, no qualified individual with handicaps shall, because the Agency's communications are inaccessible to or unusable by individuals with handicaps, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity conducted by the Agency.

(b) The Agency shall take appropriate steps to ensure effective communication with applicants, participants, personnel of other Federal entities, and members of the public.

(c) *Specific requirements regarding oral communications—*(1) *Telecommunications devices for deaf persons.* (i) The Agency headquarters and each regional office shall maintain and reliably answer at least one telecommunications device for deaf persons (TDD) or equally effective telecommunications device.

(ii) The Agency shall ensure that all Agency letterhead, forms, and other documents listing any Agency telephone number list the appropriate TDD numbers.

(2) *Interpreter service.* (i) The Agency shall establish a reliable system for the provision of qualified interpreters to individuals with handicaps for Agency programs or activities. This provision does not require the Agency to have an interpreter on staff, but does require the Agency to be able to provide a qualified interpreter on reasonable notice.

(ii) Notice of the availability of interpreter service shall be included in all announcements notifying the public of Agency activities to which the public is invited or which it is permitted to attend, including but not limited to the U.S. Commission on Civil Rights' meetings, consultations, hearings, press conferences and State Advisory Committee conferences and meetings. This notice shall designate the Agency official(s) and the address, telephone and TDD number to call to request interpreter services.

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(d) *Specific requirements for printed communications.* (1) The Agency shall establish a system to provide to individuals with handicaps appropriate reader or taping service for all Agency publications which are available to the public. This provision does not require the Agency to have a reader or taper or staff, but does require the Agency to be able to provide appropriate reader or taping service within a reasonable time and on reasonable notice. The Agency shall effectively notify qualified individuals with handicaps of the availability of reader or taping services.

(2) Notice of the availability of reader or taping service shall be included in all publications which are available to the public. This notice shall designate the Agency official(s) and the address, telephone and TDD number to call to request interpreter services.

(e) Nothing in this section or § 707.10 requires the Agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where Agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the Agency has the burden of proving that compliance with this section or § 707.10 would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the Staff Director or his or her designee after considering all Agency resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action required to comply with this paragraph would result in such an alteration or such burdens, the Agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that, to the maximum extent possible, individuals with handicaps receive the benefits and services of the program or activity.

§ 707.10 Auxiliary aids.

(a) The Agency shall furnish appropriate auxiliary aids where necessary

to afford an individual with handicaps an equal opportunity to participate in, and enjoy the benefits of, a program or activity conducted by the Agency.

(b) In determining what type of auxiliary aid is necessary, the Agency shall give primary consideration to the requests of the individual with handicaps.

(c) The Agency need not provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature.

§ 707.11 Eliminating discriminatory qualifications and selection criteria.

The Agency shall not make use of any qualification standard, eligibility requirement, or selection criterion that excludes particular classes of individuals with handicaps from an Agency program or activity merely because the persons are handicapped, without regard to an individual's actual ability to participate. An irrebuttable presumption of inability to participate based upon a handicap shall be permissible only if the condition would, in all instances, prevent an individual from meeting the essential eligibility requirements for participating in, or receiving the benefits of, the particular program or activity.

§ 707.12 Compliance procedures.

(a) Except as provided in paragraph (b) of this section, this section applies to all allegations of discrimination on the basis of handicap in programs or activities conducted by the Agency.

(b) The Agency shall process complaints alleging violations of section 504 with respect to employment according to the procedures established by the Equal Employment Opportunity Commission in 29 CFR part 1613 pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791).

(c) Responsibility for implementation and operation of this section shall be vested in the Office of General Counsel.

(d) The Agency shall accept and investigate all complete complaints for which it has jurisdiction. All complete complaints must be filed within 180

days of the alleged act of discrimination. The Agency may extend this time period for good cause.

(e) If the Agency receives a complaint over which it does not have jurisdiction, it shall promptly notify the complainant and shall make reasonable efforts to refer the complaint to the appropriate Government entity.

(f) The Agency shall notify the Architectural and Transportation Barriers Compliance Board upon receipt of any complaint alleging that a building or facility that is subject to the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151 through 4157), is not readily accessible to and usable by individuals with handicaps.

(g) Within 180 days of the receipt of a complete complaint for which it has jurisdiction, the Agency shall notify the complainant of the results of the investigation in a letter containing—

(1) Findings of fact and conclusions of law;

(2) A description of a remedy for each violation found; and

(3) A notice of the right to appeal.

(h) Appeals of the findings of fact and conclusions of law or remedies must be filed by the complainant within 90 days of receipt from the Agency of the letter required by §707.12(g). The Staff Director may extend this time for good cause.

(i) Timely appeals shall be accepted and processed by the Staff Director or the Staff Director's designee.

(j) The Agency shall notify the complainant in writing of the results of the appeal within 60 days of the receipt of the request. If the head of the Agency determines that additional information is needed from the complainant, it shall have 60 days from the date it receives the additional information to make its determination on the appeal.

(k) The time limits cited in paragraphs (d), (g), (h), and (j) of this section may be extended for an individual case when the Staff Director determines that there is good cause, based on the particular circumstances of that case, for the extension.

(l) The Agency may delegate its authority for conducting complaint investigations to other Federal agencies, except that the authority for making

the final determination may not be delegated to another Agency.

PART 708—COLLECTION BY SALARY OFFSET FROM INDEBTED CURRENT AND FORMER EMPLOYEES

Sec.

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708.14 Interest, penalties, and administrative costs.

AUTHORITY: 5 U.S.C. 5514; sec. 8(1) of E.O. 11609; redesignated in sec. 2–1 of E.O. 12107.

SOURCE: 58 FR 4351, Jan. 14, 1993, unless otherwise noted.

§708.1 Purpose and scope.

(a) These regulations provide the procedure pursuant to 5 U.S.C. 5514 and 5 CFR part 550 subpart K for the collection by administrative offset of a Federal employee's salary without his/her consent to satisfy certain debts owed to the Federal government. This procedure applies to all Federal employees who owe debts to the U.S. Commission on Civil Rights ("the Commission"). This provision does not apply when the employee consents to recovery from his/her current pay account.

(b) This procedure does not apply to debts or claims arising under:

(1) The Internal Revenue Code of 1954, as amended (26 U.S.C. 1 et seq.);

(2) The Social Security Act (42 U.S.C. 301 et seq.);

(3) The tariff laws of the United States; or

(4) To any case where collection of a debt by salary offset is explicitly provided for or prohibited by another statute (e.g., travel advances in 5 U.S.C. 5705 and employee training expenses in 5 U.S.C. 4108).

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(c) The Commission shall except from salary offset provisions any adjustments to pay arising out of an employee's election of coverage or a change in coverage under a Federal benefits programs requiring periodic payroll deductions from pay, if the amount to be recovered was accumulated over four pay periods or less.

(d) These procedures do not preclude an employee or former employee from requesting a waiver of a salary overpayment under 5 U.S.C. 5584, 10 U.S.C. 2774, or 32 U.S.C. 716 or in any way questioning the amount or validity of the debt by submitting a subsequent claim to the General Accounting Office (GAO) in accordance with procedures prescribed by the GAO. In addition, this procedure does not preclude an employee from requesting a waiver pursuant to other statutory provisions applicable to the particular debt being collected.

§ 708.2 Policy.

It is the policy of the Commission to apply the procedures(s) in these regulations uniformly and consistently in the collection of internal debts from its current and former employees.

§ 708.3 Definitions.

For the purposes of these regulations the following definitions apply:

(a) *Agency* means (1) an Executive agency as defined in section 105 of title 5 United States Code, including the U.S. Postal Service and the U.S. Postal Rate Commission;

(2) A military department as defined in section 102 of title 5, United States Code;

(3) An agency or court in the judicial branch, including a court as defined in section 610 of title 28, United States Code, the District Court for the Northern Mariana Islands, and the Judicial panel on Multidistrict Litigation;

(4) An agency of the legislative branch, including the U.S. Senate and the U.S. House of Representatives; and

(5) Other independent establishments that are entities of the Federal Government.

(b) *Creditor* agency means the agency to which the debt is owed.

(c) *Debt* means an amount owed to the United States from sources which

include loans insured or guaranteed by the United States, and amounts due the United States from fees, leases, rents, royalties, services, sales of real or personal property, overpayments, penalties, damages, interest, fines and forfeitures (except those arising under the Uniform Code of Military Justice), and all other similar sources.

(d) *Assistant Staff Director for Management* means the Assistant Staff Director for Management of the U.S. Commission on Civil rights or his/her absence, or in the event of a vacancy in the position or its elimination, the Personnel Officer.

(e) *Disposable pay* means that part of current basic pay, special pay, incentive pay, retired pay, retainer pay, or in the case of an employee not entitled to basic pay, other authorized pay remaining from an employee's Federal pay after required deductions for social security, Federal, state or local income tax, health insurance premiums, retirement contributions, life insurance premiums, Federal employment taxes, and any other deductions that are required to be withheld by law.

(f) *Employee* means a current employee of an agency, including a current member of the Armed Forces or a Reserve of the Armed Forces (Reserves).

(g) *Former employee* means an employee who is no longer employed with the Commission but is currently employed with another Federal agency.

(h) *FCCS* means the Federal Claims Collection Standards jointly published by the Department of Justice and the General Accounting Office at 4 CFR 101.1 et seq.

(i) *Hearing official* means an individual responsible for conducting any hearing with respect to the existence or amount of a debt claimed, and who renders a decision on the basis of such hearing. A hearing official may not be under the supervision or control of the Assistant Staff Director for Management of the U.S. Commission on Civil Rights.

(j) *Paying agency* means the agency employing the individual who owes the debt and is responsible for authorizing the payment of his or her current pay.

(k) *Pay interval* will normally be the biweekly pay period but may be some

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regularly recurring period of time in which pay is received.

(l) *Retainer Pay* means the pay above the maximum rate of an employee's grade which he/she is allowed to keep in special situations rather than having the employee's rate of basic pay reduced.

(m) *Salary offset* means an administrative offset to collect a debt under 5 U.S.C. 5514 by deduction(s) at one or more officially established pay intervals from the current pay account of an employee without his or her consent.

(n) *Waiver* means the cancellation, remission, forgiveness, or non-recovery of a debt allegedly owed by an employee to an agency as permitted or required by 5 U.S.C. 5584, 10 U.S.C. 2774, or 32 U.S.C. 716, 5 U.S.C. 8346(b) or any other law.

§ 708.4 Applicability.

These regulations are to be followed when:

(a) The U.S. Commission on Civil Rights is owed a debt by an individual who is a current employee of the Commission; or

(b) The U.S. Commission on Civil Rights is owed a debt by an individual currently employed by another Federal agency; or

(c) The Commission employs an individual who owes a debt to another Federal agency.

§ 708.5 Notice.

(a) Deductions shall not be made unless the employee who owes the debt has been provided with written notice signed by the Assistant Staff Director for Management (ASDM) or in his/her absence, or in the event of a vacancy in that position or its elimination the Personnel Officer (or the U.S. Department of Agriculture, National Finance Center acting on behalf of the Commission) of the debt at least 30 days before salary offset commences.

(b) The written notice from the ASDM, acting on behalf of the Commission, as the creditor agency, shall contain:

(1) A statement that the debt is owed and an explanation of its origin, nature, and amount;

(2) The agency's intention to collect the debt by deducting from the employee's current disposable pay account;

(3) The amount, frequency, proposed beginning date, and duration of the intended deduction(s);

(4) An explanation of the requirements concerning the current interest rate, penalties, and administrative costs, including a statement that such charges will be assessed unless excused in accordance with the Federal Claims Collections Standards (4 CFR 101.1 et seq.);

(5) The employee's right to inspect, request, or receive a copy of the government records relating to the debt;

(6) The employee's right to enter into a written repayment schedule for the voluntary repayment of the debt in lieu of offset;

(7) The right to a hearing conducted by an impartial hearing official (either an administrative law judge or an official who is not under the control of the Commission);

(8) The method and time period for petitioning for a hearing;

(9) A statement that the timely filing (i.e., within 15 calendar days) of a petition for a hearing will stay the commencement of collection proceedings;

(10) A statement that a final decision on the hearing (if one is requested) will be issued at the earliest practical date but not later than 60 days after the filing of the petition requesting the hearing unless the employee requests and the hearing official grants a delay in the proceedings.

(11) A statement that an employee knowingly submitting false or frivolous statements (5 CFR part 550.1101), representations, or evidence may subject the employee to disciplinary procedures under 5 U.S.C. chapter 75 and 5 CFR part 752; penalties under the False Claims Act, 31 U.S.C. 3729–3731; or criminal penalties under 18 U.S.C. 286, 287, 1001, and 1002;

(12) A statement of other rights and remedies available to the employee under statutes or regulations governing the program for which the collection is being made;

(13) A statement that an employee will be promptly refunded any amount paid or deducted for a debt which is later waived or found not valid unless

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there are applicable contractual or statutory provisions to the contrary; and

(14) The name, address, and phone number of an official who can be contacted concerning the indebtedness.

§ 708.6 Petitions for hearing.

(a) Except as provided in paragraph (d) of this section, an employee who wants a hearing must file a written petition for a hearing to be received by the Assistant Staff Director for Management not later than 15 calendar days from the date of receipt of the Notice of Offset. The petition must state why the employee believes the determination of the Commission concerning the existence or amount of the debt is in error.

(b) The petition must be signed by the employee and should identify and explain with reasonable specificity and brevity the facts, evidence, and witnesses which the employee believes support his/her position.

(c) If the employee objects to the percentage of disposable pay to be deducted from each check, the petition should state the objection and the reasons for it.

(d) If the employee files a petition for a hearing later than the 15 calendar days from the date of receipt of the Notice of Offset, as described in paragraph (a) of this section, the hearing official may accept the request if the employee can show that there was good cause (such as due to circumstances beyond his/her control or because he/she was not informed or aware of the time limit) for failing to meet the deadline date.

(e) An employee will not be granted a hearing and will have his/her disposable pay offset in accordance with the ASDM's offset schedule if he/she fails to show good cause why he/she failed to file the petition for a hearing within the stated time limits.

§ 708.7 Hearing procedures.

(a) If an employee timely files a petition for a hearing under the above procedures, the Assistant Staff Director for Management shall select the time, date, and location for the hearing.

(b) The hearing shall be conducted by an impartial hearing official.

(c) The hearing shall conform to procedures contained in the Federal Claims Collection Standards, 4 CFR 102.3(c).

(d) The Commission, as the creditor agency, will have the burden of proving the existence of the debt.

(e) The employee requesting the hearing shall have the burden of proof to demonstrate that the existence or amount of the debt is in error.

§ 708.8 Written decision.

(a) The hearing official shall issue a written opinion no later than sixty (60) days after the filing of the petition for hearing; or no longer than sixty (60) days from the proceedings if an extension has been granted pursuant to § 708.5(b)(10).

(b) The written opinion will include: A statement of the facts presented to demonstrate the nature and origin of the alleged debt; the hearing official's analysis, findings, and conclusions; the amount and validity of the debt; and if applicable, the repayment schedule.

§ 708.9 Coordinating offset with another Federal agency.

(a) The Commission is the creditor agency when the Assistant Staff Director for Management determines that an employee of another Federal agency owes a delinquent debt to the Commission. The Assistant Staff Director for Management shall, as appropriate:

(1) Arrange for a hearing upon the proper petitioning by the employee;

(2) Certify in writing that the employee of the paying agency owes the debt, the amount, and basis of the debt, the date on which payment is due, the date the Government's right to collect the debt first accrued, and that the Commission's regulations for salary offset have been approved by the Office of Personnel Management;

(3) If the collection must be made in installments, the Commission, as the creditor agency, will advise the paying agency of the amount or percentage of disposable pay to be collected in each installment and the number and the commencement date of the installments;

(4) Advise the paying agency of the actions taken under 5 U.S.C. 5514(a) and provide the dates on which action

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was taken, unless the employee has consented to salary offset in writing or signed a statement acknowledging receipt of procedures required by law. The written consent or acknowledgment must be sent to the paying agency;

(5) If the employee is in the process of separating, the Commission will submit its debt claim to the paying agency as provided in this part. The paying agency must certify any amounts already collected, notify the employee, and send a copy of the certification of the monies already collected and notice of the employee's separation to the Commission. If the paying agency is aware that the employee is entitled to Civil Service or Foreign Service Retirement and Disability Fund or similar payments, it must provide written notification to the agency responsible for making such payments stating the amount of the debt and indicating that the provisions of this part have been followed; and

(6) If the employee has already separated and all payments due from the paying agency have been paid, the Assistant Staff Director for Management may request, unless otherwise prohibited, that money payable to the employee from the Civil Service Retirement and Disability Fund or other similar funds be collected by administrative offset. The Commission will provide the agency responsible for these payments with a properly certified claim.

(b) The Commission is the paying agency when an employee of this agency owes a debt to another Federal agency which is the creditor agency.

(1) Upon receipt of a properly certified debt claim from a creditor agency, deductions will be scheduled to begin at the next established pay interval.

(2) The Commission must give the employee written notice that it has received a certified debt claim from a creditor agency (including the amount), and the date that deductions will be scheduled to begin and the amount of the deduction.

(3) The Commission shall not review the merits of the creditor agency's determination of the amount of the certified claim or of its validity.

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(4) If the employee transfers to another paying agency after the creditor agency has submitted its debt claim but before the debt is collected completely, the Commission must certify the total amount collected to the creditor agency with notice of the employee's transfer. One copy of this certification must be furnished to the employee. The creditor agency will submit a properly certified claim to the new paying agency before collection can be resumed.

(5) When the Commission, as a paying agency, receives an incomplete debt claim from a creditor agency, it must return the debt claim with a notice that procedures under 5 U.S.C. 5514 and this subpart must be provided and a properly certified debt claim received before action will be taken to collect from the employee's current pay account.

§ 708.10 Procedures for salary offset.

(a) Deductions to liquidate an employee's debt will be by the method and in the amount stated in the Assistant Staff Director for Management's written notice of intent to collect from the employee's current pay, unless alternative arrangements for repayment are made.

(b) If the employee filed a petition for a hearing with the Assistant Staff Director for Management before the expiration of the period provided, then deductions will begin after the hearing official has provided the employee with a hearing, and a final written decision has been rendered in favor of the Commission.

(c) A debt will be collected in a lump sum if possible.

(d) If an employee is financially unable to pay in one lump sum or the amount of the debt exceeds 15 percent of disposable pay for an officially established pay interval, collection must be made in installments. The size of the installment deduction(s) will bear a reasonable relationship to the size of the debt and the deduction will be established for a period not greater than the anticipated period of employment. The deduction for the pay intervals for any period must not exceed 15% of disposable pay unless the employee has agreed in writing to a deduction of a

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greater amount. If possible, the installment payment will be sufficient in size and frequency to liquidate the debt in no more than three years.

(e) Installment payments may be less than 15 percent of disposable pay if the Assistant Staff Director for Management determines that the 15 percent deduction would create an extreme financial hardship.

(f) Installment payments of less than \$25.00 per pay period or \$50.00 per month, will only be accepted in the most unusual circumstances.

(g) Unliquidated debts may be offset by the paying agency under 31 U.S.C. 3716 against any financial payment due to a separating employee including but not limited to final salary payment, retired pay, or lump sum leave, etc. as of the date of separation to the extent necessary to liquidate the debt.

(h) If the debt cannot be liquidated by offset from any final payment due a separated employee it may be recovered by the offset in accordance with 31 U.S.C. 3716 from any later payments due the former employee from the United States.

§ 708.11 Refunds.

(a) The Commission will refund promptly any amounts deducted to satisfy debts owed to the Commission when the debt is waived, found not owed to the Commission, or when directed by an administrative or judicial order; or

(b) The creditor agency will promptly return any amounts deducted and forwarded by the Commission to satisfy debts owed to the creditor agency when the debt is waived, found not owed, or

when directed by an administrative or judicial order;

(c) Upon receipt of monies returned in accordance with paragraph (b) of this section, the Commission will refund the amount to the current or former employee.

(d) Unless required by law, refunds under this subsection shall not bear interest nor shall liability be conferred to the Commission for debt or refunds owed by other creditor agencies.

§ 708.12 Statute of limitations.

If a debt has been outstanding for more than 10 years after the agency's right to collect the debt first accrued, the agency may not collect by salary offset unless facts material to the government's right to collect were not known and could not reasonably have been known by the official or officials who were charged with the responsibility for discovery and collection of such debts.

§ 708.13 Non-waiver of rights by payments.

An employee's involuntary payment of all or any part of a debt collected under these regulations will not be construed as a waiver of any rights that employee may have under 5 U.S.C. 5514 or any other provision of contract or law unless there are statutory or contractual provisions to the contrary.

§ 708.14 Interest, penalties, and administrative costs.

Charges may be assessed for interest, penalties, and administrative costs in accordance with the Federal Claims Collection Standards, 4 CFR 102.13.