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U.S. GOVERNMENT
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Title 35—Panama Canal

Part

CHAPTER I—Panama Canal Regulations 3

CHAPTER I—PANAMA CANAL REGULATIONS[1]

EDITORIAL NOTE: Upon entry into force on October 1, 1979, of the Panama Canal Treaty of 1977, the United States relinquished and Panama assumed plenary jurisdiction over what was the Canal Zone. Pursuant to the Panama Canal Act of 1979, Pub. L. 96–70, the statute implementing the new treaty, the Canal Zone Government was disestablished and the Panama Canal Company was replaced by a new United States Government agency, the Panama Canal Commission, which will operate the waterway until the termination of the treaty on December 31, 1999. Many of the functions performed by the two former Canal agencies will not be undertaken by the Panama Canal Commission.

As a result of the Treaty and Pub. L. 96–70, the regulations published in Title 35, have to be rewritten in accordance with the substantially different authority and responsibilities which the new agency has.

It should be noted that those regulations which have not been revised since October 1, 1979 must be read in light of the new definitions provided by section 3 of Pub. L. 96–70, which states in part as follows:

(b) Subject to the provisions of subsection (c) of this section, for purposes of applying the Canal Zone Code or other laws of the United States and regulations issued pursuant to such Code or other laws with respect to transactions, occurrences, or status on or after the effective date of this Act—

(1) ''Canal Zone'' shall be deemed to refer to the areas and installations in the Republic of Panama made available to the United States pursuant to the Panama Canal Treaty of 1977 and related agreements;

(2) ''Canal Zone waters'' and ''waters of the Canal Zone'' shall be deemed to refer to ''Panama Canal waters'' and ''waters of the Panama Canal'', respectively;

(3) ''Government of the Canal Zone'' or ''Canal Zone Government'' shall be deemed to refer to the United States of America;

(4) ''Governor of the Canal Zone'' or ''Governor'', wherever the reference is to the Governor of the Canal Zone, shall be deemed to refer to the Panama Canal Commission;

(5) ''Panama Canal Company'' or ''Company'' wherever the reference is to the Panama Canal Company, shall be deemed to refer to the Panama Canal Commission;

(6) In chapter 57 of title 5 of the Canal Zone Code, ''hospitals'' and ''Health Bureau'' shall be deemed to refer, respectively, to the hospitals operated by the United States in the Republic of Panama, and to the organizational unit operating such hospitals; and

(7) In chapter 57 of title 5 of the Canal Zone Code, in section 4784 of title 6 of such Code, and in section 2 of title 7 of such Code, ''health director'' shall be deemed to refer to the senior official in charge of the hospitals operated by the United States in the Republic of Panama.

(c) Any reference set forth in subsection (b) of this section shall apply except as otherwise provided in this Act or unless (1) such reference is inconsistent with the provisions of this Act, (2) in the context in which a term is used such reference is clearly not intended, or (3) a term refers to a time before the effective date of this Act.

Parts 1, 5, 53, 57, 59, 63, 65, 69, 127, and 129 have been removed because they are inconsistent with the provisions of the Panama Canal Treaty of 1977 and related agreements or with Pub.

[1] Pursuant to Pub. L. 96–70 and a document published at 44 FR 75306, Dec. 19, 1979, the chapter heading has been adjusted to read ''Panama Canal Regulations.''

L. 96–70. Other parts have been amended, revised or recodified to comply with the new statutory basis and agency organization.

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SUBCHAPTER A—ORGANIZATION AND ADMINISTRATION

PART 3—ORGANIZATION OF PANAMA CANAL COMMISSION

AUTHORITY: Issued under the authority vested in President by provisions of 3 U.S.C. 301; 22 U.S.C. 3811; EO 12215, dated May 27, 1980, 45 FR 36043.

Subpart A—Delegation of Panama Canal Functions

§ 3.1 Text of Executive Order 12215 of May 27, 1980.

By the authority vested in me as President of the United States of America by the Panama Canal Code (76A Stat. 1), as amended, by the Panama Canal Act of 1979 (93 Stat. 452; 22 U.S.C. 3601 *et seq.*), and by section 301 of Title 3 of the United States Code, it is hereby ordered as follows:

1–1. The Secretary of Defense.

1–101. The Secretary of Defense shall develop for the President's consideration an appropriate legislative proposal as required by section 3(d) of the Panama Canal Act of 1979 (93 Stat. 456; 22 U.S.C. 3602(d)). The Secretary of Defense shall coordinate development of this proposal with the Secretary of State and the heads of other interested Executive agencies.

1–102. The function vested in the President by section 1212(d)(1) of the Panama Canal Act of 1979 (93 Stat. 464; 22 U.S.C. 3652(d)(1)) to exclude employees of, or positions within, the Department of Defense from coverage under any provision of subchapter II, chapter 2 of title I of the Panama Canal Act of 1979, is delegated to the Secretary of Defense.

1–103. The function vested in the President by section 1281(b) of Title 6 of the Panama Canal Code (76A Stat. 455; 6 P.C.C. 1281(b)), as amended, with respect to areas and installations made available to the United States pursuant to the Agreement in Implementation of Article IV of the Panama Canal Treaty of 1977 is delegated to the Secretary of Defense.

1–104. The function vested in the President by section 1701 of the Panama Canal Act of 1979 (93 Stat. 492; 22 U.S.C. 3801), with respect to regulations applicable within the areas and installations made available to the United States pursuant to the Agreement in Implementation of Article IV of the Panama Canal Treaty of 1977, is delegated to the Secretary of Defense.

1–105. The functions vested in the President by sections 1243(c)(1) and 2401 of the Panama Canal Act of 1979 (93 Stat. 474 and 495; 22 U.S.C. 3681(c)(1) and 3851) are delegated to the Secretary of Defense.

1–106. The functions vested in the President by section 1502(a) of the Panama Canal Act of 1979 (93 Stat. 488; 22 U.S.C. 3782(a)) are delegated to the Secretary of Defense.

1–2. Coordination of Pay and Employment Practices.

1–201. In order to coordinate the policies and activities of agencies under subchapter II of chapter 2 of title I of the Panama Canal Act of 1979 (93 Stat. 463; 22 U.S.C. 3651 *et seq.*), each agency shall periodically consult with the Secretary of Defense with respect to the establishment of rates of pay, in order to develop compatible or unified systems for basic pay. In addition, each agency shall consult with the Secretary of Defense on such other matters as the Secretary may deem appropriate in order to develop compatible or unified employment practices.

1–202. The head of each agency shall, upon approval by the Secretary of Defense, adopt a schedule of basic pay pursuant to section 1215 of the Panama Canal Act of 1979 (93 Stat. 465; 22 U.S.C. 3655) and adopt regulations governing other matters relating to pay and employment practices.

1–203. The authority vested in the President by section 1223(a) of the Panama Canal Act of 1979 to coordinate the policies and activities of agencies (93 Stat. 467; 22 U.S.C. 3663(a)) is delegated to the Secretary of Defense. The Secretary shall exercise such functions in a manner which is in accord with the provisions of sections 1–201 and 1–202 of this Order.

1–3. Panama Canal Commission.

1–301. The functions vested in the President and delegated to the Secretary of Defense in this section 1–3 of this Order shall be carried out by the Secretary of Defense, who shall, in carrying out the said functions, provide, by redelegation or otherwise, for their performance, in a manner consistent with paragraph 3 of Article III of the Panama Canal Treaty of 1977, by the Panama Canal Commission.

1–302. The authority of the President under section 1104 of the Panama Canal Act of 1979 (93 Stat. 457; 22 U.S. 3614) to fix the compensation of and to define the authorities and duties of the Deputy Administrator and the Chief Engineer is delegated to the Secretary of Defense.

1–303. The functions vested in the President by sections 1418, 1801, and 2206 of the Panama Canal Act of 1979 (93 Stat. 487, 492, and 494; 22 U.S.C. 3778, 3811, and 3844) are delegated to the Secretary of Defense.

1–304. The authority of the President under section 1701 of the Panama Canal Act of 1979 (93 Stat. 492; 22 U.S.C. 3801) with respect to regulations applicable within the areas and installations made available to the United States pursuant to the Agreement in Implementation of Article III of the Panama Canal Treaty of 1977 is delegated to the Secretary of Defense.

1–305. The function vested in the President by section 1281(b) of Title 6 of the Panama Canal Code (76A Stat. 455; 6 P.C.C. 1281(b)), as amended, with respect to areas and installations in the Republic of Panama made available to the United States pursuant to the Agreement in Implementation of Article III of the Panama Canal Treaty of 1977 is delegated to the Secretary of Defense.

1–306. The functions vested in the President by sections 82 and 86 of Title 3 of the Panama Canal Code (76A Stat. 54 and 55; 3 P.C.C. 82 and 86), as amended, are delegated to the Secretary of Defense.

1–307. The functions vested in the President by subsections (a), (b) and (c) of section 8146 of Title 5 of the United States Code, as they apply to the employees of the Panama Canal Commission, are delegated to the Secretary of Defense.

1–308. Except to the extent heretofore delegated, the functions vested in the President pursuant to subchapter II of chapter 2 of title I of the Panama Canal Act of 1979 (93 Stat. 463) are hereby delegated to the Secretary of Defense.

1–4. Other Agencies.

1–401. The functions vested in the President by sections 1111 and 3301 of the Panama Canal Act of 1979 (93 Stat. 459 and 497; 22 U.S.C. 3621 and 3871), are delegated to the Secretary of State. The Secretary shall perform these functions in coordination with the Secretary of Defense.

1–402. The functions vested in the President by sections 1112(d), 1344(b), and 1504(b) of the Panama Canal Act of 1979 (93 Stat. 460, 484, and 488; 22 U.S.C. 3622(d), 3754(b), and 3784(b)) are delegated to the Secretary of State.

1–403. The functions vested in the President by section 1243(a)(1) of the Panama Canal Act of 1979 (93 Stat. 473; 22 U.S.C. 3681(a)(1)) are delegated to the Director of the Office of Personnel Management.

1–404. Paragraphs (22) and (23) of section 1 of Executive Order No. 11609, as amended, and Executive Order No. 11713 are revoked.

[51 FR 21359, June 12, 1986]

PART 7—CLAIMS OF EMPLOYEES OF PANAMA CANAL COMMISSION UNDER MILITARY PERSONNEL AND CIVILIAN EMPLOYEES' CLAIMS ACT OF 1964, AS AMENDED

Sec.

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7.2 Applicability and scope.
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7.11 Settlement.
7.12 Agents' or attorneys' fees.

AUTHORITY: Sec. 3, 78 Stat. 767; 31 U.S.C. 241.

SOURCE: 31 FR 12406, Sept. 17, 1966, unless otherwise noted.

§7.1 Definitions.

As used in this part:

(a) *The Act* means the Military Personnel and Civilian Employees' Claims Act of 1964, as amended (78 Stat. 767; 79 Stat. 789);

(b) *Employee* means an employee of the Panama Canal Commission (also referred to as *the Commission*) and includes a member of the uniformed services assigned to duty with the Commission;

(c) *Government* means the Panama Canal Commission unless the context indicates a broader meaning;

(d) *Chief Financial Officer* means the Chief Financial Officer of the Panama Canal Commission acting for and in behalf of the Commission;

(e) *Chief Accountant* means Chief Accountant of the Panama Canal Commission acting for and in behalf of the Commission;

(f) *Chief, Claims Branch,* means the Chief of the Claims Branch, Accounting Division, of the Panama Canal Commission acting for and in behalf of the Commission.

[31 FR 12406, Sept. 17, 1966, as amended at 44 FR 75308, Dec. 19, 1979]

§7.2 Applicability and scope.

Pursuant to the Act, the Government will settle and pay claims by employees for the loss of or damage to personal property which occurs incident to Government service. Each such claim must be substantiated and the possession of the property must be shown to have been reasonable, useful, or proper under the circumstances. The maximum amount allowable on any claim is $15,000. In lieu of a cash settlement, property may be replaced in kind at the option of the Government.

[42 FR 17875, Apr. 4, 1977]

§7.3 Claimants.

A claim may be filed by an employee or in his name by his spouse, as authorized agent, or by any other authorized agent or legal representative of the employee. If the employee is dead, the claim may be filed by his (a) spouse, (b) children, (c) father or mother, or both, or (d) brothers or sisters, or both. Payments in settlement of claims to survivors of employees will be made in the order of precedence set forth in this section.

§7.4 Conditions.

As prescribed by the Act, a claim is not allowable if:

(a) Claimant fails to present it in writing within 2 years after it accrues, except that if the claim accrues in time of war or in time of armed conflict in which any armed force of the United States is engaged or if such a war or armed conflict intervenes within 2 years after it accrues, and if good cause is shown, the claim may be presented not later than 2 years after that cause ceases to exist, or 2 years after the war or armed conflict is terminated, whichever is earlier;

(b) The loss occurred at quarters occupied by the claimant within the 50 States or the District of Columbia unless such quarters were assigned to the employee or otherwise provided in kind by the Government; or

(c) The loss was caused wholly or partly by the negligent or wrongful act of the claimant, his agent, or his employee.

§7.5 Principal types of claims payable.

The following examples are illustrative of the circumstances or situations out of which compensable claims may arise. Loss or damage due to other causes may also be payable under these regulations.

(a) Damage to or loss of property by fire, flood, hurricane or other unusual occurrence, or by theft, while located at:

(1) Quarters, wherever situated, if assigned or provided in kind by the Government.

(2) Quarters outside the 50 States and the District of Columbia without regard to whether assigned or provided in kind by the Government, unless the employee involved is a local or native resident.

(3) Any warehouse, or other place designated by a responsible official for the storage of the property.

(b) Damage to or loss of property due to a marine, rail, or aircraft accident, or other unusual occurrence.

(c) Damage to or loss of property, including vehicles, trailers, and property contained therein, which:

(1) Is incident to the performance of duty and is sustained as a result of or in connection with civil disturbance, public disorder, efforts to save human life or Government property, or a natural or other disaster; or

(2) Occurs in areas and installations in the Republic of Panama made available to the United States pursuant to the Panama Canal Treaty of 1977 and related agreements and results from vandalism that is determined to have been politically motivated.

(d) Damage to or loss of property which is incident to the performance of duty, *Provided*, That such damage or loss results from an incident that is not attributable to a common or usual risk of the claimant's employment.

(e) Damage to or loss of property used for the benefit of the Government at the direction of a responsible official.

(f) Money deposited with an authorized Government agent for safekeeping.

(g) Damages to or loss of property incident to transportation or storage pursuant to orders or in connection with travel under orders, including property in the custody of—

(1) A common or contract carrier or other commercial carrier under contract with the Government;

(2) An agent or agency of the Government; or

(3) The claimant, or while in a public or private conveyance in which he is being transported while in official travel status.

(Sec. 3(b)(1), Pub. L. 96–70, 93 Stat. 455)

[31 FR 12406, Sept. 17, 1966, as amended at 42 FR 17875, Apr. 4, 1977; 44 FR 75308, Dec. 19, 1979]

§ 7.6 Principal types of claims not payable.

The following are examples of types and categories of property for which compensation will not be allowed:

(a) Losses or damages totaling less than one dollar.

(b) Money or currency except when deposited with an authorized Government agent for safekeeping or except when lost incident to a marine, rail, aircraft, or other common disaster, or a natural disaster such as a fire, flood, hurricane, etc.

(c) Small items of substantial value such as cameras, watches, jewelry, and furs, which are lost, damaged, or stolen during shipment by ordinary means, e.g., with household goods or hold luggage.

(d) Articles being worn (unless allowable under § 7.5 (c) or (d)).

(e) Intangible property such as bank books, checks, notes, stock certificates, money orders, travelers checks, etc.

(f) Property owned by the United States, unless employee is financially responsible for it to another Government agency.

(g) Claims for loss or damage to motor vehicles or trailers or personal property contained therein (unless allowable under § 7.5 (c), (d) or (g)).

(h) Losses of insurers and subrogees.

(i) Losses recovered or recoverable from insurers and carriers.

(j) Losses recovered or recoverable pursuant to contract.

(k) Claims for damage or loss caused, in whole or in part, by the negligence or wrongful act of the employee or his agent.

(l) Property used for business or profit.

(m) Theft from the possession of the employee unless due care was used to protect possession.

(n) Property acquired, posessed or transported in violation of law or regulations.

(o) Loss in quarters located within the 50 States or the District of Columbia not assigned or otherwise provided in kind by the Government.

[31 FR 12406, Sept. 17, 1966, as amended at 42 FR 17875, Apr. 4, 1977; 44 FR 75308, Dec. 19, 1979]

§ 7.7 Types and quantity of property.

Claims are allowable only for such types and quantities of tangible personal property as to which its possession is determined to have been reasonable, useful, or proper under the attendant circumstances at the time of the loss or damage.

§ 7.8 Computation of award.

(a) *Lost or destroyed property*. The amount allowable for an item of property that is lost or destroyed may not exceed its actual value at the time the

loss occurs. Such value may be based upon the replacement cost at the place where claimant resides when award is made, subject to appropriate depreciation to reflect the age and condition of the item at the time of loss and to reduction for salvage value, if any. Property is considered ''destroyed'', for purposes of this section, if the cost of repairs would exceed the value of the property immediately prior to the incident out of which the claim arose.

(b) *Damaged property*. Normally the amount allowable for damaged property will be the cost of repairs, unless it is determined to be in the best interests of the Government to authorize a higher award.

(c) *Special limitations*. There is reserved to the Chief, Claims Branch, subject to the supervision of the Chief Accountant, the authority to fix the maximum amount payable for specific classes of articles, to establish limitations on the maximum quantity of an item for which payment will be allowed, and, when appropriate, to require that repairs be made by the Government.

[42 FR 17875, Apr. 4, 1977]

§7.9 Claims procedure.

The claimant must submit his claim in writing on a prescribed form covering employees claims for loss of or damage to personal property.

The form should be sent to the Panama Canal Commission, Chief, Claims Branch, Office of Financial Management, Unit 2300, APO AA 34011–2300 (or Balboa, Republic of Panama).

[44 FR 75308, Dec. 19, 1979, as amended at 59 FR 26122, May 19, 1994]

§7.10 Supporting papers.

In addition to the information provided on the claim form, the claimant may be required to furnish the following:

(a) Detailed estimates of the value of the property immediately before the incident out of which the claim arose and detailed estimates of the repair costs.

(b) With respect to claims involving thefts or losses in quarters or other places where the property was reasonably kept:

(1) A statement as to location of place where the theft or loss occurred;

(2) A statement as to what security precautions were taken to protect the property involved; and

(3) An explanation of the facts and circumstances surrounding the loss or theft.

(c) With respect to claims involving property being used for the benefit of the Government, a statement by the employee's supervisor evidencing that the claimant was required to provide such property or that his providing it was in the interest of the Government.

(d) As respects a claim filed by an agent or survivor, a power of attorney or other satisfactory evidence of authority to file.

[31 FR 12406, Sept. 17, 1966, as amended at 42 FR 17875, Apr. 4, 1977]

§7.11 Settlement.

Upon receipt of a claim under the regulations in this part, the Chief, Claims Branch, subject to the supervision of the Chief Accountant, shall make a determination with respect to its merits and, if allowable, authorize payment. If the claim is disallowed in whole or in part, the claimant shall be advised in writing as to the reason for the disallowance. The settlement determination by the Chief, Claims Branch, is final and conclusive.

[42 FR 17875, Apr. 4, 1977]

§7.12 Agents' or attorneys' fees.

As provided by the Act, fees payable to any agent or attorney in connection with services rendered in connection with a claim hereunder shall not exceed 10 per centum of the amount paid in settlement of such claim. Any person violating the provisions of the Act, as therein provided, shall be deemed guilty of a misdemeanor and upon conviction thereof is liable to a fine of up to $1,000.

PART 9—ORGANIZATION, FUNCTIONS, AND AVAILABILITY OF RECORDS—PANAMA CANAL COMMISSION

Subpart A—Organization and Functions of the Commission; Availability of Information and Official Records

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AUTHORITY: 5 U.S.C. 552, as amended by Pub. L. 99–570, 100 Stat. 3207; 22 U.S.C. 3611; E.O. 12600, 52 FR 23781, 3 CFR, 1987 Comp., p. 235.

SOURCE: 44 FR 75309, Dec. 19, 1979, unless otherwise noted.

Subpart A—Organization and Functions of the Commission; Availability of Information and Official Records

§ 9.1 Purpose of this subpart.

This subpart describes the organization and functions of the Panama Canal Commission (referred to in this part as ''the Commission'' or ''Agency'') and explains how a member of the public may request records from this agency under the Freedom of Information Act.

§ 9.2 Organization.

The principal office of the Panama Canal Commission is located at Balboa Heights, Republic of Panama. The Office of the Secretary of the Panama Canal Commission is located at International Square, 1825 I Street, NW., suite 1050, Washington, DC 20006–5402. The Commission also maintains a procurement office at 4400 Dauphine Street, New Orleans, LA 70146–6800.

[52 FR 31397, Aug. 20, 1987; 53 FR 16256, May 6, 1988, as amended at 59 FR 26122, May 19, 1994]

§ 9.3 Functions.

(a) The Panama Canal Commission, which replaced the Canal Zone Government and the Panama Canal Company effective October 1, 1979, is established in the executive branch of the United States by the Panama Canal Act of 1979 (Pub. L. 96–70, 93 Stat. 452) as an agency of the United States, for the purpose of maintaining and operating the Panama Canal and the facilities and appurtenances related thereto. As provided in section 1101 of that Act, the authority of the President with respect to the Commission is exercised through the Secretary of Defense.

(b) As provided in the Panama Canal Act of 1979, the supervision of the Commission is vested in a Board composed of nine members, one of whom is the Secretary of Defense or an officer of the Department of Defense designated by the Secretary. Not fewer than five

members of the Board are nationals of the United States; the remaining members are nationals of the Republic of Panama.

(c) The President appoints the members of the Board. The members of the Board who are United States nationals are appointed by and with the advice and consent of the Senate. Each member of the Board holds office at the pleasure of the President.

(d) The Administrator of the Commission, who is appointed by the President, by and with the advice and consent of the Senate, holds office at the pleasure of the President.

(e) The Commission maintains and operates the Panama Canal and facilities and appurtenances related thereto, including electric power, water, and telephone systems; procurement and storehouse facilities; motor transportation services; an agency press and duplicating center; marine and general repair shop; and an employees' housing system.

(The Panama Canal Act of 1979, secs. 1101, 1102, 1103, Pub. L. 96–70, 93 Stat. 456, 457)

§9.4 How to request general information or publications.

The Commission has an Office of Public Affairs which is responsible for providing information about the agency to members of the public and the press. If you are interested in general information about the Commission's activities, or copies of its publications, you should write, visit, or call this office. Address letters to: Panama Canal Commission, Office of Public Affairs, Unit 2300, APO AA 34011–2300 (or Balboa, Republic of Panama).

[46 FR 48659, Oct. 2, 1981, as amended at 52 FR 31397, Aug. 20, 1987; 53 FR 16256, May 6, 1988; 59 FR 26122, May 19, 1994]

§9.5 The Freedom of Information Act.

(a) The Freedom of Information Act (5 U.S.C. 552) is a law which creates a procedure for any person to request official records from United States Government agencies. The rest of the rules in this subpart explain how you may request official records from the Panama Canal Commission.

(b) The Freedom of Information Act requires every United States Government agency to make official records available to any person who requests them, unless the records that the person requests fall within one of more of the exceptions to availability listed in the law. For more details about these exceptions, see subsection (b) of section 552, Title 5, United States Code, available in libraries.

(c) The Freedom of Information Act does not require an agency to create records or compile information that you would like to have. The law deals only with making existing records available.

[44 FR 75309, Dec. 19, 1979, as amended at 52 FR 31397, Aug. 20, 1987; 53 FR 16256, May 6, 1988]

§9.6 How to make a Freedom of Information Act request.

(a) To make a request for a record using the Freedom of Information Act, you must:

(1) Write to the Panama Canal Commission, Agency Records Officer (Chief, Administrative Services Division), Unit 2300, APO AA 34011–2300 (or Balboa, Republic of Panama); and

(2) State in your letter that you are making a request under the Freedom of Information Act, and clearly mark the envelope ''Freedom of Information Act Request''. A request under 5 U.S.C. 552 which is not properly addressed and is not marked in this way shall not be considered to be received by the agency until it has actually been received by the Agency Records Officer.

(3) In your letter, reasonably describe the records you are seeking. Be as specific in describing the records as you can. Although it is not required, it will be helpful if, whenever possible, you supply in your letter specific information regarding dates, titles, file designations, the office where you believe the records may be found, and other information which may help to identify the records.

(b) The Panama Canal Commmission may request that you furnish information as to the purpose of your request. Such information is required to assist agency officials in categorizing your request in order to accurately assess fees.

[44 FR 75309, Dec. 19, 1979, as amended at 52 FR 31397, Aug. 20, 1987; 53 FR 16256, May 6, 1988; 59 FR 26122, May 19, 1994]

§ 9.7 How your Freedom of Information Act request will be handled.

(a) The official responsible for deciding whether your request will be granted is the Agency Records Officer. That official must make the decision and send you notification of it within ten working days after the Commission receives your request. In unusual circumstances, the Commission may extend the time for responding to your request. For details, see §9.10 of this part.

(b) If the Agency Records Officer denies your request, in whole or in part, the letters sent to you to notify you of this decision must:

(1) Tell you why the request is being denied;

(2) Tell you that you have the right, by appealing the decision, to require the agency to reconsider its decision; and

(3) Tell you how to make an appeal.

(c) If you request records or information which is in the files of the Commission but which originated in another Federal agency, the Agency Records Officer may refer your request to that agency. In that case, the Agency Records Officer will inform you that your request has been referred to the originating agency.

§ 9.8 How to make an appeal under the Freedom of Information Act.

(a) If you are not satisfied with the decision of the Agency Records Officer, you may require the Commission to reconsider that decision. This is called ''making an appeal.''

(b) To make an appeal, you must:

(1) Write to the Panama Canal Commission, Director, Office of Executive Administration, Unit 2300, APO AA 34011–2300 (or Balboa, Republic of Panama); and

(2) State in your letter that you are making an appeal under the Freedom of Information Act, and clearly mark the envelope ''Freedom of Information Act Appeal''; and

(3) Mail or deliver the letter of appeal within ten working days after you receive the letter from the Agency Records Officer.

(c) Although it is not required, it may be helpful if you clearly indicate in your appeal the reasons why you disagree with the decision on your request and your reasons for wanting the records.

[44 FR 75309, Dec. 19, 1979, as amended at 46 FR 48659, Oct. 2, 1981; 52 FR 31397, Aug. 20, 1987; 53 FR 16256, May 6, 1988; 59 FR 26122, May 19, 1994]

§ 9.9 How your Freedom of Information Act appeal will be handled.

(a) The official responsible for deciding whether to grant your appeal is the Director, Office of Executive Administration of the Panama Canal Commission. That official must make that decision and send you notification of it within 20 working days after receiving your appeal. In unusual circumstances, the Commission may extend the time for responding to your appeal. For details, see §9.10 of this part.

(b) If the Director, Office of Executive Administration denies your appeal, in whole or in part, the letter sent to you to notify you of this decision must:

(1) Tell you why the appeal is being denied;

(2) Tell you that this denial is the Commission's final decision; and

(3) Tell you that you have the right to request a U.S. District Court to review the denial of your appeal, as provided by 5 U.S.C. 552(a)(4)(B), as amended.

[44 FR 75309, Dec. 19, 1979, as amended at 46 FR 48659, Oct. 2, 1981]

§ 9.10 How the Commission may extend the time to respond to your request or appeal.

(a) In unusual circumstances, the Commission may extend the time for making a decision about your request or about your appeal. If the Commission does extend the time, it will do so by sending you a written notice signed by the Agency Records Officer. The notice will:

(1) Tell you why it is necessary to extend the time;

(2) Tell you how long the time has been extended; and

(3) Tell you the date when you can expect the decision about your request or your appeal to be sent to you.

(b) The Commission may extend the time for making a decision about your request or your appeal by a total of ten

working days. The extension period may be split between the request and the appeal, but it may not exceed ten working days overall.

(c) The unusual circumstances which may reasonably require an extension of time for the proper handling of your request or appeal are:

(1) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request; or

(2) The need to search for, collect, and appropriately examine a voluminous quantity of separate and distinct records which are demanded in a single request; or

(3) The need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of the Commission having substantial subject matter interest in the request.

§9.11 Fees for Freedom of Information Act requests.

(a) The following are fees charged by the Commission for document search and reproduction.

(1) Search for records: $7.10 per hour of search conducted by clerical personnel, and $23.50 per hour of search conducted by supervisory or professional personnel.

(2) Search requiring computers: $185.94 for the first two hours or fraction of the first two hours; $92.97 for each additional hour.

(3) Copying: $0.13 per page for the first copy of a record. The word ''page'' refers to a paper copy of a standard agency size which is 8½″ x 11″ or 11″ x 14″. For additional copies, you will be charged the official Panama Canal Commmission tariff rate for reproduction.

(4) Converting microfilm to paper copy: $0.13 per page for the first copy of a record. For additional copies, you will be charged the official Panama Canal Commission tariff rate for reproduction. Microfilm search charges will be at the clerical rate.

(5) Duplication of tape recordings: (i) *Labor costs:* $10.65 per ½ hour for 40 channel tape recording; $7.30 per ½ hour for basic tape recording; $9.35 per ½ hour for video tape recording. Minimum charge for taping is ½ hour.

(ii) *Material costs:* No cost will be assessed to tapes if provided by requester. If agency furnishes tapes, the requester will be charged direct purchasing costs.

(6) Duplication of photographs: Black and white, up to 8″ x 10″, $2.55 per print; color, up to 8″ x 10″, $9.20 per print.

(7) Duplication of canal sounding and engineering charts, graphs, and drawings (reproducible and non-reproducible) at cost recovery rate.

(8) Other services: If there is no specific fee listed in this section for a service necessary for handling your request, you will be charged the official agency tariff for that service. If no tariff exists for that service, the Agency Records Officer is authorized to charge the direct cost to the Commission of that service.

(b) Review fees are chargeable only when a request is for a commercial use, as defined in §9.12. Review fees will be charged in accordance with the search fee rates set forth in §9.11(a)(1).

(c) If the Commission estimates that search charges are likely to exceed $25.00, and the requester has not previously agreed to pay fees as high as those anticipated, the agency will notify the requester of the estimated amount of fees, and offer the requester the opportunity to revise the request.

(d) The Panama Canal Commission may require a requester to pay fees in advance only if the estimated charges are likely to exceed $250.00, or the requester has previously failed to pay a fee in a timely fashion (i.e., within 30 days of the date of billing).

(1) If the requester has a history of prompt payment, and the estimated charges are likely to exceed $250.00, the Commission will notify the requester of the estimated cost and obtain satisfactory assurance of full payment.

(2) If the requester has no prior payment history, and the estimated charges are likely to exceed $250.00, the agency may require an advance payment of an amount up to the full amount of estimated charges.

(3) If the requester has a poor payment history, the agency may require advance payment of the full amount of

the estimated fees, as well as any amount currently owed, plus interest on the delinquent amount, before the agency begins to process a new or pending request from that requester.

(4) When the agency acts under this subsection, the administrative time limits prescribed in §§ 9.7(a) and 9.9(a) will begin only after receipt of the required fee payments.

(e) If you wish to request a waiver or reduction of fees, you must do so in writing to the Chief, Administrative Services Division, Agency Records Officer, Panama Canal Commission, Unit 2300, APO AA 34011–2300. The Agency Records Officer may waive or reduce the fees if the official decides that providing the records you request would be 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. Requests for a waiver or reduction of fees shall be considered on a case-by-case basis.

(1) In order to determine whether 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, the Agency Records Officer will consider the following four factors:

(i) The subject of the request: Whether the subject of the requested records concerns the operations or activities of the government;

(ii) The informative value of the information to be disclosed: Whether the disclosure is likely to contribute to an understanding of government operations or activities;

(iii) The contribution to an understanding of the subject by the general public likely to result from disclosure: Whether disclosure of the requested information will contribute to public understanding; and

(iv) The significance of the contribution to public understanding: Whether the disclosure is likely to contribute significantly to public understanding of government operations or activities.

(2) In order to determine whether disclosure of the information is not primarily in the commercial interest of the requester, the Agency Records Officer will consider the following two factors:

(i) The existence and magnitude of a commercial interest: Whether the requester has a commercial interest that would be furthered by the requested disclosure; and, if so

(ii) The primary interest in disclosure: Whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is primarily in the commercial interest of the requester.

(3) The Agency Records Officer will not consider waiver or reduction of fees for requesters (persons or organizations) from whom unpaid fees remain due to the Agency for another information access request.

(4) The Agency's decision to refuse to waive or reduce fees as requested under this section may be appealed to the Director, Office of Executive Administration, Panama Canal Commission, Unit 2300, APO AA 34011–2300. Appeals should contain as much information and documentation as possible to support the request for a waiver or reduction of fees. The requester will be notified within thirty working days from the date on which the Agency received the appeal.

(f) This agency will assess interest charges on an unpaid bill starting on the 31st day following the day on which the bill was sent. Interest will be computed at the rate prescribed in Section 3717 of Title 31, United States Code, and will accrue from the date of the billing.

[52 FR 31397, Aug. 20, 1987, as amended at 53 FR 16256, May 6, 1988; 59 FR 26122, May 19, 1994]

§ 9.12 Definitions.

Commercial use refers to a request or a requester seeking 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.

Duplication refers to the process of making a copy of document necessary to respond to a Freedom of Information Act request. Such copies can take the form of paper copy, microfilm, audiovisual materials, or machine readable

documentation (e.g., magnetic tape or disk), among others. The copy provided will be in a form that is reasonably usable by the requester.

Educational institution refers to a preschool, a public or private elementary or secondary school, an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education, and an institution of vocational education, which operates programs of scholarly research.

Non-commercial scientific institution refers to 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.

Representative of the news media refers to any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. As used herein, the word ''news'' means information that is about current events or that would be of current interest to the public.

Review refers to the process of examining documents located in response to a request that is for a commercial use to determine whether any portion of any document located is permitted to be withheld. It also includes the time spent processing any documents for disclosure; i.e., doing all that is necessary to delete unreleasable portions and prepare documents for release. Review does not include time spent resolving general legal or policy issues regarding the application of exemptions.

Search time is the time spent by the agency to identify the documents requested and will be charged in accordance with §9.11(a)(1) and (2).

[52 FR 31398, Aug. 20, 1987; 53 FR 16256, May 6, 1988]

§9.13 Classifying requests for fee purposes.

(a) When the Panama Canal Commission receives a request for documents that appears to be for commercial use, fees will be assessed for the total search time, review time, and all duplication of the documents. Requestors must reasonably describe the records sought. When the agency has reasonable cause to doubt the stated use of the documents, or where the use is not clear from the request itself, the agency can seek additional clarification. Requesters should note that the Panama Canal Commission may assess fees for search and review even if no documents are determined to be releasable under the Freedom of Information Act.

(b) Educational institution requesters will be provided the first 100 pages of duplication without charge and will not be charged for search time. To be eligible for this reduction in fees, the requester must show that the request is being made under the auspices of a qualifying institution and that the records are being sought to further scholarly research and not for commercial use. The requester must reasonably describe the records sought.

(c) Non-commercial scientific institution requesters will be provided the first 100 pages without charge and will not be charged for search time. To be eligible for this reduction in fees, the requester must show that the request is being made under the auspices of a qualifying institution and that the records are being sought to further scientific research and not for commercial use. The requester must reasonably describe the records sought.

(d) Representatives of the news media will be provided the first 100 pages without charge and will not be charged for search time. To be eligible for reduction in fees, the requester must meet the criteria prescribed in §9.12 and the request must not be for commercial use. A request for records supporting the news dissemination function of the requester will not be considered to be a request that is for a commercial use. The requester must reasonably describe the records sought.

(e) For all other requesters who do not fit into the above categories, fees will be charged which recover the full reasonable direct cost of searching for and reproducing records that are responsive to the request, except that the first 100 pages of reproduction and the first two hours of search time will be furnished without charge. The requester must reasonably describe the records sought.

(f) Those requesters searching for records about themselves will be treated under the Privacy Act of 1974 and will only be charged for reproduction costs.

(g) A requester may not file multiple requests solely in order to avoid payment of fees. When the agency reasonably believes that a requester is attempting to separate a request into a series of requests for the purpose of evading the assessment of fees, the agency may aggregate any such requests and charge accordingly.

[52 FR 31398, Aug. 20, 1987; 53 FR 16256, May 6, 1988]

§ 9.14 Current index.

(a) The Commission maintains and will make available for public inspection and copying a current index of the agency's opinions, policy statements, administrative staff manuals, and instructions to staff that affect a member of the public.

(b) The Commission has decided that it is not necessary to publish this index.

(c) On request, the Commission will provide copies of this index to members of the public. The charges for the copies will be no greater than those set out in § 9.11.

[44 FR 75309, Dec. 19, 1979. Redesignated at 52 FR 31397, Aug. 20, 1987; 53 FR 16256, May 6, 1988]

§ 9.15 Annual report.

On or before March 1 of each calendar year, the Panama Canal Commission sends to both Houses of Congress a report of its activities in connection with the Freedom of Information Act during the preceding calendar year. The Freedom of Information Act requires each agency to make this report and to include in it such information as: how many requests were denied and why; how many denials were appealed and the result of those appeals; the name and title of each official who denied a request; and other information showing how the agency administered the Freedom of Information Act during the period covered by the report.

[44 FR 75309, Dec. 19, 1979. Redesignated at 52 FR 31397, Aug. 20, 1987; 53 FR 16256, May 6, 1988]

§ 9.16 Predisclosure notification procedures for confidential commercial information.

(a) *In general.* Confidential commercial information provided to the Panama Canal Commission by a submitter shall not be disclosed pursuant to a Freedom of Information Act (FOIA) request except in accordance with this section. The following definitions apply:

(1) *Confidential commercial information* means records provided to the Commission by a submitter that arguably contain material exempt from release under Exemption 4 of the Freedom of Information Act, 5 U.S.C. 552(b)(4), because disclosure could reasonably be expected to cause substantial competitive harm.

(2) *Submitter* means any person or entity who provides confidential commercial information to the Commission. The term ''submitter'' includes, but is not limited to, corporations, state governments, and foreign governments.

(b) *Notice to submitters.* The Panama Canal Commission shall provide a submitter with prompt notice of receipt of a Freedom of Information Act request encompassing its confidential commercial information whenever required in accordance with paragraph (c) of this section, and except as provided in paragraph (g) of this section. The written notice shall either describe the exact nature of the information requested or provide copies of the records or portions of records containing the requested information.

(c) *When notice is required.* (1) For confidential commercial information submitted prior to January 1, 1988, the Panama Canal Commission shall provide a submitter with notice of receipt of a FOIA request whenever:

(i) the records are less than 10 years old and the information has been designated by the submitter as confidential commercial information;

(ii) The Panama Canal Commission has reason to believe that disclosure of the information could reasonably result in commercial or financial harm to the submitter; or

(iii) The information is subject to the prior express commitment of confidentiality given by the Commission to the submitter.

(2) For confidential commercial information submitted on or after January 1, 1988, the Commission shall provide a submitter with notice of receipt of a FOIA request whenever:

(i) The submitter has in good faith designated the information as commercially or financially sensitive; or

(ii) The Commission has reason to believe that disclosure of the information could reasonably result in commercial or financial harm to the submitter.

(3) Notice of a request for confidential commercial information falling within paragraph (c)(2)(i) of this section shall be required for a period of not more than ten years after the date of submission unless the submitter requests, and provides acceptable justification for, a specific notice period of greater duration.

(4) Whenever possible, the submitter's claim of confidentiality shall be supported by a statement or certification by an officer or authorized representative of the company that the information in question is in fact confidential commercial or financial information and that the information has not been disclosed to the public.

(5) When notice is given to a submitter under this section, the Commission shall at the same time provide written notice to the requester that it is affording the submitter a reasonable period of time within which to object to disclosure and that, therefore, there will be a delay in responding to the request because of the overseas location of the agency and the time requirements to obtain responses from the submitters.

(d) *Opportunity to object to disclosure.* (1) The notice required by paragraph (b) of this section shall afford a submitter ten (10) working days within which to provide the Commission with a detailed statement of any objection to disclosure. Such statement must specify all grounds for withholding information under any exemption of the Freedom of Information Act and, in the case of Exemption 4, must demonstrate why the information is contended to be a trade secret or commercial or financial information which is considered privileged or confidential and capable of causing competitive damage if disclosed. Information provided by a submitter pursuant to this paragraph may itself be subject to disclosure under the Freedom of Information Act.

(e) *Notice of intent to disclose.* The Commission will carefully consider the submitter's objections to release prior to determining whether or not to disclose the information. Whenever the Commission decides to disclose information over the objection of the submitter, the Commission will forward a written notice to the submitter which shall include:

(1) A statement of the reasons for which the submitter's disclosure objections were not sustained;

(2) A description of the confidential commercial information to be disclosed; and,

(3) A specific disclosure date, which shall be ten (10) working days after the notice of the final decision to release the requested information has been mailed to the submitter.

(4) When notice is given to a submitter under this section, the Commission will notify the requester that such notice has been given to the submitter and the proposed date for disclosure.

(f) *Notice of lawsuit.* (1) Whenever a requester brings legal action seeking to compel disclosure of information covered by paragraph (c) of this section, the Commission shall promptly notify the submitter.

(2) Whenever a submitter brings legal action seeking to prevent disclosure of information covered by paragraph (c) of this section, the Commission shall notify the requester.

(g) *Exception to notice requirement.* The notice requirements of paragraph (c) of this section shall not apply if:

(1) The Panama Canal Commission determines that the information should not be disclosed;

(2) The information has been published or otherwise officially made available to the public;

(3) Disclosure of the information is required by law (other than 5 U.S.C. 552); or

(4) The information was acquired in the course of a lawful investigation of a possible violation of criminal law.

[56 FR 11373, Mar. 18, 1991]

Subpart B—Vital Statistics Records

§ 9.31 Definitions.

As used in this subpart:

Live birth means the birth of a child who shows evidence of life after the child is entirely outside the mother.

Stillbirth means a birth after 20 weeks of gestation which is not a live birth.

Physician means a person legally authorized to practice medicine before October 1, 1979, in the area then known as the Canal Zone.

Vital statistics includes the registration, preparation, transcription and preservation of data pertaining to marriages, births, adoptions, legitimations, deaths, stillbirths, and data incidental thereto.

Vital Statistics Unit means the organizational unit charged by the Administrator of the Panama Canal Commission with the function of vital statistics.

§ 9.32 Administration.

The Vital Statistics Unit shall administer this subpart, under the supervision of the Administrator or his designee.

§ 9.33 Functions of the Vital Statistics Unit.

The Vital Statistics Unit is the keeper of the vital statistics records of the Canal Zone Government. Some of the functions previously performed by that unit were discontinued on October 1, 1979, when the Canal Zone and its civil government ceased to exist. The Vital Statistics Unit now performs the residual functions of recordkeeping; i.e., it is limited to performing the following:

(a) Maintaining all vital statistics records of the Canal Zone Government.

(b) Performing the vital statistics functions as defined in § 9.31 of this part for those events which occurred in the Canal Zone before October 1, 1979, and which were not previously registered in that unit. This includes the delayed registration of a birth that occurred prior to October 1, 1979.

(c) The alteration of records which are filed in that unit.

(d) The issuance of copies of documents filed in that unit.

(Panama Canal Treaty of 1977 and related agreements and Pub. L. 96–70, 93 Stat. 452)

§ 9.34 Supplementary certificate upon adoption.

Upon receipt of a certified copy of an order or decree of adoption, the Vital Statistics Unit shall prepare a supplementary certificate in the new name of the adopted person and shall seal and file the original certificate of birth with such certified copy attached thereto. The sealed documents may be opened only upon the demand of the adopted person, if of legal age, or by an order of court. Upon receipt of a certified copy of a court order of annulment of the adoption, the original certificate shall be restored to its original place in the file.

§ 9.35 New birth certificate upon legitimation.

In cases of legitimation the Vital Statistics Unit, upon receipt of proof thereof, shall prepare a new certificate of birth in the new name of the legitimated child. The evidence upon which the new certificate is made and the original certificate shall be sealed and filed and may be opened only upon the demand of the person involved, if of legal age, or by an order of court.

CROSS REFERENCE: Legitimation of child, see 8 P.C.C. 335, 387, 76A Stat. 689, 691. See also 7 P.C.C. 576, 76A Stat. 571.

§ 9.36 Delayed filing of birth certificate.

(a) When a live birth occurred in the Canal Zone (prior to October 1, 1979), a certificate of live birth should have been filed with the Vital Statistics Unit within five days after the birth by the physician, midwife, or other legally authorized person in attendance at the birth or, if the birth was not so attended, by one of the parents. If a certificate of live birth in the Canal Zone was not filed during that time, it may still be possible to file a delayed certificate of birth by following the procedure set forth in paragraph (b) of this section.

(b) A delayed certificate of live birth may be filed upon the submission to, and receipt by, the Vital Statistics Unit of such evidence, in the form of affidavits or otherwise, as the Vital Statistics Unit deems sufficient to establish satisfactorily the truth of the facts alleged in support of the request

for delayed filing. Certificates accepted more than six months after the time prescribed for filing in paragraph (a) of this section shall contain the date of the delayed filing and shall be marked ''delayed.'' A summary statement of the evidence submitted in support of the acceptance for delayed filing shall be endorsed on the certificate. Such evidence shall be kept in a special permanent file.

§ 9.37 Altered certificates.

Certificates of marriage, birth, stillbirth, or death filed in the Vital Statistics Unit may be altered upon the submission to, and receipt by, the Vital Statistics Unit of such evidence, in the form of affidavits or otherwise, as that unit deems sufficient to establish satisfactorily the truth of the facts alleged in support of the request for alteration. Certificates which are altered after being filed shall contain the date of the alteration and shall be marked ''altered.'' A summary statement of the evidence submitted in support of the acceptance for alteration shall be endorsed on the certificate. Such evidence shall be kept in a special permanent file.

§ 9.38 Certified copies of records.

Subject to the restrictions contained in § 9.39, a certified copy of a certificate on file or any part thereof shall be furnished to any applicant upon request. The person designated by the Administrator or by the Administrator's designee to act as Vital Statistics Clerk shall be the person to certify copies of such certificates or parts thereof. Charges shall be made for certified copies of vital statistics records at the rate prescribed in the official Panama Canal Commission tariff.

§ 9.39 Disclosure of records.

Inspection of a vital statistics record is not permitted, and a certified copy of a certificate or part thereof may not be issued, unless the Vital Statistics Unit is satisfied that the applicant has a direct and legitimate interest in the matter recorded or that the information therein contained is necessary for the determination of personal or property rights.

PART 10—ACCESS TO INFORMATION ABOUT INDIVIDUALS

Sec.

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APPENDIX A TO PART 10—GENERAL ROUTINE USES

AUTHORITY: 5 U.S.C. 552a.

SOURCE: 44 FR 75312, Dec. 19, 1979, unless otherwise noted.

§ 10.1 Purpose of this part.

The purpose of this part is to establish Panama Canal Commission policies and procedures for implementing the Privacy Act of 1974 (Pub. L. 93–579), and particularly the provisions of 5 U.S.C. 552a.

§ 10.2 The Privacy Act of 1974.

The Privacy Act of 1974 (referred to in this part as ''the Privacy Act'') is a law which provides safeguards against the invasion of an individual's personal privacy. The Privacy Act creates a procedure for an individual to request access to or amendment of a record about himself or herself that is maintained

by an agency of the United States Government. It also places certain restrictions on the disclosure of records containing information about an individual to other persons. The rest of the rules in this part:

(a) Explain how you may request access to or amendment of records about yourself that are maintained by the Panama Canal Commission (referred to in this part as ''the Commission'' or ''the agency'');

(b) Explain the conditions under which the Commission may disclose information about an individual to others without the individual's consent; and

(c) List the systems of records maintained by the Commission which are exempt from certain provisions of the Privacy Act, including the provisions for access and amendment.

§ 10.3 Definitions.

(a) All terms used in this part which are defined in the Privacy Act (5 U.S.C. 552a(a)) shall have the same meanings as they do in that Act.

(b) *Agency Records Officer* means the Chief, Administrative Services Division, Panama Canal Commission.

(c) *Director of Executive Administration* means the Director, Office of Executive Administration of the Panama Canal Commission.

(d) *System manager* means the official designated in the most recent Notice of Systems of Records published in the FEDERAL REGISTER, as having responsibility for a given system of records.

[44 FR 75312, Dec. 19, 1979, as amended at 46 FR 48659, Oct. 2, 1981]

§ 10.4 When this part applies.

(a) This part applies only to information about individuals that is maintained by the Panama Canal Commission in a system of records which has been described in a notice published in the FEDERAL REGISTER. This means that these regulations apply only to information about an individual that can be retrieved from a group of records by the individual's name or other personal identifier (such as an employee identification number).

(b) Where another agency (such as the Office of Personnel Management) has published a notice describing a system of records that is partially under the control of the Panama Canal Commission, the Privacy Act regulations of that agency take precedence over the regulations in this part.

§ 10.5 How to make a Privacy Act request.

(a) You may find it helpful to review the descriptions of Commission systems of records, as published in the FEDERAL REGISTER, before you make a request. You may review these in the annual compilation of ''Privacy Act Issuances,'' available at libraries, or, upon request, at the Records Management Branch, Administration Building, Balboa Heights, Republic of Panama.

(b) To find out whether a particular system of records contains information about you, or to request access to records about yourself, you must:

(1) Write or visit the system manager or the Agency Records Officer. The title and address of the system manager are given in the Notice of System of Records published in the FEDERAL REGISTER. The office of the Agency Records Officer is located in the Administration Building, Balboa Heights, Republic of Panama, and that official's mailing address is: Panama Canal Commission, Agency Records Officer, Unit 2300, APO AA 34011–2300 (or Balboa, Republic of Panama).

(2) Reasonably identify the system of records or the type of information, or records, you are interested in. Be as specific as you can. If you do not know which system of records is involved, it will be helpful if you identify the office where you believe the records may be located.

(3) Adequately identify yourself in accordance with the requirements contained in § 10.6 of this part.

(c) If you make your request in writing, state in your letter that you are making a request under the Privacy Act and clearly mark the envelope with the words ''Privacy Act Request.'' A request under 5 U.S.C. 552a which is not properly addressed and is not marked in this way shall not be considered to have been received by the agency until it has actually been received

by the system manager or the Agency Records Officer.

[44 FR 75312, Dec. 19, 1979, as amended at 59 FR 26123, May 19, 1994]

§ 10.6 How to identify yourself.

(a) If you make your request in person, or if you wish to review your records in person, you must identify yourself to the system manager or the Agency Records Officer (or to a person designated by one of those officials) by showing at least one identification document containing your picture (for example, employee identification card, driver's license, passport), or at least two identification documents containing your signature, or other identification acceptable to the official concerned.

(b) If you make your request in writing, you must supply information that will help to verify your identity (for example, signature, employee identification number, date and place of birth), and you may also be required to provide the certificate of a notary public or other official authorized to administer oaths.

(c) Whether making your request in person or in writing, if you cannot identify yourself to the satisfaction of the system manager or the Agency Records Officer (or the person designated by one of those officials), you may be asked to make and sign a written statement asserting your identity and indicating that you understand that knowingly and willfully requesting or obtaining access to any record about another individual under false pretenses is a misdemeanor punishable by a fine of up to $5,000 (5 U.S.C. 552a(i)(3)).

§ 10.7 How your Privacy Act request will be handled.

(a) The system manager or the Agency Records Officer will acknowledge receipt of your request within ten working days. At the same time, or as soon as possible after acknowledging receipt, that official will:

(1) Tell you that a record about you is maintained in the system of records you identified and tell how you may review it, or get a copy; or

(2) Tell you that no record about you is maintained in the system of records you identified; or

(3) Tell you that your inquiry cannot be answered or your request cannot or will not be granted because you have not adequately identified yourself or the system of records; because the system of records in question is exempt from the access provisions of the Privacy Act; or because the record or system of records in question is not under the control of the Commission.

(b) When the system manager or the Agency Records Officer makes a decision to grant you access to the records you requested, you normally may see the records or get copies of them right away. If, for any reason, the records cannot be provided immediately, that official will arrange with you a mutually acceptable time and place for you to review and copy the records. If that official cannot make the records available to you within 30 working days of receipt of your request, that official will advise you in writing of the reason for the delay.

§ 10.8 When, where, and under what conditions you may review the records.

(a) If you want to review your records in person, you will normally be required to go during regular working hours to the location specified in the Notice of the System of Records or to the office of the Agency Records Officer, in the administration Building, Balboa Heights, Republic of Panama. If you cannot go in person during regular working hours, you should telephone or write the system manager or the Agency Records Officer so that appropriate arrangements can be made for you to review the records.

(b) You must identify yourself to the system manager or the Agency Records Officer (or to a person designated by one of those officials) in accordance with the requirements contained in § 10.6 of this part.

(c) If you have been told that you may review your records in person, you may, upon your request, be accompanied by a person of your choosing. You will however, have to provide the system manager with a written signed statement authorizing disclosure of the

records about you to that person, and authorizing discussion of your records in the presence of that person.

(d) You may be shown a copy of a record rather than the original record itself when the record is not maintained at, or cannot be transferred to, a location which is accessible to you. In that event, you will be charged for the copies only if you choose to retain them. If copies are made at your request, the agency will charge you the cost of making the copies, as stated in § 10.11 of this part.

(e) No one shall be allowed to inspect original agency records except under the immediate supervision of the system manager, or the Agency Records Officer, or a person designated by one of those officials.

§ 10.9 Special procedures for medical records.

(a) If you request medical records about yourself, including psychiatric and psychological records, the records will be made available to you only after the Director of Health and Safety, or that official's designee, determines that release of the records would not be likely to have an adverse effect on you. If they are not made available to you, upon your written request the medical records which are not otherwise exempt from disclosure may be reviewed by a licensed medical practitioner designated by you.

(b) School records of a psychological nature may be shown to the student who is the subject of the records or to the parent or guardian of the student only if the Director of Health and Safety, or that official's designee, determines that the release would not be likely to have an adverse effect on the individual who is the subject of the records.

§ 10.10 How to request review of a system manager's denial of access.

(a) If the system manager denies your request for records, in whole or in part, you may ask the Agency Records Officer to review that decision. The denial is not considered a final agency decision unless it has been reviewed and confirmed in writing by the Agency Records Officer.

(b) To request review of a system manager's denial, you must:

(1) Write to the Panama Canal Commission, Agency Records Officer, Unit 2300, APO AA 34011–2300 (or Balboa, Republic of Panama); and

(2) State in your letter that you are requesting review of the system manager's denial and clearly mark the envelope ''Privacy Act Request for Review''; and

(3) Mail or deliver the request for review within ten working days after you receive the system manager's denial.

(c) Although it is not required, it may be helpful if you state in your request for review the reasons why you disagree with the decision on your request for access and your reasons for wanting the records.

[44 FR 75312, Dec. 19, 1979, as amended at 59 FR 26123, May 19, 1994]

§ 10.11 Fees for Privacy Act requests.

(a) The fees for copies of records made at your request under this section will be the same as the fees provided in § 9.11(a) (3), (4), (5), (6), (7); (c); and (e) of this title for copies of materials provided under the Freedom of Information Act.

(b) If your request for copies of records or portions of records is expected to involve fees of more than $50, the Commission will not treat your request as having been received until:

(1) The Commission has sent you a written notification of the estimated fees; and

(2) You agree in writing to pay at least the estimated fees; and

(3) You pay part of the estimated fees in advance, if the agency requires such a deposit before it will begin to copy the records you have requested.

§ 10.12 How to request amendment of your record under the Privacy Act.

After you have reviewed your record, you may ask the Commission to correct or amend any portion of the record that you believe is not accurate, timely, relevant, or complete. To make a request for amendment, you must:

(a) Write to the Panama Canal Commission, Agency Records Officer, Unit 2300, APO AA 34011–2300 (or Balboa, Republic of Panama).

(b) State in your letter that you are requesting amendment of a record under the Privacy Act, and clearly mark the envelope ''Privacy Act Request for Amendment.'' A request for amendment of a record under 5 U.S.C. 552a which is not properly addressed and is not marked in this way shall not be considered to be received by the Commission until it has actually been received by the Agency Records Officer.

(c) In your letter, identify the system of records involved, if you can, and identify the particular record or portion of the record you wish to have corrected or amended. If possible, attach a copy of the record in question.

(d) Explain in your letter why you believe the record or portion of the record is not accurate, timely, relevant, or complete, and provide any evidence available to support your request.

(e) Include in your letter any other information that may be necessary for proper processing of your request.

[44 FR 75312, Dec. 19, 1979, as amended at 59 FR 26123, May 19, 1994]

§ 10.13 How your Privacy Act request for amendment will be handled.

(a) The Agency Records Officer (or that official's designee) will decide whether your request for amendment of a record should be granted. That official (or the designee) will acknowledge receipt of your request within ten working days and will either notify you of the decision or tell you when you can expect to have the decision. If a decision cannot be made within 30 working days of the receipt of your request, the Agency Records Officer (or the designee) will advise you in writing of the circumstances causing the delay.

(b) If your request for amendment is granted, in whole or in part:

(1) The Agency Records Officer (or that official's designee) will notify you of this decision;

(2) The system manager will promptly correct the record; and

(3) Where an accounting of disclosures has been maintained, the system manager will advise all previous recipients of the record that the correction has been made.

(c) If your request for amendment is denied, in whole or in part, the Agency Records Officer (or that official's designee) will notify you of this decision and will:

(1) Tell you why the request is being denied;

(2) Tell you that you have the right to request further review by appealing the decision; and

(3) Tell you how to make an appeal.

§ 10.14 How to appeal a refusal to amend a record under the Privacy Act.

(a) If the Agency Records Officer (or that official's designee) has denied your request to amend a record, you may request the Executive Secretary to review that decision. This is called ''making an appeal.''

(b) To make an appeal, you must:

(1) Write to the Panama Canal Commission, Director, Office of Executive Administration, Unit 2300, APO AA 34011–2300 (or Balboa, Republic of Panama); and

(2) State in your letter that you are appealing a denial of a request for amendment under the Privacy Act, and clearly mark the envelope ''Privacy Act Appeal''; and

(3) Mail or deliver the letter of appeal within ten working days after you receive the initial agency denial.

[44 FR 75312, Dec. 19, 1979, as amended at 46 FR 48659, Oct. 2, 1981; 59 FR 26123, May 19, 1994]

§ 10.15 How your Privacy Act appeal will be handled.

(a) The official responsible for deciding whether to grant your appeal is the Director of Executive Administration of the Panama Canal Commission. The Director of Executive Administration will review the refusal to amend your record and will advise you of his decision within 30 working days or receipt of your appeal.

(b) If the Director of Executive Administration grants your appeal, in whole or in part:

(1) That official will notify you of the decision;

(2) The system manager will promptly correct the record; and

(3) Where an accounting of disclosures has been maintained, the system

manager will advise all previous recipients of the record that the correction has been made.

(c) If the Director of Executive Administration denies your appeal, in whole or in part, the letter sent to notify you of this decision must:

(1) Tell you why the appeal is being denied;

(2) Tell you that this denial of your appeal is a final agency decision;

(3) Tell you that you have the right to file a concise statement of your reasons for disagreeing with the decision of the agency; and

(4) Tell you that you have the right to request a U.S. District Court to review this denial of your appeal, as provided by 5 U.S.C. 552a(g).

(d) The Administrator of the Panama Canal Commission may extend the 30-working-day period specified in paragraph (a) of this section for good cause shown. In that case, the Agency Records Officer will notify you in writing of the reason for the delay and will tell you when you can expect a decision on your appeal.

(e) If you choose to file a concise statement of your reasons for disagreeing with the agency's refusal to amend your record:

(1) The system manager shall cause a notation to be made on the disputed portion of the record;

(2) Copies of your statement of disagreement will be provided to anyone to whom the disputed record is subsequently disclosed and (to the extent that an accounting of disclosures has been maintained) to any previous recipients of the disputed record; and

(3) The Commission may, at its discretion, make a brief summary of its reasons for not amending the record and may provide this summary, along with your statement of disagreement, to previous or subsequent recipients of the disputed record.

[44 FR 75312, Dec. 19, 1979, as amended at 46 FR 48659, Oct. 2, 1981]

§ 10.16 Rights of parents and legal guardians.

The parent of legal guardian of a minor or the legal guardian of an individual who has been declared incompetent may request access to, or amendment of, a record on behalf of that individual. To do so, a parent will be required to show a certified or authenticated copy of the minor's birth certificate, and a legal guardian will be required to show a certified or authenticated copy of the court order establishing guardianship. In some cases, the parent or legal guardian of a minor may be asked to provide evidence that the minor is in the parent's or guardian's custody, that the minor has consented to disclosure of the information to the parent or guardian, or that the parent or guardian has authority to act on the minor's behalf.

§ 10.17 Conditions under which the Commission may disclose an individual's record to other persons.

(a) The Commission shall not disclose information about an individual that is contained in one of its systems of records to any person or to another agency, except by written request of, or with the prior written consent of, the individual who is the subject of the record, unless the disclosure is authorized by paragraph (b) of this section or is required by other applicable law.

(b) Under 5 U.S.C. 552a, the Commission may disclose information contained in its systems of records, without the consent of the individual who is the subject of the record, if the disclosure of the information, or record, would be:

(1) To the parent or legal guardian of any minor, or to the legal guardian of any individual who has been declared to be incompetent by a court of competent jurisdiction, where such person is acting on the individual's behalf (5 U.S.C. 552a(h));

(2) To those officers and employees of the Commission who have a need for the information in the performance of their duties (5 U.S.C. 552a(b)(1));

(3) Required under 5 U.S.C. 552, the Freedom of Information Act (5 U.S.C. 552a(b)(2));

(4) For a routine use as defined in 5 U.S.C. 552a(a)(7) and as described for all systems of records in Appendix A of this part and for specific systems of records in the Notice of Systems of Records published in the FEDERAL REGISTER (5 U.S.C. 552a(b)(3));

(5) To the Bureau of the Census for purposes of planning or carrying out a

census or survey or related activity under the provisions of Title 13, U.S. Code (5 U.S.C. 552a(b)(4));

(6) To a recipient who has provided the Commission with advance adequate written assurance that the record will be used solely as a statistical research or reporting record, and the record is to be transferred in a form that is not individually identifiable (5 U.S.C. 552a(b)(5));

(7) To the National Archives of the United States as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, or for evaluation by the Administrator of General Services or that official's designee to determine whether the record has such value (5 U.S.C. 552a(b)(6));

(8) To another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if the head of the agency or instrumentality has made a written request to the Commission specifying the particular portion desired and the law enforcement activity for which the record is sought (5 U.S.C. 552a(b)(7));

(9) To a person pursuant to a showing of compelling circumstances affecting the health or safety of an individual, if upon such disclosure notification is transmitted to the last known address of such individual (5 U.S.C. 552a(b)(8));

(10) To either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof, any joint committee of Congress or subcommittee of any such joint committee (5 U.S.C. 552a(b)(9));

(11) To the Comptroller General, or any of his authorized representatives, in the course of the performance of the duties of the General Accounting Office (5 U.S.C. 552a(b)(10)); or

(12) Pursuant to the order of a court of competent jurisdiction (5 U.S.C. 552a(b)(11)).

§ 10.18 Accounting of certain disclosures.

(a) The system manager or his designee shall keep an accurate accounting of each disclosure of personal information about an individual from a system of records under his control which is made in accordance with § 10.17(b) of this part, except if that disclosure is to officers and employees of the Commission (§ 10.17(b)(2)) or is required under the Freedom of Information Act (§ 10.17(b)(3)).

(b) This accounting of disclosure shall include:

(1) The date, nature, and purpose of each such disclosure; and

(2) The name and address of the person or agency to whom the disclosure is made.

(c) The system manager shall retain this accounting of disclosure for at least five years after the disclosure or for the life of the record, whichever is longer.

(d) The Commission shall make the accounting of disclosure available to the individual named in the record, at that individual's request, except when the disclosure was made under § 10.17(b)(8) of this part or when the record in question is exempt from the access provisions of the Privacy Act under §§ 10.21 and 10.22 of this part. An individual may request access to the accounting of disclosure by the procedure for requesting access to records that is explained in §§ 10.5 through 10.10 of this part.

§ 10.19 Records about deceased persons.

A record about a deceased person is not covered by the rules in this part, except to the extent that the deceased person's record contains information about a living individual. In disclosing information about a deceased person, the Commission will make every effort to avoid any infringement of the privacy rights of a living individual.

§ 10.20 Penalties for noncompliance with the Act.

Subsections (g) and (i) of 5 U.S.C. 552a provide civil remedies and criminal penalties for noncompliance with the provisions of the Privacy Act of 1974 (Pub. L. 93–579) or regulations implementing that Act. In addition, adverse or disciplinary action may be taken against any officer or employee who willfully or negligently fails to comply with the requirements of the

Privacy Act or the regulations in this part.

§ 10.21 General exemptions.

(a) The following systems of records are eligible for exemption under 5 U.S.C. 552a(j)(2) because each system is maintained by a component of the agency, or subcomponent, which performs as its principal function the enforcement of criminal laws, and which contains investigatory material compiled for criminal law enforcement purposes. Accordingly, these systems are exempt from the following sections of 552a of 5 U.S.C.: (c) (3) and (4); (d); (e) (1), (2) and (3); (e)(4) (G) and (H); (e) (5); (e)(8); (f); (g); and (h).

(1) PCC/GSCP–2, Canal Protection Division Incident Report Files;

(2) PCC/OIG–1, Investigative Files of the Office of Inspector General;

(3) PCC/OIG–2, Allegation/Complaint Files of the Office of Inspector General;

(4) PCC/OIG–3, Cash Audit Files.

(b) The systems of records listed below, although no longer actively in use, continue to be subject to general exemption pursuant to 5 U.S.C. 552a(j)(2) because they were compiled by a component, or subcomponent, of the agency which performed as its principal function the enforcement of criminal laws, and which contain investigatory material compiled for criminal law enforcement purposes. Accordingly, the following systems of records are exempt from subsections (c)(3) and (4); (d); (e)(1), (2) and (3); (e)(4) (G) and (H); (e)(5); (e)(8); (f); (g); and (h) of 5 U.S.C. 552a:

(1) PCC/AEPR–1, Probation and Parole Unit Child Custody Reports;

(2) PCC/AEPR–2, Presentence and Preparole Investigation Reports;

(3) PCC/AEPR–3, Probation and Parole Unit Statistical File;

(4) PCC/GSPL–1, Law Enforcement Case Report File;

(5) PCC/GSPL–2, Police Headquarters Confidential File;

(6) PCC/GSPL–3, Detective Confidential Files;

(7) PCC/GSPL–4, Convict Files;

(8) PCC/GSPL–6, Police Photo Files;

(9) PCC/GSPL–7, Fingerprint File;

(10) PCC/GSPL–10, Master Name File;

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

(1) From (c)(3) because release of an accounting of disclosures to an individual who is the subject of an investigation could reveal the nature and scope of the investigation and could result in the altering or destruction of evidence, improper influencing of witnesses and other evasive action that could impede or compromise the investigation.

(2) From (c)(4) because this subsection is inapplicable to the extent that an exemption is being claimed for subsection (d).

(3) From subsection (d) because access to the records contained in these systems would inform the subject of a criminal or civil investigation, matter or case of the existence of such, and provide the subject with information that might enable him or her to avoid detection, apprehension or legal obligations, and present a serious impediment to law enforcement and other civil remedies. Amendment of the records would impose an impossible administrative burden by requiring investigations to be continuously reinvestigated.

(4) From subsection (e)(1) because it is often impossible to determine relevance or necessity of information in the early stages of an investigation. The value of such information is a question of judgment and timing; what appears relevant and necessary when collected may ultimately be evaluated and viewed as irrelevant and unnecessary to an investigation. In addition, information may be obtained concerning the violation of laws other than those within the scope of its jurisdiction. In the interest of effective law enforcement, information should be retained because it may aid in establishing patterns of unlawful activity and provide leads for other law enforcement agencies. Further, in obtaining evidence during an investigation, information may be provided which relates to matters incidental to the main purpose of the investigation but which may be pertinent to the investigative jurisdiction of another agency. Such information cannot readily be identified.

(5) From subsection (e)(2) because in a law enforcement investigation it is usually counterproductive to collect information to the greatest extent practicable directly from the subject thereof. It is not always feasible to rely upon the subject of an investigation as a source for information which may implicate him or her in illegal activities. In addition, collecting information directly from the subject could seriously compromise an investigation by prematurely revealing its nature and scope, or could provide the subject with an opportunity to conceal criminal activities, or intimidate potential sources, in order to avoid apprehension.

(6) From subsection (e)(3) because providing such notice to the subject of an investigation, or to other individual sources, could seriously compromise the investigation by prematurely revealing its nature and scope, or could inhibit cooperation, or permit the subject to evade apprehension.

(7) From (e)(4) (G) and (H); (f); (g); and (h) because these provisions concern an individual's access to records which concern him and such access to records in this system would compromise investigations, reveal investigatory techniques and confidential informants, and invade the privacy of private citizens who provide information in connection with a particular investigation.

(8) From subsection (e)(5) because in the collection of information for law enforcement purposes it is impossible to determine what information is accurate, relevant, timely, and complete. With the passage of time, seemingly irrelevant or untimely information may acquire new significance as further investigation brings new details to light and the accuracy of such information can only be determined in a court of law. The restrictions of subsection (e)(5) would restrict the ability of trained investigators to exercise their judgment in reporting on investigations and impede the development of information necessary for effective law enforcement.

(9) From subsection (e)(8) because the application of this provision could prematurely reveal an ongoing criminal investigation to the subject of the investigation and could reveal investigative techniques, procedures or evidence.

[59 FR 9089, Feb. 25, 1994]

§ 10.22 Specific exemptions.

(a) The following systems of records are eligible for exemption under 5 U.S.C. 552a(k)(2) because they contain investigatory material compiled for law enforcement purposes, other than material within the scope of subsection (j)(2) of 5 U.S.C. 552a. Provided, however, that if any individual is denied any right, privilege or benefit that he would otherwise be eligible, as a result of the maintenance of such material, such material shall be provided to such individual, except to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identify of the source would be held in confidence, or prior to January 1, 1975, under an implied promise that the identity of the source would be held in confidence. Accordingly, the following systems of records are exempt from (c)(3); (d); (e)(1); (e)(4) (G) and (H); (f); (g); and (h) of 5 U.S.C. 552a.

(1) PCC/GSCP–2, Canal Protection Division Incident Report Files;

(2) PCC/OIG–1, Investigative Files of the Office of Inspector General;

(3) PCC/OIG–2, Allegation/Complaint Files of the Office of Inspector General;

(4) PCC/OIG–3, Cash Audit Files.

(5) PCC/FMAC–1, Embezzlements, Burglaries, and Cash Shortages;

(6) PCC/EO–2, Equal Employment Opportunity Complaint File;

(7) PCC/GCCL–1, Marine Accident/Miscellaneous General Claims Files;

(8) PCC/GSCS–2, Housing Complaints Files;

(9) PCC/GSCX–1, Administrative Reports, Transfer of Custody and Official Complaint Files.

(10) PCC/AEPR–1, Probation and Parole Unit Child Custody Reports;

(11) PCC/AEPR–2, Presentence and Preparole Investigation Reports;

(12) PCC/AEPR–3, Probation and Parole Unit Statistical File;

(13) PCC/CAPS–2, Case Investigations;

(14) PCC/GSPL–1, Law Enforcement Case Report Files;

(15) PCC/GSPL–2, Police Headquarters Confidential File;

(16) PCC/GSPL–3, Detective Confidential Files;

(17) PCC/GSPL–4, Convict Files;

(18) PCC/GSPL–6, Police Photo Files;

(19) PCC/GSPL–7, Fingerprint File;

(20) PCC/GSPL–10, Master Name File;

(21) PCC/CZG–HL–2, Medical Administration System.

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

(1) From subsection (c)(3) because the release of the accounting of disclosures would permit the subject of a criminal investigation and/or civil case or matter under investigation, in litigation, or under regulatory or administrative review or action to obtain valuable information concerning the nature of that investigation, case or matter and present a serious impediment to law enforcement or civil legal activities.

(2) From (d); (e)(4) (G) and (H); (f); (g); and (h) because these provisions concern an individual's access to records which concern him and such access to records in this system would compromise investigations, reveal investigatory techniques and confidential informants, and invade the privacy of private citizens who provide information in connection with a particular investigation.

(3) From subsection (e)(1) because it is often impossible to determine relevancy or necessity of information in the early stages of an investigation. The value of such information is a question of judgment and timing; what appears relevant and necessary when collected may ultimately be evaluated and viewed as irrelevant and unnecessary to an investigation. In addition, information may be obtained concerning the violation of laws other than those within the scope of its jurisdiction. In the interest of effective law enforcement, this information should be retained because it may aid in establishing patterns of unlawful activity and provide leads for other law enforcement agencies. Further, in obtaining evidence during an investigation, information may be provided which relates to matters incidental to the main purpose of the investigation but which may be pertinent to the investigative jurisdiction of another agency. Such information cannot readily be identified.

(c) The following systems of records are eligible for exemption under 5 U.S.C. 552a(k)(5) because they contain investigatory material compiled solely for the purpose of determining suitability, eligibility or qualifications for Federal civilian employment, military service, Federal contracts, or access to classified information, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to January 1, 1975, under an implied promise that the identity of the source would be held in confidence. Accordingly, these systems of records are exempt from 5 U.S.C. 552a(c)(3) and (d).

(1) PCC/FMAC–1, Embezzlements, Burglaries, and Cash Shortages;

(2) PCC/PB–2, Appeals, Grievances, Complaints and Assistance Records;

(3) PCC/PB–3, Personnel Investigation Records;

(4) PCC/PR–5, Recruiting and Placement Records;

(5) PCC/PR–7, Personnel Reference Unit Files.

(6) PCC/OIG–1, Investigative Files of the Office of Inspector General;

(7) PCC/OIG–2, Allegation/Complaint Files of the Office of Inspector General;

(8) PCC/OIG–3, Cash Audit Files.

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

(1) From (c)(3) because release of an accounting of disclosure to an individual who is the subject of an investigation could compromise the investigation.

(2) From (d) because access to or amendment of records in these systems would reveal the identity(ies) of the source(s) of information collected in the course of a background investigation. Such knowledge might violate the explicit or implicit promise of confidentiality made to the source during the investigation or constitute an unwarranted invasion of the personal privacy of third parties, or reveal sensitive investigative techniques and procedures. Such breaches could restrict

the free flow of information vital to a determination of a candidate's qualifications and suitability.

(e) The following systems of records are eligible for exemption under 5 U.S.C. 552a (k)(6) because they contain testing or examination material used solely to determine individual qualifications for appointment or promotion in the Federal service, the disclosure of which would compromise the objectivity or fairness of the testing or examination process. Accordingly, these systems of records are exempt from 5 U.S.C. 552a(d).

(1) PCC/CZG/BRAE–1, Canal Zone Board of Registration for Architects and Professional Engineers Reference Files;

(2) PCC/MRBL–1, Marine License Files;

(3) PCC/MRNA–1, Admeasurer Examination File;

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

(1) The exemption from (d) is justified because portions of records in these systems relate to testing or examining materials and are used solely to determine individual qualifications for appointment or promotion in the Federal service. Access to or amendment of this information would compromise the objectivity and fairness of the testing or examining process.

(2) [Reserved]

[59 FR 9090, Feb. 25, 1994]

APPENDIX A TO PART 10—GENERAL ROUTINE USES

Information about an individual which is maintained in any system of records under the control of the Panama Canal Commission is subject to disclosure, as a routine use of such information, to any of the following persons or agencies under the circumstances described:

1. Information indicating a violation or potential violation of law (whether civil, criminal, or regulatory in nature, and whether involving a statute or regulation or a rule or order issued pursuant thereto) may be referred to the federal, state, local, foreign, or international agency charged with investigating or prosecuting such violations or charged with implementing or enforcing the particular statute, or regulations, rule, or order, which is pertinent thereto.

2. Information which has a bearing on matters which may be in dispute may be disclosed in the course of presenting evidence or argument to a court or administrative tribunal, a judicial official, or counsel for a party in connection with litigation or administrative proceedings in which the agency, or its officers or employees, are or may become involved.

3. Information may be provided to persons or agencies from whom information is solicited, to the extent necessary to elicit facts which may be relevant to a financial audit or an agency decision to hire or retain an employee, issue a security clearance, award a contract, grant a license, or otherwise provide a benefit or incur an obligation.

4. Information may be disclosed to a Federal agency, in response to its request in a particular case or in a category of cases, in connection with that agency's (a) decision in a personnel matter; (b) financial audits and accounting; (c) issuance of a security clearance; (d) investigation of an individual employed or formerly employed by the Panama Canal Commission (or its predecessors); or (e) decision to award a contract, grant a license, or otherwise provide a benefit or incur an obligation.

5. Information may be supplied in response to an inquiry from a Member of Congress on behalf of an individual or, at any stage of the legislative coordination and clearance process, to the Office of Management and Budget in connection with the review of private relief legislation.

6. Information which has a bearing on the qualifications of professional personnel (such as architects, attorneys, engineers, medical practitioners, pilots, and teachers) who have been employed by the agency or have had professional dealings with the agency may be provided to the appropriate authorities such as professional licensing and certifying boards and grievance committees.

7. To the extent necessary for implementation of the Panama Canal Treaty of 1977 and related agreements, information may, upon approval by the Agency Records Officer (Chief, Administrative Services Division) or that official's designee, be disclosed to officials of the Government of the Republic of Panama and to U.S. Government agencies which, under the Treaty, assumed functions formerly performed by the Panama Canal Company or the Canal Zone Government.

SUBCHAPTERS B–D [RESERVED]
SUBCHAPTER E—EMPLOYMENT AND COMPENSATION UNDER THE PANAMA CANAL EMPLOYMENT SYSTEM

PART 251—REGULATIONS OF THE SECRETARY OF THE ARMY (PANAMA CANAL EMPLOYMENT SYSTEM)—PERSONNEL POLICY

Subpart A—General Provisions

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AUTHORITY: 22 U.S.C. 3641–3701, E.O. 12173, 12215.

SOURCE: 47 FR 12952, Mar. 26, 1982, unless otherwise noted.

Subpart A—General Provisions

§ 251.1 Purpose.

The regulations in this part are prescribed for the purposes of coordinating the personnel policies and activities of the respective agencies participating in the Panama Canal Employment System and excluding employees in the Department of Defense from certain provisions of the Panama Canal Employment System.

§ 251.2 Definitions.

(a) *Agency* means:

(1) The Panama Canal Commission, and

(2) An executive agency or the Smithsonian Institution, to the extent of any election in effect under section 1212(b)(2) of the Panama Canal Act.

(b) *Employee* means an individual serving in a position.

(c) The *Panama Canal Treaty* means the Panama Canal Treaty between the United States of America and the Republic of Panama, signed September 7, 1977, and related agreements.

(d) *Position* means a civilian position in an agency, if a substantial portion of the duties and responsibilities of the position are performed in the Republic of Panama.

(e) *Subchapter II* means Subchapter II of Chapter 2 of Title I of the Panama Canal Act of 1979 (93 Stat. 463).

(f) *PAPB* means the Panama Area Personnel Board.

§ 251.3 Panama Area Personnel Board.

(a) There is hereby established the Panama Area Personnel Board (PAPB). The purpose of the PAPB shall be to assist the Secretary of the Army in carrying out his responsibility to coordinate the policies and the activities of the agencies participating in the Panama Canal Employment System.

(b) *Functions.* The Panama Area Personnel Board shall:

(1) Provide leadership and advice in all aspects of personnel management so as to promote uniformity of policies and practices to the extent compatible with the missions and governing rules of the various agencies.

(2) Formulate and issue such additional regulations, guidelines, and procedures as may be necessary to carry out the provisions of Parts 251 and 253 of this subchapter.

(3) Approve qualification standards which will be applied uniformly in effecting all personnel actions. In general, qualification standards issued by the Office of Personnel Management and those developed by individual agencies which are appropriate for general use will be used for this purpose.

(4) Provide technical direction to the Central Examining Office.

(5) Consider requests for conversion to Canal Area Career or Career-Conditional appointments.

(6) Perform such other duties and responsibilities as prescribed by the Secretary of the Army or his designee.

(c) Agencies shall consult with each other concerning any matter of interest within the scope of the Panama Canal Employment System and refer any recommendations for changes to the Panama Area Personnel Board.

(d) *Composition*. The PAPB shall be composed of the Administrator of the Panama Canal Commission, the Commander-in-Chief, United States Southern Command, and one member appointed by the Secretary of the Army who will serve as permanent chairman. The extent to which any member may serve through a representative designated by the member will be determined by the PAPB.

(e) Any member may enter topics on a meeting agenda.

(f) *Records*. The Panama Canal Commission shall have control of the systems of records of the PAPB that are subject to 5 U.S.C. 552 and 552a (the Freedom of Information and Privacy Acts). The regulations in Parts 9 and 10 of this title are adopted as regulations of the PAPB. The Administrator shall act as agency head for the purposes of the Freedom of Information and Privacy Acts.

[47 FR 12952, Mar. 26, 1982, as amended at 49 FR 31070, Aug. 3, 1984; 51 FR 33262, Sept. 19, 1986]

§251.4 Adoption of Panama Canal Employment System by Department of Defense.

(a) Subchapter II and the Panama Canal Employment System are hereby made applicable to all employees of all Department of Defense agencies and departments in Panama, except that the positions and incumbents specified by paragraphs (b) through (i) of this section are excluded, to the extent indicated, from Subchapter II and the regulations in this part and in Part 253.

(b) The following positions, and the incumbents thereof, are excluded from all the provisions of Subchapter II, (except section 1217(d)) and the regulations in this part and Part 253 of this chapter:

(1) Consultants and experts when employed under the provisions of 5 U.S.C. 3109 or other statutory authority.

(2) Any employee excluded by 5 U.S.C. 2105(c) from coverage under laws administered by the Office of Personnel Management, except that Subpart B of this part shall apply to such employees.

(3)–(4) [Reserved]

(5) Positions in the Department of Defense designated as sensitive, key positions, for which off-Isthmus recruitment is necessary, except that the incumbents of these positions are eligible to receive any differential authorized by Subchapter II and the regulations in §§251.31 and 251.32 of this part.

(6) Positions of mess attendant which are designated by the commander of the employing military command for occupancy of San Blas (Cuna) Indians pursuant to agreements with the San Blas Tribal Chieftain.

(c) The following positions, and the incumbents thereof, are excluded from the provisions of section 1212 of the Panama Canal Act which provide for merit selection for employment, section 1213 of the said Act and Subparts B and C of the regulations in Part 253 of this chapter:

(1) Attorneys.

(2) Intelligence related positions in the Departments of Defense and Army that are excepted from the competitive service by 5 CFR 213.3106(d)(1), 213.3106(d)(2), and 213.3107(a)(5).

(3) Visiting physicians and nurses of the Health Services Command, U.S. Army Medical Activity, Panama assigned to the home visit program under the Cash Relief Act of July 8, 1937, as amended (50 Stat. 478; 68 Stat. 17), for beneficiaries who reside in the Republic of Panama.

(4) Hospital residents and interns and other student hospital employees.

(5) Positions designated by competent authority as fee-rate positions within the Special Category established by the regulations in this part.

(6) Positions requiring part-time or intermittent services in which the individual appointee will receive during his service year compensation that aggregates not more than 40 percent of the annual salary rate for the first step of grade 3 in the applicable Non-Manual schedule.

(7) Positions designated by the agency as appropriate for use as Student Trainee positions and which are filled under a cooperative work-study agreement between an agency and a college or university approved for participation in such a program by the agency.

(8) [Reserved]

(9) Student assistant positions.

(10) Positions that are filled by mentally retarded or severely physically handicapped persons pursuant to regulations issued by the PAPB. Such regulations shall conform, in substance, to those utilized to authorize appointment of the aforesaid classes of persons in Federal employment in the United States.

(d) Heads of services in hospitals operated by the United States in the Republic of Panama, and the incumbents thereof, are excluded from the provisions of sections 1212 of the Panama Canal Act which provide for merit selection for employment, sections 1212 and 1215 through 1217 of the said Act, Subpart B of the regulations in this part, and Subparts B and C of the regulation in Part 253, except that such positions and incumbents are not excluded from the provisions of section 1217(d) of the Act.

(e) Positions of student assistant, apprentice and learner, and the incumbents thereof, are excluded from the provisions of section 1225(b)(2) of the Panama Canal Act.

(f) Professional educators employed by the Department of Defense Dependent Schools are excluded from all the provisions of Subchapter II and the regulations in this part and Part 253 of this chapter, except that the incumbents of these positions are eligible to receive any differential authorized by Subchapter II and the regulations in §§ 251.31 and 251.32 of this part.

(g) Officers and employees of the National Security Agency appointed and compensated pursuant to the National Security Act of 1959, as amended, 50 U.S.C. 3402, note, are excluded from all provisions of subchapter II and the regulations contained in this part and part 253 of this chapter, except that such positions are not excluded from the provisions of sections 1217, 1217a and 1218 of subchapter II or the regulations in §§ 251.25, 251.31 and 251.32.

(h) Positions at or above GS–6 and equivalent subject to the Civilian Intelligence Personnel Management System (CIPMS) are excluded from all the provisions of subchapter II and the regulations contained in this part and part 253, except that such positions are not excluded from the provisions of sections 1217, 1217a, and 1218 of subchapter II or the regulations in §§ 251.25, 251.31 and 251.32.

(i) Officers and employees of non-Department of Defense (DOD) agencies attached to DOD agencies in Panama are excluded from all the provisions of subchapter II and the regulations contained in this part and part 253 of this chapter, except that such employees may be covered by the provisions of sections 1217, 1217a, and 1218 of subchapter II and the regulations in §§ 251.25, 251.31 and 251.32 of this chapter, if coverage by said provisions is agreed to by the employee's agency and DOD and such coverage does not result in a benefit greater than that provided to DOD employees.

[47 FR 12952, Mar. 26, 1982, as amended at 51 FR 33262, Sept. 19, 1986; 56 FR 1923, Jan. 18, 1991; 56 FR 40555, Aug. 15, 1991; 58 FR 5616, Jan. 22, 1993]

§ 251.5 Compliance with regulations.

Inspection or program evaluation facilities within the higher headquarters of the employing agencies will be utilized for periodic evaluation of operations under the regulations in this part and Part 253 of this chapter. When an evaluation indicates failure on the part of any activity to adhere to the regulations in this part, the Secretary of the Army will bring such deviations to the attention of the head of the agency concerned who will be responsible for taking necessary corrective action. When an evaluation reveals an

improper or erroneous action by the PAPB, the Chairman of the PAPB will direct corrective action be taken.

§ 251.6 Deviations.

Whenever strict compliance with the letter of the regulations in this part would create practical difficulties or undue hardships, the Panama Area Personnel Board may permit a deviation from these regulations. Such authority may be exercised only if the deviation is within the spirit of the regulations and the efficiency of the U.S. Government and the integrity of the Panama Canal Employment System are protected and promoted. Any deviation authorized, and the reasons therefor, shall be made a matter of record.

[51 FR 33262, Sept. 19, 1986]

Subpart B—Compensation and Allowances Under the Panama Canal Employment System

§ 251.11 Uniformity of job classification standards.

In order to assure uniform application of rates of basic compensation, job classification standards shall be uniform within and among all agencies. Any problems arising in achieving such uniformity which cannot be resolved between or among the agencies shall be referred to the PAPB for resolution. If resolution is not achieved the matter shall then be forwarded to the Office of the Secretary of the Army for decision.

§ 251.12 Uniformity of compensation.

(a) The rates of basic compensation for positions and employees and the additional compensation authorized by §§ 251.31 and 251.32 shall be uniform within and among all agencies. Any problems arising in achieving such uniformity shall be referred to the PAPB for resolution. If resolution is not achieved the matter shall then be forwarded to the Office of the Secretary of the Army for decision.

(b) This section shall not preclude the adoption by agencies, under regulations issued by the PAPB, of special rate ranges or other special rates of basic pay for positions for which employees must be recruited from outside the Republic of Panama or in other appropriate circumstances. This section shall not preclude the establishment of rates of pay for employees described in paragraph (b)(1) of this section that are different than the rates established for employees described in paragraph (b)(2) of this section:

(1) A person who was employed by a department on September 30, 1979 and continued in employment with an agency without a break in service of more than three days or a person who was separated from the service of the Panama Canal Company or Canal Zone Government by reason of a reduction in force on September 30, 1979, and was appointed to a position in the Panama Canal Commission before April 1, 1980; a person who was employed on September 30, 1979, by an agency of the United States Government (other than an agency subject to this part) which since that date has had responsibility for carrying out the rights and responsibilities of the United States under the Panama Canal Treaty of 1977 if the person is appointed to a position under Part 253 within 90 days of terminating employment with such agency; and

(2) Anyone other than a person described in paragraph (b)(1) of this section.

[47 FR 12952, Mar. 26, 1982, as amended at 51 FR 33262, Sept. 19, 1986]

§ 251.13 Establishment of basic wages.

Agencies that participate in the Panama Canal Employment System shall consult with each other concerning basic pay for employees and shall refer their recommendations for basic pay to the Panama Area Personnel Board. Upon approval by the Secretary of the Army or his designee of basic wage rates, the rates shall be adopted by the agencies.

§ 251.21 Use of categories.

Positions in the agencies shall be grouped into the categories set forth in §§ 251.22 to 251.24.

§ 251.22 Non-manual category.

Those occupational groupings which embrace administrative, clerical, technical, professional, and related occupations. This includes positions covered by Chapter 51 of Title 5, United States

Code, except for those which are specifically excepted and covered in the Special Category.

§ 251.23 Manual category.

(a) Those manual-type occupational groupings that elsewhere in the Federal government are usually covered by the Federal Wage System, i.e., those that encompass the unskilled, semi-skilled, and skilled manual-labor occupations in the trades, crafts, and related employment. This category does not include those positions that are specifically excepted and placed in the special category.

(b) The PAPB shall prescribe standards for grading manual category jobs. Whenever a job-grading standard under the Federal Wage System is utilized, the PAPB shall modify it if necessary to take into account any significant differences in knowledge, skill, or responsibility requirements that are found between the job covered by the Federal Wage System standard and the Canal Area position to which it is applied.

§ 251.24 Special category.

Those occupational groupings which are excepted from the Non-Manual and Manual categories, and whose bases have been traditionally or by statute evaluated, classified, and titled by reference to applicable Government or industry standards for the same or similar work.

§ 251.25 Basic compensation.

(a) For employees not entitled to the differential prescribed by § 251.31 or the additional remuneration prescribed by § 251.32, the rates of pay shall be the base salary or wage rates prescribed by § 251.13. For employees who are entitled to the differential prescribed by § 251.31 or the additional remuneration prescribed by § 251.32, the rates of pay shall be the base salary or wage rate plus the applicable differential or additional remuneration. The aggregate pay thus derived shall be considered basic compensation.

(b) An employee shall not be paid, except as provided in paragraph (c) of this section, basic compensation as defined in paragraph (a) of this section at a rate in excess of the rate of basic pay payable for Level V of the Executive Schedule.

(c) The Deputy Administrator and the Chief Engineer of the Panama Canal Commission shall not be paid basic compensation as defined in paragraph (a) of this section at a rate in excess of the rate of basic pay payable for level IV of the Executive Schedule.

[56 FR 40555, Aug. 15, 1991]

§ 251.31 Tropical differential.

(a) An overseas tropical differential for an employee in the category established by § 251.12(b)(1) who is a United States citizen employee and who qualifies under the provisions of paragraph (b) of this section, shall be fixed by the head of each agency in an amount equal to 15 percent of the applicable base wage or salary established under § 251.13.

(b) The tropical differential prescribed by paragraph (a) of this section shall be paid to each United States citizen employee who qualifies under the following rules:

(1) To be eligible, the employee must have continuously occupied a position, other than a position the rates of pay for which are fixed in accordance with rates of pay for the same or similar work performed outside the continental United States, since: (i) Recruitment or transfer by a department from a place (other than the former Canal Zone) under the jurisdiction of the United States, or (ii) Separation from the Armed Forces of the United States or from employment with a United States firm, organization, or interest under conditions which provided by contract for return transportation to a place (other than the former Canal Zone) under the jurisdiction of the United States.

(2) When the employee is married to another employee eligible for the differential prescribed by this section, the differential may be paid to one spouse only.

(3) The employee whose spouse is a member of the U.S. military service stationed in the area may be paid the differential only to the extent that the amount of the differential otherwise payable exceeds the amount of the total housing allowance (BAQ plus the

housing portion of the station allowance) established for Panama, Republic of Panama, for a military member having the same rank and family size as the employee's military spouse. The employee whose spouse, by reason of U.S. Government employment in the Republic of Panama, is eligible under the Department of State Standardized Regulations (Government Civilian, Foreign Areas) (DSSR) for a living quarters allowance (LQA) may be paid the differential only to the extent that the amount of the differential otherwise payable exceeds the amount of LQA established for Panama, Republic of Panama, by sections 920 and 932.22 of the DSSR for one in the same quarter group and with the same family size as the employee's spouse.

(4) Tropical differential may be paid only to an individual whose retention the head of the agency determines is essential.

(c) The rule set forth in paragraph (b)(1) of this section shall not disqualify the employee who has been continuously employed since July 3, 1976, and who on that date was: (1) Receiving a differential, (2) Not receiving a differential because the employee's spouse was receiving a differential or a housing or living quarters allowance, (3) Not receiving a differential because the employee was under 21, unmarried, and the child or stepchild of a resident of the former Canal Zone or the Republic of Panama, or (4) Not receiving a differential solely because such payment when combined with his or her aggregate compensation established under prior regulations in this subpart would have exceeded the then current rate of step 5, GS–17, of the General Schedule previously set out in 5 U.S.C. 5332(a).

(d) The rules set forth in paragraph (b)(2) and (3) of this section shall not disqualify for the differential the employee who is living apart from his or her spouse while party to a pending action for divorce or separate maintenance filed in a court of competent jurisdiction.

(e) The rules set forth in paragraph (b)(1) of this section shall not disqualify an employee who has been continuously employed as a medical doctor since August 15, 1991 and who on that date was receiving the tropical differential.

[47 FR 12952, Mar. 26, 1982, as amended at 56 FR 40556, Aug. 15, 1991]

§ 251.32 Additional remuneration under Panama Canal Treaty.

(a)(1) An overseas Panama Area differential for an employee in the category established by § 251.12(b)(2) and who qualifies under the provisions of paragraph (b) of this section shall be fixed by the head of each agency for each position in an amount equal to (i) the rate of basic pay for the same or similar work performed in the continental United States by employees of the Government of the United States plus (ii) an amount equal to 15 percent of that rate, less (iii) the base rate of pay established for the position pursuant to § 251.13. The amount of the differential shall not exceed 25 percent of the rate of pay for the same or similar work performed in the United States by employees of the Government of the United States.

(2) Notwithstanding the provisions of paragraph (a)(1) of this section, the Panama Area differential for pilots in the category established by § 251.12(b)(2), employed in the navigation of vessels in the waters of the Panama Canal, who qualify under the provisions of paragraph (b) of this section, shall be an amount equal to 15 percent of the base salary established under § 251.13.

(b) The Panama Area differential prescribed by paragraph (a) of this section shall be paid to each employee who qualifies under the following rules:

(1) An employee is eligible if recruited from outside the Republic of Panama for placement in Panama.

(2) The Panama Area differential may be paid only to an individual whose recruitment or retention the agency head determined to be essential.

(c) The rates of the Panama Area differential prescribed by this section shall be adjusted by heads of agencies with reference to changes in rates of pay for United States Government employees in the continental United States.

(d) The rules set forth in paragraph (b)(1) of this section shall not disqualify an employee who has been continuously employed as a medical doctor since August 15, 1991, and who on that date was receiving the Panama Area differential.

[47 FR 12952, Mar. 26, 1982, as amended at 56 FR 40556, Aug. 15, 1991]

§ 251.41 Salary protection upon conversion of pay base.

(a) In the case of any employee whose rate of basic pay is determined in relation to rates of basic pay for the same or similar work in the United States and which is converted to a rate of basic pay which is determined in relation to rates in areas other than the United States, the employee shall continue to receive a rate of basic pay (but not including environmental differentials authorized under § 251.71 or § 251.72 of this chapter) not less than that to which the employee was entitled immediately before the conversion.

(b) This section shall cease to apply with respect to any employee if the employee is placed in a position:

(1) For which the rate of basic pay is determined in relation to rates of basic pay in the United States; or

(2) Which is of a lower grade.

§ 251.42 Individual pay determinations.

(a) Except as provided in paragraph (b) of this section, pay determinations in connection with personnel actions such as promotions, demotions, transfers, and conversions to new schedules shall be made in accordance with regulations generally in effect for employees in the Federal service as follows:

(1) *Non-manual category*. Salary changes for employees in this category shall be in general conformity with Subparts B and C of 5 CFR Part 531.

(2) *Manual category*. Wage determinations for employees in this category shall be made in accordance with regulations published by the PAPB. Such regulations shall generally conform to regulations published in 5 CFR Part 532.

(3) *Special category*. Salary and wage changes for employees in this category shall be made in accordance with regulations promulgated by the employing agency. In those cases where more than one agency employs persons in positions in this category, the regulations will be developed jointly by the interested agencies.

(b) The pay and grade retention regulations in effect for employees to whom Chapter 51 of Title 5, United States Code, applies, which are set forth in 5 CFR Part 536, shall, in general, apply to reductions in the pay or grade of employees to whom this section applies, except that the provisions of 5 CFR Part 536 pertaining to retroactivity and to appeals shall not apply, and except that the PAPB may make other exceptions.

§ 251.43 Within-grade increases.

(a) *Non-manual category*. Employees in positions in this category shall be advanced to higher steps within the grade of their positions generally in accordance with 5 CFR Part 531, Subpart D.

(b) *Manual category*. Employees in positions in this category shall be advanced successively to the next higher step in their grade level generally in accordance with FPM Supplement 532–1.

(c) *Special category*. Employees in positions in this category shall be advanced successively to the next higher step within their grade in accordance with regulations to be prescribed by the head of the agency concerned.

[47 FR 12952, Mar. 26, 1982, as amended at 51 FR 33262, Sept. 19, 1986]

§ 251.71 Environmental and night shift differentials for manual-type positions.

The head of each agency, in coordination with the heads of other agencies, may authorize payment of environmental differentials for manual-type positions to compensate for exposure to hazards, physical hardships, and working conditions of an unusually severe nature which have not been considered in determining the base rate of pay for the position in question. Differentials for night work may also be established for manual-type positions. Any differential prescribed under this section shall conform with like differentials established under the Federal Wage System to the extent that it

is practicable under local conditions. Such differential shall be treated as part of the basic compensation for the position to the extent it is so treated in the Federal Wage System.

§ 251.72 Physical hardship or hazard differentials for non-manual positions.

The head of each agency, in coordination with the heads of other agencies, may authorize payment of differentials for positions, other than positions subject to § 251.71 of this chapter, to compensate for irregular or intermittent duty involving unusual physical hardship or hazard. Differential prescribed under this section shall generally conform to regulations published in 5 CFR Part 550.

§ 251.73 Premium pay.

(a) Premium pay for Manual-type positions shall be established in accordance with the provisions of 5 U.S.C. 5544 and Supplement 532–1 of the Federal Personnel Manual; *Provided, However,* That any rule concerning premium pay established prior to the effective date of these regulations may be continued for the type of position to which the rule applied before the said effective date.

(b) Premium pay and compensatory time for positions, other than positions subject to paragraph (a) of this section, shall be established in accordance with the provisions of Subchapter V of Chapter 55 of Title 5, United States Code; *Provided, however,* That any rule concerning premium pay or compensatory time established prior to the effective date of these regulations may be continued for the type of position to which the rule applied before the said effective date.

PART 253—REGULATIONS OF THE SECRETARY OF THE ARMY (PANAMA CANAL EMPLOYMENT SYSTEM)—EMPLOYMENT POLICY

PANAMA CANAL EMPLOYMENT SYSTEM

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SOURCE: 47 FR 12956, Mar. 26, 1982, unless otherwise noted.

PANAMA CANAL EMPLOYMENT SYSTEM

Subpart A—General Provisions

§ 253.1 Purpose.

The regulations in this part are prescribed for the purpose of establishing the Panama Canal Employment System governing employment in the Panama Canal Commission and any other Executive Agency, or the Smithsonian Institution, electing to participate in the system.

§ 253.2 Definitions.

As used in this part:

(a) *Administrator* is the Administrator of the Panama Canal Commission.

(b) *Agency* means:

(1) The Panama Canal Commission, and

(2) An executive agency or the Smithsonian Institution, to the extent of any election in effect under section 1212(b)(2) of the Panama Canal Act; except that in paragraph (r) of this section *agency* shall mean an Executive agency, as that term is defined in 5 U.S.C. 105.

(c) *Competitive service* has the meaning given that term in 5 U.S.C. 2102.

(d) *Employee* means an individual serving in a position.

(e) The *Panama Canal Act* means the Panama Canal Act of 1979 (Pub. L. 96–70, 93 Stat. 463).

(f) The *Panama Canal Treaty* means the Panama Canal Treaty between the United States of America and the Republic of Panama, signed September 7, 1977, and related agreements.

(g) *Position* means a civilian position in an agency, if a substantial portion of the duties and responsibilities of the position are performed in the Republic of Panama. In the case of the Commission, *position* means a civilian position in the Commission.

(h) *Subchapter II* means Subchapter II of Chapter 2 of Title I of the Panama Canal Act.

(i) *PAPB* means the Panama Area Personnel Board.

(j) *CEO* means the Central Examining Office.

(k) *Competitive status* has the meaning ascribed to that term in 5 CFR 1.3(c).

(l) *Continental United States* means the forty-eight contiguous states of the United States of America and the District of Columbia.

(m) *Federal Wage System* means the system for fixing and adjusting the rates of pay for prevailing rate employees of the U.S. Government that was established by Pub. L. 92–392 and as set forth in FPM Supplement 532–1 and related issuances.

(n) *Isthmus* means all territory of the Republic of Panama.

(o) *Merit status* means basic eligibility to be noncompetitively selected to fill a vacant position under the Panama Canal Employment System.

(p) *OPM* means the Office of Personnel Management.

(q) *Veteran* means a person entitled to preference as a *preference eligible* as defined by 5 U.S.C. 2108(3).

(r) *Department* means a department, agency or independent establishment in the executive branch of the Government of the United States (including a

corporation wholly owned or controlled by the United States) which conducted operations in the Canal Zone.

§ 253.3 Establishment of Panama Canal Employment System; scope and requirements.

(a) There is hereby established a Panama Canal Employment System. The employment system is a system of:

(1) Selection for appointment, reappointment, reinstatement, reemployment and retention with respect to positions, employees, and individuals under consideration for appointment; and

(2) Regulations concerning other matters related to employment in an agency, as prescribed in this chapter.

(b) The Panama Canal Employment System shall:

(1) Be based on the consideration of the merit of each employee or candidate for employment and the qualifications and fitness of the employee or candidate to hold the position concerned;

(2) Be subject to the provisions of the Panama Canal Treaty of 1977 and related agreements and any other applicable provision of law;

(3) Apply uniformly within and among all agencies, positions, employees and individuals concerned;

(4) Conform, to the extent practicable and consistent with the provisions of law, to the policies, principles, and standards applicable to the competitive service;

(5) In the case of employees who are citizens of the United States, provide for the appropriate interchange of those employees between positions under this system and positions in the competitive service; and

(6) In the case of non-Panamanian employees hired on or after October 1, 1979, include a policy for their periodic rotation in accordance with the Panama Canal Treaty or the Agreement in Implementation of Article IV thereof.

(c) The Panama Canal Commission and, to the extent of any election pursuant to law and paragraph (d) of this section, any other agency shall conduct their employment practices in accordance with this system and the regulations in this part and in part 251 of this chapter.

(d) The head of any Executive Agency and the Smithsonian Institution may elect to have the Panama Canal Employment System made applicable in whole or in part to personnel of that agency in the Republic of Panama.

(e) Provisions for interchange between this system and the competitive service which involve movement from this system to the competitive service shall be subject to the concurrence of the Office of Personnel Management.

§ 253.4 Coverage and exclusions.

(a) *Applicability*. Except as otherwise provided by an agency head in adopting this employment system for application to an agency, the regulations in this part apply to all applicants for employment and employees, irrespective of citizenship, and to all positions except the employees and positions excluded pursuant to § 253.8.

(b) *Exclusions*. The Assistant Secretary of Army may exclude employees or positions from any or all provisions of this part and may revoke such exclusions.

§ 253.5 Central Examining Office.

(a) There is established the Central Examining Office.

(b) The purpose of the Central Examining Office is to assist in implementing the Panama Canal Treaty and related agreements with respect to recruitment, examination, determination of qualification standards, and similar matters.

(c) Authority of the Central Examining Office. The CEO may, subject to policy direction of the PAPB:

(1) Develop examination rating guides.

(2) Conduct, or arrange for, such recruitment and examining programs as may be required to insure an adequate supply of qualified eligibles.

(d) The Central Examining Office shall serve all agencies equally, and shall not give preference to any agency.

§ 253.6 Review by the Office of Personnel Management.

The Office of Personnel Management shall make periodic reviews of the operations of the Panama Canal Employment System for conformity with the

requirements of applicable portions of Title 5, United States Code, this part, and part 251, and shall report its findings to the Panama Area Personnel Board.

§ 253.7 Deviations.

Whenever strict compliance with the letter of the regulations in this part would create practical difficulties or undue hardships, the Panama Area Personnel Board may permit a deviation from these regulations. Such authority may be exercised only if the deviation is within the spirit of the regulations, and the efficiency of the U.S. Government and the integrity of the Panama Canal Employment System are protected and promoted. Any deviation authorized, and the reasons therefor, shall be made a matter of record.

§ 253.8 Exclusions.

(a) Pursuant to the provisions of § 253.4(b), the positions specified by paragraphs (b), (c), (d), and (e) of this section, and incumbents thereof, are excluded, to the extent indicated, from the provisions of Subchapter II and the regulations in this part, with the exception of § 253.47, and in part 251 of this chapter.

(b) The following positions are excluded from all the provisions of subchapter II (except sections 1217 and 1218) and from the regulations in this part and in part 251 of this chapter (except for §§ 251.25, 251.31 and 251.32 of this chapter):

(1) The Administrator, Deputy Administrator, Chief Engineer, Chief Financial Officer, Inspector General, Assistant to the Chairman and Secretary, and Assistant to the Secretary for Congressional Affairs of the Panama Canal Commission.

(2) Persons in the active military, naval, or public health service of the United States appointed to the Panama Canal Commission.

(3) Consultants and experts when employed under the provisions of 5 U.S.C. 3109 or other statutory authority.

(4) Any employee excluded by 5 U.S.C. 2105(c) from coverage under laws administered by the Office of Personnel Management.

(5) The Ombudsman.

(6) Positions in the Panama Canal Commission and the incumbents thereof, if a substantial portion of the duties and responsibilities are performed in the United States. All of the rights and privileges which are provided by applicable laws and regulations for citizens of the United States employed in the competitive service, except Title 5 U.S. Code, Chapter 43 pertaining to performance appraisal, are extended to the incumbents of such positions, other than the Secretary and the Assistant to the Secretary for Congressional Affairs of the Panama Canal Commission.

(c) The following positions, and the incumbents thereof, are excluded from the provisions of section 1212 of the Panama Canal Act which provide for merit selection for employment, section 1213 of the said Act and Subparts B and C of the regulations in this part:

(1) Attorneys.

(2) Positions designated as fee-rate positions within the Special Category established by § 251.24.

(3) Positions requiring part-time or intermittent services in which the individual appointee will receive during his service year compensation that aggregates not more than 40 percent of the annual salary rate for the first step of grade 3 in the applicable Non-Manual schedule.

(4) Positions designated by the agency as appropriate for use as Student Trainee positions and which are filled under a cooperative work-study agreement between an agency and a college or university approved for participation in such a program by the agency.

(5) Positions that are filled by mentally retarded or severely physically handicapped persons pursuant to regulations issued by the agency. Such regulations shall conform, in substance, to those utilized to authorize appointment of the aforesaid classes of persons in Federal employment in the United States.

(6) The positions in the Panama Canal Commission of Deputy Chief Engineer and Associate Ombudsman.

(7) Student assistant positions.

(8) Any service employee assigned to the residence of the Administrator of the Panama Canal Commission when so designated by the Administrator.

(9) Liaison Services Specialists of the General Services Bureau of the Panama Canal Commission.

(10) Positions at non-manual grade 5 and grade 7 level (not to exceed 35 in number) designated for use by the Panama Canal Commission for filling positions in the Professional and Administrative Career Intern Program with high-potential Panamanian citizens.

(d) All Bureau Directors and Heads of Independent Units of the Panama Canal Commission are excluded from the provisions of sections 1212, 1213, 1215 and 1216 of subchapter II, subparts B and C of this part and subpart B of part 251, except for §§ 251.25, 251.31 and 251.32 of this chapter.

(e) Positions of student assistant, apprentice and learner, and the incumbents thereof, are excluded from the provisions of section 1225(b)(2) of the Panama Canal Act.

(5 U.S.C. 5102, E.O. 12173, 12215)

[47 FR 12956, Mar. 26, 1982, as amended at 49 FR 41025, Oct. 19, 1984; 51 FR 25693, July 16, 1986; 51 FR 33262, Sept. 19, 1986; 51 FR 37182, Oct. 20, 1986; 54 FR 4019, Jan. 27, 1989; 56 FR 1924, Jan. 18, 1991; 56 FR 40556, Aug. 15, 1991]

PANAMA CANAL BOARD OF APPEALS

§ 253.11 Establishment; composition; appointment of members; alternates; employees.

(a) There is established a Panama Canal Board of Appeals to review and determine the classification appeals of employees.

(b) The Board shall consist of five members, all of whom shall be civilians employed by the Federal Government and appointed by the Assistant Secretary of the Army as follows:

(1) One member shall be nominated by the Office of Personnel Management.

(2) Two members shall be selected from among employees of U.S. Government agencies in the Republic of Panama (one from a Department of Defense agency and the other from the Panama Canal Commission) and shall be appointed only after appropriate consultation with the advice from organizations representing such employees.

(3) The remaining members (one from Department of Defense and one from Panama Canal Commission) will be selected by the Assistant Secretary of the Army.

(c) The Assistant Secretary of the Army shall appoint one of the members as Chairman of the Board.

(d) For each member of the Board, two alternate members shall be appointed, following the same criteria as for appointment of members. An alternate shall serve on the Board whenever the member for whom he is the alternate is unable to serve for any reason.

(e) The Panama Area Personnel Board will provide administrative and logistical support necessary to accomplish Board functions.

§ 253.12 Decisions of the Board.

(a) Decisions of the Board on any question or other matter relating to an appeal shall be made by majority vote of its members.

(b) Decisions of the Board are final and conclusive and the agency concerned shall take action in accordance with the decision.

§ 253.13 Classification appeals.

(a) Any employee may request at any time that his employing agency review and revise or adjust the classification, grade, and pay level of his position, or any of them, as the case may be. Such requests for review and revision or adjustment shall be submitted and adjudicated in accordance with the regularly established procedures of the employing agency.

(b) In the event of adverse classification decision by the employing agency, an employee shall have the right to appeal, in writing, to the Panama Canal Board of Appeals.

§ 253.14 Terms of members.

The term of service for each member or alternate member of the Panama Canal Board of Appeals shall be for 2 years, provided that the Assistant Secretary of the Army may, in his discretion, terminate or extend the term of service of any member or alternate member at any time. Individuals who are designated as members or alternate members shall be detailed to the Panama Canal Board of Appeals for such periods as their services are required.

Any hearings on employee appeals will be heard in the Republic of Panama.

§ 253.15 Appeals procedures.

The Panama Canal Board of Appeals shall formulate the procedures necessary to the performance of the functions prescribed by section 1222 of the Panama Canal Act. Those portions of the procedures establishing time limits for filing appeals, the form in which appeals are to be submitted, and the circumstances under which the personal appearance of an employee or his representative will be authorized, shall be published for the information of all employees.

§ 253.16 Effective date of decisions.

(a) Decisions of the Panama Canal Board of Appeals shall be binding upon all employing agencies, and shall be effective not later than the beginning of the fourth pay period following the receipt of the decision in the employing agency unless a specific date is stated in the decision in accordance with paragraph (b) of this section.

(b) When the appeal to the Panama Canal Board of Appeals is made within 30 calendar days from the date of an employee's receipt of an adverse decision from his employing agency on a classification appeal provided by § 253.13, if it is from an action lowering the grade or pay level of the employee's position, and the decision of the Panama Canal Board of Appeals raises the grade or pay level of the position, the effective date shall be retroactive to the date of the action which lowered the grade or pay level. However, when the decision of the Panama Canal Board of Appeals raises the grade or pay level of the position above the grade or pay level in effect immediately preceding the lowering thereof, retroactivity will apply only to the extent of restoration to the grade or pay level in effect immediately preceding the lowering thereof. Retroactivity may be based only on duties and responsibilities existing at the time of the lowering of the grade or pay level and not on the basis of duties and responsibilities later assigned.

(c) The right to a retroactive effective date under paragraph (b) of this section may be preserved in the discretion of the Panama Canal Board of Appeals upon a showing by the employee that reasons beyond his control prevented him from appealing within the 30-day period referred to in that subparagraph and that he did appeal as promptly as circumstances permitted.

Subpart B—Filling Positions

§ 253.31 Authority of appointing officers; methods of filling vacancies.

(a) Appointing officers of an agency shall effect personnel actions in accordance with the regulations in this part.

(b) In his discretion an appointing officer may fill any position either by competitive appointment from a Panama Canal Employment System register, by appointment or position change of a present or former Federal employee through noncompetitive action in accordance with the regulations in this part, or, when authorized under § 253.43, by temporary appointment. Except as otherwise provided in the regulations in this part, the appointing officer shall exercise his discretion in all personnel actions solely on the basis of merit and fitness. In determining merit and fitness of any person, there shall be no discrimination on the basis of nationality or citizenship, religious or political affiliations, marital status, physical handicap, race, color, sex, age, or national origin.

§ 253.32 [Reserved]

§ 253.33 Positions restricted to veterans of United States Armed Forces.

The provisions of 5 CFR 330.401, 330.402 and 330.403 apply in their entirety.

§ 253.34 Disqualification of applicants.

An applicant may be denied examination and an eligible may be denied appointment for any of the reasons set forth below. A person disqualified for any of the listed reasons may, in the discretion of the PAPB, be denied examination, or denied appointment to any position, for such period as it may determine.

(a) Dismissal from employment for delinquency or misconduct.

(b) Physical or mental unfitness for the position for which applied.

(c) Criminal, infamous, dishonest, immoral, or notoriously disgraceful conduct.

(d) Intentional false statements or deception or fraud in examination or appointment.

(e) Habitual use of narcotics or habitual use of intoxicating beverages to excess.

(f) In the case of citizens of the United States, reasonable doubt as to the loyalty of the person involved to the Government of the United States.

(g) In the case of non-United States citizens, reasonable doubt that the person involved would refrain from committing acts inimical to the interests of the Government of the United States.

(h) Refusal to furnish testimony in regard to matters inquired of arising under the regulations in this chapter, or refusal to furnish testimony in connection with investigations conducted pursuant to Executive Order 10450 of April 1953. (3 CFR, 1949–1953 Comp., p. 936.)

(i) Any legal or other disqualification which makes the applicant unfit for the service.

§ 253.35 Appointments subject to investigation.

(a) All initial appointments or reappointments made under this part shall be subject to such investigation as may be required to establish the appointee's qualifications and suitability for employment.

(b) Except in cases involving intentional false statements, or deception or fraud in examination or appointment, the condition ''subject to investigation'' automatically expires at the end of 1 year after the effective date of the appointment.

(c) For a period of 1 year after the effective date of any appointment subject to investigation, the head of the agency may remove the employee if investigation discloses that he is disqualified for any of the reasons listed in § 253.34. Thereafter removal may be required only on the basis of intentional false statements or deception or fraud in examination or appointment.

§ 253.36 Prohibited practices.

(a) *Coercion in competition.* An applicant for competitive examination, eligible on any register, or officer or employee in the executive branch of the Government may not directly or indirectly persuade, induce, or coerce, or attempt to persuade, induce, or coerce any prospective applicant to withhold filing application, or any applicant or eligible to withdraw from competition or eligibility for the purpose of either improving or injuring the prospects of any applicant or eligible for appointment. The penalty for violation of this section by applicants or eligibles shall be cancellation of application or eligibility, as the case may be. The penalty for violation of this section by an employee shall be as determined by the head of the agency.

(b) *Instruction of applicants.* Employees are forbidden to instruct, either directly or indirectly, or to be concerned in any manner with the instruction of any person or classes of persons with a view to their special preparation for examinations conducted pursuant to the regulations in this part, except as a part of a government authorized or sponsored program. Violations of this restriction shall be considered sufficient cause for removal from the service.

§ 253.37 Examinations.

The Manager, CEO shall be responsible for conducting open competitive examinations for entrance into the service which will fairly test the relative capacity and fitness of the persons examined for the position to be filled. When sufficient competent persons are not available to provide competition, the Manager, CEO may, with the consent of the employing agency, examine and certify for competitive appointment fewer than three individuals.

§ 253.38 Rating competitors.

(a) The subjects in examinations shall be given such relative weight as the Central Examining Office may prescribe and the same rating scale shall be applied to all persons competing in the same examination. Earned ratings will be augmented for eligible veterans in accordance with the provisions of 5

CFR 337.101(b), (c). Eleven points will be added to the earned ratings of eligible Panamanians.

(b) In rating competitors, CEO shall, in the case of veteran's preference eligibles, provide for waiver of the physical standards and requirements in accordance with 5 U.S.C. 3312.

§ 253.39 Establishment of registers of eligibles.

The names of eligibles (those competitors who meet minimum requirements and are rated as attaining the minimum required rating) shall be entered on appropriate registers in the order outlined below. In the judgment of CEO, eligibility on registers may be established on the basis of earned eligible ratings attained in appropriate examinations for positions in the competitive service.

(a) According to their ratings (including veteran preference and Panamanian preference).

(b) An individual entitled to veteran preference shall be entered ahead of all others having the same rating.

(c) All veterans who have a compensable service-connected disability of 10 percent or more shall be entered at the top of the register in the order of their ratings, except for professional and scientific positions comparable in pay level to positions in grades Non-Manual 9 and above.

(d) When establishing registers, or making certifications therefrom, CEO will provide for priority consideration for career and career-conditional employees of agencies operating in the Republic of Panama who have been separated by reduction in force. However, such priority consideration shall not extend to any position which is in a pay level higher than that from which the employee was separated. Any benefits conferred pursuant to this section are in addition to those conferred by entry of the employee's name on the employing activity's reemployment priority list.

(e) CEO will take appropriate action to insure that veterans of, or persons serving in, the Armed Forces of the United States, receive the same consideration in examinations and entry upon registers as are provided for the competitive service by 5 CFR 332.311, 332.312, 332.313, 332.321, 332.322.

(f) CEO will establish appropriate time periods and procedures for terminating the eligibility of individuals on a register.

§ 253.40 Certificate for appointment.

(a) Upon receipt of a request for certification of eligibles, a sufficient number of names to permit the appointing officer to consider three eligibles in connection with each vacancy shall be certified from the top of the appropriate register. Certificates may contain fewer than three names, if fewer than three eligibles are available and the requesting agency consents to issuance of such a certificate.

(b) [Reserved]

(c) If the number of eligibles on the register is insufficient, CEO, in consultation with the employing agency, will determine whether selective certification is to be made from another register, whether a recruiting campaign to attract applicants for examination should be initiated, or whether examining action is to be taken in accordance with § 253.37 or a temporary appointment authorized in accordance with § 253.43.

(d) When there is no register appropriate as a whole for certification for filling a particular position, there may be certified selectively from the most nearly appropriate existing register the names of eligibles who are qualified for the particular position. Such eligibles shall be certified in the order of their ranking. Eligibles on the register may, when appropriate, be rerated on the basis of the particular requirements of the position.

(e) Certification shall be made without regard to sex, unless the appointing officer requests and justifies referral of eligibles of a specified sex.

(f) Certification must be limited to eligibles residing in the Republic of Panama except when persons possessing the requisite skills and qualifications are not found in the Republic of Panama.

§ 253.41 Selection from certificates.

Selections from certificates are made by application of either the rule of three or the rule of ten.

(a) *Rule of three.* When selecting from a certificate of eligibles, an appointing official shall, with sole reference to merit and fitness, make the selection for the first vacancy from the highest three eligibles available for appointment on the certificate. For the second vacancy, the selecting official must make selection from the three highest eligibles remaining on the certificate. Each succeeding vacancy must be filled in like manner subject to the rules in § 253.40. The rule of three applies to selections involving:

(1) All United States Wage Base positions except those of apprentice, floating equipment trainees at the grade FE–5 and FE–7 levels and marine engineer trainees at the grade ME–7 level; and

(2) United States citizens.

(b) *Rule of ten.* When selecting from a certificate of eligibles, an appointing official shall, with sole reference to merit and fitness, make the selection for the first vacancy from the highest ten eligibles available for appointment on the certificate. For the second vacancy, the selecting official must make selection from the ten highest eligibles remaining on the certificate. Each succeeding vacancy must be filled in like manner subject to the rules in § 253.40. The rule of ten applies to selections involving:

(1) All Canal Area Wage Base positions filled from pre-rated inventories which includes the positions of firefighter and firefighter trainee, and

(2) United States Wage Base positions of apprentice, floating equipment trainees at the grade FE–5 and FE–7 levels and marine engineer trainees at the grade ME–7 level.

The rule of ten shall not be applied in any situation where a United States applicant is among the top three candidates available.

(c) An appointing officer is not required to consider any eligible:

(1) Who has been considered for three or ten separate appointments, as applicable, from the same or different certificates for the same position, or

(2) To whose certification for the particular position the officer makes an objection that is sustained by the CEO for any of the reasons stated in § 253.34 or for other reasons considered by the CEO to be disqualifying for the particular position. The length of a non-Panamanian candidate's previous service or residence in foreign areas may be a valid qualification and selection factor in filling positions in an agency having an established policy for periodic rotation of non-Panamanian citizens.

(d) When an appointing officer passes over a veteran-preference eligible and tentatively selects a non-preference eligible, the provisions of 5 CFR 332.406 apply except that the CEO shall exercise the authority vested in the Office of Personnel Management.

[56 FR 1924, Jan. 18, 1991]

§ 253.42 Appointments from registers.

(a) Except as provided by paragraph (d) of this section, a ''Canal Area Career-Conditional Appointment'' shall be given to an eligible selected from a register for other than temporary or term appointment.

(b) Upon completion by the appointee of 3 years of creditable service, his career-conditional appointment shall be automatically converted to a ''Canal Area Career Appointment.'' As used in this paragraph, ''creditable service'' means all substantially continuous service with the Federal Government since initial non-temporary civilian appointment, including any service in the competitive or excepted service, or intervening service in the legislative or judicial branches or in the Armed Forces of the United States. A break in service of 30 days or less shall be considered substantially continuous service. Breaks in service of more than 30 days shall not be considered substantially continuous service unless the head of the agency excepts particular types of cases from this requirement. In making such exceptions, the agency will be guided by the instructions published for the competitive service in the Federal Personnel Manual.

(c) An eligible given a Canal Area Career-Conditional Appointment shall be required to serve a probationary period of 1 year. Prior Federal service may be counted toward completion of the probationary period as provided in the Federal Personnel Manual. The employing agency shall utilize the probationary period as fully as possible to

determine the fitness of the employee and shall terminate his services during such period if he fails to demonstrate fully his qualifications for continued employment. The employee shall automatically acquire a merit status upon satisfactory completion of probation.

(d) An eligible selected from a register for other than a temporary or term appointment shall be given a Canal Area Career Appointment if:

(1) He is a Federal employee serving under a career appointment in the competitive service, a permanent appointment in the excepted service, or a Canal Area Career Appointment;

(2) He is a former Federal employee who once met the service requirement for a career appointment in the competitive service, a permanent appointment in the excepted service, a Canal Zone Career Appointment, or a Canal Area Career Appointment.

(e) An eligible selected from a register for career appointment shall be required to serve a probationary period, subject to the same conditions as apply to a career-conditional appointment.

§ 253.43 Temporary and term appointments.

(a) An agency may make temporary limited appointments for periods not in excess of 1 year, and term appointments for periods of more than 1, but not in excess of 4 years. In making such appointments, the agency will be guided by the instructions published for the competitive service in the Federal Personnel Manual. A person so appointed shall not acquire merit status by reason of such appointment.

(b) Term employees are required to serve a 1-year trial period, during which they shall be entitled to the same limited protection as is accorded probationers under the Panama Canal Employment System. In adverse actions, term employees are entitled to the rights accorded career and career-conditional employees under the Panama Canal Employment System except while they are serving the 1-year trial period and when the term appointment has expired.

§ 253.44 Noncompetitive appointments.

(a) Appointing officers may noncompetitively appoint a current Federal employee who has a merit status, a competitive status, or who is serving probation at the time of appointment. Appointing officers may noncompetitively reappoint a former Federal employee who has a merit status, a competitive status, or who was serving probation at the time of separation. Eligibility for such reappointment will be subject to the following conditions:

(1) Former Federal employees who have never completed the service requirement for Canal Zone or Canal Area career appointment or for career appointment in the competitive service may be reappointed only within 3 years following the date of their separation, except that periods of temporary employment shall serve to extend the three-year period. This time limit does not apply to former employees entitled to veteran preference.

(2) Former employees who have once completed the service requirement for Canal Zone or Canal Area career appointment or for career appointment in the competitive service may be reappointed without time limitation.

(b) Appointing officers may noncompetitively appoint an individual who is certified by the Director of ACTION as having served satisfactorily as a Volunteer or Volunteer Leader under the Peace Corps Act, or as a VISTA volunteer under the Economic Opportunity Act. Such appointments shall be made in accordance with the procedures and regulations in effect for the appointment of such persons to positions in the competitive service.

(c) A Student Trainee who has successfully completed his cooperative work-study program may be appointed noncompetitively to a position at grade 5 or grade 7 in the applicable Non-Manual schedule for which he meets the qualification requirements, with the exception of any written test requirements, in the field of work in which he received his training, provided:

(1) He has successfully completed all the requirements for a bachelor's degree, including any specialized courses required for the particular position for which he has been in training;

(2) He has completed at least 6 months work experience (i.e., 6 months in a pay status) as a Student Trainee in the agency that recommends his appointment; and

(3) His employing agency recommends him for noncompetitive appointment within 90 days after completion of his work-study program.

(d) Employees appointed to positions excluded from this subpart pursuant to § 253.8(c)(5) may have their appointments converted to career or career-conditional appointments in accordance with regulations prescribed by the PAPB. Such regulations shall generally conform to the regulations of the Office of Personnel Management for conversion of excepted service appointments of physically or mentally handicapped persons to career or career-conditional appointments.

(e) A Professional and Administrative Career Intern Program participant who has successfully completed at least one year of the prescribed training may be noncompetitively appointed to a position at non-manual grades 7 and above for which he/she meets the qualification requirements.

(5 U.S.C. 5102, E.O. 12173, 12215)

[47 FR 12956, Mar. 26, 1982, as amended at 51 FR 33262, Sept. 19, 1986]

§ 253.45 Tenure following noncompetitive appointment.

(a) The noncompetitive appointment of a current or former Federal employee who has not completed the service requirement for Canal Area or Canal Zone career appointment or career appointment in the competitive service shall be made as a Canal Area Career-Conditional Appointment. The appointment shall be automatically converted to a Canal Area Career Appointment upon completion of the service requirement. A merit status shall be acquired upon satisfactory completion of any required probationary period.

(b) The noncompetitive appointment of a former or current Federal employee who has once completed the service requirement for Canal Zone or Canal Area Career Appointment or for career appointment in the competitive service shall be made as Canal Area Career Appointment.

(c) Former or current Federal employees who did not complete any required probationary periods prior to noncompetitive appointment shall be required to serve a probationary period of one year following appointment.

(d) The noncompetitive appointment of Volunteer or Volunteer Leader under the Peace Corps Act or VISTA volunteer under the Economic Opportunity Act shall be made as Canal Area Career-Conditional Appointment; shall be subject to satisfactory completion of a probationary period of one year; and shall be automatically converted to a Canal Area Career Appointment upon completion of the service requirement. A merit status shall be acquired upon satisfactory completion of probation.

(e) The noncompetitive appointment of a person who successfully completed a cooperative work-study program or a Professional and Administrative Career Intern Program under paragraph (c) or (e), respectively, of § 253.44 shall be made as a Canal Area Career-Conditional Appointment or Canal Area Career Appointment and may be subject to the satisfactory completion of a probationary period of one year. Canal Area Career-Conditional Appointments shall be automatically converted to Canal Area Career Appointments upon completion of the Service requirements.

(5 U.S.C. 5102, E.O. 12173, 12215)

[47 FR 12956, Mar. 26, 1982, as amended at 49 FR 41025, Oct. 19, 1984]

§ 253.46 Promotion, demotion, reassignment, and transfer.

(a) Appointing officers may, in their discretion, promote, demote, reassign, or transfer employees who are serving under Canal Area Career or Career-Conditional Appointments, subject to the provisions of this section and in accordance with the appropriate qualification standards established by the PAPB for the position. Such actions will be based solely on the merit of the employee and upon his qualifications and fitness to hold the positions concerned. Such actions for employees serving under temporary or term appointments will be subject to such regulations as the agency may prescribe.

In preparing such regulations the agency will be guided by the instructions published for the competitive service in the Federal Personnel Manual.

(b) Employing agencies shall establish a promotion plan for all employees which is consistent with the Panama Canal Treaty and insofar as practicable, with the provisions of the merit promotion plan developed by the Office of Personnel Management for the competitive service.

§ 253.47 Rotation of personnel.

(a) United States citizen employees and other non-Panamanian employees appointed to a position subject to this part after September 30, 1979 shall be subject to a policy of periodic rotation in accordance with the Panama Canal Treaty and related agreements, except that the following individuals shall not be subject to such policy:

(1) An individual who was a permanent employee of the Panama Canal Company or Canal Zone Government on September 30, 1979 and was transferred to a position in the Panama Canal Commission or another agency in the Republic of Panama on October 1, 1979 without a break in service.

(2) An individual who was separated from the Panama Canal Company or Canal Zone Government by reason of a reduction in force on September 30, 1979 and was appointed to a position in the Panama Canal Commission before April 1, 1980, or

(3) An individual who was employed by a department on September 30, 1979 and continues in employment with an agency, other than the Panama Canal Commission, without a break in service.

(b) The head of each agency shall establish a policy of periodic rotation in accordance with paragraph (a) of this section and other applicable law. Such policy may except positions from rotation for sound administrative reasons. This section shall not preclude an agency other than the Commission from adopting a policy of periodic rotation of employees pursuant to other authority.

(c) Notwithstanding any Canal Area Career or Career-Conditional Appointment or acquisition of merit status, an employee may, in accordance with an agency's rotation policy, be removed from service after completion of the service period under the rotation policy established under this section.

[47 FR 12956, Mar. 26, 1982, as amended at 51 FR 33262, Sept. 19, 1986]

Subpart C—Conversion to Canal Area Career or Career-Conditional Appointments

§ 253.71 Eligibility.

Incumbents of positions made subject to Subpart B of this part by revocation of an exclusion in § 253.8 or by other action, may be retained in their positions. Each retained incumbent without a personal or competitive status who is serving in a continuing position under a non-temporary appointment will become eligible for conversion to a Canal Area Career or Career-Conditional Appointment provided:

(a) He rendered 6 months satisfactory service in the position immediately prior to its inclusion under Subpart B of this part. Periods to be counted toward the 6-month period as an exception to the requirement for actual service shall be determined in accordance with the instructions applying to the competitive service as published in Chapter 315 of the Federal Personnel Manual.

(b) He meets the applicable qualification and suitability standards.

(c) His employing agency submits a timely recommendation which is approved by the PAPB.

§ 253.72 Procedure.

The employing agency shall recommend to the PAPB that the appointment of an eligible employee be converted. The recommendation shall be submitted not later than one year after the date that the position is brought within the coverage of Subpart B of this part. Upon approval by the PAPB, the conversion is effective as of the date of the employing agency's recommendation. Notice of the PAPB's decision together with the reasons therefor shall be given in writing to the agency and employee concerned and be made a part of the employee's official personnel folder.

§ 253.73 Tenure.

(a) *Preservation of tenure.* Neither a conversion action, nor a recommendation for conversion, shall serve to reduce an employee's retention standing for reduction-in-force purposes.

(b) *Tenure following recommendation.* Upon submission of a recommendation for conversion, the nominee's retention standing for reduction in force is in Retention Group I if he is already in that group or if he meets the service requirement for a Canal Area Career Appointment; otherwise, his retention standing is in Tenure Group II.

(1) An employee reverts to his previous tenure group if the recommendation is returned without final action, and remains in this group until such time as the recommendation is resubmitted.

(2) Irrespective of his previous retention standing, an employee is placed in Tenure Group III if the PAPB disapproves the recommendation for conversion.

(c) *Tenure following conversion.* Conversion will be to Canal Area Career Appointment if the employee meets the service requirement for such appointment; otherwise, conversion will be to Canal Area Career-Conditional Appointment. However, retention standing for reduction-in-force purposes will be governed by paragraph (a) of this section. All conversions will be subject to satisfactory completion of a one-year probationary period if such probation has not been completed prior to the time of conversion.

§ 253.74 Acquisition of merit status.

An employee who is converted under this subpart acquires a merit status upon completion of any required probationary period.

§ 253.75 Employees not recommended for conversion.

(a) Employees who are not recommended for conversion, or whose conversion is disapproved, will be retained in status quo and placed in Tenure Group III until separated or until they receive a competitive appointment.

(b) Employees retained in status quo may be noncompetitively changed to other positions upon meeting the requirements established pursuant to § 253.46(a) for the noncompetitive movement of employees serving under temporary appointments.

(c) Employees retained in status quo are subject to displacement by eligibles on registers.

(d) Employees serving under temporary appointments on the date their positions are made subject to Subpart B of this part will be considered as having been converted to a temporary appointment under § 253.43 and may be retained until expiration of their current appointments.

Subpart D—Conversion From Excluded and Temporary Appointments to Canal Area Career or Career-Conditional Appointments

§ 253.76 Eligibility.

A temporary employee may be converted to a Canal Area Career or Career-Conditional Appointment provided:

(a) He rendered at least one year of satisfactory continuous service with the agency in which he is to be converted and the service immediately preceded the conversion;

(b) The conversion is to a position in the same wage category as that held by the employee prior to the conversion;

(c) The conversion is to either:

(1) A manual category position at any grade from MG–1 to MG–9 and the employee to be converted ranks among the top 50% of the register of eligibles or;

(2) A non-manual category position filled from a pre-rated inventory at any grade from NM–1 to NM–5 provided the employee to be converted ranks among the top 25% of the register of eligibles;

(d) There is no United States citizen within reach in accordance with the rule of three, and no preference eligible would be passed over; and

(e) The employee is not a United States citizen.

[56 FR 1924, Jan. 18, 1991]

§ 253.77 Procedure.

The employing agency shall obtain approval from the Central Examining Office prior to converting temporary

employees to Canal Area Career or Career-Conditional Appointments. Employees converted under this subpart will be treated as if they had been appointed from a register as provided in § 253.42.

[56 FR 1924, Jan. 18, 1991]

Subpart E—Performance Rating

§ 253.181 Rating system.

Employing agencies shall establish a performance rating system for employees generally patterned after the Office of Personnel Management guidelines.

Subpart F—Training

§ 253.201 Training programs.

Agencies shall, in accordance with any obligation established by the Panama Canal Treaty or the agreements in implementation thereof, establish training programs for Panamanian employees and apprentices in order to increase the number of Panamanian nationals qualified to assume positions as positions become available. Except as provided in the said treaty and agreement, there shall be no discrimination on the basis of citizenship with regard to training.

Subpart G—Military Service

§ 253.221 Rights of employees.

The rights of employees called to active military duty in the Armed Forces of the United States will be determined in accordance with 5 CFR Part 353.

Subpart H—Adverse Personnel and Reduction-in-Force Actions

§ 253.241 Applicability of existing law and civil service regulations.

(a) The provisions of 5 U.S.C. 7501 are applicable to the removal or suspension of those employees to whom such provisions were applicable immediately prior to January 19, 1959.

(b) The provisions of 5 CFR Part 752, and Title 5, United States Code, pertaining to adverse actions, are applicable to preference eligibles to the extent and in the manner specified therein.

(c) The provisions of 5 CFR Part 351 and Title 5, United States Code, pertaining to reductions in force, are applicable to all reduction-in-force actions.

(d) The provisions of 5 U.S. Code, section 5596 shall be applicable to any person whose removal or suspension under an agency's system established by § 253.262 is determined to have been unjustified or unwarranted after review in accordance with procedures of the employing agency.

§ 253.242 Probationary employees.

Any employee serving a probationary period shall be given a full and fair trial in the duties of the position in which appointed. If the performance of his duties or his conduct during the probationary period is not satisfactory to the employing agency, his services may be terminated by notifying him in writing of the reasons for his separation and of its effective date. An employee's services may also be terminated during the probationary period for reasons based in whole or in part on conditions arising prior to his appointment. The employing agency shall notify him in writing of the reasons for his separation and its effective date.

Subpart I—Grievances and Appeals

§ 253.261 Grievance procedures.

Each employing agency shall make available to employees a grievance procedure established by the agency, except as may be otherwise provided by a negotiated grievance procedure.

§ 253.262 Adverse actions and appeals.

Each agency shall establish an adverse action and appeals system under which the provisions of 5 CFR Part 752, are administratively extended to employees in categories corresponding to those in the U.S. competitive service to which that part applies. Appeals to the Merit Systems Protection Board shall not, however, be so extended by such administrative action.

§ 253.263 Appeals from applicants or eligibles.

Applicants and eligibles who have reason to believe that the regulations

in this part were not followed in rating their examinations or in making selections for appointment may appeal to CEO. In the event they are not satisfied with CEO's decision, and they can show reason to believe that CEO's action was arbitrary, capricious, or in violation of these regulations, they may request a review of the decision by the PAPB.

Subpart J—Records and Reports

§ 253.291 Applicability of Federal Personnel Manual.

(a) The provisions of Chapter 296 of the Federal Personnel Manual will, except as indicated below, apply to the preparation of notifications of personnel action taken under the regulations in this chapter.

(1) All appointment and conversion actions will be prefaced by the term ''Canal Area'' or ''CA'' and will be identified as taken under the authority of the regulations in this chapter.

(2) The noncompetitive appointment of a former Federal employee under the provisions of § 253.44 will be termed a reappointment rather than a reinstatement.

(b) The provisions of Chapters 293 and 298 of the Federal Personnel Manual will apply, respectively, to the maintenance of employment records and the reporting of employment, except that the Official Personnel Folders of non-U.S. citizen employees who separate from service may be retained by the employing agency for not to exceed two years following separation. Upon expiration of this period, the Official Personnel Folders will be transferred to the National Personnel Records Center for permanent storage.

[51 FR 33262, Sept. 19, 1986]

Subpart K—Labor Management Relations

§ 253.311 Labor-management and employee relations.

Labor-management and employee relations of agencies, their employees and the exclusive representative of employees in an appropriate unit in an agency shall be governed and regulated solely by Chapter 71 of title 5, United States Code and other applicable laws, rules and regulations of the United States.

Subpart L—Equal Employment Opportunity

§ 253.331 Policy concerning equal employment opportunity.

(a) All Personnel actions affecting employees or applicants for employment shall be made free from any discrimination based on race, color, religion, sex, age, national origin, handicapping condition or marital status.

(b) Agencies may adopt regulations to carry out the provisions of this subpart and may provide for appeals of personnel actions alleged to be based upon discrimination prohibited by this subpart.

(Secs. 1211 through 1225 of the Panama Canal Act of 1979; 93 Stat. 463; Executive Order 12215)

PART 255—[RESERVED]

PART 256—SALARY OFFSET FOR FEDERAL EMPLOYEES WHO ARE INDEBTED TO THE UNITED STATES

Sec.

256.1 Collection of debts by offset; scope of regulations.
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256.8 Consequence of employee's failure to meet deadline dates.
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256.10 Representation.
256.11 Applicable legal principles.
256.12 Standards for determining extreme financial hardship.
256.13 Collection of debts on behalf of other agencies by offsetting the pay of a Commission employee.

AUTHORITY: 5 U.S.C. 5514, as amended by section 5 of Public Law 97–365, 96 Stat. 1751–1752.

SOURCE: 50 FR 34123, Aug. 23, 1985, unless otherwise noted.

§ 256.1 Collection of debts by offset; scope of regulations.

(a) If it is determined that an employee of the United States is indebted to the Panama Canal Commission, the employee's pay may be offset to satisfy that indebtedness under the procedures set forth in this part.

(b) Debts owed by Commission employees to other agencies of the United States may be recovered by offset against the employee's pay in accordance with § 256.13. Similar provision in the regulations of other agencies permit the Commission to recover by offset debts owed to the Commission by the employee of another agency, if the Commission first complies with the provisions of §§ 256.1 through 256.12 of this part.

(c) An offset against pay shall be carried out in accordance with the standards established under the Federal Claims Collection Act of 1966, as amended (31 U.S.C. 3701 *et seq.*).

(d) The regulations in this part do not apply to, and do not impair the United States' authority with regard to, the collection of a debt, by offset or by other means, if the debt is owed to the United States by a Federal employee and the debt arose under the Internal Revenue Code of 1954 as amended (26 U.S.C. 1 *et seq.*), or in any other circumstances in which collection of a debt by salary offset is explicitly provided by Federal statute, such as the collection authority granted the Commission pursuant to 22 U.S.C. 3645.

(e) These regulations do not preclude an employee from questioning the amount or validity of a debt by submitting a claim to the General Accounting Office, but the Commission need not suspend the collection of the debt because of the filing of such a claim.

(f) These regulations do not preclude the compromise, suspension or termination of collection actions where appropriate under the standards set forth at 4 CFR 101.1 *et seq.*

(g) An employee's involuntary payment of all or any portion of an alleged debt being collected pursuant to this part shall not be construed as a waiver of any rights which the employee may have under this subpart or any other provision of law, except as otherwise provided by law.

(h) Amounts paid or deducted pursuant to this subpart shall be promptly refunded to an employee if the debt is waived or otherwise found not owing to the United States or if the Commission is directed by a competent judicial or administrative authority to refund amounts deducted from an employee's current pay.

(i) The procedures in this part and the collection of debts by the Panama Canal Commission shall be carried out by the Chief Financial Officer.

(j) The Commission will not initiate salary offset to collect a debt under this subpart more than ten years after the Government's right to collect the debt first accrued, unless facts material to the Government's right to collect the debt were not known and could not reasonably have been known by the official or officials of the Government who are charged with discovering and collecting the debt in question.

§ 256.2 Definitions.

As used in this part:

Agency shall have the same meaning as prescribed in 5 CFR 550.1103.

Creditor agency means the Federal agency to which the debt is owed.

Day, unless specified otherwise, means a calendar day, and time limits are to be computed by counting calendar days, rather than only those days on which Commission offices are open for business.

Debt means an amount owed to the United States from any source, except as provided in this part. Such debts include, but are not limited to, those arising from loans insured or guaranteed by the United States, fees, leases, rents, royalties, services, sales of real or personal property, overpayments, fines penalties, damages, interest forfeitures, etc. Interest, penalties, and administrative costs may be assessed on debts collected pursuant to this part. These charges shall be assessed or waived in accordance with the provisions of 4 CFR 102.13.

Delinquent debt means (a) a debt which has not been paid, or for which arrangements for payment have not been agreed to by the creditor agency and the employee, by the date specified in the creditor agency's initial written notification or (b) a debt for which the

employee fails to comply with the terms of payment arrangements agreed to with the creditor agency.

Disposable pay shall have the same meaning as prescribed in 5 CFR 550.1103.

Employee means a current—

(a) Civilian employee, as defined in 5 U.S.C. 2105;

(b) Member of the Armed Forces or Reserves of the United States;

(c) Employee of the United States Postal Service; or

(d) Employee of the Postal Rate Commission.

Pay means basic pay, premium pay, special pay, incentive pay, retired pay, retainer pay, or, in case of an employee not entitled to basic pay, other authorized pay.

Paying agency means the Federal agency or branch of the Armed Forces or Reserves employing the individual or disbursing his or her current pay.

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

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

§ 256.3 Pay subject to offset.

(a) An offset from an employee's pay from the Commission may not exceed 15 percent of the employee's disposable pay, unless the employee agree in writing to a larger offset.

(b) If collection in one lump-sum payment would exceed 15 percent of the employee's disposable pay, an offset shall be made biweekly or at officially established pay intervals from the employee's current pay account. Whenever possible, the installment payments shall be sufficient in size to liquidate the debt during a period not greater than the anticipated period of active duty or employment of the debtor employee.

(c) If an employee retires, resigns, or is discharged, or if his employment period or period of active duty otherwise ends before collection of the debt is completed, an offset may be made from subsequent payments of any nature (*e.g.*, final salary payment, lump-sum leave, etc.) due the individual from the employing agency, to the extent necessary to liquidate the debt. If the final payment due the employee is insufficient to satisfy the debt, the creditor agency shall take steps necessary to provide for payment of the debt by administrative offset from payments of any kind due the former employee from the United States pursuant to 31 U.S.C. 3716. (See 4 CFR 102.4)

§ 256.4 Advance notice of debt; request for records; submission of information.

(a) Before initiating an offset proceeding, the Chief Financial Officer of the Panama Canal Commission will establish an individual administrative case file for each employee to be covered by the offset proceeding and notify the employee—

(1) That he has determined that the employee is indebted to the United States in a specific amount as the result of a debt due and owing to the Panama Canal Commission;

(2) That he intends to satisfy that indebtedness by offsetting 15 percent of the employee's disposable pay unless the employee can demonstrate that he is not indebted to the United States or that the proposed offset schedule would produce an extreme financial hardship, as defined in § 256.12 of this part;

(3) If the applicable law includes a provision requiring waiver of debts in certain circumstances, notice of the waiver provision, including a description of the conditions under which a waiver must be granted, notice that the employee has an opportunity to request such a waiver, and instructions on how to apply for a waiver; and

(4) The options available to him and time limits within which submission of additional information or documents must be made.

(b)(1) An employee who has been notified of the Chief Financial Officer's determination of the existence and amount of the debt and the proposed offset schedule, may submit to him a request—

(i) Not later than 10 days from the date the employee receives the notice, for a copy of the records in the possession of the agency relating to the debt,

(ii) Within the time specified in paragraph (c) of this section, that he reconsider his determination of the existence or amount of the debt,

(iii) Within the time set forth in paragraph (c) fo this section, that he reconsider the proposed offset schedule, on the basis that it would produce an extreme financial hardship for the employee, and

(iv) Within the time set forth in paragraph (c) of this section, that he consider a request for waiver of the debt, if a waiver provision is applicable to the debt.

(2) If the employee requests a reconsideration of the determination of the existence or amount of the debt, the employee shall submit a statement, with supporting documents, indicating why the employee believes he is not so indebted.

(3) If the employee requests a reconsideration of the proposed offset schedule, the employee shall file an alternative proposed offset schedule and a statement, with supporting documents, showing why the schedule proposed by the agency would produce an extreme financial hardship for the employee. The supporting documents must show, for the employee and his spouse and legal dependents, for the one-year period preceding the receipt of the notice and for the repayment period proposed by the employee in his or her offset schedule, the—

(i) Income from all sources,

(ii) Assets,

(iii) Liabilities,

(iv) Number of legal dependents,

(v) Expenses for food, housing, clothing, and transportation,

(vi) Medical expenses, and

(vii) Exceptional expenses, if any.

(c) An employee who requests a reconsideration of the existence or amount of the debt, or the proposed offset schedule, shall submit his statement, with supporting documents, to the Chief Financial Officer no later than—

(1) Forty-five days from the date the employee receives the notice of the debt, if he does not make a timely request for records under paragraph (b)(1)(i) of this section; or

(2) Forty-five days from the date the employee receives the records, if a timely request for records was made.

(d) If the employee submits a timely request for reconsideration under paragraph (b) of this section, together with the required documents, the Chief Financial Officer will reconsider whether the employee is indebted to the United States, the amount that the employee owes, or whether the proposed offset schedule is appropriate.

(e) If the employee files a timely request for waiver of the debt, the Chief Financial Officer will consider that request. If the employee files a request for waiver that is not timely, the request will be considered if he establishes that his failure to file within the time prescribed was because of circumstances beyond his control or because he did not receive the notice of the time limit and was not otherwise aware of it.

(f) The Chief Financial Officer's decision on the employee's request for reconsideration will be based on agency records and the material submitted by the employee. He shall promptly notify the employee of his decision concerning the existence and amount of the debt and the appropriateness of the employee's proposed alternative offset schedule.

(g) If the Chief Financial Officer determines that the employee is indebted to the United States, he will include in the notice to the employee the following matters:

(1) A statement of the reasons for the decision regarding the indebtedness, including, if applicable, the reasons for any reduction of the amount of the indebtedness; and

(2) The notice described in § 256.5.

(h) If the Chief Financial Officer determines that his original offset schedule, or a modified schedule (other than the one proposed by the employee) will not impose an extreme financial hardship on the employee, he will include in the notice to the employee—

(1) A statement of the reasons for his conclusion that his original or modified offset schedule will not impose an extreme financial hardship, and

(2) The notice described in § 256.6.

§ 256.5 Formal notice to employee.

(a) At least 30 days before requesting an agency to offset the pay of an employee or commencing the offset of the pay of an employee of the Commission, the Chief Financial Officer will send the employee a notice stating—

(1) The nature and amount of the debt he has determined that the employee owes the United States;

(2) His intention to collect the debt by offset;

(3) The amount that the agency determines will be offset from the employee's disposable pay, including the proposed schedule for the deductions;

(4) Unless such payments are excused in accordance with 4 CFR 102.13, an explanation of the creditor agency's requirements concerning interest, penalties, and administrative costs;

(5) The employee's right to inspect and copy Government records relating to the debt or, if the employee or his representative cannot personally inspect the records, to request and receive a copy of such records.

(6) If not previously provided, the opportunity (under terms agreeable to the Commission) to establish a schedule for the voluntary repayment of the debt or to enter into a written agreement to establish a schedule for repayment of the debt in lieu of offset. The agreement must be in writing, signed by both the employee and the Commission, and documented in the Commission's files (4 CFR 102.2(e));

(7) If the applicable law includes a provision requiring waiver of debts in certain circumstances, notice of the waiver provision, including notice of the period within which such a waiver must be requested and an explanation of the conditions under which waiver may be granted;

(8) That amounts paid or deducted for the alleged debt which are later waived or found not owed to the United States will be promptly refunded to the employee;

(9) The employee's right to a hearing on the Chief Financial Officer's determination concerning the existence and amount of the debt and the proposed offset schedule. This notice shall include a description of the applicable hearing procedures and requirements;

(10) That the timely filing of a petition for hearing on the existence or amount of a debt or the offset schedule will stay the commencement of collection proceedings; but that a request for a waiver or a hearing on the employee's credibility of veracity in connection with a request for a permissive waiver will not stay the collection proceedings;

(11) 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;

(12) The method and time period for requesting a hearing; and

(13) That any knowingly false or frivolous statements, representations, or evidence may subject the employee to:

(i) Disciplinary or adverse action;

(ii) Penalties under the False Claims Act, sections 3729–3731 of Title 31, United States Code, or any other applicable statutory authority; or

(iii) Criminal penalties under sections 286, 287, 1001, and 1002 of title 18, United States Code or any other applicable statutory authority.

(b) The formal notice prescribed by paragraph (a) of this section, is not applicable to any pay adjustment arising out of an employee's election of coverage or a change in coverage under a Federal benefits program requiring periodic deductions from pay, if the amount to be recovered was accumulated over four pay periods or less.

§ 256.6 Request for a hearing; prehearing submissions.

(a) An employee's request for a hearing or waiver under § 256.5 must be filed not later than 15 days from the date of receipt of the formal notice.

(b) Not later than three days prior to a scheduled hearing date, the employee may notify the Chief Financial Officer of his election to have the matter determined by the hearing official solely on the basis of written submissions. If no such election is filed by the employee, the hearing shall be conducted as an oral proceeding.

(c) If an employee files a timely petition for a hearing, the Chief Financial Officer will—

(1) Notify the employee of the time, date, and location of the hearing, if a determination solely on the basis of written submissions has not been requested; and

(2) Provide copies of the records in the possession of the agency relating to the employee's debt to the hearing official and, if he has not previously received the records, to the employee.

(d) If the employee files a request for a hearing that is not timely, he will be granted a hearing if he establishes that his failure to file within the time prescribed was because of circumstances beyond his control or because he did not receive the notice of the time limit and was not otherwise aware of it.

(e) If the employee contests the Commission determination of the existence or amount of the debt, he shall, not later than 10 days prior to the scheduled hearing date, file the following documents:

(1) A statement of the reasons why the employee believes that the Commission determination of the existence or amount of the debt was clearly erroneous. The statement shall include a recitation of the facts on which the employee relies to support his belief and any legal arguments supporting his position;

(2) A list of witnesses the employee intends to call at the hearing and a statement of why their testimony is desired; and

(3) A copy of the records that the employee intends to introduce at the hearing, if they differ from those provided by the Commission.

(f) If the employee contests the Commission's proposed offset schedule, he shall, not later than 10 days prior to the scheduled hearing date, file the following:

(1) A proposed alternative offset schedule;

(2) A statement of the reasons why the proposed offset against disposable pay will produce an extreme financial hardship;

(3) The information required in § 256.4(b)(3) of this part;

(4) A list of witnesses the employee intends to call at the hearing and a statement of why their testimony is desired; and

(5) A copy of the records that the employee intends to introduce at the hearing, if they differ from those provided by the Commission.

(g) The Chief Financial Officer shall file, not later than 10 days prior to the scheduled hearing date, a list of witnesses that the Commission intends to call at the hearing.

(h) Material submitted by an employee in connection with a request for reconsideration or for a waiver under § 256.4 need not be resubmitted in connection with the proceeding under this section.

(i) Material required to be filed under paragraphs (e), (f), and (g) of this section shall be filed with the hearing official and copies shall be provided to the opposing party.

§ 256.7 Hearings; time, date, and location.

(a) If an employee files a timely request for a hearing under § 256.6, the Commission will select the time, date, and location for the hearing. A hearing will be granted on a request for a waiver only if such waiver is provided for by law and if the request, in the judgment of the Chief Financial Officer, raises issues of veracity or credibility of the employee. To the extent feasible, the Commission will select a date and location that is convenient for the employee.

(b) For an employee who resides on the Isthmus of Panama, the hearing will be held in Panama. Hearings may be scheduled in New Orleans or Washington, D.C. for persons not residing in Panama.

§ 256.8 Consequence of employee's failure to meet deadline dates.

(a) An employee shall be considered to have waived his right to a hearing, and will have his disposable pay offset in accordance with the offset schedule proposed by the Commission, if the employee fails to appear at the time fixed for a hearing, or fails to file the required submissions under § 256.6 within five days after the filing date established under that section.

(b) The hearing official may excuse the employee's failure to meet any of

the foregoing requirements if the employee shows that he exercised due diligence and that there is good cause for his failure to meet the requirements.

§ 256.9 Hearing procedures.

(a) The hearing will be conducted by a hearing official who is not an employee of the Commission or otherwise under its supervision or control, except that hearings on waivers may be conducted by an employee of the Commission.

(b) The hearing official shall prepare a summary record of the hearing, which will be maintained by the Commission as a part of the record of the offset procedures; however, no transcript of the hearing shall be made.

(c) The hearing shall not be conducted in accordance with formal rules of evidence with regard to the admissibility or use of evidence, except that the hearing official shall limit the evidence to testimony and documents which are relevant to the issues being considered.

(d) At the hearing, the employee and the Commission may introduce evidence and may call witnesses, consistent with the provisions of paragraph (c) of this section. Witnesses shall testify under oath and are subject to cross-examination.

(e) If the matter being contested is the existence or amount of a debt, the hearing official shall issue a decision upholding the Commission determination, unless the hearing official finds that the Commission determination was clearly erroneous.

(f) If the hearing official finds that the Commission's determination of the amount of the debt was clearly erroneous, he shall determine the amount owed by the employee, if any.

(g) If the matter being contested is the Commission's proposed offset schedule, the hearing official shall uphold that schedule unless the employee has demonstrated by clear and convincing evidence that the payments called for under that schedule would result in an extreme financial hardship for the employee.

(h) If the matter being contested is the credibility or veracity of the employee in connection with his request for a waiver, the hearing official shall make a determination as to the employee's credibility or veracity.

(i) If the hearing official finds that the payments called for under the Chief Financial Officer's proposed offset schedule will produce an extreme financial hardship for the employee, the hearing official shall establish an offset schedule that will result in the repayment of the debt in the shortest period of time which will not result in an extreme financial hardship for the employee.

(j) The hearing official shall issue a written opinion setting forth his decision and a statement of the reasons supporting it as soon as practicable, but not more than 60 days after the filing of the petition requesting the hearing, unless the hearing official has granted a delay in the proceedings at the request of the employee. The opinion shall contain his determinations as to the existence and amount of the debt, the origin of the debt, and, if a request for a waiver has been made, the employee's veracity or credibility.

(k) If the employee files a petition for a hearing in connection with a request for a waiver under a statute requiring a waiver and meets the time limits for filing material prior to the hearing, no deductions to effect the offset will be made until the employee has been provided a hearing and a final written decision has been issued.

§ 256.10 Representation.

An employee may represent himself or may be represented by another person, including an attorney, during any proceedings under this part.

§ 256.11 Applicable legal principles.

(a) The hearing official may not find that the Commission's determination of the existence or amount of the employee's debt was erroneous—

(1) On the basis of State or local statutes of limitations;

(2) On the basis that the employee is owed monies by the United States (other than regular salary) and that payment of that debt by the United States would eliminate or reduce the debt, unless the employee has, not later than 45 days after receipt of advance notice of the debt under § 256.4, submitted written confirmation by the

agency which is indebted to the employee that such money is owed and has assigned the payment of that money to the Commission; or

(3) On the basis of any factual or legal argument that was decided on the merits adversely to the employee in a court of competent jurisdiction.

(b) In determining whether the Chief Financial Officer's decision concerning the existence or amount of the employee's debt is clearly erroneous, the hearing official shall be bound by the relevant Federal statutes and regulations governing the program which gave rise to the debt, and general principles of the law of the United States, if relevant.

§ 256.12 Standards for determining extreme financial hardship.

(a) An offset will be considered to produce an extreme financial hardship for an employee if the offset prevents the employee from meeting the costs necessarily incurred for essential subsistence expenses of the employee and his spouse and dependents. Essential subsistence expenses consist of the costs incurred for medical care, food, housing, clothing, and transportation only.

(b) In determining whether an offset would prevent the employee from meeting the essential subsistence costs described in paragraph (a) of this section, the following matters shall be considered—

(1) The income from all sources of the employee and his spouse and dependents;

(2) The extent to which the assets of the employee and his spouse and dependents are available to pay the debt or the essential subsistence expenses;

(3) Whether the essential subsistence costs have been minimized to the greatest extent possible;

(4) The extent to which the employee and his spouse and dependents can borrow money to pay the debt or the essential subsistence expenses; and

(5) The extent to which the employee and his spouse and dependents have other exceptional expenses that should be taken into account, and whether these expenses have been minimized.

§ 256.13 Collection of debts on behalf of other agencies by offsetting the pay of a Commission employee.

(a) Upon completion of the procedures established by the creditor agency under 5 U.S.C. 5514, the creditor agency shall forward to the Commission a certified statement of the existence of the debt. This document shall include a statement that the employee owes the debt, the amount and basis of the debt, the date on which payment is due, the date on which the claim against the debtor accrued, if different from the payment due date, and a statement that agency regulations implementing 5 U.S.C. 5514 have been approved by the Office of Personnel Management.

(b) Unless the employee has consented to the salary offset in writing or signed a statement acknowledging receipt of the required procedures and the writing or statement is attached to the debt claim form, the creditor agency must also indicate the actions taken under section 5514(b) and give the dates the actions were taken.

(c) If, after the debt claim has been submitted by the creditor agency, the employee transfers to a position in another agency, the Commission will certify the total amount of the collection made on the debt. One copy of the certification will be furnished to the employee, and one copy will be furnished to the creditor agency, together with notice of the employee's transfer. The original of the debt claim form shall be inserted in the employee's official personnel folder, together with the certification of the amount which has been collected. Upon receiving the official personnel folder, it will be the responsibility of the new paying agency to resume the collection from the individual's current pay and notify the employee and the creditor agency of the resumption. In cases in which an employee transfers to the Commission while a debt is being collected from him by another Federal agency by offset, the Commission will resume the collection and notify the employee that it is doing so.

(d) For collections of debts by offset under this section, the Commission

will not repeat the procedures prescribed by 5 U.S.C. 5514 and agency regulations under section 5514.

(e) If the Commission receives an incomplete or improperly certified debt claim, it will return the claim to the creditor agency with a notice that procedures under 5 U.S.C. 5514 must be complied with and a complete debt claim must be submitted before any action will be taken to collect the debt by offset from the employee's current pay.

(f) If the Commission receives a complete debt claim, deductions shall be scheduled to begin on the next officially established pay interval, if possible. A copy of the debt claim form shall be given to the debtor, together with notice of the date deductions will commence.

(g) The Commission will not review the merits of the creditor agency's determination with respect to the amount or validity of the debt.

PART 257—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY PANAMA CANAL COMMISSION

Sec.

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AUTHORITY: 29 U.S.C. 794.

SOURCE: 52 FR 26007, July 10, 1987, unless otherwise noted.

§ 257.101 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.

§ 257.102 Application.

This part applies to all programs or activities conducted by the agency except for programs or activities conducted outside the United States which do not involve individuals with handicaps in the United States.

§ 257.103 Definitions.

For purposes of this part, the term—

Agency means the Panama Canal Commission.

Assistant Attorney General means the Assistant Attorney General, Civil Rights Division, United States Department of Justice.

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, materials in Braille, 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.

Complete complaint means a written statement that contains the complainant's name and address and describes the agency's alleged discriminatory actions 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 describe or identify (by name, if possible) the alleged victims of discrimination.

Facility means all or any portion of buildings, structures, equipment, roads, walks, parking lots, rolling stock or other conveyances, or other real or personal property.

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, and drug addiction and alcoholism.

(2) *Major life activities* includes functions such as caring for oneself, 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 life activities only as a result of the attitudes of others toward such impairment; or

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

Qualified individual with handicaps means—

(1) With respect to any covered 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;

(2) With respect to employment, an individual with handicaps who meets the definition of *qualified handicapped person* set forth in 29 CFR 1613.702(f), which is made applicable to this part by § 257.140; and

(3) With respect to any other covered 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.

Section 504 means section 504 of the Rehabilitation Act of 1973 (Pub. L. 93–112, 87 Stat. 394 (29 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 Amendments of 1978 (Pub. L. 95–602, 92 Stat. 2955); and the Rehabilitation Act Amendments of 1986 (Pub. L. 99–506, 100 Stat. 1810). As used in this part, section 504 applies only to programs or activities conducted by Executive agencies and not to federally assisted programs.

§§ 257.104—257.109 [Reserved]

§ 257.110 Self-evaluation.

(a) The agency shall, by July 11, 1988, 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, or 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.

§ 257.111 Notice.

The agency shall make available to employees, applicants, participants, beneficiaries, and other interested persons such information regarding the provisions of this part and its applicability to the programs or activities conducted by the agency, and make such information available to them in such manner as the agency head finds necessary to apprise such persons of the protections against discrimination assured them by section 504 and this regulation.

§§ 257.112—257.129 [Reserved]

§ 257.130 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 offices of the agency located in the United States.

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

(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; or

(v) 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 may 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 permissible separate or different programs or activities.

(3) The agency may 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 may not, in determining the site or location of a facility, make selections the purpose or effect of which would—

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

§§ 257.131—257.139 [Reserved]

§ 257.140 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 federally conducted programs or activities.

§§ 257.141—257.148 [Reserved]

§ 257.149 Program accessibility: Discrimination prohibited.

Except as otherwise provided in § 257.150 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.

§ 257.150 Program accessibility: Existing facilities.

(a) *General.* The agency shall operate each program or activity 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—

(1) Necessarily require the agency to make each of its existing facilities accessible to and usable by individuals with handicaps; or

(2) 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 § 257.150(a) would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the agency head or his 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.

(b) *Methods*—(1) *General.* The agency may comply with the requirements of this section through such means as redesign of equipment, reassignment of services to accessible buildings, assignments of aides to beneficiaries, home visits, delivery of services at alternate accessible sites, alteration of existing facilities and construction of new facilities, use of accessible rolling stock, or any other methods that result in making its programs or activities readily accessible to and usable by individuals with handicaps. The agency is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section. The agency, in making alterations to existing buildings, shall meet accessibility requirements to the extent compelled by the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151 through 4157), and any regulations implementing it. 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.

(2) [Reserved]

(c) *Time period for compliance.* The agency shall comply with the obligations established under this section by October 8, 1987, except that where structural changes in facilities are undertaken, such changes shall be made by July 10, 1990, but in any event as expeditiously as possible.

(d) *Transition plan.* In the event that structural changes to facilities will be undertaken to achieve program accessibility, the agency shall develop, by January 11, 1988, 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 or 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—

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

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

(3) Specify the schedule for taking the steps necessary to achieve compliance with this section, and if the time period of the transition plan is longer than one year, identify steps that will be taken during each year of the transition period;

(4) Indicate the official responsible for implementation of the plan.

§ 257.151 Program accessibility: 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. The definitions, requirements, and standards of the Architectural Barriers Act (42 U.S.C. 4151 through 4157), as established in 41 CFR 101–19.600 to 101–19.607, apply to buildings covered by this section.

§§ 257.152—257.159 [Reserved]

§ 257.160 Communications.

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

(1) 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.

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

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

(2) Where the agency communicates with applicants and beneficiaries by telephone, telecommunication devices for deaf persons (TDD's) or equally effective telecommunication systems shall be used.

(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 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.

(d) This section does not 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 § 257.160 would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be

made by the agency head or his 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 section 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.

§§ 257.161—257.169 [Reserved]

§ 257.170 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 Director of Equal Opportunity.

(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 by the complainant of decision required by § 257.170(g). The agency may extend this time for good cause.

(i) Timely appeals shall be accepted and processed by Administrator of the Panama Canal Commission.

(j) The Administrator shall notify the complainant of the results of the appeal within 60 days of the receipt of the request. If the Administrator determines that it needs additional information from the complainant, he 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 (g) and (j) of this section may be extended with the permission of the Assistant Attorney General.

(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.

§§ 257.171—257.999 [Reserved]