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Code of Federal Regulations

31

Parts 0 to 199

Revised as of July 1, 2005

Money and Finance: Treasury

Containing a codification of documents of general applicability and future effect

As of July 1, 2005

With Ancillaries

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Cite this Code: CFR

To cite the regulations in this volume use title, part and section number. Thus, 31 CFR 0.101 *refers to title 31, part 0, section 101.*

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The Code of Federal Regulations is a codification of the general and permanent rules published in the Federal Register by the Executive departments and agencies of the Federal Government. The Code is divided into 50 titles which represent broad areas subject to Federal regulation. Each title is divided into chapters which usually bear the name of the issuing agency. Each chapter is further subdivided into parts covering specific regulatory areas.

Each volume of the Code is revised at least once each calendar year and issued on a quarterly basis approximately as follows:

Title 1 through Title 16.....as of January 1
Title 17 through Title 27.....as of April 1
Title 28 through Title 41.....as of July 1
Title 42 through Title 50.....as of October 1

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(b) The matter incorporated is in fact available to the extent necessary to afford fairness and uniformity in the administrative process.

(c) The incorporating document is drafted and submitted for publication in accordance with 1 CFR part 51.

Properly approved incorporations by reference in this volume are listed in the Finding Aids at the end of this volume.

What if the material incorporated by reference cannot be found? If you have any problem locating or obtaining a copy of material listed in the Finding Aids of this volume as an approved incorporation by reference, please contact the agency that issued the regulation containing that incorporation. If, after contacting the agency, you find the material is not available, please notify the Director of the Federal Register, National Archives and Records Administration, Washington DC 20408, or call 202-741-6010.

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A subject index to the Code of Federal Regulations is contained in a separate volume, revised annually as of January 1, entitled CFR INDEX AND FINDING AIDS. This volume contains the Parallel Table of Statutory Authorities and Agency Rules (Table I). A list of CFR titles, chapters, and parts and an alphabetical list of agencies publishing in the CFR are also included in this volume.

An index to the text of ''Title 3—The President'' is carried within that volume.

The Federal Register Index is issued monthly in cumulative form. This index is based on a consolidation of the ''Contents'' entries in the daily Federal Register.

A List of CFR Sections Affected (LSA) is published monthly, keyed to the revision dates of the 50 CFR titles.

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RAYMOND A. MOSLEY,
Director,
Office of the Federal Register.

July 1, 2005.

THIS TITLE

Title 31—MONEY AND FINANCE: TREASURY is composed of three volumes. The parts in these volumes are arranged in the following order: parts 0–199, parts 200–499, and parts 500 to end. The contents of these volumes represent all current regulations codified under this title of the CFR as of July 1, 2005.

For this volume, Elmer Barksdale was Chief Editor. The Code of Federal Regulations publication program is under the direction of Frances D. McDonald, assisted by Alomha S. Morris.

Title 31—Money and Finance: Treasury

(This book contains parts 0 to 199)

Part

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ABBREVIATION USED IN THIS CHAPTER:
C. P. D.= *Commissioner of the Public Debt.*

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AUTHORITY: 5 U.S.C. 301.

SOURCE: 60 FR 28535, June 1, 1995, unless otherwise noted.

Subpart A—General Provisions

§ 0.101 Purpose.

(a) The Department of the Treasury Employee Rules of Conduct (Rules) are separate from and additional to the Standards of Ethical Conduct for Employees of the Executive Branch (Executive Branch-wide Standards) (5 CFR part 2635) and the Supplemental Standards of Ethical Conduct for Employees of the Department of the Treasury (Treasury Supplemental Standards) (to be codified at 5 CFR part 3101). The Rules prescribe employee rules of conduct and procedure and provide for disciplinary action for the violation of the Rules, the Treasury Supplemental Standards, the Executive Branch-wide Standards, and any other rule, regulation or law governing Department employees.

(b) The Rules are not all-inclusive and may be modified by interpretive guidelines and procedures issued by the Department's bureaus. The absence of a specific published rule of conduct covering an action does not constitute a condonation of that action or indicate that the action would not result in corrective or disciplinary action.

§ 0.102 Policy.

(a) All employees and officials of the Department are required to follow the rules of conduct and procedure contained in the Rules, the Treasury Supplemental Standards, the Executive Branch-wide Standards of Ethical Conduct, the Employee Responsibilities and Conduct (5 CFR part 735), and any bureau issued rules.

(b) Employees found in violation of the Rules, the Treasury Supplemental Standards, the Executive Branch-wide Standards or any applicable bureau rule may be instructed to take remedial or corrective action to eliminate the conflict. Remedial action may include, but is not limited to:

(1) Reassignment of work duties;

(2) Disqualification from a particular assignment;

(3) Divestment of a conflicting interest; or

(4) Other appropriate action.

(c) Employees found in violation of the Rules, the Treasury Supplemental Standards, the Executive Branch-wide Standards or any applicable bureau rule may be disciplined in proportion to the gravity of the offense committed, including removal. Disciplinary action will be taken in accordance with applicable laws and regulations

and after consideration of the employee's explanation and any mitigating factors. Further, disciplinary action may include any additional penalty prescribed by law.

§ 0.103 Definitions.

The following definitions are used throughout this part:

(a) Adviser means a person who provides advice to the Department as a representative of an outside group and is not an employee or special Government employee as those terms are defined in § 0.103.

(b) Bureau means:

(1) Bureau of Alcohol, Tobacco and Firearms;

(2) Bureau of Engraving and Printing;

(3) Bureau of the Public Debt;

(4) Departmental Offices;

(5) Federal Law Enforcement Training Center;

(6) Financial Management Service;

(7) Internal Revenue Service;

(8) Legal Division;

(9) Office of the Comptroller of the Currency;

(10) Office of the Inspector General;

(11) Office of Thrift Supervision;

(12) United States Customs Service;

(13) United States Mint;

(14) United States Secret Service; and

(15) Any organization designated as a bureau by the Secretary pursuant to appropriate authority.

(c) *Person* means an individual, corporation and subsidiaries it controls, company, association, firm, partnership, society, joint stock company, or any other organization or institution as specified in 5 CFR 2635.102(k).

(d) *Regular employee* or *employee* means an officer or employee of the Department of the Treasury but does not include a special Government employee.

(e) *Special Government employee* means an officer or employee who is retained, designated, appointed, or employed to perform temporary duties either on a full-time or intermittent basis, with or without compensation, for a period not to exceed 130 days during any consecutive 365-day period. See 18 U.S.C. 202(a).

RESPONSIBILITIES

§ 0.104 Designated Agency Ethics Official and Alternate Designated Agency Ethics Official.

The Deputy General Counsel is the Department's Designated Agency Ethics Official (DAEO). The DAEO is responsible for managing the Department's ethics program, including coordinating ethics counseling and interpreting questions of conflicts of interest and other matters that arise under the Executive Branch-wide Standards and Treasury Supplemental Standards and Rules. See 5 CFR 2638.203. The Senior Counsel for Ethics is the Alternate Designated Agency Ethics Official.

§ 0.105 Deputy Ethics Official.

The Chief Counsel or Legal Counsel for a bureau, or a designee, is the Deputy Ethics Official for that bureau. The Legal Counsel for the Financial Crimes Enforcement Network is the Deputy Ethics Official for that organization. It is the responsibility of the Deputy Ethics Official to give authoritative advice and guidance on conflicts of interest and other matters arising under the Executive Branch-wide Standards, Treasury Supplemental Standards, and the Rules.

§ 0.106 Bureau Heads.

Bureau heads or designees are required to:

(a) Provide all employees with a copy of Executive Order 12674, as amended by Executive Order 12731, the Executive Branch-wide Standards, the Treasury Supplemental Standards and the Rules; provide all new employees with an explanation of the contents and application of the Executive Branch-wide Standards, Treasury Supplemental Standards and the Rules; and provide all departing employees with an explanation of the applicable post-employment restrictions contained in 18 U.S.C. 207 and 5 CFR part 2641 and any other applicable law or regulation.

(b) Provide guidance and assistance to supervisors and employees in implementing and adhering to the rules and procedures included in the Executive Branch-wide Standards and Treasury

Supplemental Standards and Rules; obtain any necessary legal advice or interpretation from the Designated Agency Ethics Official or a Deputy Ethics Official; and inform employees as to how and from whom they may obtain additional clarification or interpretation of the Executive Branch-wide Standards, Treasury Supplemental Standards, Rules, and any other relevant law, rule or regulation.

(c) Take appropriate corrective or disciplinary action against an employee who violates the Executive Branch-wide Standards, Treasury Supplemental Standards or Rules, or any other applicable law, rule or regulation, and against a supervisor who fails to carry out his responsibilities in taking or recommending corrective or disciplinary action when appropriate against an employee who has committed an offense.

§0.107 Employees.

(a) Employees are required to:

(1) Read and follow the rules and procedures contained in the Executive Branch-wide Standards, Treasury Supplemental Standards, and Rules;

(2) Request clarification or interpretation from a supervisor or ethics official if the application of a rule contained in the Executive Branch-wide Standards, Treasury Supplemental Standards, or Rules is not clear;

(3) Report to the Inspector General or to the appropriate internal affairs office of the Bureau of Alcohol, Tobacco and Firearms, Customs Service, Internal Revenue Service, or Secret Service, any information indicating that an employee, former employee, contractor, subcontractor, or potential contractor engaged in criminal conduct or that an employee or former employee violated the Executive Branch-wide Standards or the Treasury Supplemental Standards or Rules. Legal Division attorneys acquiring this type of information during the representation of a bureau shall report it to the appropriate Chief or Legal Counsel or the Deputy General Counsel, who shall report such information to the Inspector General or appropriate internal affairs office; and

(4) Report to the Inspector General information defined in paragraph (a)(3) of this section relating to foreign intelligence or national security, as covered in Executive Order 12356. Legal Division attorneys acquiring this type of information during the representation of a bureau shall report it to the Deputy General Counsel, who shall report such information to the Inspector General.

(b) The confidentiality of the source of the information reported to the Inspector General or the internal affairs office under this section will be maintained to the extent appropriate under the circumstances.

Subpart B—Rules of Conduct

§0.201 Political activity.

(a) Employees may:

(1) Take an active part in political management or in political campaigns to the extent permitted by law (5 U.S.C. 7321–7326); and

(2) Vote as they choose and express their opinions on political subjects and candidates.

(b) Employees may not use their official authority or influence to interfere with or affect election results.

(c) Employees may be disqualified from employment for knowingly supporting or advocating the violent overthrow of our constitutional form of government.

NOTE: The Hatch Act Reform Amendments of 1993 significantly reduced the statutory restrictions on the political activity of most Department employees. However, career members of the Senior Executive Service and employees of the Secret Service, the Internal Revenue Service, Office of Criminal Investigation, the Customs Service, Office of Investigative Programs, and the Bureau of Alcohol, Tobacco and Firearms, Office of Law Enforcement, remain subject to significant restrictions on their political activities.

§0.202 Strikes.

Employees shall not strike against the Government.

§0.203 Gifts or gratuities from foreign governments.

(a) The United States Constitution prohibits employees from accepting gifts, emoluments, offices, or titles from a foreign government without the consent of the Congress. Congress has consented to an employee accepting

and retaining a gift from a foreign government that is of minimal value and offered as a souvenir or mark of courtesy, unless otherwise prohibited by bureau regulation (5 U.S.C. 7342). Minimal value is prescribed in 41 CFR part 101–49 and was set at $225.00 on the date that the Rules became effective.

(b) All gifts exceeding minimal value, the refusal of which would likely cause offense or embarrassment or otherwise adversely affect the foreign relations of the United States, shall be accepted and deposited with the Department within sixty days of acceptance. If the gift is travel or expenses for travel taking place entirely outside the United States, it shall be reported within thirty days (see 5 U.S.C. 7342(c)(1)(B)(ii)).

(c) As used in paragraph (b) of this section, *Deposit with the Department* means delivery to the Department Gift Unit or other depository as authorized by the Treasury Directive on Foreign Gifts (Treasury Directive 61–04).

(d) All foreign gifts must be reported as prescribed in the Treasury Directive on Foreign Gifts (Treasury Directive 61–04).

§ 0.204 Use of controlled substances and intoxicants.

Employees shall not sell, use or possess controlled substances or intoxicants in violation of the law while on Department property or official duty, or use a controlled substance or intoxicant in a manner that adversely affects their work performance.

§ 0.205 Care of documents and data.

(a) Employees shall not conceal, remove, alter, destroy, mutilate or access documents or data in the custody of the Federal Government without proper authority.

(b) Employees are required to care for documents according to Federal law and regulation, and Department procedure (18 U.S.C. 2071, 5 U.S.C. 552, 552a).

(c) The term *documents* includes, but is not limited to, any writing, recording, computer tape or disk, blueprint, photograph, or other physical object on which information is recorded.

§ 0.206 Disclosure of information.

Employees shall not disclose official information without proper authority, pursuant to Department or bureau regulation. Employees authorized to make disclosures should respond promptly and courteously to requests from the public for information when permitted to do so by law (31 CFR 1.9, 1.10, and 1.28(b)).

§ 0.207 Cooperation with official inquiries.

Employees shall respond to questions truthfully and under oath when required, whether orally or in writing, and must provide documents and other materials concerning matters of official interest when directed to do so by competent Treasury authority.

§ 0.208 Falsification of official records.

Employees shall not intentionally make false, misleading or ambiguous statements, orally or in writing, in connection with any matter of official interest. Matters of official interest include among other things: Transactions with the public, government agencies or fellow employees; application forms and other forms that serve as a basis for appointment, reassignment, promotion or other personnel action; vouchers; leave records and time and attendance records; work reports of any nature or accounts of any kind; affidavits; entry or record of any matter relating to or connected with an employee's duties; and reports of any moneys or securities received, held or paid to, for or on behalf of the United States.

§ 0.209 Use of Government vehicles.

Employees shall not use Government vehicles for unofficial purposes, including to transport unauthorized passengers. The use of Government vehicles for transporting employees between their domiciles and places of employment must be authorized by statute (See, e.g., 31 U.S.C. 1344).

§ 0.210 Conduct while on official duty or on Government property.

Employees must adhere to the regulations controlling conduct when they are on official duty or in or on Government property, including the Treasury Building, Treasury Annex Building and grounds; the Bureau of Engraving and Printing buildings and grounds; the

United States Mint buildings and grounds; the grounds of the Federal Law Enforcement Training Center; and Treasury-occupied General Services Administration buildings and grounds (see 31 CFR parts 91, 407, 605, 700).

§0.211 Soliciting, selling and canvassing.

Employees shall not solicit, make collections, canvass for the sale of any article, or distribute literature or advertising in any space occupied by the Department without appropriate authority.

§0.212 Influencing legislation or petitioning Congress.

(a) Employees shall not use Government time, money, or property to petition a Member of Congress to favor or oppose any legislation. This prohibition does not apply to the official handling, through the proper channels, of matters relating to legislation in which the Department of the Treasury has an interest.

(b) Employees, individually or collectively, may petition Congress or Members of Congress or furnish information to either House of Congress when not using Government time, money or property (5 U.S.C. 7211).

§0.213 General conduct prejudicial to the Government.

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

§0.214 Nondiscrimination.

(a) Employees shall not discriminate against or harass any other employee, applicant for employment or person dealing with the Department on official business on the basis of race, color, religion, national origin, sex, sexual orientation, age, or disability. Sexual harassment is a form of sex discrimination and is prohibited by this section.

(b) An employee who engages in discriminatory conduct may be disciplined under these rules. However, this section does not create any enforceable legal rights in any person.

§0.215 Possession of weapons and explosives.

(a) Employees shall not possess firearms, explosives, or other dangerous or deadly weapons, either openly or concealed, while on Government property or official duty.

(b) The prohibition in paragraph (a) of this section does not apply to employees who are required to possess weapons or explosives in the performance of their official duties.

§0.216 Privacy Act.

Employees involved in the design, development, operation, or maintenance of any system of records or in maintaining records subject to the Privacy Act of 1974, as amended (5 U.S.C. 552a), shall comply with the conduct regulations delineated in 31 CFR 1.28(b).

§0.217 Personal financial interests.

(a) Employees may hold the following financial interests without violating 18 U.S.C. 208(a):

(1) The stocks or bonds of a publicly traded corporation with a value of $1000 or less; and

(2) The stocks or bonds in the investment portfolio of a diversified mutual fund in which an employee has invested.

(b) The Department has found that the financial interests listed in paragraph (a) of this section are too remote and inconsequential to affect the integrity of an employee's service.

Subpart C—Special Government Employees

§0.301 Applicability of subpart B.

The rules of conduct contained in subpart B of this part apply to special Government employees employed with the Treasury Department. The regulations contained in §0.201 of subpart B, concerning political activity, apply to special Government employees only on the days that they serve the Department. Treasury bureaus are responsible for informing special Government employees employed with them of the applicability of bureau specific statutes or regulations.

§ 0.302 Service with other Federal agencies.

A special Government employee serving concurrently in the Department and in a Federal agency other than the Department is required to inform the Department and the agency in which he serves of the arrangement so that appropriate administrative measures may be taken.

Subpart D—Advisers to the Department

§ 0.401 Advisers to the Department.

(a) An adviser or advisory committee member includes an individual who provides advice to the Department as a representative of an outside group and is not an employee or special Government employee of the Department. Questions concerning whether an individual serves the Department in the capacity of an adviser, employee, or special Government employee shall be addressed to the Designated Agency Ethics Official or a Deputy Ethics Official.

(b) Advisers or advisory committee members are not required to follow the Rules and are not generally required by the Department to file financial disclosure statements; nevertheless, they should be guided by the regulations in this part covering such issues as public disclosure of official information (§ 0.206), conduct (§ 0.211 and § 0.213), and gifts or gratuities from Foreign governments (§ 0.203).

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1.34 Guardianship.
1.35 Information forms.
1.36 Systems exempt in whole or in part from provisions of 5 U.S.C. 552a and this part.

APPENDIX A TO SUBPART C—DEPARTMENTAL OFFICES
APPENDIX B TO SUBPART C—INTERNAL REVENUE SERVICE
APPENDIX C TO SUBPART C—UNITED STATES CUSTOMS SERVICE
APPENDIX D TO SUBPART C—UNITED STATES SECRET SERVICE
APPENDIX E TO SUBPART C—BUREAU OF ALCOHOL, TOBACCO AND FIREARMS
APPENDIX F TO SUBPART C—BUREAU OF ENGRAVING AND PRINTING
APPENDIX G TO SUBPART C—FINANCIAL MANAGEMENT SERVICE
APPENDIX H TO SUBPART C—UNITED STATES MINT
APPENDIX I TO SUBPART C—BUREAU OF THE PUBLIC DEBT
APPENDIX J TO SUBPART C—OFFICE OF THE COMPTROLLER OF THE CURRENCY
APPENDIX K TO SUBPART C—FEDERAL LAW ENFORCEMENT TRAINING CENTER
APPENDIX L TO SUBPART C—OFFICE OF THRIFT SUPERVISION
APPENDIX M TO SUBPART C [RESERVED]
APPENDIX N TO SUBPART C—FINANCIAL CRIMES NETWORK

AUTHORITY: 5 U.S.C. 301 and 31 U.S.C. 321. Subpart A also issued under 5 U.S.C. 552, as amended. Subpart C also issued under 5 U.S.C. 552a.

SOURCE: 52 FR 26305, July 14, 1987, unless otherwise noted.

Subpart A—Freedom of Information Act

SOURCE: 65 FR 40504, June 30, 2000, unless otherwise noted.

§ 1.1 General.

(a) *Purpose and scope.* (1) This subpart contains the regulations of the Department of the Treasury implementing the Freedom of Information Act (FOIA), 5 U.S.C. 552, as amended by the Electronic Freedom of Information Act Amendments of 1996. The regulations set forth procedures for requesting access to records maintained by the Department of the Treasury. These regulations apply to all bureaus of the Department of the Treasury. Any reference in this subpart to the Department or its officials, employees, or records shall be deemed to refer also to the bureaus or their officials, employees, or records. Persons interested in the records of a particular bureau should also consult the appendix to this subpart that pertains to that bureau. The head of each bureau is hereby authorized to substitute the officials designated and change the addresses specified in the appendix to this subpart applicable to the bureau. The bureaus of the Department of the Treasury for the purposes of this subpart are:

(i) The Departmental Offices, which include the offices of:

(A) The Secretary of the Treasury, including immediate staff;

(B) The Deputy Secretary of the Treasury, including immediate staff;

(C) The Chief of Staff, including immediate staff;

(D) The Executive Secretary and all offices reporting to such official, including immediate staff;

(E) The Under Secretary of the Treasury for International Affairs and all offices reporting to such official, including immediate staff;

(F) The Under Secretary of the Treasury for Domestic Finance and all offices reporting to such official, including immediate staff;

(G) The Under Secretary for Enforcement and all offices reporting to such official, including immediate staff;

(H) The Assistant Secretary of the Treasury for Financial Institutions and all offices reporting to such official, including immediate staff;

(I) The Assistant Secretary of the Treasury for Economic Policy and all offices reporting to such official, including immediate staff;

(J) The Fiscal Assistant Secretary and all offices reporting to such official, including immediate staff;

(K) The General Counsel and all offices reporting to such official, including immediate staff; except legal counsel to the components listed in paragraphs (a)(1)(i)(L), and (a)(1)(i)(S), and (a)(1)(ii) through (xiii) of this section;

(L) The Inspector General and all offices reporting to such official, including immediate staff;

(M) The Assistant Secretary of the Treasury for International Affairs and all offices reporting to such official, including immediate staff;

(N) The Assistant Secretary of the Treasury for Legislative Affairs and Public Liaison and all offices reporting to such official, including immediate staff;

(O) The Assistant Secretary of the Treasury for Management and Chief Financial Officer and all offices reporting to such official, including immediate staff;

(P) The Assistant Secretary of the Treasury for Public Affairs and all offices reporting to such official, including immediate staff;

(Q) The Assistant Secretary of the Treasury for Tax Policy and all offices reporting to such official, including immediate staff;

(R) The Treasurer of the United States, including immediate staff;

(S) The Treasury Inspector General for Tax Administration and all offices reporting to such official, including immediate staff.

(ii) The Bureau of Alcohol, Tobacco and Firearms.

(iii) The Office of the Comptroller of the Currency.

(iv) The United States Customs Service.

(v) The Bureau of Engraving and Printing.

(vi) The Federal Law Enforcement Training Center.

(vii) The Financial Management Service.

(viii) The Internal Revenue Service.

(ix) The United States Mint.

(x) The Bureau of the Public Debt.

(xi) The United States Secret Service.

(xii) The Office of Thrift Supervision.

(xiii) The Financial Crimes Enforcement Network.

(2) For purposes of this subpart, the office of the legal counsel for the components listed in paragraphs (a)(1)(ii) through (xiii) of this section are to be considered a part of their respective bureaus. Any office which is now in existence or may hereafter be established, which is not specifically listed or known to be a component of any of those listed in paragraphs (a)(1)(i) through (xiii) of this section, shall be deemed a part of the Departmental Offices for the purpose of making requests for records under this subpart.

(b) *Definitions.* As used in this subpart, the following terms shall have the following meanings:

(1) *Agency* has the meaning given in 5 U.S.C. 551(1) and 5 U.S.C. 552(f).

(2) *Appeal* means a request for a review of an agency's determination with regard to a fee waiver, category of requester, expedited processing, or denial in whole or in part of a request for access to a record or records.

(3) *Bureau* means an entity of the Department of the Treasury that is authorized to act independently in disclosure matters.

(4) *Business information* means trade secrets or other commercial or financial information.

(5) *Business submitter* means any entity which provides business information to the Department of the Treasury or its bureaus and which has a proprietary interest in the information.

(6) *Computer software* means tools by which records are created, stored, and retrieved. Normally, computer software, including source code, object code, and listings of source and object codes, regardless of medium, are not agency records. However, when data are embedded within the software and cannot be extracted without the software, the software may have to be treated as an agency record. Proprietary (or copyrighted) software is not an agency record.

(7) *Confidential commercial information* means records provided to the government 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.

(8) *Duplication* refers to the process of making a copy of a record in order to respond to a FOIA request. Such copies can take the form of paper copy, microform, audio-visual materials, or machine readable documentation (*e.g.*, magnetic tape or disk), among others.

(9) *Electronic records* means those records and information which are created, stored, and retrievable by electronic means. This ordinarily does not include computer software, which is a tool by which to create, store, or retrieve electronic records.

(10) *Request* means any request for records made pursuant to 5 U.S.C. 552(a)(3).

(11) *Requester* means any person who makes a request for access to records.

(12) *Responsible official* means a disclosure officer or the head of the organizational unit having immediate custody of the records requested, or an official designated by the head of the organizational unit.

(13) *Review*, for fee purposes, refers to the process of examining records located in response to a commercial use request to determine whether any portion of any record located is permitted to be withheld. It also includes processing any records for disclosure; *e.g.*, doing all that is necessary to excise them and otherwise prepare them for release.

(14) *Search* includes all time spent looking for material that is responsive to a request, including page-by-page or line-by-line identification of material within records. Searches may be done manually or by automated means.

[65 FR 40504, June 30, 2000, as amended at 68 FR 55311, Sept. 25, 2003]

§ 1.2 Information made available.

(a) *General.* The FOIA (5 U.S.C. 552) provides for access to information and records developed or maintained by Federal agencies. The provisions of section 552 are intended to assure the right of the public to information. Generally, this section divides agency information into three major categories and provides methods by which each category of information is to be made available to the public. The three major categories of information are as follows:

(1) Information required to be published in the FEDERAL REGISTER (see § 1.3);

(2) Information required to be made available for public inspection and copying or, in the alternative, to be published and offered for sale (see § 1.4); and

(3) Information required to be made available to any member of the public upon specific request (see § 1.5).

(b) Subject only to the exemptions and exclusions set forth in 5 U.S.C. 552(b) and (c), any person shall be afforded access to information or records in the possession of any bureau of the Department of the Treasury, subject to the regulations in this subpart and any regulations of a bureau implementing or supplementing them.

(c) *Exemptions.* (1) The disclosure requirements of 5 U.S.C. 552(a) do not apply to certain matters which are exempt under 5 U.S.C. 552(b); nor do the disclosure requirements apply to certain matters which are excluded under 5 U.S.C. 552(c).

(2) Even though an exemption described in 5 U.S.C. 552(b) may be applicable to the information or records requested, a Treasury bureau may, if not precluded by law, elect under the circumstances of that request not to apply the exemption. The fact that the exemption is not applied by a bureau in response to a particular request shall have no precedential significance in processing other requests, but is merely an indication that, in the processing of the particular request, the bureau finds no necessity for applying the exemption.

§ 1.3 Publication in the Federal Register.

(a) *Requirement.* Subject to the application of the exemptions and exclusions in 5 U.S.C. 552(b) and (c) and subject to the limitations provided in 5 U.S.C. 552(a)(1), each Treasury bureau shall, in conformance with 5 U.S.C. 552(a)(1), separately state, publish and maintain current in the FEDERAL REGISTER for the guidance of the public the following information with respect to that bureau:

(1) Descriptions of its central and field organization and the established places at which, the persons from whom, and the methods whereby, the public may obtain information, make submittals or requests, or obtain decisions;

(2) Statements of the general course and method by which its functions are channeled and determined, including the nature and requirements of all formal and informal procedures available;

(3) Rules of procedure, descriptions of forms available or the places at which forms may be obtained, and instructions as to the scope and contents of all papers, reports, or examinations;

(4) Substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by the bureau; and

(5) Each amendment, revision, or repeal of matters referred to in paragraphs (a)(1) through (4) of this section.

(b) *The United States Government Manual.* The functions of each bureau are summarized in the description of the Department and its bureaus in the United States Government Manual, which is issued annually by the Office of the Federal Register.

§ 1.4 Public inspection and copying.

(a) *In general.* Subject to the application of the exemptions and exclusions described in 5 U.S.C. 552(b) and (c), each Treasury bureau shall, in conformance with 5 U.S.C. 552(a)(2), make available for public inspection and copying, or, in the alternative, promptly publish and offer for sale the following information with respect to the bureau:

(1) Final opinions, including concurring and dissenting opinions, and orders, made in the adjudication of cases;

(2) Those statements of policy and interpretations which have been adopted by the bureau but are not published in the FEDERAL REGISTER;

(3) Its administrative staff manuals and instructions to staff that affect a member of the public;

(4) Copies of all records, regardless of form or format, which have been released to any person under 5 U.S.C. 552(a)(3), and which the bureau determines have become or are likely to become the subject of subsequent requests for substantially the same records because they are clearly of interest to the public at large. The determination that records have become or may become the subject of subsequent requests shall be made by the Responsible Official (as defined at § 1.1(b)(12)).

(5) A general index of the records referred to in paragraph (a)(4) of this section.

(b) *Information made available by computer telecommunications.* For records required to be made available for public inspection and copying pursuant to 5 U.S.C. 552(a)(2) (paragraphs (a)(1) through (4) of this section) which are created on or after November 1, 1996, as soon as practicable but no later than one year after such records are created, each bureau shall make such records available on the Internet.

(c) *Deletion of identifying details.* To prevent a clearly unwarranted invasion of personal privacy, or pursuant to an exemption in 5 U.S.C. 552(b), a Treasury bureau may delete information contained in any matter described in paragraphs (a)(1) through (4) of this section before making such matters available for inspection or publishing it. The justification for the deletion shall be explained fully in writing, and the extent of such deletion shall be indicated on the portion of the record which is made available or published, unless including that indication would harm an interest protected by the exemption in 5 U.S.C. 552(b) under which the deletion is made. If technically feasible, the extent of the deletion shall be indicated at the place in the record where the deletion was made.

(d) *Public reading rooms.* Each bureau of the Department of the Treasury shall make available for public inspection and copying, in a reading room or otherwise, the material described in paragraphs (a)(1) through (5) of this section. Fees for duplication shall be charged in accordance with § 1.7. See the appendices to this subpart for the location of established bureau reading rooms.

(e) *Indexes.* (1) Each bureau of the Department of the Treasury shall maintain and make available for public inspection and copying current indexes identifying any material described in paragraphs (a)(1) through (3) of this section. In addition, each bureau shall promptly publish, quarterly or more frequently, and distribute (by sale or otherwise) copies of each index or supplement unless the head of each bureau (or a delegate) determines by order published in the FEDERAL REGISTER that the publication would be unnecessary and impractical, in which case the bureau shall nonetheless provide copies of the index on request at a cost not to exceed the direct cost of duplication.

(2) Each bureau shall make the index referred to in paragraph (a)(5) of this section available on the Internet by December 31, 1999.

§ 1.5 Specific requests for other records.

(a) *In general.* (1) Except for records made available under 5 U.S.C. 552(a)(1)

and (a)(2), but subject to the application of the exemptions and exclusions described in 5 U.S.C. 552(b) and (c), each bureau of the Department of the Treasury shall promptly make the requested records available to any person in conformance with 5 U.S.C. 552(a)(3). The request must conform in every respect with the rules and procedures of this subpart and the applicable bureau's appendix to this subpart. Any request or appeal from the initial denial of a request that does not comply with the requirements in this subpart will not be considered subject to the time constraints of paragraphs (h), (i), and (j) of this section, unless and until the request is amended to comply. Bureaus shall promptly advise the requester in what respect the request or appeal is deficient so that it may be amended and resubmitted for consideration in accordance with this subpart. If a requester does not respond within 30 days to a communication from a bureau to amend the request in order for it to be in conformance with this subpart, the request file will be considered closed. When the request conforms with the requirements of this subpart, bureaus shall make every reasonable effort to comply with the request within the time constraints. If the description of the record requested is of a type that is not maintained by the bureau, the requester shall be so advised and the request shall be returned to the requester.

(2) This subpart applies only to records in the possession or control of the bureau at the time of the request. Records considered to be responsive to the request are those in existence on or before the date of receipt of the request by the appropriate bureau official. Requests for the continuing production of records created after the date of the appropriate bureau official's receipt of the request shall not be honored. Bureaus shall provide the responsive record or records in the form or format requested if the record or records are readily reproducible by the bureau in that form or format. Bureaus shall make reasonable efforts to maintain their records in forms or formats that are reproducible for the purpose of disclosure. For purposes of this section, *readily reproducible* means, with respect to electronic format, a record or records that can be downloaded or transferred intact to a floppy disk, compact disk (CD), tape, or other electronic medium using equipment currently in use by the office or offices processing the request. Even though some records may initially be readily reproducible, the need to segregate exempt from nonexempt records may cause the releasable material to not be readily reproducible.

(3) Requests for information classified pursuant to Executive Order 12958, ''Classified National Security Information,'' require the responsible bureau to review the information to determine whether it continues to warrant classification. Information which no longer warrants classification under the Executive Order's criteria shall be declassified and made available to the requester, unless the information is otherwise exempt from disclosure.

(4) When a bureau receives five or more requests for substantially the same records, it shall place those requests in front of an existing request backlog that the responsible official may have. Upon completion of processing, the released records shall be made available in the bureau's public reading room, and if created on or after November 1, 1996, shall be made available in the electronic reading room of the bureau's web site.

(b) *Form of request.* In order to be subject to the provisions of this section, the following must be satisfied.

(1) The request for records shall be made in writing, signed by the person making the request, and state that it is made pursuant to the Freedom of Information Act, 5 U.S.C. 552, or this subpart.

(2) The request shall indicate whether the requester is a commercial user, an educational institution, non-commercial scientific institution, representative of the news media, or ''other'' requester, subject to the fee provisions described in §1.7. In order for the Department to determine the proper category for fee purposes as defined in this section, a request for records shall also state how the records released will be used. This information shall not be used to determine the releasibility of any record or records. A

determination of the proper category of requester shall be based upon a review of the requester's submission and the bureau's own records. Where a bureau has reasonable cause to doubt the use to which a requester will put the records sought, or where that use is not clear from the request itself, bureaus should seek additional clarification before assigning the request to a specific category. The categories of requesters are defined as follows:

(i) *Commercial.* A commercial use request refers to a request from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made, which can include furthering those interests through litigation. The bureaus may determine from the use specified in the request that the requester is a commercial user.

(ii) *Educational institution.* This 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 a program or programs of scholarly research. This category does not include requesters wanting records for use in meeting individual academic research or study requirements.

(iii) *Non-commercial scientific institution.* This refers to an institution that is not operated on a ''commercial'' basis as that term is defined in paragraph (b)(2)(i) of this section, 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.

(iv) *Representative of the news media.* This refers to any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term *news* means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large, and publishers of periodicals (but only in those instances when they can qualify as disseminators of ''news'') who make their products available for purchase or subscription by the general public. These examples are not intended to be all-inclusive. In the case of ''freelance'' journalists, they may be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through that organization, even though not actually employed by it. A publication contract would be the clearest proof, but bureaus may also look to the past publication record of a requester in making this determination.

(v) *''Other'' Requester.* This refers to a requester who does not fall within any of the previously described categories.

(3) The request must be properly addressed to the bureau that maintains the record. The functions of each bureau are summarized in *The United States Government Manual* which is issued annually and is available from the Superintendent of Documents. Both the envelope and the request itself should be clearly marked ''Freedom of Information Act Request.'' See the appendices to this subpart for the office or officer to which requests shall be addressed for each bureau. A requester in need of guidance in defining a request or determining the proper bureau to which a request should be sent may contact Disclosure Services at 202/622–0930, or may write to Disclosure Services, Department of the Treasury, 1500 Pennsylvania Avenue, NW, Washington, DC 20220. Requesters may access the ''FOIA Home Page'' at the Department of the Treasury World Wide Web site at: *http://www.treas.gov.*

(4) The request must reasonably describe the records in accordance with paragraph (d) of this section.

(5) The request must set forth the address where the person making the request wants to be notified about whether or not the request will be granted.

(6) The request must state whether the requester wishes to inspect the records or desires to have a copy made and furnished without first inspecting them.

(7) The request must state the firm agreement of the requester to pay the fees for search, duplication, and review

as may ultimately be determined in accordance with § 1.7. The agreement may state the upper limit (but not less than $25) that the requester is willing to pay for processing the request. A request that fees be waived or reduced may accompany the agreement to pay fees and shall be considered to the extent that such request is made in accordance with § 1.7(d) and provides supporting information to be measured against the fee waiver standard set forth in § 1.7(d)(1). The requester shall be notified in writing of the decision to grant or deny the fee waiver. A requester shall be asked to provide an agreement to pay fees when the request for a fee waiver or reduction is denied and the initial request for records does not include such agreement. If a requester has an outstanding balance of search, review, or duplication fees due for FOIA request processing, the requirements of this paragraph are not met until the requester has remitted the outstanding balance due.

(c) *Requests for records not in control of bureau; referrals; consultations.* (1) When a requested record is in the possession or under the control of a bureau of the Department other than the office to which the request is addressed, the request for the record shall be transferred to the appropriate bureau and the requester notified. This referral shall not be considered a denial of access within the meaning of these regulations. The bureau of the Department to which this referral is made shall treat this request as a new request addressed to it and the time limits for response set forth by paragraph (h)(1) of this section shall begin when the referral is received by the designated office or officer of the bureau.

(2) When a requested record has been created by an agency or Treasury bureau other than the Treasury bureau possessing the record, the bureau having custody of the record shall refer the record to the originating agency or Treasury bureau for a direct response to the requester. The requester shall be informed of the referral unless otherwise instructed by the originating agency. This is not a denial of a FOIA request; thus no appeal rights accrue to the requester.

(3) When a FOIA request is received for a record created by a Treasury bureau that includes information originated by another bureau of the Department of the Treasury or another agency, the record shall be referred to the originating agency or bureau for review and recommendation on disclosure. The agency or bureau shall respond to the referring office. The Treasury bureau shall not release any such records without prior consultation with the originating bureau or agency.

(4) In certain instances and at the discretion of the Departmental Offices, requests having impact on two or more bureaus of the Department may be coordinated by the Departmental Offices.

(d) *Reasonable description of records.* The request for records must describe the records in reasonably sufficient detail to enable employees who are familiar with the subject area of the request to locate the records without placing an unreasonable burden upon the Department. Whenever possible, a request should include specific information about each record sought, such as the date, title or name, author, recipients, and subject matter of the record. If the Department determines that the request does not reasonably describe the records sought, the requester shall be given an opportunity to provide additional information. Such opportunity may, when necessary, involve a discussion with knowledgeable Department of the Treasury personnel. The reasonable description requirement shall not be used by officers or employees of the Department of the Treasury to improperly withhold records from the public.

(e) *Requests for expedited processing.* (1) When a request for records includes a request for expedited processing, both the envelope and the request itself must be clearly marked, ''Expedited Processing Requested.''

(2) Records will be processed as soon as practicable when a requester asks for expedited processing in writing and is granted such expedited treatment by the Department. The requester must demonstrate a compelling need for expedited processing of the requested records. A compelling need is defined as follows:

(i) Failure to obtain the requested records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual. The requester shall fully explain the circumstances warranting such an expected threat so that the Department may make a reasoned determination that a delay in obtaining the requested records could pose such a threat; or

(ii) With respect to a request made by a person primarily engaged in disseminating information, urgency to inform the public concerning actual or alleged Federal Government activity. A person ''primarily engaged in disseminating information'' does not include individuals who are engaged only incidentally in the dissemination of information. The standard of ''urgency to inform'' requires that the records requested pertain to a matter of current exigency to the American public and that delaying a response to a request for records would compromise a significant recognized interest to and throughout the American general public. The requester must adequately explain the matter or activity and why the records sought are necessary to be provided on an expedited basis.

(3) A demonstration of a compelling need by a person making a request for expedited processing shall be made by a statement certified by the requester to be true and correct to the best of his or her knowledge and belief. The statement must be in the form prescribed by 28 U.S.C. 1746, ''I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief. Executed on [date].''

(4) Upon receipt by the appropriate bureau official, a request for expedited processing shall be considered and a determination as to whether to grant or deny the request for expedited processing shall be made, and the requester notified, within 10 calendar days of the date of the request. However, in no event shall the bureau have fewer than five days (excluding Saturdays, Sundays, and legal public holidays) from the date of receipt of the request for such processing. The determination to grant or deny a request for expedited processing may be made solely on the information contained in the initial letter requesting expedited treatment.

(5) Appeals of initial determinations to deny expedited processing must be made within 10 calendar days of the date of the initial letter of determination denying expedited processing. Both the envelope and the appeal itself shall be clearly marked, ''Appeal for Expedited Processing.''

(6) An appeal determination regarding expedited processing shall be made, and the requester notified, within 10 days (excluding Saturdays, Sundays, and legal public holidays) from the date of receipt of the appeal.

(f) *Date of receipt of request.* A request for records shall be considered to have been received on the date on which a complete request containing the information required by paragraph (b) of this section has been received. A determination that a request is deficient in any respect is not a denial of access, and such determinations are not subject to administrative appeal. Requests shall be stamped with the date of receipt by the office prescribed in the appropriate appendix. As soon as the date of receipt has been established, the requester shall be so informed and shall also be advised when to expect a response. The acknowledgment of receipt requirement shall not apply if a disclosure determination will be issued prior to the end of the 20-day time limit.

(g) *Search for record requested.* Department of the Treasury employees shall search to identify and locate requested records, including records stored at Federal Records Centers. Searches for records maintained in electronic form or format may require the application of codes, queries, or other minor forms of programming to retrieve the requested records. Wherever reasonable, searches shall be done by electronic means. However, searches of electronic records are not required when such searches would significantly interfere with the operation of a Treasury automated information system or would require unreasonable effort to conduct. The Department of the Treasury is not required under 5 U.S.C. 552 to tabulate or compile information for the purpose of creating a record or records that do not exist.

(h) *Initial determination.* (1) *In general.* The officers designated in the appendices to this part shall make initial determinations either to grant or to deny in whole or in part requests for records. Such officers shall respond in the approximate order of receipt of the requests, to the extent consistent with sound administrative practice. These determinations shall be made and the requester notified within 20 days (excepting Saturdays, Sundays, and legal public holidays) after the date of receipt of the request, as determined in accordance with paragraph (f) of this section, unless the designated officer invokes an extension pursuant to paragraph (j)(1) of this section or the requester otherwise agrees to an extension of the 20-day time limitation.

(2) *Granting of request.* If the request is granted in full or in part, and if the requester wants a copy of the records, a copy of the records shall be mailed to the requester, together with a statement of the applicable fees, either at the time of the determination or shortly thereafter.

(3) *Inspection of records.* In the case of a request for inspection, the requester shall be notified in writing of the determination, when and where the requested records may be inspected, and of the fees incurred in complying with the request. The records shall then promptly be made available for inspection at the time and place stated, in a manner that will not interfere with Department of the Treasury operations and will not exclude other persons from making inspections. The requester shall not be permitted to remove the records from the room where inspection is made. If, after making inspection, the requester desires copies of all or a portion of the requested records, copies shall be furnished upon payment of the established fees prescribed by §1.7. Fees may be charged for search and review time as stated in §1.7.

(4) *Denial of request.* If it is determined that the request for records should be denied in whole or in part, the requester shall be notified by mail. The letter of notification shall:

(i) State the exemptions relied on in not granting the request;

(ii) If technically feasible, indicate the amount of information deleted at the place in the record where such deletion is made (unless providing such indication would harm an interest protected by the exemption relied upon to deny such material);

(iii) Set forth the name and title or position of the responsible official;

(iv) Advise the requester of the right to administrative appeal in accordance with paragraph (i) of this section; and

(v) Specify the official or office to which such appeal shall be submitted.

(5) *No records found.* If it is determined, after a thorough search for records by the responsible official or his delegate, that no records have been found to exist, the responsible official will so notify the requester in writing. The letter of notification will advise the requester of the right to administratively appeal the Department's determination that no records exist (*i.e.*, to challenge the adequacy of the Department's search for responsive records) in accordance with paragraph (i) of this section. The response shall specify the official or office to which the appeal shall be submitted for review.

(i) *Administrative appeal.* (1)(i) A requester may appeal a Department of the Treasury initial determination when:

(A) Access to records has been denied in whole or in part;

(B) There has been an adverse determination of the requester's category as provided in §1.7(d)(4);

(C) A request for fee waiver or reduction has been denied;

(D) It has been determined that no responsive records exist; or

(E) A request for expedited processing has been denied.

(ii) An appeal, other than an appeal for expedited processing, must be submitted within 35 days of the date of the initial determination or the date of the letter transmitting the last records released, whichever is later, except in the case of a denial for expedited processing. An appeal of a denial for expedited processing must be made within 10 days of the date of the initial determination to deny expedited processing (see §1.5(e)(5)). All appeals must be submitted to the official specified in the appropriate appendix to this subpart whose title and address should also

have been included in the initial determination. An appeal that is improperly addressed shall be considered not to have been received by the Department until the office specified in the appropriate appendix receives the appeal.

(2) The appeal shall—

(i) Be made in writing and signed by the requester or his or her representative;

(ii) Be addressed to and mailed or hand delivered within 35 days (or within 10 days when expedited processing has been denied) of the date of the initial determination, or the date of the letter transmitting the last records released, whichever is later, to the office or officer specified in the appropriate appendix to this subpart and also in the initial determination. (See the appendices to this subpart for the address to which appeals made by mail should be addressed);

(iii) Set forth the address where the requester desires to be notified of the determination on appeal;

(iv) Specify the date of the initial request and date of the letter of initial determination, and, where possible, enclose a copy of the initial request and the initial determination being appealed.

(3)(i) Appeals shall be stamped with the date of their receipt by the office to which addressed, and shall be processed in the approximate order of their receipt. The receipt of the appeal shall be acknowledged by the office or officer specified in the appropriate appendix to this subpart and the requester advised of the date the appeal was received and the expected date of response. The decision to affirm the initial determination (in whole or in part) or to grant the request for records shall be made and notification of the determination mailed within 20 days (exclusive of Saturdays, Sundays, and legal public holidays) after the date of receipt of the appeal, unless extended pursuant to paragraph (j)(1) of this section. If it is decided that the initial determination is to be upheld (in whole or in part) the requester shall be—

(A) Notified in writing of the denial;

(B) Notified of the reasons for the denial, including the FOIA exemptions relied upon;

(C) Notified of the name and title or position of the official responsible for the determination on appeal; and

(D) Provided with a statement that judicial review of the denial is available in the United States District Court for the judicial district in which the requester resides or has a principal place of business, the judicial district in which the requested records are located, or the District of Columbia in accordance with 5 U.S.C. 552(a)(4)(B).

(ii) If the initial determination is reversed on appeal, the requester shall be so notified and the request shall be processed promptly in accordance with the decision on appeal.

(4) If a determination cannot be made within the 20-day period (or within a period of extension pursuant to paragraph (j)(1) of this section), the requester may be invited to agree to a voluntary extension of the 20-day appeal period. This voluntary extension shall not constitute a waiver of the right of the requester ultimately to commence an action in a United States district court.

(j) *Time extensions; unusual circumstances.* (1) In unusual circumstances, the time limitations specified in paragraphs (h) and (i) of this section may be extended by written notice from the official charged with the duty of making the determination to the person making the request or appeal setting forth the reasons for this extension and the date on which the determination is expected to be sent. As used in this paragraph, *unusual circumstances* means, but only to the extent reasonably necessary to the proper processing of the particular requests:

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

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

(iii) The need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request, or among two or

more bureaus or components of bureaus of the Department of the Treasury having substantial subject matter interest therein.

(2) Any extension or extensions of time shall not cumulatively total more than 10 days (exclusive of Saturdays, Sundays, and legal public holidays). However, if additional time is needed to process the request, the bureau shall notify the requester and provide the requester an opportunity to limit the scope of the request or arrange for an alternative time frame for processing the request or a modified request. The requester shall retain the right to define the desired scope of the request, as long as it meets the requirements contained in this subpart.

(3) Bureaus may establish multitrack processing of requests based on the amount of work or time, or both, involved in processing requests.

(4) If more than one request is received from the same requester, or from a group of requesters acting in concert, and the Department believes that such requests constitute a single request which would otherwise satisfy the unusual circumstances specified in paragraph (j)(1) of this section, and the requests involve clearly related matters, the Department may aggregate these requests for processing purposes.

(k) *Failure to comply.* If a bureau of the Department of the Treasury fails to comply with the time limits specified in paragraphs (h) or (i) of this section , or the time extensions of paragraph (j) of this section, any person making a request for records in accordance with §1.5 shall be considered to have exhausted administrative remedies with respect to the request. Accordingly, the person making the request may initiate suit as set forth in paragraph (l) of this section.

(l) *Judicial review.* If an adverse determination is made upon appeal pursuant to paragraph (i) of this section, or if no determination is made within the time limits specified in paragraphs (h) and (i) of this section, together with any extension pursuant to paragraph (j)(1) of this section or within the time otherwise agreed to by the requester, the requester may commence an action in a United States district court in the district in which he resides, in which his principal place of business is located, in which the records are situated, or in the District of Columbia, pursuant to 5 U.S.C. 552(a)(4).

(m) *Preservation of records.* Under no circumstances shall records be destroyed while they are the subject of a pending request, appeal, or lawsuit under the FOIA.

(n) *Processing requests that are not properly addressed.* A request that is not properly addressed as specified in the appropriate appendix to this subpart shall be forwarded to the appropriate bureau or bureaus for processing. If the recipient of the request does not know the appropriate bureau to forward it to, the request shall be forwarded to the Departmental Disclosure Officer (Disclosure Services, DO), who will determine the appropriate bureau. A request not addressed to the appropriate bureau will be considered to have been received for purposes of paragraph (f) of this section when the request has been received by the appropriate bureau office as designated in the appropriate appendix to this subpart. An improperly addressed request, when received by the appropriate bureau office, shall be acknowledged by that bureau.

§1.6 Business information.

(a) *In general.* Business information provided to the Department of the Treasury by a business submitter shall not be disclosed pursuant to a Freedom of Information Act request except in accordance with this section.

(b) *Notice to business submitters.* A bureau shall provide a business submitter with prompt written notice of receipt of a request or appeal encompassing its business information whenever required in accordance with paragraph (c) of this section, and except as is provided in paragraph (g) of this section. Such written notice shall either describe the exact nature of the business information requested or provide copies of the records or portions of records containing the business information.

(c) *When notice is required.* The bureau shall provide a business submitter with notice of receipt of a request or appeal whenever:

(1) The business submitter has in good faith designated the information

as commercially or financially sensitive information, or

(2) The bureau has reason to believe that disclosure of the information could reasonably be expected to cause substantial competitive harm.

(3) Notice of a request for business information falling within paragraph (c)(1) or (2) of this section shall be required for a period of not more than ten years after the date of submission unless the business submitter requests, and provides acceptable justification for, a specific notice period of greater duration.

(4) The submitter's claim of confidentiality should be supported by a statement by an authorized representative of the company providing specific justification that the information in question is in fact confidential commercial or financial information and has not been disclosed to the public.

(d) *Opportunity to object to disclosure.* (1) Through the notice described in paragraph (b) of this section, a bureau shall afford a business submitter ten days from the date of the notice (exclusive of Saturdays, Sundays, and legal public holidays) to provide the bureau with a detailed statement of any objection to disclosure. Such statement shall specify all grounds for withholding any of the information under any exemption of the Freedom of Information Act and, in the case of Exemption 4, shall demonstrate why the information is considered to be a trade secret or commercial or financial information that is privileged or confidential. Information provided by a business submitter pursuant to this paragraph may itself be subject to disclosure under the FOIA.

(2) When notice is given to a submitter under this section, the requester shall be advised that such notice has been given to the submitter. The requester shall be further advised that a delay in responding to the request may be considered a denial of access to records and that the requester may proceed with an administrative appeal or seek judicial review, if appropriate. However, the requester will be invited to agree to a voluntary extension of time so that the bureau may review the business submitter's objection to disclose.

(e) *Notice of intent to disclose.* A bureau shall consider carefully a business submitter's objections and specific grounds for nondisclosure prior to determining whether to disclose business information. Whenever a bureau decides to disclose business information over the objection of a business submitter, the bureau shall forward to the business submitter a written notice which shall include:

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

(2) A description of the business information to be disclosed; and

(3) A specified disclosure date which is not less than ten days (exclusive of Saturdays, Sundays, and legal public holidays) after the notice of the final decision to release the requested information has been mailed to the submitter. Except as otherwise prohibited by law, a copy of the disclosure notice shall be forwarded to the requester at the same time.

(f) *Notice of FOIA lawsuit.* Whenever a requester brings suit seeking to compel disclosure of business information covered by paragraph (c) of this section, the bureau shall promptly notify the business submitter.

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

(1) The bureau determines that the information shall not be disclosed;

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

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

§ 1.7 Fees for services.

(a) *In general.* This fee schedule is applicable uniformly throughout the Department of the Treasury and pertains to requests processed under the Freedom of Information Act. Specific levels of fees are prescribed for each of the following categories of requesters. Requesters are asked to identify the applicable fee category they belong to in their initial request in accordance with § 1.5(b).

(1) *Commercial use requesters.* These requesters are assessed charges which

recover the full direct costs of searching for, reviewing, and duplicating the records sought. Commercial use requesters are not entitled to two hours of free search time or 100 free pages of duplication of documents. Moreover, when a request is received for disclosure that is primarily in the commercial interest of the requester, the Department is not required to consider a request for a waiver or reduction of fees based upon the assertion that disclosure would be in the public interest. The Department may recover the cost of searching for and reviewing records even if there is ultimately no disclosure of records, or no records are located.

(2) *Educational and Non-Commercial Scientific Institution Requesters.* Records shall be provided to requesters in these categories for the cost of duplication alone, excluding charges for the first 100 pages. To be eligible, requesters must show that the request is made under the auspices of a qualifying institution and that the records are not sought for a commercial use, but are sought in furtherance of scholarly (if the request is from an educational institution) or scientific (if the request is from a non-commercial scientific institution) research. These categories do not include requesters who want records for use in meeting individual academic research or study requirements.

(3) *Requesters who are Representatives of the News Media.* Records shall be provided to requesters in this category for the cost of duplication alone, excluding charges for the first 100 pages.

(4) *All Other Requesters.* Requesters who do not fit any of the categories described above shall be charged fees that will recover the full direct cost of searching for and duplicating records that are responsive to the request, except that the first 100 pages of duplication and the first two hours of search time shall be furnished without charge. The Department may recover the cost of searching for records even if there is ultimately no disclosure of records, or no records are located. Requests from persons for records about themselves filed in the Department's systems of records shall continue to be treated under the fee provisions of the Privacy Act of 1974 which permit fees only for duplication, after the first 100 pages are furnished free of charge.

(b) *Fee waiver determination.* Where the initial request includes a request for reduction or waiver of fees, the responsible official shall determine whether to grant the request for reduction or waiver before processing the request and notify the requester of this decision. If the decision does not waive all fees, the responsible official shall advise the requester of the fact that fees shall be assessed and, if applicable, payment must be made in advance pursuant to § 1.7(e)(2).

(c) *When fees are not charged.* (1) No fee shall be charged for monitoring a requester's inspection of records.

(2) Fees shall be charged in accordance with the schedule contained in paragraph (g) of this section for services rendered in responding to requests for records, unless any one of the following applies:

(i) Services were performed without charge;

(ii) The cost of collecting a fee would be equal to or greater than the fee itself; or,

(iii) The fees were waived or reduced in accordance with paragraph (d) of this section.

(d) *Waiver or reduction of fees.* (1) Fees may be waived or reduced on a case-by-case basis in accordance with this paragraph by the official who determines the availability of the records, provided such waiver or reduction has been requested in writing. Fees shall be waived or reduced by this official when it is determined, based upon the submission of the requester, that a waiver or reduction of the fees is in the public interest because furnishing the information 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. Fee waiver/reduction requests shall be evaluated against the fee waiver policy guidance issued by the Department of Justice on April 2, 1987.

(2) Normally no charge shall be made for providing records to state or foreign governments, international governmental organizations, or local government agencies or offices.

(3) Appeals from denials of requests for waiver or reduction of fees shall be decided in accordance with the criteria set forth in paragraph (d)(1) of this section by the official authorized to decide appeals from denials of access to records. Appeals shall be addressed in writing to the office or officer specified in the appropriate appendix to this subpart within 35 days of the denial of the initial request for waiver or reduction and shall be decided within 20 days (excluding Saturdays, Sundays, and legal public holidays).

(4) Appeals from an adverse determination of the requester's category as described in § 1.5(b)(2) and provided in § 1.5(i)(1) shall be decided by the official authorized to decide appeals from denials of access to records and shall be based upon a review of the requester's submission and the bureau's own records. Appeals shall be addressed in writing to the office or officer specified in the appropriate appendix to this subpart within 35 days of the date of the bureau's determination of the requester's category and shall be decided within 20 days (excluding Saturdays, Sundays, and legal public holidays).

(e) *Advance notice of fees.* (1) When the fees for processing the request are estimated to exceed the limit set by the requester, and that amount is less than $250, the requester shall be notified of the estimated costs. The requester must provide an agreement to pay the estimated costs; however, the requester shall also be given an opportunity to reformulate the request in an attempt to reduce fees.

(2) If the requester has failed to state a limit and the costs are estimated to exceed $250.00, the requester shall be notified of the estimated costs and must pre-pay such amount prior to the processing of the request, or provide satisfactory assurance of full payment if the requester has a history of prompt payment of FOIA fees. The requester shall also be given an opportunity to reformulate the request in such a way as to constitute a request for responsive records at a reduced fee.

(3) When the Department or a bureau of the Department acts under paragraphs (e)(1) or (2) of this section, the administrative time limits of 20 days (excluding Saturdays, Sundays, and legal public holidays) from receipt of initial requests or appeals, plus extensions of these time limits, shall begin only after fees have been paid, a written agreement to pay fees has been provided, or a request has been reformulated.

(f) *Form of payment.* (1) Payment may be made by check or money order payable to the Treasury of the United States or the relevant bureau of the Department of the Treasury.

(2) The Department of the Treasury reserves the right to request prepayment after a request is processed and before documents are released.

(3) When costs are estimated or determined to exceed $250, the Department shall either obtain satisfactory assurance of full payment of the estimated cost where the requester has a history of prompt payment of FOIA fees or require a requester to make an advance payment of the entire estimated or determined fee before continuing to process the request.

(4) If a requester has previously failed to pay a fee within 30 days of the date of the billing, the requester shall be required to pay the full amount owed plus any applicable interest, and to make an advance payment of the full amount of the estimated fee before the Department begins to process a new request or the pending request. Whenever interest is charged, the Department shall begin assessing interest on the 31st day following the day on which billing was sent. Interest shall be at the rate prescribed in 31 U.S.C. 3717. In addition, the Department shall take all steps authorized by the Debt Collection Act of 1982, as amended by the Debt Collection Improvement Act of 1996, including administrative offset pursuant to 31 CFR Part 5, disclosure to consumer reporting agencies and use of collection agencies, to effect payment.

(g) *Amounts to be charged for specific services.* The fees for services performed by a bureau of the Department of the Treasury shall be imposed and collected as set forth in this paragraph.

(1) *Duplicating records.* All requesters, except commercial requesters, shall receive the first 100 pages duplicated without charge. Absent a determination to waive fees, a bureau shall charge requesters as follows:

(i) $.20 per page, up to 8½×14″, made by photocopy or similar process.

(ii) Photographs, films, and other materials—actual cost of duplication.

(iii) Other types of duplication services not mentioned above—actual cost.

(iv) Material provided to a private contractor for copying shall be charged to the requester at the actual cost charged by the private contractor.

(2) *Search services.* Bureaus shall charge for search services consistent with the following:

(i) *Searches for other than electronic records.* The Department shall charge for search time at the salary rate(s) (basic pay plus 16 percent) of the employee(s) making the search. However, where a single class of personnel is used exclusively (*e.g.*, all administrative/clerical, or all professional/executive), an average rate for the range of grades typically involved may be established. This charge shall include transportation of personnel and records necessary to the search at actual cost. Fees may be charged for search time as prescribed in §1.7, even if the search does not yield any responsive records, or if records are denied.

(ii) *Searches for electronic records.* The Department shall charge for actual direct cost of the search, including computer search time, runs, and the operator's salary. The fee for computer output shall be actual direct costs. For requesters in the ''all other'' category, when the cost of the search (including the operator time and the cost of operating the computer to process a request) equals the equivalent dollar amount of two hours of the salary of the person performing the search (*i.e.*, the operator), the charge for the computer search will begin.

(3) *Review of records.* The Department shall charge commercial use requesters for review of records at the salary rate(s) (*i.e.*, basic pay plus 16 percent) of the employee(s) making the review. However, when a single class of personnel is used exclusively (*e.g.*, all administrative/clerical, or all professional/executive), an average rate for the range of grades typically involved may be established. Fees may be charged for review time as prescribed in §1.7, even if records ultimately are not disclosed.

(4) *Inspection of records.* Fees for all services provided shall be charged whether or not copies are made available to the requester for inspection.

(5) *Other services.* Other services and materials requested which are not covered by this part nor required by the FOIA are chargeable at the actual cost to the Department. This includes, but is not limited to:

(i) Certifying that records are true copies;

(ii) Sending records by special methods such as express mail, etc.

(h) *Aggregating requests.* When the Department or a bureau of the Department reasonably believes that a requester or group of requesters is attempting to break a request down into a series of requests for the purpose of evading the assessment of fees, the agency shall aggregate any such requests and charge accordingly.

APPENDIX A TO SUBPART A OF PART 1—DEPARTMENTAL OFFICES

1. *In general.* This appendix applies to the Departmental Offices as defined in 31 CFR 1.1(a)(1).

2. *Public reading room.* The public reading room for the Departmental Offices is the Treasury Library. The Library is located in the Main Treasury Building, 1500 Pennsylvania Avenue, NW., Washington, DC 20220. For building security purposes, visitors are required to make an appointment by calling 202–622–0990.

3. *Requests for records.* Initial determinations under 31 CFR 1.5(h) as to whether to grant requests for records of the Departmental Offices will be made by the head of the organizational unit having immediate custody of the records requested or the delegate of such official. Requests for records should be addressed to: Freedom of Information Request, DO, Assistant Director, Disclosure Services, Department of the Treasury, 1500 Pennsylvania Avenue, NW, Washington, DC 20220.

4. *Administrative appeal of initial determination to deny records.*

(i) Appellate determinations under 31 CFR 1.5(i) with respect to records of the Departmental Offices will be made by the Secretary, Deputy Secretary, Under Secretary, General Counsel, Inspector General, Treasury Inspector General for Tax Administration, Treasurer of the United States, or Assistant Secretary having jurisdiction over the organizational unit which has immediate custody of the records requested, or the delegate of such officer.

(ii) Appellate determinations with respect to requests for expedited processing shall be made by the Deputy Assistant Secretary (Administration).

(iii) Appeals should be addressed to:

Freedom of Information Appeal, DO, Assistant Director, Disclosure Services, Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

5. *Delivery of process.* Service of process will be received by the General Counsel of the Department of the Treasury or the delegate of such officer and shall be delivered to the following location: General Counsel, Department of the Treasury, Room 3000, Main Treasury Building, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

APPENDIX B TO SUBPART A OF PART 1—INTERNAL REVENUE SERVICE

1. *In general.* This appendix applies to the Internal Revenue Service. See also 26 CFR 601.702.

2. *Public reading room.* The public reading rooms for the Internal Revenue Service are maintained at the following location:

NATIONAL OFFICE

Mailing Address

Freedom of Information Reading Room, PO Box 795, Ben Franklin Station, Washington, DC 20044

Walk-In Address

Room 1621, 1111 Constitution Avenue, NW., Washington, DC

NORTHEAST REGION

Mailing Address

Freedom of Information Reading Room, PO Box 5138, E:QMS:D, New York, NY 10163

Walk-In Address

11th Floor, 110 W. 44th Street, New York, NY

MIDSTATES REGION

Mailing Address

Freedom of Information Reading Room, Mail Code 7000 DAL, 1100 Commerce Street, Dallas, TX 75242

Walk-In Address

10th Floor, Rm. 10B37, 1100 Commerce Street, Dallas, TX

SOUTHEAST REGION

Mailing Address

401 W. Peachtree Street, NW., Stop 601D, Room 868, Atlanta, GA 30365

Walk-In Address

Same as mailing address

WESTERN REGION

Mailing Address

1301 Clay Street, Stop 800–S, Oakland, CA 94612

Walk-In Address

8th Floor, 1301 Clay Street, Oakland, CA

3. *Requests for records.* Initial determinations under 31 CFR 1.5(h) as to whether to grant requests for records of the Internal Revenue Service, grant expedited processing, grant a fee waiver, or determine requester category will be made by those officials specified in 26 CFR 601.702.

4. *Administrative appeal of initial determination to deny records.* Appellate eterminations under 31 CFR 1.5(i) with respect to records of the Internal Revenue Service will be made by the Commissioner of Internal Revenue or the delegate of such officer. Appeals made by mail should be addressed to:

Freedom of Information Appeal, Commissioner of Internal Revenue Service, c/o Ben Franklin Station, PO Box 929, Washington, DC 20044.

Appeals may be delivered personally to the Assistant Chief Counsel (Disclosure Litigation) CC:EL:D, Office of the Chief Counsel, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, D.C.

5. *Delivery of process.* Service of process shall be effected consistent with Rule 4 of the Federal Rule of Civil Procedure, and directed to the Commissioner of Internal Revenue at the following address:

Commissioner, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224. Attention: CC:EL:D.

APPENDIX C TO SUBPART A OF PART 1—UNITED STATES CUSTOMS SERVICE

1. *In general.* This appendix applies to the United States Customs Service.

2. *Public reading room.* The public reading room for the United States Customs Service is maintained at the following location:

United States Customs Service, 1300 Pennsylvania Avenue NW., Washington, DC 20229.

3. *Requests for records.*

(a) Headquarters—Initial determinations under 31 CFR 1.5(h) as to whether to grant requests for records will be made by the appropriate Division Director at Customs Service Headquarters having custody of or functional jurisdiction over the subject matter of the requested records. If the request relates to records maintained in an office which is

not within a division, the initial determination shall be made by the individual designated for that purpose by the Assistant Commissioner having responsibility for that office. Requests may be mailed or delivered in person to:

Freedom of Information Act, Chief, Disclosure Law Branch, U.S. Customs Service, 1300 Pennsylvania Avenue, NW., Washington, DC 20229.

(b) Field Offices—Initial determinations under 31 CFR 1.5(h) as to whether to grant requests for records maintained by the Office of Investigations will be made by the Special Agent in Charge in whose office the records are maintained. Initial determinations of records maintained in Customs Ports of Entry as to whether or not to grant requests for records will be made by the Port Director of the Customs Service Port having jurisdiction over the Port of Entry in which the records are maintained. Requests may be mailed or faxed to or delivered personally to the respective Special Agents in Charge or Port Directors of the Customs Service Ports at the following locations:

OFFICES OF SPECIAL AGENTS IN CHARGE (SACS)

Atlanta—SAC

1691 Phoenix Blvd., Suite 250, Atlanta, Georgia 30349, Phone (770) 994–2230, FAX (770) 994–2262

Detroit—SAC

McNamara Federal Building, 477 Michigan Avenue, Room 350, Detroit, Michigan 8226–2568, Phone (313) 226–3166, FAX (313) 226–6282

Baltimore—SAC

40 South Gay Street, 3rd Floor Baltimore, Maryland 21202, Phone (410) 962–2620, FAX (410) 962–3469

El Paso—SAC

9400 Viscount Blvd., Suite 200, El Paso, Texas 79925, Phone (915) 540–5700, FAX (915) 540–5754

Boston—SAC

10 Causeway Street, Room 722, Boston, MA 02222–1054, Phone (617) 565–7400, FAX (617) 565–7422

Houston—SAC

4141 N. Sam Houston Pkwy, E., Houston, Texas 77032, Phone (281) 985–0500, FAX (281) 985–0505

Buffalo—SAC

111 West Huron Street, Room 416, Buffalo, New York 14202, Phone (716) 551–4375, FAX (716) 551–4379

Los Angeles—SAC

300 South Ferry St., Room 2037, Terminal Island, CA 90731, Phone (310) 514–6231, FAX (310) 514–6280

Chicago—SAC

610 South Canal Street, Room 1001, Chicago, Illinois 60607, Phone (312) 353–8450, FAX (312) 353–8455

Miami—SAC

8075 NW 53rd Street, Scranton Building, Miami, Florida 33166, Phone (305) 597–6030, FAX (305) 597–6227

Denver—SAC

115 Inverness Drive, East, Suite 300, Englewood, CO 80112–5131, Phone (303) 84–6480, FAX (303) 784–6490

New Orleans—SAC

423 Canal Street, Room 207, New Orleans, LA 70130, Phone (504) 670–2416, FAX (504) 589–2059

New York—SAC

6 World Trade Center, New York, New York 10048–0945, Phone (212) 466–2900, FAX (212) 466–2903

San Juan—SAC

#1, La Puntilla Street, Room 110, San Juan, PR 00901, Phone (787) 729–6975 FAX (787) 729–6646

San Antonio—SAC

10127 Morocco, Suite 180, San Antonio, Texas 78216, Phone (210) 229–4561, FAX (210) 229–4582

Seattle—SAC

1000—2nd Avenue, Suite 2300, Seattle, Washington, 98104, Phone (206) 553–7531, FAX (206) 553–0826

San Diego—SAC

185 West ''F'' Street, Suite 600, San Diego, CA 92101, Phone (619) 57–6850, FAX (619) 557–5109

Tampa—SAC

2203 North Lois Avenue, Suite 600, Tampa, Florida 33607, Phone (813) 348–1881, FAX (813) 348–1871

San Francisco—SAC

1700 Montgomery Street, Suite 445, San Francisco, CA 94111, Phone (415) 705–4070, FAX (415) 705–4065

Tucson—SAC

555 East River Road, Tucson, Arizona 85704, Phone (520) 670–6026, FAX (520) 70–6233

CUSTOMS SERVICE PORTS

Anchorage: 605 West Fourth Avenue Anchorage, AK 99501. Phone: (907) 271–2675; FAX: (907) 271–2684.

Minneapolis: 110 South Street Minneapolis, MN 55401. Phone: (612) 348–1690; FAX: (612) 348–1630.

Baltimore: 200 St. Paul Place Baltimore, MD 21202. Phone: (410) 962–2666; FAX: (410) 962–9335.

Mobile: 150 North Royal Street Mobile, AL 36602. Phone: (205) 441–5106; FAX: (205) 441–6061.

Blaine: 9901 Pacific Highway Blaine, WA 98230. Phone: (360) 332–5771; FAX: (360) 332–4701.

New Orleans: 423 Canal Street New Orleans, LA 70130. Phone: (504) 589–6353; FAX: (504) 589–7305.

Boston: 10 Causeway Street Boston, MA 02222–1059. Phone: (617) 565–6147; FAX: (617) 565–6137.

New York: 6 World Trade Center New York, NY 10048. Phone: (212) 466–4444; FAX: (212) 455–2097.

Buffalo: 111 West Huron Street Buffalo, NY 14202–22378. Phone: (716) 551–4373; FAX: (716) 551–5011.

New York-JFK Area: Building #77 Jamaica, NY 11430. Phone: (718) 553–1542; FAX: (718) 553–0077.

Champlain: 35 West Service Road Rts. 1 & 9 South Champlain, NY 12919. Phone: (518) 298–8347; FAX: (518) 298–8314.

New York-NY/Newark Area: Hemisphere Center, Newark, NJ 07114. Phone: (201) 645–3760; FAX: (201) 645–6634.

Charleston: 200 East Bay Street Charleston, SC 29401. Phone: (803) 727–4296; FAX: (803) 727–4043.

Nogales: 9 North Grand Avenue Nogales, AZ 85621. Phone: (520) 287–1410; FAX: (520) 287–1421.

Charlotte: 1801–K Cross Beam Drive Charlotte, NC 28217. Phone: (704) 329–6101; FAX: (704) 329–6103.

Norfolk: 200 Granby Street Norfolk, VA 23510. Phone: (804) 441–3400; FAX: (804) 441–6630.

Charlotte/Amalie: Main Post OFC-Sugar Estate St. Thomas, VI 00801. Phone: (809) 774–2511; FAX: (809) 776–3489.

Pembina: PO Box 610 Pembina, ND 58271. Phone: (701) 825–6201; FAX: (701) 825–6473.

Chicago: 610 South Canal Street Chicago, IL 60607. Phone: (312) 353–6100; FAX: (312) 353–2337.

Philadelphia: 2nd & Chestnut Streets Philadelphia, PA 19106. Phone: (215) 597–4605; FAX: (215) 597–2103.

Cleveland: 56 Erieview Plaza Cleveland, OH 44114. Phone: (216) 891–3804; FAX: (216) 891–3836.

Portland, Oregon: 511 NW Broadway Portland, OR 97209. Phone: (503) 326–2865; FAX: (503) 326–3511.

Dallas/Fort Worth: PO Box 61905 Dallas/Fort Worth Airport, TX 75261. Phone: (972) 574–2170; FAX: (972) 574–4818.

Providence: 49 Pavilion Avenue Providence, RI 02905. Phone: (401) 941–6326; FAX: (401) 941–6628.

Denver: 4735 Oakland Street Denver, CO 80239. Phone: (303) 361–0715; FAX: (303) 361–0722.

San Diego: 610 West Ash Street San Diego, CA 92188. Phone: (619) 557–6758; FAX: (619) 557–5314.

Detroit: 477 Michigan Avenue Detroit, MI 48226. Phone: (313) 226–3178; FAX: (313) 226–3179.

San Francisco: 555 Battery Avenue San Francisco, CA 94111. Phone: (415) 744–7700; FAX: (415) 744–7710.

Duluth: 515 West 1st Street Duluth, MN 55802–1390. Phone: (218) 720–5201; FAX: (218) 720–5216.

San Juan: #1 La Puntilla San Juan, PR 00901. Phone: (809) 729–6965; FAX: (809) 729–6978.

El Paso: 9400 Viscount Boulevard El Paso, TX 79925. Phone: (915) 540–5800; FAX: (915) 540–3011.

Savannah: 1 East Bay Street Savannah, GA 31401. Phone: (912) 652–4256; FAX: (912) 652–4435.

Great Falls: 300 2nd Avenue South Great Falls, MT 59403. Phone: (406) 453–7631; FAX: (406) 453–7069.

Seattle: 1000 2nd Avenue Seattle, WA 98104–1049. Phone: (206) 553–0770; FAX: (206) 553–2970.

Honolulu: 335 Merchant Street Honolulu, HI 96813. Phone: (808) 522–8060; FAX: (808) 522–8060.

St. Albans: P.O. Box 1490 St. Albans, VT 05478. Phone: (802) 524–7352; FAX: (802) 527–1338.

Houston/Galveston: 1717 East Loop Houston, TX 77029. Phone: (713) 985–6712; FAX: (713) 985–6705.

St. Louis: 4477 Woodson Road St. Louis, MO 63134–3716. Phone: (314) 428–2662; FAX: (314) 428–2889.

Laredo/Colombia: P.O. Box 3130 Laredo, TX 78044. Phone: (210) 726–2267; FAX: (210) 726–2948.

Tacoma: 2202 Port of Tacoma Road, Tacoma, WA 98421. Phone: (206) 593–6336; FAX: (206) 593–6351.

Los Angeles: 300 South Ferry Street Terminal Island, CA 90731. Phone: (310) 514–6001; FAX: (310) 514–6769.

Tampa: 4430 East Adamo Drive Tampa, FL 33605. Phone: (813) 228–2381; FAX: (813) 225–7309.

Miami Airport: 6601 West 25th Street Miami, FL 33102–5280. Phone: (305) 869–2800; FAX: (305) 869–2822.

Washington, DC: P.O. Box 17423 Washington, DC. 20041. Phone: (703) 318–5900; FAX: (703) 318–6706.

Milwaukee: P.O. Box 37260 Milwaukee, WI 53237–0260. Phone: (414) 571–2860; FAX: (414) 762–0253.

(c) All such requests should be conspicuously labeled on the face of the envelope, ''Freedom of Information Act Request'' or ''FOIA Request''.

4. *Administrative appeal of initial determination to deny records.* Appellate determinations under 31 CFR 1.5(i) will be made by the Assistant Commissioner of Customs (Office of Regulations and Rulings), or his designee, and all such appeals should be mailed, faxed (202/927–1873) or personally delivered to the United States Customs Service, 1300 Pennsylvania Avenue, NW., Washington, DC 20229. If possible, a copy of the initial letter of determination should be attached to the appeal.

5. *Delivery of process.* Service of process will be received by the Chief Counsel, United States Customs Service, 1300 Pennsylvania Avenue, NW., Washington, DC 20229.

APPENDIX D TO SUBPART A OF PART 1—UNITED STATES SECRET SERVICE

1. *In general.* This appendix applies to the United States Secret Service.

2. *Public reading room.* The United States Secret Service will provide a room on an ad hoc basis when necessary. Contact the Disclosure Officer, Room 720, 1800 G Street, NW., Washington, DC 20223 to make appointments.

3. *Requests for records.* Initial determinations under 31 CFR 1.5(h) as to whether to grant requests for records of the United States Secret Service will be made by the Freedom of Information and Privacy Acts Officer, United States Secret Service. Requests may be mailed or delivered in person to:

Freedom of Information Act Request, FOIA and Privacy Acts Officer, U.S. Secret Service, oom 720, 1800 G Street, NW., Washington, DC 20223.

4. *Administrative appeal of initial determination to deny records.* Appellate determinations under 31 CFR 1.5(i) with respect to records of the United States Secret Service will be made by the Deputy Director, United States Secret Service. Appeals should be addressed to:

Freedom of Information Appeal, Deputy Director, U.S. Secret Service, Room 800, 1800 G Street, NW., Washington, DC 20223.

5. *Delivery of Process.* Service of process will be received by the United States Secret Service Chief Counsel at the following address:

Chief Counsel, U.S. Secret Service, Room 842, 1800 G Street, NW., Washington, DC 20223.

APPENDIX E TO SUBPART A OF PART 1—BUREAU OF ALCOHOL, TOBACCO AND FIREARMS

1. *In general.* This appendix applies to the Bureau of Alcohol, Tobacco and Firearms.

2. *Public reading room.* The Bureau of Alcohol, Tobacco and Firearms will make materials available for review on an ad hoc basis when necessary. Contact the Chief, Disclosure Division, Bureau of Alcohol, Tobacco, and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226.

3. *Requests for records.* Initial determinations under 31 CFR 1.5(h) as to whether to grant requests for records of the Bureau of Alcohol, Tobacco, and Firearms will be made by the Chief, Disclosure Division, Office of Assistant Director (Liaison and Public Information) or the delegate of such officer. Requests may be mailed or delivered in person to:

Freedom of Information Act Request, Chief, Disclosure Division, Bureau of Alcohol, Tobacco, and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226.

4. *Administrative appeal of initial determination to deny records.* Appellate determinations under 31 CFR 1.5(i) with respect to records of the Bureau of Alcohol, Tobacco and Firearms will be made by the Assistant Director, Liaison and Public Information, Bureau of Alcohol, Tobacco, and Firearms or the delegate of such officer.

Appeals may be mailed or delivered in person to:

Freedom of Information Appeal, Assistant Director, Liaison and Public Information, Bureau of Alcohol, Tobacco, and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226.

5. *Delivery of process.* Service of process will be received by the Director of the Bureau of Alcohol, Tobacco, and Firearms at the following location:

Bureau of Alcohol, Tobacco, and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226, Attention: Chief Counsel.

APPENDIX F TO SUBPART A OF PART 1—BUREAU OF ENGRAVING AND PRINTING

1. *In general.* This appendix applies to the Bureau of Engraving and Printing.

2. *Public reading room.* Contact the Disclosure Officer, 14th and C Streets, SW., Washington, DC 20228, to make an appointment.

3. *Requests for records.* Initial determinations under 31 CFR 1.5(h) as to whether to grant requests for records of the Bureau of Engraving and Printing will be made by the Assistant to the Director. Requests may be mailed or delivered in person to:

Freedom of Information Act Request, Disclosure Officer, (Assistant to the Director),

Room 112–M, Bureau of Engraving and Printing, Washington, DC 20228.

4. *Administrative appeal of initial determination to deny records.* Appellate determinations under 31 CFR 1.5(i) with respect to records of the Bureau of Engraving and Printing will be made by the Director of the Bureau of Engraving and Printing or the delegate of the Director. Appeals may be mailed or delivered in person to:

Freedom of Information Appeal, Director, Bureau of Engraving and Printing, 14th and C Streets, SW., Room 119–M, Washington, DC 20228.

5. *Delivery of process.* Service of process will be received by the Chief Counsel or the delegate of such officer at the following location:

Chief Counsel, Bureau of Engraving and Printing, 14th and C Streets, SW., Room 04–24 M, Washington, DC 20228.

APPENDIX G TO SUBPART A OF PART 1—FINANCIAL MANAGEMENT SERVICE

1. *In general.* This appendix applies to the Financial Management Service.

2. *Public reading room.* The public reading room for the Financial Management Service is maintained at the following location:

Library, Main Treasury Building, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

For building security purposes, visitors are required to make an appointment by calling 202/622–0990.

3. *Requests for records.* Initial determinations under 31 CFR 1.5(h) whether to grant requests for records will be made by the Disclosure Officer, Financial Management Service. Requests may be mailed or delivered in person to:

Freedom of Information Request, Disclosure Officer, Financial Management Service, 401 14th Street, SW., Washington, DC 20227.

4. *Administrative appeal of initial determination to deny records.* Appellate determinations under 31 CFR 1.5(i) will be made by the Commissioner, Financial Management Service. Appeals may be mailed to:

Freedom of Information Appeal (FOIA), Commissioner, Financial Management Service, 401 14th Street, SW., Washington, DC 20227.

Appeals may be delivered personally to the Office of the Commissioner, Financial Management Service, 401 14th Street, SW., Washington, DC.

5. *Delivery of process.* Service of process will be received by the Commissioner, Financial Management Service, and shall be delivered to:

Commissioner, Financial Management Service, Department of the Treasury, 401 14th Street, SW., Washington, DC 20227.

APPENDIX H TO SUBPART A OF PART 1—UNITED STATES MINT

1. *In general.* This appendix applies to the United States Mint.

2. *Public reading room.* The U.S. Mint will provide a room on an ad hoc basis when necessary. Contact the Freedom of Information/Privacy Act Officer, United States Mint, Judiciary Square Building, 7th floor, 633 3rd Street, NW., Washington, DC 20220.

3. *Requests for records.* Initial determinations under 31 CFR 1.5(h) as to whether to grant requests for records of the United States Mint will be made by the Freedom of Information/Privacy Act Officer, United States Mint. Requests may be mailed or delivered in person to:

Freedom of Information Act Request, Freedom of Information/Privacy Act Officer, United States Mint, Judiciary Square Building, 7th Floor, 633 3rd Street, NW., Washington, DC 20220.

4. *Administrative appeal of initial determination to deny records.* Appellate determinations under 31 CFR 1.5(i) with respect to records of the United States Mint will be made by the Director of the Mint. Appeals made by mail should be addressed to:

Freedom of Information Appeal, Director, United States Mint, Judiciary Square Building, 7th Floor, 633 3rd Street, NW., Washington, DC 20220.

5. *Delivery of process.* Service of process will be received by the Director of the Mint and shall be delivered to:

Chief Counsel, United States Mint, Judiciary Square Building, 7th Floor, 633 3rd Street, NW., Washington, D.C. 20220.

APPENDIX I TO SUBPART A OF PART 1—BUREAU OF THE PUBLIC DEBT

1. *In general.* This appendix applies to the Bureau of the Public Debt.

2. *Public reading room.* The public reading room for the Bureau of the Public Debt is maintained at the following location:

Library, Main Treasury Building, 1500 Pennsylvania Avenue, NW, Washington, DC 20220.

For building security purposes, visitors are required to make an appointment by calling 202/622–0990.

3. *Requests for records.* Initial determinations under 31 CFR 1.5(h) whether to grant requests for records will be made by the Disclosure Officer of the Bureau of the Public Debt. Requests may be sent to:

Freedom of Information Act Request, Disclosure Officer, Administrative Resource Center, Bureau of the Public Debt, Department of the Treasury, 200 Third Street, Room 211, Parkersburg, WV 26101–5312.

4. *Administrative appeal of initial determination to deny records.* Appellate determinations under 31 CFR 1.5(i) with respect to records of the Bureau of the Public Debt will be made by the Executive Director, Administrative Resource Center, Bureau of the Public Debt. Appeals may be sent to:

Freedom of Information Act Appeal, Executive Director, Administrative Resource Center, Bureau of the Public Debt, Department of the Treasury, 200 Third Street, Room 211, Parkersburg, WV 26101–5312.

5. *Delivery of process.* Service of process will be received by the Chief Counsel, Bureau of the Public Debt, or the delegate of such officer, and shall be delivered to the following location:

Chief Counsel's Office, Bureau of the Public Debt, 200 Third Street, Room G–15, Parkersburg, WV 26106–1328.

[65 FR 40504, June 30, 2000, as amended at 67 FR 34402, May 14, 2002]

APPENDIX J TO SUBPART A OF PART 1—OFFICE OF THE COMPTROLLER OF THE CURRENCY

1. *In general.* This appendix applies to the Office of the Comptroller of the Currency.

2. *Public reading room.* The Office of the Comptroller of the Currency will make materials available through its Public Information Room at 250 E Street, SW., Washington, DC 20219.

3. *Requests for records.* Initial determinations under 31 CFR 1.5(h) as to whether to grant requests for records of the Office of the Comptroller of the Currency will be made by the Disclosure Officer or the official so designated. Requests may be mailed or delivered in person to:

Freedom of Information Act Request, Disclosure Officer, Communications Division, 3rd Floor, Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

4. *Administrative appeal of initial determination to deny records.* Appellate determinations under 31 CFR 1.5(i) with respect to records of the Office of the Comptroller of the Currency will be made by the Chief Counsel or delegates of such person. Appeals made by mail should be addressed to:

Communications Division, Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

Appeals may be delivered personally to the Communications Division, Comptroller of the Currency, 250 E Street, SW., Washington, DC.

5. *Delivery of process.* Service of process will be received by the Director, Litigation Division, Comptroller of the Currency, and shall be delivered to such officer at the following location:

Litigation Division, Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

APPENDIX K TO SUBPART A OF PART 1—FEDERAL LAW ENFORCEMENT TRAINING CENTER

1. *In general.* This apppendix applies to the Federal Law Enforcement Training Center.

2. *Public reading room.* The public reading room for the Federal Law Enforcement Training Center is maintained at the following location:

Library, Building 262, Federal Law Enforcement Training Center, Glynco, GA 31524.

3. *Requests for records.* Initial determinations under 31 CFR 1.5(h) as to whether to grant requests for records will be made by the Chief, Management Analysis Division, Federal Law Enforcement Training Center. Requests made by mail should be addressed to:

Freedom of Information Act Request, Freedom of Information Act Officer, Federal Law Enforcement Training Center, Department of the Treasury, Building 94, Glynco, GA 31524.

Requests may be delivered personally to the Management Analysis Division, Federal Law Enforcement Training Center, Building 94, Glynco, GA.

4. *Administrative appeal of initial determination to deny records.* Appellate determinations under 31 CFR 1.5(i) with respect to records of the consolidated Federal Law Enforcement Training Center will be made by the Director, Federal Law Enforcement Training Center. Appeals may be mailed to:

Freedom of Information Appeal, Federal Law Enforcement Training Center, Department of the Treasury, Building 94, Glynco, GA 31524.

5. *Delivery of process.* Service of process will be received by the Legal Counsel of the Federal Law Enforcement Training Center, or his delegate, and shall be delivered to such officer at the following location:

Legal Counsel, Federal Law Enforcement Training Center, Department of the Treasury, Building 94, Glynco, GA 31524.

APPENDIX L TO SUBPART A OF PART 1—OFFICE OF THRIFT SUPERVISION

1. *In general.* This appendix applies to the Office of Thrift Supervision (OTS). OTS regulatory handbooks and other publications are available for sale. Information may be obtained by calling the OTS Order Department at 301/645–6264. OTS regulatory handbooks and other publications may be purchased by forwarding a request, along with a check to: OTS Order Department, PO Box

753, Waldorf, MD 20604 or by calling 301/645–6264 to pay by VISA or MASTERCARD.

2. *Public reading room.* The public reading room for the Office of Thrift Supervision is maintained at the following location:

1700 G Street, NW., Washington, DC 20552.

3. *Requests for records.* Initial determinations under 31 CFR 1.5(h) as to whether to grant requests for records of the Office of Thrift Supervision will be made by the Director, OTS Dissemination Branch. Requests for records should be addressed to: Freedom of Information Request, Manager, Dissemination Branch, Records Management & Information Policy Division, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

Requests for records may be delivered in person to:

Public Reference Room, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC.

4. *Administrative appeal of initial determination to deny records.* Appellate determinations under 31 CFR 1.5(i) with respect to records of the Office of Thrift Supervision will be made by the Director, Records Management & Information Policy, Office of Thrift Supervision, or their designee. Appeals made by mail should be addressed to: Freedom of Information Appeal, Director, Records Management & Information Policy Division, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

Appeals may be delivered in person to:

Public Reference Room, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC.

5. *Delivery of process.* Service of process will be received by the Corporate Secretary of the Office of Thrift Supervision or their designee and shall be delivered to the following location:

Corporate Secretary, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

APPENDIX M TO SUBPART A—FINANCIAL CRIMES ENFORCEMENT NETWORK

1. *In general.* This appendix applies to the Financial Crimes Enforcement Network (FinCEN).

2. *Public Reading Room.* FinCEN will provide a room on an ad hoc basis when necessary. Contact Office of Regulatory Programs, FinCEN, (202) 354–6400.

3. *Requests for records.* Initial determinations under 31 CFR 1.5(h) as to whether to grant requests for records of FinCEN will be made by the Freedom of Information Act/Privacy Act Officer, FinCEN. Requests for records may be mailed to: Freedom of Information Act/Privacy Act Request, Financial Crimes Enforcement Network, Post Office Box 39, Vienna, VA 22183.

4. *Administrative appeal of initial determinations to deny records.* Appellate determinations under 31 CFR 1.5(i) with respect to the records of FinCEN will be made by the Director of FinCEN or the delegate of the Director. Appeals should be mailed to: Freedom of Information Appeal, Post Office Box 39, Vienna, VA 22183.

5. *Delivery of process.* Service of process will be received by the Chief Counsel of FinCEN and shall be delivered to: Chief Counsel, Financial Crimes Enforcement Network, Post Office Box 39, Vienna, VA 22183.

[68 FR 55310, Sept. 25, 2003]

Subpart B—Other Disclosure Provisions

§ 1.8 Scope.

The regulations in this subpart concern access to information and records other than under 5 U.S.C. 552. This subpart is applicable to the Departmental Offices and to the bureaus of the Department as defined in §1.1(a) of this part, except to the extent that bureaus of the Department have adopted separate guidance governing the subject matter of a provision of this subpart.

[69 FR 54003, Sept. 7, 2004]

§ 1.9 Records not to be otherwise withdrawn or disclosed.

Except in accordance with this part, or as otherwise authorized, Treasury Department officers and employees are prohibited from making records or duplicates available to any person who is not an officer or employee of the Department, and are prohibited from withdrawing any such records or duplicates from the files, possession or control of the Department.

[69 FR 54003, Sept. 7, 2004]

§ 1.10 Oral information.

(a) Officers and employees of the Department may, in response to requests, orally provide information contained in records of the Department that are determined to be available to the public. If the obtaining of such information requires a search of records, a written request and the payment of the fee for a record search set forth in §1.6 will be required.

(b) Information with respect to activities of the Department not a matter of record shall not be disclosed if the information involves matters exempt from disclosure under 5 U.S.C. 552 or the regulations in this part, or if the disclosure of such information would give the person requesting the information advantages not accorded to other citizens.

[69 FR 54003, Sept. 7, 2004]

§ 1.11 Testimony or the production of records in a court or other proceeding.

(a) *Applicability*. (1) This section sets forth the policies and procedures of the Department regarding the testimony of employees and former employees as witnesses in legal proceedings and the production or disclosure of information contained in Department documents for use in legal proceedings pursuant to a request, order, or subpoena (collectively referred to in this subpart as a demand).

(2) This section does not apply to any legal proceeding in which an employee is to testify while on leave status regarding facts or events that are unrelated to the official business of the Department.

(3)(i) Nothing in this section affects the rights and procedures governing public access to records pursuant to the Freedom of Information Act (5 U.S.C. 552) or the Privacy Act (5 U.S.C. 552a).

(ii) Demands in legal proceedings for the production of records, or for the testimony of Department employees regarding information protected by the Privacy Act (5 U.S.C. 552a), the Trade Secrets Act (18 U.S.C. 1905) or other confidentiality statutes, must satisfy the requirements for disclosure set forth in those statutes and the applicable regulations of this part before the records may be provided or testimony given.

(4) This section is intended only to provide guidance for the internal operations of the Department and to inform the public about Department procedures concerning the service of process and responses to demands or requests, and the procedures specified in this section, or the failure of any Treasury employee to follow the procedures specified in this section, are not intended to, do not, and may not be relied upon to create a right or benefit, substantive or procedural, enforceable at law by a party against the United States.

(b) *Definitions*. For purposes of this section:

(1) *Agency counsel* means:

(i) With respect to the Departmental Offices, the General Counsel or his or her designee; or

(ii) With respect to a bureau or office of the Department, the Chief Counsel or Legal Counsel (or his or her designee) of such bureau or office.

(2) *Demand* means a request, order, or subpoena for testimony or documents related to or for possible use in a legal proceeding.

(3) *Department* means the United States Department of the Treasury.

(4) *Document* means any record or other property, no matter what media and including copies thereof, held by the Department, including without limitation, official letters, telegrams, memoranda, reports, studies, calendar and diary entries, maps, graphs, pamphlets, notes, charts, tabulations, analyses, statistical or informational accumulations, any kind of summaries of meetings and conversations, film impressions, magnetic tapes and sound or mechanical reproductions.

(5) *Employee* means all employees or officers of the Department, including contractors and any other individuals who have been appointed by, or are subject to the supervision, jurisdiction or control of the Secretary, as well as the Secretary of the Treasury. The procedures established within this subpart also apply to former employees of the Department where specifically noted.

(6) *General Counsel* means the General Counsel of the Department or other Department employee to whom the General Counsel has delegated authority to act under this subpart.

(7) *Legal proceeding* means all pretrial, trial and post trial stages of all existing or reasonably anticipated judicial or administrative actions, hearings, investigations, or similar proceedings before courts, commissions, boards, grand juries, or other tribunals, foreign or domestic. This phrase includes all phases of discovery as well as

responses to formal or informal requests by attorneys or others involved in legal proceedings.

(8) *Official business* means the authorized business of the Department.

(9) *Secretary* means the Secretary of the Treasury.

(10) *Testimony* means a statement in any form, including personal appearances before a court or other legal tribunal, interviews, depositions, telephonic, televised, or videotaped statements or any responses given during discovery or similar proceedings, which response would involve more than the production of documents.

(c) *Department policy*. No current or former employee shall, in response to a demand, produce any Department documents, provide testimony regarding any information relating to or based upon Department documents, or disclose any information or produce materials acquired as part of the performance of that employee's official duties or official status, without the prior authorization of the General Counsel or the appropriate agency counsel.

(d) *Procedures for demand for testimony or production of documents*. (1) A demand directed to the Department for the testimony of a Department employee or for the production of documents shall be served in accordance with the Federal Rules of Civil Procedure, Federal Rules of Criminal Procedure, or applicable state procedures and shall be directed to the General Counsel, Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220, or to the Chief or Legal Counsel of the concerned Department component. Acceptance of a demand shall not constitute an admission or waiver with respect to jurisdiction, propriety of service, improper venue, or any other defense in law or equity available under the applicable laws or rules.

(2) A subpoena or other demand for testimony directed to an employee or former employee shall be served in accordance with the Federal Rules of Civil or Criminal Procedure or applicable State procedure and a copy of the subpoena shall be sent to agency counsel.

(3)(i) In court cases in which the United States or the Department is not a party, where the giving of testimony or the production of documents by the Department, or a current or former employee is desired, an affidavit (or if that is not feasible, a statement) by the litigant or the litigant's attorney, setting forth the information with respect to which the testimony or production is desired, must be submitted in order to obtain a decision concerning whether such testimony or production will be authorized. Such information shall include: the title of the legal proceeding, the forum, the requesting party's interest in the legal proceeding, the reason for the demand, a showing that other evidence reasonably suited to the requester's needs is not available from any other source and, if testimony is requested, the intended use of the testimony, a general summary of the desired testimony, and a showing that no document could be provided and used in lieu of testimony. The purpose of this requirement is to assist agency counsel in making an informed decision regarding whether testimony or the production of document should be authorized. Permission to testify or produce documents will, in all cases, be limited to the information set forth in the affidavit or statement, or to such portions thereof as may be deemed proper.

(ii) Agency counsel may consult or negotiate with an attorney for a party, or the party if not represented by an attorney, to refine or limit a demand so that compliance is less burdensome or obtain information necessary to make the determination required by paragraph (e) of this section. Failure of the attorney or party to cooperate in good faith to enable agency counsel to make an informed determination under this subpart may serve, where appropriate, as a basis for a determination not to comply with the demand.

(iii) A determination under this subpart to comply or not to comply with a demand is without prejudice as to any formal assertion or waiver of privilege, lack of relevance, technical deficiency or any other ground for noncompliance.

(4)(i) Employees shall immediately refer all inquiries and demands made on the Department to agency counsel.

(ii) An employee who receives a subpoena shall immediately forward the subpoena to agency counsel. Agency counsel will determine the manner in which to respond to the subpoena.

(e) *Factors to be considered by agency counsel.* (1) In deciding whether to authorize the release of official information or the testimony of personnel concerning official information (hereafter referred to as ''the disclosure'') agency counsel shall consider the following factors:

(i) Whether the request or demand is unduly burdensome;

(ii) Whether the request would involve the Department in controversial issues unrelated to the Department's mission;

(iii) Whether the time and money of the United States would be used for private purposes;

(iv) The extent to which the time of employees for conducting official business would be compromised;

(v) Whether the public might misconstrue variances between personal opinions of employees and Department policy;

(vi) Whether the request demonstrates that the information requested is relevant and material to the action pending, genuinely necessary to the proceeding, unavailable from other sources, and reasonable in its scope;

(vii) Whether the number of similar requests would have a cumulative effect on the expenditure of agency resources;

(viii) Whether disclosure otherwise would be inappropriate under the circumstances; and

(ix) Any other factor that is appropriate.

(2) Among those demands and requests in response to which compliance will not ordinarily be authorized are those with respect to which any of the following factors exists:

(i) The disclosure would violate a statute, Executive order, or regulation;

(ii) The integrity of the administrative and deliberative processes of the Department would be compromised;

(iii) The disclosure would not be appropriate under the rules of procedure governing the case or matter in which the demand arose;

(iv) The disclosure, including release in camera, is not appropriate or necessary under the relevant substantive law concerning privilege;

(v) The disclosure, except when in camera and necessary to assert a claim of privilege, would reveal information properly classified or other matters exempt from unrestricted disclosure; or

(vi) The disclosure would interfere with ongoing enforcement proceedings, compromise constitutional rights, reveal the identity of an intelligence source or confidential informant, or disclose trade secrets or similarly confidential commercial or financial information.

(f) *Requests for opinion or expert testimony.* (1) Subject to 5 CFR 2635.805, an employee or former employee shall not provide, with or without compensation, opinion or expert testimony concerning official information, subjects, or activities, except on behalf of the United States or a party represented by the Department of Justice, without written approval of agency counsel.

(2) Upon a showing by the requestor of exceptional need or unique circumstances and that the anticipated testimony will not be adverse to the interests of the Department or the United States, agency counsel may, in writing, grant authorization for an employee, or former employee, to appear and testify at no expense to the United States.

(3) Any expert or opinion testimony by a former employee of the Department shall be excepted from § 1.11(f)(1) where the testimony involves only general expertise gained while employed at the Department.

(g) *Procedures when agency counsel directs an employee not to testify or provide documents.* (1) If agency counsel determines that an employee or former employee should not comply with a subpoena or other request for testimony or the production of documents, agency counsel will so inform the employee and the party who submitted the subpoena or made the request.

(2) If, despite the determination of the agency counsel that testimony should not be given and/or documents not be produced, a court of competent jurisdiction or other appropriate authority orders the employee or former

employee to testify and/or produce documents, the employee shall notify agency counsel of such order.

(i) If agency counsel determines that no further legal review of, or challenge to, the order will be sought, the employee or former employee shall comply with the order.

(ii) If agency counsel determines to challenge the order, or that further legal review is necessary, the employee or former employee should not comply with the order. Where necessary, the employee should appear at the time and place set forth in the subpoena. If legal counsel cannot appear on behalf of the employee, the employee should produce a copy of this subpart and respectfully inform the legal tribunal that he/she has been advised by counsel not to provide the requested testimony and/or produce documents. If the legal tribunal rules that the subpoena must be complied with, the employee shall respectfully decline to comply, citing this section and *United States* ex rel. *Touhy* v. *Ragen*, 340 U.S. 462 (1951).

[69 FR 54003, Sept. 7, 2004]

§ 1.12 Regulations not applicable to official request.

The regulations in this part shall not be applicable to official requests of other governmental agencies or officers thereof acting in their official capacities, unless it appears that granting a particular request would be in violation of law or inimical to the public interest. Cases of doubt should be referred for decision to agency counsel (as defined in § 1.11(b)(1)).

[69 FR 54003, Sept. 7, 2004]

Subpart C—Privacy Act

§ 1.20 Purpose and scope of regulations.

The regulations in this subpart are issued to implement the provisions of the Privacy Act of 1974 (5 U.S.C. 552a). The regulations apply to all records which are contained in systems of records maintained by the Department of the Treasury and which are retrieved by an individual's name or personal identifier. They do not relate to those personnel records of Government employees, which are under the jurisdiction of the Office of Personnel Management to the extent such records are subject to regulations issued by such OPM. The regulations apply to all components of the Department of the Treasury. Any reference in this subpart to the Department or its officials, employees, or records shall be deemed to refer also to the components or their officials, employees, or records. The regulations set forth the requirements applicable to Department of the Treasury employees maintaining, collecting, using or disseminating records pertaining to individuals. They also set forth the procedures by which individuals may request notification of whether the Department of the Treasury maintains or has disclosed a record pertaining to them or may seek access to such records maintained in any nonexempt system of records, request correction of such records, appeal any initial adverse determination of any request for amendment, or may seek an accounting of disclosures of such records. For the convenience of interested persons, the components of the Department of the Treasury may reprint these regulations in their entirety (less any appendices not applicable to the component in question) in those titles of the Code of Federal Regulations which normally contain regulations applicable to such components. In connection with such republication, and at other appropriate times, components may issue supplementary regulations applicable only to the component in question, which are consistent with these regulations. In the event of any actual or apparent inconsistency, these Departmental regulations shall govern. Persons interested in the records of a particular component should, therefore, also consult the *Code of Federal Regulations* for any rules or regulations promulgated specifically with respect to that component (see Appendices to this subpart for cross references). The head of each component is hereby also authorized to substitute other appropriate officials for those designated and correct addresses specified in the appendix to this subpart applicable to the component. The components of the Department of the Treasury for the purposes of this subpart are:

(a) The Departmental Offices, which include the offices of:

(1) The Secretary of the Treasury, including immediate staff;

(2) The Deputy Secretary of the Treasury, including immediate staff;

(3) The Chief of Staff, including immediate staff;

(4) The Executive Secretary and all offices reporting to such official, including immediate staff;

(5) The Under Secretary of the Treasury for International Affairs and all offices reporting to such official, including immediate staff;

(6) The Under Secretary of the Treasury for Domestic Finance and all offices reporting to such official, including immediate staff;

(7) The Under Secretary for Enforcement and all offices reporting to such official, including immediate staff;

(8) The Assistant Secretary of the Treasury for Financial Institutions and all offices reporting to such official, including immediate staff;

(9) The Assistant Secretary of the Treasury for Economic Policy and all offices reporting to such official, including immediate staff;

(10) The Fiscal Assistant Secretary and all offices reporting to such official, including immediate staff;

(11) The General Counsel and all offices reporting to such official, including immediate staff; except legal counsel to the components listed in paragraphs (a)(17) and (b) through (m) of this section;

(12) The Inspector General and all offices reporting to such official, including immediate staff;

(13) The Assistant Secretary of the Treasury for International Affairs and all offices reporting to such official, including immediate staff;

(14) The Assistant Secretary of the Treasury for Legislative Affairs and Public Liaison and all offices reporting to such official, including immediate staff;

(15) The Assistant Secretary of the Treasury for Management and Chief Financial Officer and all offices reporting to such official, including immediate staff;

(16) The Assistant Secretary of the Treasury for Public Affairs and all offices reporting to such official, including immediate staff;

(17) The Assistant Secretary of the Treasury for Tax Policy and all offices reporting to such official, including immediate staff;

(18) The Treasurer of the United States, including immediate staff;

(19) The Treasury Inspector General for Tax Administration and all offices reporting to such official, including immediate staff.

(b) The Bureau of Alcohol, Tobacco and Firearms.

(c) The Office of the Comptroller of the Currency.

(d) The United States Customs Service.

(e) The Bureau of Engraving and Printing.

(f) The Federal Law Enforcement Training Center.

(g) The Financial Management Service.

(h) The Internal Revenue Service.

(i) The United States Mint.

(j) The Bureau of the Public Debt.

(k) The United States Secret Service.

(l) The Office of Thrift Supervision.

(m) The Financial Crimes Enforcement Network.

For purposes of this subpart, the office of the legal counsel for the components listed in paragraphs (b), (c), (d), (e), (f), (g), (h), (i), (j), (k), (l), and (m) of this section are to be considered a part of such components. Any office, which is now in existence or may hereafter be established, which is not specifically listed or known to be a component of any of those listed above, shall be deemed a part of the Departmental Offices for the purpose of these regulations.

[52 FR 26305, July 14, 1987, as amended at 60 FR 31633, June 16, 1995; 65 FR 2333, Jan. 14, 2000; 68 FR 55311, Sept. 25, 2003]

§ 1.21 Definitions.

(a) The term *agency* means agency as defined in 5 U.S.C. 552(e);

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

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

(d) The term *record* means any item, collection, or grouping of information

about an individual that is maintained by the Department of the Treasury or component of the Department. This includes, but is not limited to, the individual's education, financial transactions, medical history, and criminal or employment history and that contains the name, or an identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or a photograph;

(e) The term *system of records* means a group of any records under the control of the Department of the Treasury or any component from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual;

(f) The term *statistical record* means a record in a system of records maintained for statistical research or reporting purposes only and not used in whole or part in making any determination about an identifiable individual, except as provided by 13 U.S.C. 8.

(g) The term *routine use* means the disclosure of a record that is compatible with the purpose for which the record was collected;

(h) The term *component* means a bureau or office of the Department of the Treasury as set forth in § 1.20 and in the appendices to these regulations. (See 5 U.S.C. 552a(a).)

(i) The term *request for access* means a request made pursuant to 5 U.S.C. 552a(d)(1).

(j) The term *request for amendment* means a request made pursuant to 5 U.S.C. 552a(d)(2).

(k) The term *request for accounting* means a request made pursuant to 5 U.S.C. 552a(c)(3).

§ 1.22 Requirements relating to systems of records.

(a) *In general.* Subject to 5 U.S.C. 552a (j) and (k) and § 1.23(c), each component shall, in conformance with 5 U.S.C. 552a:

(1) Maintain in its records only such information about an individual as is relevant and necessary to accomplish a purpose of the agency required to be accomplished by the statute or by Executive order of the President (See 5 U.S.C. 552a(e)(1)).

(2) Collect information to the greatest extent practicable directly from the subject individual when the information may result in adverse determinations about an individual's rights, benefits, and privileges under Federal programs. (See 5 U.S.C. 552a(e)(2)).

(b) *Requests for information from individuals.* Subject to 5 U.S.C. 552a(j) and § 1.23(c)(1), each component of the Treasury shall inform each individual whom it asks to supply information, on the form which it uses to collect the information or on a separate form that can be retained by the individual:

(1) The authority (whether granted by statute, or by Executive order of the President) which authorizes the solicitation of the information and whether disclosure of such information is mandatory or voluntary;

(2) The principal purpose or purposes for which the information is intended to be used;

(3) The routine uses which may be made of the information, as published pursuant to 5 U.S.C. 552a(e)(4)(D); and

(4) The effects on such individual, if any, of not providing all or any part of the requested information. (See 5 U.S.C. 552a(e)(3)).

(c) *Report on new systems.* Each component of the Treasury shall provide adequate advance notice to Congress and the Office of Management and Budget through the Disclosure Branch and Administration Section of the Office of the General Counsel of any proposal to establish or alter any system of records in order to permit an evaluation of the probable or potential effect of such proposal on the privacy and other personal or property rights of individuals or the disclosure of information relating to such individuals, and its effect on the preservation of the constitutional principles of federalism and separation of powers. (See 5 U.S.C. 552a(o)).

(d) *Accurate and secure maintenance of records.* Each component shall:

(1) Subject to 5 U.S.C. 552a(j) and § 1.23(c)(1), maintain all records which are used in making any determination about any individual with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to

assure fairness to the individual in the determination (see 5 U.S.C. 552a(e)(5);

(2) Prior to disseminating any record about an individual to any person other than an agency, unless the dissemination is made pursuant to 5 U.S.C. 552 (see 31 CFR part 1, subpart A), make reasonable efforts to assure that such records are accurate, complete, timely, and relevant for Department of the Treasury purposes (see 5 U.S.C. 552a(e)(6)) and

(3) Establish appropriate administrative, technical, and physical safeguards to insure the security and confidentiality of records and to protect against any anticipated threats or hazards to their security or integrity which could result in substantial harm, embarrassment, inconvenience, or unfairness to any individual on whom information is maintained. (See 5 U.S.C. 552a(e)(10)).

(i) System managers, with the approval of the head of their offices within a component, shall establish administrative and physical controls, consistent with Department regulations, to insure the protection of records systems from unauthorized access or disclosure and from physical damage or destruction. The controls instituted shall be proportional to the degree of sensitivity of the records but at a minimum must insure that records other than those available to the general public under the Freedom of Information Act (5 U.S.C. 552), are protected from public view, that the area in which the records are stored is supervised during all business hours and physically secure during nonbusiness hours to prevent unauthorized personnel from obtaining access to the records. Automated systems shall comply with the security standards promulgated by the National Bureau of Standards.

(ii) System managers, with the approval of the head of their offices within a component, shall adopt access restrictions to insure that only those individuals within the agency who have a need to have access to the records for the performance of their duties have access to them. Procedures shall also be adopted to prevent accidental access to, or dissemination of, records.

(e) *Prohibition against maintenance of records concerning First Amendment rights.* No component shall maintain a record describing how any individual exercises rights guaranteed by the First Amendment (e.g. speech), unless the maintenance of such record is:

(1) Expressly authorized by statute, or

(2) Expressly authorized by the individual about whom the record is maintained, or

(3) Pertinent to and within the scope of an authorized law enforcement activity. (See 5 U.S.C. 552a (e)(7))

(f) *Notification of disclosure under compulsory legal process.* Subject to 5 U.S.C. 552a(j) and §1.23(c)(1), when records concerning an individual are subpoenaed by a Grand Jury, Court, or quasi-judicial agency, or disclosed in accordance with an ex parte court order pursuant to 26 U.S.C. 6103(i), the official served with the subpoena or court order shall make reasonable efforts to assure that notice of any disclosure is provided to the individual. Notice shall be provided within five working days of making the records available under compulsory legal process or, in the case of a Grand Jury subpoena or an ex parte order, within five days of its becoming a matter of public record. Notice shall be mailed to the last known address of the individual and shall contain the following information: the date and authority to which the subpoena is, or was returnable, or the date of and court issuing the ex parte order, the name and number of the case or proceeding, and the nature of the information sought and provided. Notice of the issuance of a subpoena or an ex parte order is not required if the system of records has been exempted from the notice requirement of 5 U.S.C. 552a (e)(8) and this section, pursuant to 5 U.S.C. 552a (j) and §1.23 (c)(1), by a Notice of Exemption published in the FEDERAL REGISTER. (See 5 U.S.C. 552a (e)(8)).

(g) *Emergency disclosure.* If information concerning an individual has been disclosed to any person under compelling circumstances affecting health or safety, the individual shall be notified at the last known address within 5 days of the disclosure (excluding Saturdays, Sundays, and legal public holidays).

Notification shall include the following information: The nature of the information disclosed, the person or agency to whom it was disclosed, the date of disclosure, and the compelling circumstances justifying the disclosure. Notification shall be given by the officer who made or authorized the disclosure. (See 5 U.S.C. 552a (b)(8)).

§ 1.23 Publication in the Federal Register—Notices of systems of records, general exemptions, specific exemptions, review of all systems.

(a) *Notices of systems of records to be published in the* FEDERAL REGISTER. (1) The Department shall publish a notice of the existence and character of all systems of records every 3 years in the FEDERAL REGISTER. An annual notice of systems of records is required to be published by the Office of the Federal Register in the publication entitled ''Privacy Act Issuances'', as specified in 5 U.S.C. 552a(f).

(2) Minor changes to systems of records shall be published annually. (See paragraph (d)(8) of this section)

(3) In addition, the Department shall publish in the FEDERAL REGISTER upon establishment or revision a notice of the existence and character of any new or revised systems of records. Unless otherwise instructed, each notice shall include:

(i) The name and location of the system;

(ii) The categories of individuals on whom records are maintained in the system;

(iii) The categories of records maintained in the system;

(iv) Each routine use of the records contained in the system, including the categories of users and the purpose of such use;

(v) The policies and practices of the component regarding storage, retrievability, access controls, retention, and disposal of the records;

(vi) The title and business address of the Treasury official who is responsible for the system of records;

(vii) The procedures of the component whereby an individual can be notified if the system of records contain a record pertaining to the individual, including reasonable times, places, and identification requirements.

(viii) The procedures of the component whereby an individual can be notified on how to gain access to any record pertaining to such individual that may be contained in the system of records, and how to contest its content; and

(ix) The categories of sources of records in the system. (See 5 U.S.C. 552a(e)(4))

(b) *Notice of new or modified routine uses to be published in the* FEDERAL REGISTER. At least 30 days prior to a new use or modification of a routine use, as published under paragraph (a)(3)(iv) of this section, each component shall publish in the FEDERAL REGISTER notice of such new or modified use of the information in the system and provide an opportunity for interested persons to submit written data, views, or arguments to the components. (See 5 U.S.C. 552a(e)(11))

(c) *Promulgation of rules exempting systems from certain requirements*—(1) *General exemptions.* In accordance with existing procedures applicable to a Treasury component's issuance of regulations, the head of each such component may adopt rules, in accordance with the requirements (including general notice) of 5 U.S.C. 553 (b) (1), (2), and (3), (c) and (e), to exempt any system of records within the component from any part of 5 U.S.C. 552a and these regulations except subsections (b) (sec. 1.24, conditions of disclosure), (c)(1) (sec. 1.25, keep accurate accounting of disclosures), (c)(2) (sec. 1.25, retain accounting for five years or life of record), (e)(4) (A) through (F) (paragraph (a) of this section, publication of annual notice of systems of records), (e)(6) (sec. 1.22(d), accuracy of records prior to dissemination), (e)(7) (sec. 1.22(e), maintenance of records on First Amendment rights), (e)(9) (sec. 1.28, establish rules of conduct), (e)(10) (sec. 1.22(d)(3), establish safeguards for records), (e)(11) (paragraph (c) of this section, publish new intended use), and (i) (sec. 1.28(c), criminal penalties) if the systems of records maintained by the component which performs as its principal function any activity pertaining to the enforcement of criminal laws, including police efforts to prevent, control, or reduce crime or to apprehend criminals, and the activities of

prosecutors, courts, correctional, probation, pardon, or parole authorities, and which consists of:

(i) Information compiled for the purpose of identifying individual criminal offenders and alleged offenders and consisting only of identifying data and notations of arrests, the nature and disposition of criminal charges, sentencing, confinement, release, and parole, and probation status;

(ii) Information compiled for the purpose of a criminal investigation, including reports of informants and investigators, and associated with an identifiable individual; or

(iii) Reports identifiable to an individual compiled at any stage of the process of enforcement of the criminal laws from arrest or indictment through release from supervision. (See 5 U.S.C. 552a(j))

(2) *Specific exemptions.* In accordance with existing procedures applicable to a Treasury component's issuance of regulations, the head of each such component may adopt rules, in accordance with the requirements (including general notice) of 5 U.S.C. 553 (b) (1), (2), and (3), (c), and (e), to exempt any system of records within the component from 5 U.S.C. 552a(c)(3) (sec. 1.25(c)(2), accounting of certain disclosures available to the individual), (d) (sec. 1.26(a), access to records), (e)(1) (sec. 1.22(a)(1), maintenance of information to accomplish purposes authorized by statute or executive order only), (e)(4)(G) (paragraph (a)(7) of this section, publication of procedures for notification), (e)(4)(H) (paragraph (a)(8) of this section, publication of procedures for access and contest), (e)(4)(I) (paragraph (a)(9) of this section, publication of sources of records), and (f) (sec. 1.26, promulgate rules for notification, access and contest), if the system of records is:

(i) Subject to the provisions of 5 U.S.C. 552(b)(1);

(ii) Investigatory material compiled for law enforcement purposes, other than material within the scope of subsection (j)(2) of 5 U.S.C. 552a and paragraph (a)(1) of this section. If any individual is denied any right, privilege, or benefit that such individual would otherwise be entitled to by Federal law, or for which such individual would otherwise be eligible, as a result of the maintenance of this material, such material shall be provided to the individual, except to the extent that the disclosure of the 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 September 27, 1975, under an implied promise that the identity of the source would be held in confidence;

(iii) Maintained in connection with providing protective services to the President of the United States or other individuals pursuant to 18 U.S.C. 3056;

(iv) Required by statute to be maintained and used solely as statistical records;

(v) 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 September 27, 1975, under an implied promise that the identity of the source would be held in confidence;

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

(vii) Evaluation material used to determine potential for promotion in the armed services, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence.

(3) At the time that rules under this subsection are adopted, the head of the component shall include in the statement required under 5 U.S.C. 553(c) the reasons why the system of records is to be exempted from a provision of 5

U.S.C. 552a and this part. (See 5 U.S.C. 552a (j) and (k))

(d) *Review and report to OMB.* The Department shall ensure that the following reviews are conducted as often as specified below by each of the components who shall be prepared to report to the Departmental Disclosure Branch upon request the results of such reviews and any corrective action taken to resolve problems uncovered. Each component shall:

(1) Review every two years a random sample of the component's contracts that provide for the maintenance of a system of records on behalf of the component to accomplish a function of the component, in order to ensure that the working of each contract makes the provisions of the Act apply. (5 U.S.C. 552a(m)(1))

(2) Review annually component's recordkeeping and disposal policies and practices in order to assure compliance with the Act.

(3) Review routine use disclosures every 3 years, that are associated with each system of records in order to ensure that the recipient's use of such records continues to be compatible with the purpose for which the disclosing agency originally collected the information.

(4) Review every three years each system of records for which the component has issued exemption rules pursuant to section (j) or (k) of the Privacy Act in order to determine whether the exemption is needed.

(5) Review annually each ongoing matching program in which the component has participated during the year, either as a source or as a matching agency in order to assure that the requirements of the Act, the OMB Matching Guidelines, and the OMB Model Control System and checklist have been met.

(6) Review component's training practices annually to ensure that all component personnel are familiar with the requirements of the Act, these regulations and Departmental directives.

(7) Review annually the actions of component personnel that have resulted either in the agency being found civilly liable under section (g) of the Act, or an employee being found criminally liable under the provisions of section (i) of the Act, in order to determine the extent of the problem and to prevent future recurrences.

(8) Review annually each system of records notice to ensure that it accurately describes the system. Where minor changes are needed, publish an amended notice in the FEDERAL REGISTER. Minor changes shall be consolidated in one annual comprehensive publication. The term ''minor change to a system of records'' means a change that does not significantly change the system. More specifically, a minor change does not affect the character or purpose of the system and does not affect the ability of an individual to gain access to a record about the individual or to any information pertaining to such individual which is contained in the system; for example, changing the title of the system manager or the location of the system.

§ 1.24 Disclosure of records to person other than the individual to whom they pertain.

(a) *Conditions of disclosure.* No component of Treasury shall disclose any record which is contained in a system of records maintained by it by any means of communication to any person, or to another agency, except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains, or the parent, if a minor, or legal guardian, if incompetent, of such individual, unless disclosure of the record would be:

(1) To those offices and employees of the Department of the Treasury who have a need for the record in the performance of their duties;

(2) Retired under 5 U.S.C. 552 (subpart A of this part);

(3) For a routine use as defined in 5 U.S.C. 552a(a)(7) and § 1.21(g) and as described under 5 U.S.C. 552a(e)(4)(D) and § 1.23(a)(4);

(4) To the Bureau of the Census for purposes of planning or carrying out a census or survey or related activity pursuant to the provisions of title 13 of the U.S. Code;

(5) To a recipient who has provided the component with advance adequate written assurance that the record will be used solely as a statistical research

or reporting record, and the record is to be transferred in a form that is not individually identifiable;

(6) To the National Archives 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 the designee of such official to determine whether the record has such value;

(7) To another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity.

(i) If the activity is authorized by law; and

(ii) If the head of the agency or instrumentality has made a written request to the Department of the Treasury specifying the particular portion desired and the law enforcement activities for which the record is sought;

(8) To a person pursuant to a showing of compelling circumstances affecting the health or safety of an individual, if upon such disclosure, notification is transmitted to the last known address of such individual;

(9) To either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof, any joint committee of Congress or subcommittee of any such joint committee.

(10) To the Comptroller General, or the authorized representatives of such official, in the course of the performance of the duties of the General Accounting Office; or

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

§ 1.25 Accounting of disclosures.

(a) *Accounting of certain disclosures.* Each component, with respect to each system of records under its control, shall:

(1) Keep an accurate accounting of: (i) The date, nature, and purpose of each disclosure of a record to any person or to an agency made under 5 U.S.C. 552a (b) and § 1.24; and (ii) the name and address of the person or agency to whom the disclosure is made;

(2) Retain the accounting made under paragraph (a)(1) of this section for at least five years or the life of the record, whichever is longer, after the disclosure for which the accounting is made; and

(3) Inform any person or other agency about any correction or notation of dispute made by the constitutent unit in accordance with 5 U.S.C. 552a (d) and § 1.28 of any record that has been disclosed to the person or agency if an accounting of the disclosure was made. (See 5 U.S.C. 552(c).)

(b) *Accounting systems.* To permit the accounting required by paragraph (a) of this section, system managers, with the approval of the head of their offices within a component, shall establish or implement, a system of accounting for all disclosures of records, either orally or in writing, made outside the Department of the Treasury. Accounting records shall:

(1) Be established in the least expensive and most convenient form that will permit the system manager to advise individuals, promptly upon request, what records concerning them have been disclosed and to whom:

(2) Provide, as a minimum, the identification of the particular record disclosed, the name and address of the person or agency to whom or to whom or to which disclosed, and the date, nature and purpose of the disclosure; and

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

(c) *Exemptions from accounting requirements.* No accounting is required for disclosure of records:

(1) To those officers and employees of the Department of the Treasury who have a need for the record in the performance of their duties; or

(2) If disclosure would be required under 5 U.S.C. 552 and Subpart A of this part.

(d) *Access to accounting by individual.* (1) Subject to paragraphs (c) and (d)(2) of this section, each component shall establish and set forth in the appendix

to this subpart applicable to the component, procedures for making the accounting required under paragraph (a) of this section available to the individual to whom the record pertains and shall thereafter make such accounting available in accordance therewith at the request of the individual. The procedures may require the requester to provide reasonable identification.

(2) Access accountings of disclosure may be withheld from the individual named in the record only if the disclosures were (i) made under 5 U.S.C. 552a (b)(7) and § 1.24 (a)(7), or (ii) under a system of records exempted from the requirements of 5 U.S.C. 552a(c)(3) in accordance with 5 U.S.C. 552 (j) or (k) and § 1.23(c). (See 5 U.S.C. 552a(c))

§ 1.26 Procedures for notification and access to records pertaining to individuals—format and fees for request for access.

(a) *Procedures for notification and access.* Each component shall establish, in accordance with the requirements of 5 U.S.C. 553, and set forth in the appendix to this subpart applicable to such component procedures whereby an individual can be notified, in response to a request, if any system of records named by the individual contains a record pertaining to that individual. In addition, such procedures shall set forth the requirements for access to such records. As a minimum such procedures shall specify the times during, and the places at which access will be accorded, together with such identification as may be required of the individual before access. (See 5 U.S.C. 552a(f) (1), (2) and (3))

(b) *Access.* Each component in accordance with the procedures prescribed under paragraph (a) of this section, shall allow an individual to gain access to records or to any information pertaining to such individual which is contained in the system of records upon request. The individual shall be permitted to review the record and have a copy made of all or any portion of the record in a form that is comprehensible. The individual will also be permitted to be accompanied by any person of the individual's choosing to review the record, except that the agency may require the individual to furnish a written statement authorizing discussion of that individual's record in the accompanying person's presence. (See 5 U.S.C. 552a(d)(1))

(c) *Exceptions.* Neither the procedures prescribed under paragraph (a) of this section nor the requirements for access under paragraph (b) of this section shall be applicable to—(1) systems of records exempted pursuant to 5 U.S.C. 552a (j) and (k) and § 1.23(c); (2) information compiled in reasonable anticipation of a civil action or proceeding (See 5 U.S.C. 552(d)(5)); or (3) information pertaining to an individual which is contained in, and inseparable from, another individual's record.

(d) *Format of request.* (1) A record for notification of whether a record exists shall:

(i) Be made in writing and signed by the person making the request, who must be the individual about whom the record is maintained, or such individual's duly authorized representative (See § 1.34);

(ii) State that it is made pursuant to the Privacy Act, 5 U.S.C. 552a or these regulations, have marked ''Privacy Act Request'' on the request and on the envelope;

(iii) Give the name of the system or subsystem or categories of records to which access is sought, as specified in ''Privacy Act Issuances'' published by the Office of the Federal Register and referenced in the appendices to this subpart;

(iv) Describe the nature of the record(s) sought in sufficient detail to enable Department personnel to locate the system of records containing the record with a reasonable amount of effort. Whenever possible, a request for access should describe the nature of the record sought, the date of the record or the period in which the record was compiled.

(v) Provide such identification of the requester as may be specified in the appropriate appendix to this subpart; and

(vi) Be addressed or delivered in person to the office or officer of the component indicated for the particular system or subsystem or categories of records the individual wishes access to, as specified in ''Privacy Act Issuances'' published by the Office of the Federal

Register and referenced in the appendices to this subpart. Assistance in ascertaining the appropriate component or in preparing a request for notification may be obtained by a written request to this effect addressed as specified in Appendix A of this part, as the address for the Departmental Offices for ''Request for notification and access to records and accountings of disclosures''.

(2) A request for access to records shall, in addition to complying with paragraph (a)(1)(i) through (vi) of this section:

(i) State whether the requester wishes to inspect the records or desires to have a copy made and furnished without first inspecting them;

(ii) If the requester desires to have a copy made, state the firm agreement of the requester to pay the fees for duplication ultimately determined in accordance with (31 CFR 1.6) Subpart A of this title, unless such fees are waived pursuant to that section by the system manager or other appropriate official as indicated in the appropriate appendix to these regulations; and

(iii) Comply with any other requirement set forth in the applicable appendix to this subpart or the ''Notice of Records Systems'' applicable to the system in question. Requesters are hereby advised that any request for access which does not comply with the foregoing requirements and those set forth elsewhere in this Subpart C, will not be deemed subject to the time constraints of this section, unless and until amended so as to comply. However, components shall advise the requester in what respect the request is deficient so that it may be processed. This section applies only to records which are contained in a system of records and which are in the possession or control of the component. (See 5 U.S.C. 552a (d) and (f))

(e) *Requests for records not in control of component.* (1) Treasury employees shall make reasonable efforts to assist an oral requester to ascertain to which office or officer a written request should be sent. When the request is for a record which is not in the possession or control of any component of the Department of the Treasury, the requester shall be so advised.

(2) Where the record requested was created by a Department or agency other than the Department of the Treasury or a component of the Department and has been classified (e.g. National Defense or Intelligence Information) or otherwise restrictively endorsed (e.g. Office of Personnel Management records of FBI reports) by such other Department or agency, and a copy is in the possession of a component of the Department of the Treasury, that portion of the request shall be referred to the originating agency for determination as to all issues in accordance with the Privacy Act. In the case of a referral to another agency under this paragraph, the requester shall be notified that such portion of the request has been so referred and that the requester may expect to hear from that agency.

(3) When information sought from a system manager or other appropriate official in the Department of the Treasury includes information furnished by other Federal agencies not classified or otherwise restrictively endorsed, the system manager or other appropriate official receiving the request shall consult with the appropriate agency prior to making a decision to disclose or not to disclose the record. The decision as to whether the record shall be disclosed shall be made, in the first instance by the system manager or other appropriate official maintaining the record. (See 5 U.S.C. 552a (d) and (f))

(f) *Date of receipt of request.* A request for notification or access to records shall be considered to have been received for purposes of this subpart on the date on which the requirements of paragraph (d) of this section have been satisfied. Requests for notification or access to records and any separate agreement to pay shall be stamped or endorsed with the date of receipt by the receiving office. The latest of such stamped dates will be deemed to be the date of receipt of the request for the purposes of this subpart. (See 5 U.S.C. 552a (d) and (f))

(g) *Notification of determination*—(1) *In general.* Notification of determinations as to notification of whether a record exists or as to whether to grant access to records requested will be made by

the officers designated in the appendices to this subpart. The notification of the determination shall be mailed within 30 days (excluding Saturdays, Sundays and legal public holidays) after the date of receipt of the request, as determined in accordance with paragraph (f) of this section. If it is not possible to respond within 30 days, the designated officer shall inform the requester, stating the reason for the delay (e.g. volume of records requested, scattered location of the records, need to consult other agencies, or the difficulty of the legal issues involved) and when a response will be dispatched. (See 5 U.S.C. 552a (d) and (f))

(2) *Granting of access.* When it has been determined that the request for access will be granted—(i) and a copy requested; such copy in a form comprehensible to the requester shall be furnished promptly, together with a statement of the applicable fees for duplication; and (ii) and the right to inspect has been requested, the requester shall be promptly notified in writing of the determination, and when and where the requested records may be inspected. An individual seeking to inspect such records may be accompanied by another person of such individual's choosing. The individual seeking access shall be required to sign the required form indicating that the Department of the Treasury is authorized to discuss the contents of the subject record in the accompanying person's presence. If, after making the inspection, the individual making the request desires a copy of all or a portion of the requested records, such copy in a form comprehensible to the individual shall be furnished upon payment of the applicable fees for duplication. Fees to be charged are as prescribed by 31 CFR part 1, Subpart A, §1.6 Fees shall not be charged where they would amount, in the aggregate, to less than $3.00. (See 5 U.S.C. 552a (d) and (f))

(3) *Requirements for access to medical records.* When access is requested to medical records, including psychological records, the responsible official may determine that such release could have an adverse effect on the individual and that release will be made only to a physician authorized in writing to have access to such records by the individual making the request. Upon receipt of the authorization the physician will be permitted to review the records or to receive copies of the records by mail, upon proper verification of identity. (See 5 U.S.C. 552a (f) (3))

(4) *Denial of request.* When it is determined that the request for notification of whether a record exists or access to records will be denied (whether in whole or part or subject to conditions or exceptions), the person making the request shall be so notified by mail in accordance with paragraph (g)(1) of this section. The letter of notification shall specify the city or other location where the requested records are situated (if known), contain a statement of the reasons for not granting the request as made, set forth the name and title or position of the responsible official and advise the individual making the request of the right to file suit in accordance with 5 U.S.C. 552a (g)(1)(B).

(5) *Prohibition against the use of 5 U.S.C. 552 (b) exemptions.* Exemptions from disclosure under 5 U.S.C. 552 (b) (31 CFR part 1, Subpart A, §1.2 (c)), may not be invoked for the purpose of withholding from an individual any record which is otherwise accessible to such individual under the Privacy Act, 5 U.S.C. 552a and this subpart. (See 5 U.S.C. 552a (q))

(6) *Records exempt in whole or in part.* (i) When an individual requests notification as to whether a record exists or access to records concerning the individual which have been exempted from individual access pursuant to 5 U.S.C. 552a (j) or which have been compiled in reasonable anticipation of a civil action or proceeding in either a court or before an administrative tribunal and the assertion of the exemption is deemed necessary, the Department of the Treasury will neither confirm nor deny the existence of the record but shall advise the individual only that no record available to the individual pursuant to the Privacy Act of 1974 has been identified.

(ii) Requests from individuals for access to records which have been exempted from access pursuant to 5 U.S.C. 552a (k) shall be processed as follows:

(A) Requests for information classified pursuant to Executive Order 11652 require the responsible component of the Department to review the information to determine whether it continues to warrant classification under the criteria of sections 1 and 5 (B), (C), (D) and (E) of the Executive order. Information which no longer warrants classification under these criteria shall be declassified and made available to the individual. If the information continues to warrant classification, the individual shall be advised that the information sought is classified, that it has been reviewed and continues to warrant classification, and that it has been exempted from access pursuant to 5 U.S.C. 552 (b)(1) and 5 U.S.C. 552a (k)(1). Information which has been exempted pursuant to 5 U.S.C. 552a (j) and which is also classified shall be reviewed as required by this paragraph but the response to the individual shall be in the form prescribed by paragraph (g)(6)(i) of this section.

(B) Requests for information which has been exempted from disclosure pursuant to 5 U.S.C. 552a (k)(2) shall be responded to in the manner provided in paragraph (g)(6)(i) of this section unless the requester shows that the information has been used or is being used to deny the individual any right, privilege or benefit for which he is eligible or to which he would otherwise be entitled under federal law. In that event, the individual shall be advised of the existence of the information but such information as would identify a confidential source shall be extracted or summarized in a manner which protects the source to the maximum degree possible and the summary extract shall be provided to the requesting individual.

(C) Information compiled as part of an employee background investigation which has been exempted pursuant to 5 U.S.C. 552a (k)(5) shall be made available to an individual upon request except to the extent that it identifies the confidential source. Material identifying the confidential sources shall be extracted or summarized in a manner which protects the source to the maximum degree possible and the summary or extract shall be provided to the requesting individual.

(D) Testing or examination material which has been exempted pursuant to 5 U.S.C. 552a (k)(6) shall not be made available to an individual if disclosure would compromise the objectivity or fairness of the testing or examination process; but may be made available if no such compromise possibility exists. (See 5 U.S.C. 552a (d)(5), (j) and (k)).

§ 1.27 Procedures for amendment of records pertaining to individuals—format, agency review and appeal from initial adverse agency determination.

(a) *In general.* Subject to the application of exemptions promulgated by the head of each component, in accordance with §1.23(c), and subject to §1.27(f), each component of the Department of the Treasury, shall in conformance with 5 U.S.C. 552a(d)(2), permit an individual to request amendment of a record pertaining to such individual. Any request for amendment of records or any appeal that does not fully comply with the requirements of this section and any additional specific requirements imposed by the component in the applicable appendix to this subpart will not be deemed subject to the time constraints of paragraph (e) of this section, unless and until amended so as to comply. However, components shall advise the requester in what respect the request or appeal is deficient so that it may be resubmitted or amended. (See 5 U.S.C. 552a (d) and (f))

(b) *Form of request to amend records.* In order to be subject to the provisions of this section, a request to amend records shall:

(1) Be made in writing and signed by the person making the request, who must be the individual about whom the record is maintained, or the duly authorized representative of such individual;

(2) State that it is made pursuant to the Privacy Act, 5 U.S.C. 552a or these regulations, have marked ''Privacy Act Amendment Request'' on the request and on the envelope;

(3) Be addressed to the office or officer of the component specified for such purposes in ''Privacy Act Issuances'' published by the Office of the Federal Register and referenced in the appendices to this subpart for that purpose; and

(4) Reasonably describe the records which the individual desires to have amended, including, to the best of the requester's knowledge, dates of letters requesting access to such records previously and dates of letters in which notification concerning access was made, if any, and the individual's documentation justifying the correction. (See U.S.C. 552a (d) and (f))

(c) *Date of receipt of request.* A request for amendment of records pertaining to an individual shall be deemed to have been received for purposes of this subpart when the requirements of paragraph (b) of this section have been satisfied. The receiving office or officer shall stamp or otherwise endorse the date of receipt of the request. (See 5 U.S.C. 552a (d) and (f))

(d) *Review of requests to amend records.* Officials responsible for review of requests to amend records pertaining to an individual, as specified in the appropriate appendix to this subpart, shall:

(1) Not later than 10 days (excluding Saturdays, Sundays, and legal public holidays) after the date of receipt of such request, acknowledge in writing such receipt; and

(2) Promptly, either—(i) Make any correction of any portion which the individual believes and the official agrees is not accurate, relevant, timely, or complete; or

(ii) Inform the individual of the refusal to amend the record in accordance with the individual's request, the reason for the refusal, and the name and business address of the officer designated in the applicable appendix to this subpart, as the person who is to review such refusal. (See 5 U.S.C. 552a (d) and (f))

(e) *Administrative appeal*—(1) *In general.* Each component shall permit individuals to request a review of initial decisions made under paragraph (d) of this section, when an individual disagrees with a refusal to amend this record. (See 5 U.S.C. 552a (d), (f), and (g)(1))

(2) Form of request for administrative review of refusal to amend record. At any time within 35 days after the date of the notification of the initial decision described in paragraph (d)(2)(ii) of this section, the requester may submit an administrative appeal from such refusal to the official specified in the notification of the initial decision and the appropriate appendix to this subpart. The appeal shall:

(i) Be made in writing stating any arguments in support thereof and be signed by the person to whom the record pertains, or the duly authorized representative of such official;

(ii) Be addressed to and mailed or hand delivered within 35 days of the date of the initial decision, to the office or officer specified in the appropriate appendix to this subpart and in the notification. (See the appendices to this subpart for the address to which appeals made by mail should be addressed);

(iii) Have clearly marked on the appeal and on the envelope, ''Privacy Act Amendment Appeal'';

(iv) Reasonably describe the records requested to be amended; and

(v) Specify the date of the initial request, to amend records, and the date of the letter giving notification that the request was denied. (See 5 U.S.C. 552a (d) and (f))

(3) *Date of receipt.* Appeals shall be promptly stamped with the date of their receipt by the office to which addressed and such stamped date will be deemed to be the date of receipt for all purposes of this subpart. The receipt of the appeal shall be acknowledged within 10 days (excluding Saturdays, Sundays, and legal public holidays) from the date of the receipt (unless the determination on appeal is dispatched in 10 days, in which case, no acknowledgement is required) by the responsible official and the requester advised of the date of receipt established by the foregoing and when a response is due in accordance with this paragraph. (See 5 U.S.C. 552a (d) and (f))

(4) *Review of administrative appeals from denial of requests to amend records.* Officials responsible for deciding administrative appeals from denials of requests to amend records pertaining to an individual, as specified in the appendices to this subpart shall: Complete the review, and notify the requester of the final agency decision within 30 days (exclusive of Saturdays, Sundays and legal public holidays) after the date of receipt of such appeal, unless the time is extended by the head of the

agency or the delegate of such official, for good cause shown. If such final agency decision is to refuse to amend the record, in whole or in part, the requester shall also be advised of the right—(i) to file a concise ''Statement of Disagreement'' setting forth the reasons for his disagreement with the decision which shall be filed within 35 days of the date of the notification of the final agency decision and (ii) to judicial review of the final agency decision under 5 U.S.C. 552a(g)(1)(A). (See 5 U.S.C. 552a (d), (f) and (g)(1))

(5) *Notation on record and distribution of statements of disagreement.* The system manager is responsible, in any disclosure containing information about which an individual has filed a ''Statement of Disagreement'', occurring after the filing of the statement under paragraph (e)(4) of this section, for clearly noting any portion of the record which is disputed and providing copies of the statement and, if deemed appropriate, a concise statement of the component's reasons for not making the amendments requested to persons or other agencies to whom the disputed record has been disclosed. (See 5 U.S.C. 552a(d)(4))

(f) *Records not subject to correction under the Privacy Act.* The following records are not subject to correction or amendment by individuals:

(1) Transcripts or written statements made under oath; and

(2) Transcripts of Grand Jury proceedings, judicial or quasi-judicial proceedings which form the official record of those proceedings; and

(3) Pre-sentence reports comprising the property of the courts but maintained in agency files; and

(4) Records pertaining to the determination, the collection and the payment of the Federal taxes; and

(5) Records duly exempted from correction by notice published in the FEDERAL REGISTER; and

(6) Records compiled in reasonable anticipation of a civil action or proceeding.

§ 1.28 Training, rules of conduct, penalties for non-compliance.

(a) *Training.* Subject to policy guidance and regulations issued by the Deputy Secretary, who has Department-wide responsibility therefor, each component shall institute a training program to instruct employees and employees of Government contractors covered by 5 U.S.C. 552a(m), who are involved in the design, development, operation or maintenance of any system of records, on a continuing basis with respect to the duties and responsibilities imposed on them and the rights conferred on individuals by the Privacy Act, the regulations in this subpart, including the appendices thereto, and any other related regulations. Such training shall provide suitable emphasis on the civil and criminal penalties imposed on the Department and the individual employees by the Privacy Act for non-compliance with specified requirements of the Act as implemented by the regulations in this subpart. (See 5 U.S.C. 552a(e)(9))

(b) *Rules of conduct.* In addition, to the Standards of Conduct published in part O of this title, particularly 31 CFR 0.735–44, the following are applicable to employees of the Department of the Treasury (including, to the extent required by the contract or 5 U.S.C. 552a(m), Government contractors and employees of such contractors), who are involved in the design, development, operation or maintenance of any system of records, or in maintaining any records, for or on behalf of the Department, including any component thereof.

(1) The head of each office of a component of the Department shall be responsible for assuring that employees subject to such official's supervision are advised of the provisions of the Privacy Act, including the criminal penalties and civil liabilities provided therein, and the regulations in this subpart, and that such employees are made aware of their individual and collective responsibilities to protect the security of personal information, to assure its accuracy, relevance, timeliness and completeness, to avoid unauthorized disclosure either orally or in writing, and to insure that no information system concerning individuals, no matter how small or specialized is maintained without public notice.

(2) Employees of the Department of the Treasury involved in the design,

development, operation, or maintenance of any system of records, or in maintaining any record shall:

(i) Collect no information of a personal nature from individuals unless authorized to collect it to achieve a function or carry out a responsibility of the Department;

(ii) Collect from individuals only that information which is necessary to Department functions or responsibilities, unless related to a system exempted under 5 U.S.C. 552a (j) or (k):

(iii) Collect information, wherever possible, directly from the individual to whom it relates, unless related to a system exempted under 5 U.S.C. 552a(j);

(iv) Inform individuals from whom information is collected about themselves of the authority for collection, the purposes thereof, the use that will be made of the information, and the effects, both legal and practical, of not furnishing the information. (While this provision does not explicitly require it, where feasible, third party sources should be informed of the purposes for which information they are asked to provide will be used.);

(v) Neither collect, maintain, use nor disseminate information concerning an individual's religious or political beliefs or activities or membership in associations or organizations, unless (A) the individual has volunteered such information for the individual's own benefits; (B) the information is expressly authorized by statute to be collected, maintained, used or disseminated; or (C) the activities involved are pertinent to and within the scope of an authorized investigation, adjudication or correctional activity;

(vi) Advise their supervisors of the existence or contemplated development of any record system which is capable of retrieving information about individuals by individual identifier;

(vii) Disseminate no information concerning individuals outside the Department except when authorized by 5 U.S.C. 552a or pursuant to a routine use published in the FEDERAL REGISTER;

(viii) Assure that an accounting is kept in the prescribed form, of all dissemination of personal information outside the Department, whether made orally or in writing, unless disclosed under 5 U.S.C. 552 and subpart A of this part;

(ix) Maintain and process information concerning individuals with care in order to insure that no inadvertent disclosure of the information is made either within or without the Department; and

(x) Assure that the proper Department authorities are aware of any information in a system maintained by the Department which is not authorized to be maintained under the provisions of the Privacy Act of 1974, including information on First Amendment Activities, information that is inaccurate, irrelevant or so incomplete as to risk unfairness to the individual concerned.

(3) Heads of components within the Department or their delegates shall, at least annually, review the record systems subject to their supervision to insure compliance with the provisions of the Privacy Act of 1974 and the regulations in this subpart. (See 5 U.S.C. 552a (e)(9), (i) and (m))

(c) *Criminal penalties.* (1) The Privacy Act imposes criminal penalties on the conduct of Government officers or employees as follows: Any officer or employee of an agency (which term includes the Department of the Treasury):

(i) Who by virtue of the official's employment or official position, has possession of, or access to, agency records which contain individually identifiable information the disclosure of which is prohibited by this section (5 U.S.C. 552a) or regulations established thereunder, and who knowing that disclosure of the specific material is so prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, or

(ii) Who willfully maintains a system of records without meeting the notice requirements of paragraph (e)(4) of this section (5 U.S.C. 552a)—shall be guilty of a misdemeanor and fined not more than $5,000.

(2) The Act also imposes a collateral criminal penalty on the conduct of any person as follows:

''Any person who knowingly and willfully requests or obtains any record concerning an

individual from an agency under false pretenses shall be guilty of a misdemeanor and fined not more than $5,000.''

(3) For the purposes of 5 U.S.C. 552a (i), the provisions of paragraph (c)(1) of this section are applicable to Government contractors and employees of such contractors who by contract, operate by or on behalf of the Department of the Treasury a system of records to accomplish a Departmental function. Such contractor and employees are considered employees of the Department of the Treasury for the purposes of 5 U.S.C. 552a(i). (See 5 U.S.C. 552a (i) and (m).)

§ 1.29 Records transferred to Federal Records Center or National Archives of the United States.

(a) *Records transferred to the Administrator of General Services for storage in the Federal Records Center.* Records pertaining to an identifiable individual which are transferred to the Federal Records Center in accordance with 44 U.S.C. 3103 shall, for the purposes of the Privacy Act, 5 U.S.C. 552a, be considered to be maintained by the component which deposited the record and shall be subject to the provisions of the Privacy Act and this subpart. The Administrator of General Services shall not disclose such records except to the Department of the Treasury or to others under rules consistent with the Privacy Act which may be established by the Department of the Treasury or a component. If such records are retrieved for the purpose of making a determination about an individual, they must be reviewed for accuracy, relevance, timeliness, and completeness.

(b) *Records transferred to the National Archives of the United States.* (1) Records transferred to National Archives prior to September 27, 1975. Records pertaining to an identifiable individual transferred to the National Archives prior to September 27, 1975, as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government shall be considered to be maintained by the National Archives, and

(i) Shall not be subject to 5 U.S.C. 552a,

(ii) Except, that a statement describing such records [modeled after 5 U.S.C. 552a (e)(4) (A) through (G)] shall be published in the FEDERAL REGISTER.

(2) *Records transferred to National Archives on or after September 27, 1975.* Records pertaining to an identifiable individual transferred to the National Archives as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, on or after September 27, 1975, shall be considered to be maintained by the National Archives, and

(i) Shall not be subject to 5 U.S.C. 552a,

(ii) Except, that a statement describing such records in accordance with 5 U.S.C. 552a (e)(4) (A) through (G) shall be published in the FEDERAL REGISTER and rules of conduct and training in accordance with 5 U.S.C. 552 (e) (9) are to be established by the National Archives. (See 5 U.S.C. 552a (e))

§ 1.30 Application to system of records maintained by Government contractors.

When a component contracts for the operation of a system of records, to accomplish a Departmental function, the provisions of the Privacy Act, 5 U.S.C. 552a, and this subpart shall be applicable to such system. The component shall have responsibility for insuring that the contractor complies with the contract requirements relating to privacy.

§ 1.31 Sale or rental of mailing lists.

(a) *In general.* An individual's name and address shall not be sold or rented by a component unless such action is specifically authorized by law.

(b) *Withholding of names and addresses.* This section shall not be construed to require the withholding of names and addresses otherwise permitted to be made public. (See 5 U.S.C. 552a (n)).

§ 1.32 Use and disclosure of social security numbers.

(a) *In general.* An individual shall not be denied any right, benefit, or privilege provided by law by a component because of such individual's refusal to disclose his social security number.

(b) *Exceptions.* The provisions of paragraph (a) of this section shall not apply with respect to:

(1) Any disclosure which is required by Federal statute, or

(2) The disclosure of a social security number to any Federal, State, or local agency maintaining a system of records in existence and operating before January 1, 1975, if such disclosure was required under statute or regulation adopted prior to such date to verify the identity of an individual.

(c) *Requests for disclosure of social security number.* Any component which requests an individual to disclose his or her social security account number shall inform that individual whether:

(1) Disclosure is mandatory or voluntary.

(2) By what statutory or other authority such number is solicited, and

(3) What uses will be made of it. (See section 7 of the Privacy Act of 1974 set forth at 5 U.S.C. 552a, note.)

§ 1.34 Guardianship.

The parent or guardian of a minor or a person judicially determined to be incompetent shall, in addition to establishing the identity of the minor or other person represented, establish parentage or guardianship by furnishing a copy of a birth certificate showing parentage or a court order establishing the guardianship and may thereafter, act on behalf of such individual. (See 5 U.S.C. 552a (h))

§ 1.35 Information forms.

(a) *Review of forms.* Except for forms developed and used by constituent units, the Deputy Assistant Secretary for Administration shall be responsible for reviewing all forms developed and used by the Department of the Treasury to collect information from and about individuals. The heads of components shall each be responsible for the review of forms used by such component to collect information from and about individuals.

(b) *Scope of review.* The responsible officers shall review each form for the purpose of eliminating any requirement for information that is not relevant and necessary to carry out an agency function and to accomplish the following objectives;

(1) To insure that no information concerning religion, political beliefs or activities, association memberships (other than those required for a professional license), or the exercise of First Amendment rights is required to be disclosed unless such requirement of disclosure is expressly authorized by statute or is pertinent to, and within the scope of, any authorized law enforcement activity;

(2) To insure that the form or a separate form that can be retained by the individual makes clear to the individual which information he is required by law to disclose and the authority for that requirement and which information is voluntary;

(3) To insure that the form or a separate form that can be retained by the individual states clearly the principal purpose or purposes for which the information is being collected, and summarizes concisely the routine uses that will be made of the information;

(4) To insure that the form or a separate form that can be retained by the individual clearly indicates to the individual the effect in terms of rights, benefits or privileges of not providing all or part of the requested information; and

(5) To insure that any form requesting disclosure of a Social Security Number, or a separate form that can be retained by the individual, clearly advises the individual of the statute or regulation requiring disclosure of the number or clearly advises the individual that disclosure is voluntary and that no consequence will follow from the refusal to disclose it, and the uses that will be made of the number whether disclosed mandatorily and voluntarily.

(c) *Revision of forms.* Any form which does not meet the objectives specified in the Privacy Act and in this section, shall be revised to conform thereto. A separate statement may be used in instances when a form does not conform. This statement will accompany a form and shall include all the information necessary to accomplish the objectives specified in the Privacy Act and this section.

§ 1.36 Systems exempt in whole or in part from provisions of 5 U.S.C. 552a and this part.

(a) *In General.* In accordance with 5 U.S.C. 552a(j) and (k) and § 1.23(c), the

Department of the Treasury hereby exempts the systems of records identified below from the following provisions of the Privacy Act for the reasons indicated.

(b) *Authority.* These rules are promulgated pursuant to the authority vested in the Secretary of the Treasury by 5 U.S.C. 552a(j) and (k) and pursuant to the authority of § 123(c).

(c) *General exemptions under 5 U.S.C. 552a(j)(2).* (1) Under 5 U.S.C. 552a(j)(2), the head of any agency may promulgate rules to exempt any system of records within the agency from certain provisions of the Privacy Act of 1974 if the agency or component thereof that maintains the system performs as its principal function any activities pertaining to the enforcement of criminal laws. Certain components of the Department of the Treasury have as their principal function activities pertaining to the enforcement of criminal laws and protective service activities which are necessary to assure the safety of individuals protected by the Department pursuant to the provisions of 18 U.S.C. 3056. This paragraph applies to the following systems of records maintained by the Department of the Treasury:

(i) Departmental Offices:

Number	System name
DO .190	Investigation Data Management System.
DO .303	TIGTA General Correspondence.
DO .307	TIGTA Employee Relations Matters, Appeals, Grievances, and Complaint Files.
DO .308	TIGTA Data Extracts.
DO .309	TIGTA Chief Counsel Case Files.
DO .310	TIGTA Chief Counsel Disclosure Section Records.
DO .311	TIGTA Office of Investigations Files.

(ii) Bureau of Alcohol, Tobacco and Firearms:

Number	System name
ATF .003	Criminal Investigation Report System.

(iii) Comptroller of the Currency:

Number	System name
CC .110	Reports of Suspicious Activities
CC .120	Bank Fraud Information System
CC .500	Chief Counsel's Management Information System.
CC .510	Litigation Information System

(iv) U.S. Customs Service:

Number	System name
CS .053	Confidential Source Identification File.
CS .127	Internal Affairs Records System.
CS .129	Investigations Record System.
CS .171	Pacific Basin Reporting Network.
CS .213	Seized Assets and Case Tracking System (SEACATS).
CS .244	Treasury Enforcement Communications System (TECS).
CS .270	Background-Record File of Non-Customs Employees.
CS .285	Automated Index to Central Enforcement Files.

(v) Bureau of Engraving and Printing.

(vi) Federal Law Enforcement Training Center.

(vii) Financial Management Service.

(viii) Internal Revenue Service:

Number	System name
IRS 34.022	National Background Investigations Center Management Information System (NBICMIS).
IRS 46.002	Case Management and Time Reporting System, Criminal Investigation Division.
IRS 46.003	Confidential Informants, Criminal Investigation Division.
IRS 46.005	Electronic Surveillance Files, Criminal Investigation Division.
IRS 46.009	Centralized Evaluation and Processing of Information Items (CEPIIs), Criminal Investigation Division.
IRS 46.015	Relocated Witnesses, Criminal Investigation Division.
IRS 46.016	Secret Service Details, Criminal Investigation Division.
IRS 46.022	Treasury Enforcement Communications System (TECS).
IRS 46.050	Automated Information Analysis System.
IRS 90.001	Chief Counsel Criminal Tax Case Files.

(ix) U.S. Mint

(x) Bureau of the Public Debt

(xi) U.S. Secret Service:

Number	System name
USSS .003	Criminal Investigation Information System.
USSS .006	Non-Criminal Investigation Information System.
USSS .007	Protection Information System.

(xii) Office of Thrift Supervision:

Number	System name
OTS .001	Confidential Individual Information System.
OTS .004	Criminal Referral Database

(xiii) Financial Crimes Enforcement Network:

Number	Name of System
FinCEN .001	FinCEN DataBase.
FinCEN .002	Suspicious Activity Reporting System.
FinCEN .003	Bank Secrecy Act Reports System.

(2) The Department hereby exempts the systems of records listed in paragraphs (c)(1)(i) through (xiii) of this section from the following provisions of 5 U.S.C. 552a, pursuant to 5 U.S.C. 552a(j)(2): 5 U.S.C. 552a(c)(3) and (4), 5 U.S.C. 552a(d)(1), (2), (3), (4), 5 U.S.C. 552a(e)(1), (2) and (3), 5 U.S.C. 552a(e)(4)(G), (H), and (I), 5 U.S.C. 552a(e)(5) and (8), 5 U.S.C. 552a(f), and 5 U.S.C. 552a(g).

(d) *Reasons for exemptions under 5 U.S.C. 552a(j)(2).* (1) 5 U.S.C. 552a(e)(4)(G) and (f)(l) enable individuals to inquire whether a system of records contains records pertaining to them. Application of these provisions to the systems of records would give individuals an opportunity to learn whether they have been identified as suspects or subjects of investigation. As further described in the following paragraph, access to such knowledge would impair the Department's ability to carry out its mission, since individuals could:

(i) Take steps to avoid detection;

(ii) Inform associates that an investigation is in progress;

(iii) Learn the nature of the investigation;

(iv) Learn whether they are only suspects or identified as law violators;

(v) Begin, continue, or resume illegal conduct upon learning that they are not identified in the system of records; or

(vi) Destroy evidence needed to prove the violation.

(2) 5 U.S.C. 552a(d)(1), (e)(4)(H) and (f)(2), (3) and (5) grant individuals access to records pertaining to them. The application of these provisions to the systems of records would compromise the Department's ability to provide useful tactical and strategic information to law enforcement agencies.

(i) Permitting access to records contained in the systems of records would provide individuals with information concerning the nature of any current investigations and would enable them to avoid detection or apprehension by:

(A) Discovering the facts that would form the basis for their arrest;

(B) Enabling them to destroy or alter evidence of criminal conduct that would form the basis for their arrest; and

(C) Using knowledge that criminal investigators had reason to believe that a crime was about to be committed, to delay the commission of the crime or commit it at a location that might not be under surveillance.

(ii) Permitting access to either ongoing or closed investigative files would also reveal investigative techniques and procedures, the knowledge of which could enable individuals planning crimes to structure their operations so as to avoid detection or apprehension.

(iii) Permitting access to investigative files and records could, moreover, disclose the identity of confidential sources and informers and the nature of the information supplied and thereby endanger the physical safety of those sources by exposing them to possible reprisals for having provided the information. Confidential sources and informers might refuse to provide criminal investigators with valuable information unless they believed that their identities would not be revealed through disclosure of their names or the nature of the information they supplied. Loss of access to such sources would seriously impair the Department's ability to carry out its mandate.

(iv) Furthermore, providing access to records contained in the systems of records could reveal the identities of undercover law enforcement officers who compiled information regarding the individual's criminal activities and thereby endanger the physical safety of those undercover officers or their families by exposing them to possible reprisals.

(v) By compromising the law enforcement value of the systems of records for the reasons outlined in paragraphs (d)(2)(i) through (iv) of this section, permitting access in keeping with these provisions would discourage other law enforcement and regulatory agencies, foreign and domestic, from

freely sharing information with the Department and thus would restrict the Department's access to information necessary to accomplish its mission most effectively.

(vi) Limitation on access to the material contained in the protective intelligence files is considered necessary to the preservation of the utility of intelligence files and in safeguarding those persons the Department is authorized to protect. Access to the protective intelligence files could adversely affect the quality of information available to the Department; compromise confidential sources, hinder the ability of the Department to keep track of persons of protective interest; and interfere with the Department's protective intelligence activities by individuals gaining access to protective intelligence files.

(vii) Many of the persons on whom records are maintained in the protective intelligence suffer from mental aberrations. Knowledge of their condition and progress comes from authorities, family members and witnesses. Many times this information comes to the Department as a result of two party conversations where it would be impossible to hide the identity of informants. Sources of information must be developed, questions asked and answers recorded. Trust must be extended and guarantees of confidentiality and anonymity must be maintained. Allowing access to information of this kind to individuals who are the subjects of protective interest may well lead to violence directed against an informant by a mentally disturbed individual.

(viii) Finally, the dissemination of certain information that the Department may maintain in the systems of records is restricted by law.

(3) 5 U.S.C. 552a(d)(2), (3) and (4), (e)(4)(H), and (f)(4) permit an individual to request amendment of a record pertaining to him or her and require the agency either to amend the record, or to note the disputed portion of the record and to provide a copy of the individual's statement of disagreement with the agency's refusal to amend a record to persons or other agencies to whom the record is thereafter disclosed. Since these provisions depend on the individual's having access to his or her records, and since these rules exempt the systems of records from the provisions of 5 U.S.C. 552a relating to access to records, for the reasons set out in paragraph (d)(2) of this section, these provisions should not apply to the systems of records.

(4) 5 U.S.C. 552a(c)(3) requires an agency to make accountings of disclosures of a record available to the individual named in the record upon his or her request. The accountings must state the date, nature, and purpose of each disclosure of the record and the name and address of the recipient.

(i) The application of this provision would impair the ability of law enforcement agencies outside the Department of the Treasury to make effective use of information provided by the Department. Making accountings of disclosures available to the subjects of an investigation would alert them to the fact that another agency is conducting an investigation into their criminal activities and could reveal the geographic location of the other agency's investigation, the nature and purpose of that investigation, and the dates on which that investigation was active. Violators possessing such knowledge would be able to take measures to avoid detection or apprehension by altering their operations, by transferring their criminal activities to other geographical areas, or by destroying or concealing evidence that would form the basis for arrest. In the case of a delinquent account, such release might enable the subject of the investigation to dissipate assets before levy.

(ii) Moreover, providing accountings to the subjects of investigations would alert them to the fact that the Department has information regarding their criminal activities and could inform them of the general nature of that information. Access to such information could reveal the operation of the Department's information-gathering and analysis systems and permit violators to take steps to avoid detection or apprehension.

(iii) The release of such information to the subject of a protective intelligence file would provide significant information concerning the nature of an investigation, and could result in impeding or compromising the efforts

of Department personnel to detect persons suspected of criminal activities or to collect information necessary for the proper evaluation of persons considered to be of protective interest.

(5) 5 U.S.C. 552(c)(4) requires an agency to inform any person or other agency about any correction or notation of dispute that the agency made in accordance with 5 U.S.C. 552a(d) to any record that the agency disclosed to the person or agency if an accounting of the disclosure was made. Since this provision depends on an individual's having access to and an opportunity to request amendment of records pertaining to him or her, and since these rules exempt the systems of records from the provisions of 5 U.S.C. 552a relating to access to and amendment of records, for the reasons set out in paragraph (f)(3) of this section, this provision should not apply to the systems of records.

(6) 5 U.S.C. 552a(e)(4)(I) requires an agency to publish a general notice listing the categories of sources for information contained in a system of records. The application of this provision to the systems of records could compromise the Department's ability to provide useful information to law enforcement agencies, since revealing sources for the information could:

(i) Disclose investigative techniques and procedures;

(ii) Result in threats or reprisals against informers by the subjects of investigations; and

(iii) Cause informers to refuse to give full information to criminal investigators for fear of having their identities as sources disclosed.

(7) 5 U.S.C. 552a(e)(1) requires an agency to maintain in its records only such information about an individual as is relevant and necessary to accomplish a purpose of the agency required to be accomplished by statute or executive order. The term ''maintain,'' as defined in 5 U.S.C. 552a(a)(3), includes ''collect'' and ''disseminate.'' The application of this provision to the systems of records could impair the Department's ability to collect and disseminate valuable law enforcement information.

(i) At the time that the Department collects information, it often lacks sufficient time to determine whether the information is relevant and necessary to accomplish a Treasury Department purpose.

(ii) In many cases, especially in the early stages of investigation, it may be impossible to immediately determine whether information collected is relevant and necessary, and information that initially appears irrelevant and unnecessary often may, upon further evaluation or upon collation with information developed subsequently, prove particularly relevant to a law enforcement program.

(iii) Compliance with the records maintenance criteria listed in the foregoing provision would require the periodic up-dating of the Department's protective intelligence files to insure that the records maintained in the system remain timely and complete.

(iv) Not all violations of law discovered by the Department fall within the investigative jurisdiction of the Department of the Treasury. To promote effective law enforcement, the Department will have to disclose such violations to other law enforcement agencies, including State, local and foreign agencies, that have jurisdiction over the offenses to which the information relates. Otherwise, the Department might be placed in the position of having to ignore information relating to violations of law not within the jurisdiction of the Department of the Treasury when that information comes to the Department's attention during the collation and analysis of information in its records.

(8) 5 U.S.C. 552a(e)(2) requires an agency to collect information to the greatest extent practicable directly from the subject individual when the information may result in adverse determinations about an individual's rights, benefits, and privileges under Federal programs. The application of this provision to the systems of records would impair the Department's ability to collate, analyze, and disseminate investigative, intelligence, and enforcement information.

(i) Most information collected about an individual under criminal investigation is obtained from third parties, such as witnesses and informants. It is usually not feasible to rely upon the

subject of the investigation as a source for information regarding his criminal activities.

(ii) An attempt to obtain information from the subject of a criminal investigation will often alert that individual to the existence of an investigation, thereby affording the individual an opportunity to attempt to conceal his criminal activities so as to avoid apprehension.

(iii) In certain instances, the subject of a criminal investigation is not required to supply information to criminal investigators as a matter of legal duty.

(iv) During criminal investigations it is often a matter of sound investigative procedure to obtain information from a variety of sources to verify information already obtained.

(9) 5 U.S.C. 552a(e)(3) requires an agency to inform each individual whom it asks to supply information, on the form that it uses to collect the information or on a separate form that the individual can retain, of the agency's authority for soliciting the information; whether disclosure of information is voluntary or mandatory; the principal purposes for which the agency will use the information; the routine uses that may be made of the information; and the effects on the individual of not providing all or part of the information. The systems of records should be exempted from this provision to avoid impairing the Department's ability to collect and collate investigative, intelligence, and enforcement data.

(i) Confidential sources or undercover law enforcement officers often obtain information under circumstances in which it is necessary to keep the true purpose of their actions secret so as not to let the subject of the investigation or his or her associates know that a criminal investigation is in progress.

(ii) If it became known that the undercover officer was assisting in a criminal investigation, that officer's physical safety could be endangered through reprisal, and that officer may not be able to continue working on the investigation.

(iii) Individuals often feel inhibited in talking to a person representing a criminal law enforcement agency but are willing to talk to a confidential source or undercover officer whom they believe not to be involved in law enforcement activities.

(iv) Providing a confidential source of information with written evidence that he or she was a source, as required by this provision, could increase the likelihood that the source of information would be subject to retaliation by the subject of the investigation.

(v) Individuals may be contacted during preliminary information gathering, surveys, or compliance projects concerning the administration of the internal revenue laws before any individual is identified as the subject of an investigation. Informing the individual of the matters required by this provision would impede or compromise subsequent investigations.

(vi) Finally, application of this provision could result in an unwarranted invasion of the personal privacy of the subject of the criminal investigation, particularly where further investigation reveals that the subject was not involved in any criminal activity.

(10) 5 U.S.C. 552a(e)(5) requires an agency to maintain all records it uses in making any determination about any individual with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to assure fairness to the individual in the determination.

(i) Since 5 U.S.C. 552a(a)(3) defines ''maintain'' to include ''collect'' and ''disseminate,'' application of this provision to the systems of records would hinder the initial collection of any information that could not, at the moment of collection, be determined to be accurate, relevant, timely, and complete. Similarly, application of this provision would seriously restrict the Department's ability to disseminate information pertaining to a possible violation of law to law enforcement and regulatory agencies. In collecting information during a criminal investigation, it is often impossible or unfeasible to determine accuracy, relevance, timeliness, or completeness prior to collection of the information. In disseminating information to law enforcement and regulatory agencies,

it is often impossible to determine accuracy, relevance, timeliness, or completeness prior to dissemination, because the Department may not have the expertise with which to make such determinations.

(ii) Information that may initially appear inaccurate, irrelevant, untimely, or incomplete may, when collated and analyzed with other available information, become more pertinent as an investigation progresses. In addition, application of this provision could seriously impede criminal investigators and intelligence analysts in the exercise of their judgment in reporting results obtained during criminal investigations.

(iii) Compliance with the records maintenance criteria listed in the foregoing provision would require the periodic up-dating of the Department's protective intelligence files to insure that the records maintained in the system remain timely and complete.

(11) 5 U.S.C. 552a(e)(8) requires an agency to make reasonable efforts to serve notice on an individual when the agency makes any record on the individual available to any person under compulsory legal process, when such process becomes a matter of public record. The systems of records should be exempted from this provision to avoid revealing investigative techniques and procedures outlined in those records and to prevent revelation of the existence of an ongoing investigation where there is need to keep the existence of the investigation secret.

(12) 5 U.S.C. 552a(g) provides for civil remedies to an individual when an agency wrongfully refuses to amend a record or to review a request for amendment, when an agency wrongfully refuses to grant access to a record, when an agency fails to maintain accurate, relevant, timely, and complete records which are used to make a determination adverse to the individual, and when an agency fails to comply with any other provision of 5 U.S.C. 552a so as to adversely affect the individual. The systems of records should be exempted from this provision to the extent that the civil remedies may relate to provisions of 5 U.S.C. 552a from which these rules exempt the systems of records, since there should be no civil remedies for failure to comply with provisions from which the Department is exempted. Exemption from this provision will also protect the Department from baseless civil court actions that might hamper its ability to collate, analyze, and disseminate investigative, intelligence, and law enforcement data.

(e) *Specific exemptions under 5 U.S.C. 552a(k)(1).* (1) Under 5 U.S.C. 552a(k)(1), the head of any agency may promulgate rules to exempt any system of records within the agency from certain provisions of the Privacy Act of 1974 to the extent that the system contains information subject to the provisions of 5 U.S.C. 552(b)(1). This paragraph applies to the following system of records maintained by the Department of the Treasury:

Financial Crimes Enforcement Network:

Number	System name
FinCEN .001	FinCEN Database.

(2) The Department of the Treasury hereby exempts the system of records listed in paragraph (e)(1) of this section from the following provisions of 5 U.S.C. 552a, pursuant to 5 U.S.C. 552a(k)(1): 5 U.S.C. 552a(c)(3), 5 U.S.C. 552a(d)(1), (2), (3) and (4), 5 U.S.C. 552a(e)(1), 5 U.S.C. 552a(e)(4)(G), (H), and (I), and 5 U.S.C. 552a(f).

(f) *Reasons for exemptions under 5 U.S.C. 552a(k)(1).* The reason for invoking the exemption is to protect material required to be kept secret in the interest of national defense or foreign policy pursuant to Executive Order 12958 (or successor or prior Executive Order).

(g) *Specific exemptions under 5 U.S.C. 552a(k)(2).* (1) Under 5 U.S.C. 552a(k)(2), the head of any agency may promulgate rules to exempt any system of records within the agency from certain provisions of the Privacy Act of 1974 if the system is investigatory material compiled for law enforcement purposes and for the purposes of assuring the safety of individuals protected by the Department pursuant to the provisions of 18 U.S.C. 3056. This paragraph applies to the following systems of records maintained by the Department of the Treasury:

(i) Departmental Offices:

Number	System name
DO .114	Foreign Assets Control Enforcement Records.
DO .144	General Counsel Litigation Referral and Reporting System.
DO .190	Investigation Data Management System.
DO .303	TIGTA General Correspondence.
DO .307	TIGTA Employee Relations Matters, Appeals, Grievances, and Complaint Files.
DO .308	TIGTA Data Extracts.
DO .309	TIGTA Chief Counsel Case Files.
DO .310	TIGTA Chief Counsel Disclosure Section Records.
DO .311	TIGTA Office of Investigations Files.

(ii) Bureau of Alcohol, Tobacco and Firearms:

Number	System name
ATF .008	Regulatory Enforcement Record System.
ATF .009	Technical and Scientific Services Record System.

(iii) Comptroller of the Currency

Number	System name
CC .100	Enforcement Action Report System
CC .110	Reports of Suspicious Activities
CC .120	Bank Fraud Information System
CC .220	Section 914 Tracking System
CC .500	Chief Counsel's Management Information System.
CC .510	Litigation Information System
CC .600	Consumer Complaint Inquiry and Information System

(iv) U.S. Customs Service:

Number	System name
CS .021	Arrest/Seizure/Search Report and Notice of Penalty File.
CS .022	Attorney Case File.
CS .041	Cartmen or Lightermen.
CS .043	Case Files (Associate Chief Counsel—Gulf Custom Management Center).
CS .046	Claims Case File.
CS .053	Confidential Source Identification File.
CS .057	Container Station Operator Files.
CS .058	Cooperating Individual Files.
CS .061	Court Case File.
CS .069	Customhouse Brokers File (Chief Counsel).
CS .077	Disciplinary Action, Grievances and Appeal Case Files.
CS .098	Fines, Penalties, and Forfeitures Records.
CS .099	Fines, Penalties, and Forfeiture Files (Supplemental Petitions).
CS .100	Fines, Penalties, and Forfeiture Records (Headquarters).
CS .122	Information Received File.
CS .125	Intelligence Log.
CS .127	Internal Affairs Records System.
CS .129	Investigations Record System.
CS .133	Justice Department Case File.
CS .138	Litigation Issue Files.
CS .159	Notification of Personnel Management Division when an employee is placed under investigation by the Office of Internal Affairs.
CS .171	Pacific Basin Reporting Network.
CS .186	Personnel Search.
CS .190	Personnel Case File.
CS .197	Private Aircraft/Vessel Inspection Reporting System.
CS .206	Regulatory Audits of Customhouse Brokers.
CS .212	Search/Arrest/Seizure Report.
CS .213	Seized Assets and Case Tracking System (SEACATS).
CS .214	Seizure File.
CS .224	Suspect Persons Index.
CS .232	Tort Claims Act File.
CS .244	Treasury Enforcement Communications System (TECS).
CS .258	Violator's Case Files.
CS .260	Warehouse Proprietor Files.
CS .270	Background-Record File of Non-Customs Employees.
CS .271	Cargo Security Record System.
CS .285	Automated Index to Central Investigative Files.

(v) Bureau of Engraving and Printing:

Number	System name
BEP .021	Investigative files.

(vi) Federal Law Enforcement Training Center

(vii) Financial Management Service

(viii) Internal Revenue Service:

Number	System name
IRS 00.002	Correspondence File-Inquiries about Enforcement Activities.
IRS 00.007	Employee Complaint and Allegation Referral Records.
IRS 00.334	Third Party Contact Reprisal Records
IRS 22.061	Wage and Information Returns Processing (IRP).
IRS 26.001	Acquired Property Records.
IRS 26.006	Form 2209, Courtesy Investigations.
IRS 26.008	IRS and Treasury Employee Delinquency.
IRS 26.011	Litigation Case Files.
IRS 26.012	Offer in Compromise (OIC) Files.
IRS 26.013	One-hundred Per Cent Penalty Cases.
IRS 26.016	Returns Compliance Programs (RCP).
IRS 26.019	TDA (Taxpayer Delinquent Accounts).
IRS 26.020	TDI (Taxpayer Delinquency Investigations) Files.
IRS 26.021	Transferee Files.
IRS 26.022	Delinquency Prevention Programs.
IRS 34.020	IRS Audit Trail Lead Analysis System.
IRS 34.037	IRS Audit Trail and Security Records System.
IRS 37.002	Applicant Appeal Files.

Number	System name
IRS 37.003	Closed Files Containing Derogatory Information about individuals' Practice before the IRS and Files of Attorneys and Certified Public Accountants Formerly Enrolled to Practice.
IRS 37.004	Derogatory Information (No Action).
IRS 37.005	Present Suspensions and Disbarments Resulting from Administrative Proceeding.
IRS 37.007	Inventory.
IRS 37.009	Resigned Enrolled Agents (action pursuant to 31 CFR Section 10.55(b)).
IRS 37.011	Present Suspensions from Practice Before the Internal Revenue Service.
IRS 42.001	Examination Administrative File.
IRS 42.008	Audit Information Management System (AIMS).
IRS 42.012	Combined Case Control Files.
IRS 42.016	Classification and Examination Selection Files.
IRS 42.017	International Enforcement Program Files.
IRS 42.021	Compliance Programs and Projects Files.
IRS 42.029	Audit Underreporter Case Files.
IRS 42.030	Discriminant Function File (DIF) Appeals Case Files.
IRS 42.031	Anti-Money Laundering/Bank Secrecy Act BSA) and Form 8300 Records.
IRS 44.001	Appeals Case Files.
IRS 46.050	Automated Information Analysis System.
IRS 48.001	Disclosure Records.
IRS 49.001	Collateral and Information Requests System.
IRS 49.002	Component Authority and Index Card Mircofilm Retrieval System.
IRS 49.007	Overseas Compliance Projects System.
IRS 60.000	Employee Protection System Records
IRS 90.002	Chief Counsel Disclosure Litigation Division Case Files.
IRS 90.004	Chief Counsel General Legal Services Case Files.
IRS 90.005	Chief Counsel General Litigation Case Files.
IRS 90.009	Chief Counsel Field Case Service Files.
IRS 90.010	Digest Room Files Containing Briefs, Legal Opinions, Digests of Documents Generated Internally or by the Department of Justice Relating to the Administration of the Revenue Laws.
IRS 90.013	Legal case files of the Chief Counsel, Deputy Chief Counsel, Associate Chief Counsels (Enforcement Litigation) and (technical).
IRS 90.016	Counsel Automated Tracking System (CATS).

(ix) U.S. Mint:

Number	System name
Mint .008	Criminal investigation files (formerly: Investigatory Files on Theft of Mint Property).

(x) Bureau of the Public Debt.

Number	System name
BPD.009	U.S. Treasury Securities Fraud Information System.

(xi) U.S. Secret Service:.

Number	System name
USSS .003	Criminal Investigation Information System.
USSS .006	Non-Criminal Investigation Information System.
USSS .007	Protection Information System.

(xii) Office of Thrift Supervision:.

Number	System name
OTS .001	Confidential Individual Information System.
OTS .004	Criminal Referral Database.

(xiii) Financial Crimes Enforcement Network:

Number	Name of System
FinCEN .001	FinCEN Database.
FinCEN .002	Suspicious Activity Reporting System.
FinCEN .003	Bank Secrecy Act Reports System.

(2) The Department hereby exempts the systems of records listed in paragraphs (g)(1)(i) through (xiii) of this section from the following provisions of 5 U.S.C. 552a, pursuant to 5 U.S.C. 552a(k)(2): 5 U.S.C. 552a(c)(3), 5 U.S.C. 552a(d)(1), (2), (3), (4), 5 U.S.C. 552a(e)(1), 5 U.S.C. 552a(e)(4)(G), (H), and (I), and 5 U.S.C. 552a(f).

(h) *Reasons for exemptions under 5 U.S.C. 552a(k)(2).* (1) 5 U.S.C. 552a(c)(3) requires an agency to make accountings of disclosures of a record available to the individual named in the record upon his or her request. The accountings must state the date, nature, and purpose of each disclosure of the record and the name and address of the recipient.

(i) The application of this provision would impair the ability of the Department and of law enforcement agencies outside the Department of the Treasury to make effective use of information maintained by the Department. Making accountings of disclosures available to the subjects of an investigation would alert them to the fact that an agency is conducting an investigation into their illegal activities

and could reveal the geographic location of the investigation, the nature and purpose of that investigation, and the dates on which that investigation was active. Violators possessing such knowledge would be able to take measures to avoid detection or apprehension by altering their operations, by transferring their illegal activities to other geographical areas, or by destroying or concealing evidence that would form the basis for detection or apprehension. In the case of a delinquent account, such release might enable the subject of the investigation to dissipate assets before levy.

(ii) Providing accountings to the subjects of investigations would alert them to the fact that the Department has information regarding their illegal activities and could inform them of the general nature of that information.

(2) 5 U.S.C. 552a(d)(1), (e)(4)(H) and (f)(2), (3) and (5) grant individuals access to records pertaining to them. The application of these provisions to the systems of records would compromise the Department's ability to utilize and provide useful tactical and strategic information to law enforcement agencies.

(i) Permitting access to records contained in the systems of records would provide individuals with information concerning the nature of any current investigations and would enable them to avoid detection or apprehension by:

(A) discovering the facts that would form the basis for their detection or apprehension;

(B) enabling them to destroy or alter evidence of illegal conduct that would form the basis for their detection or apprehension, and

(C) using knowledge that investigators had reason to believe that a violation of law was about to be committed, to delay the commission of the violation or commit it at a location that might not be under surveillance.

(ii) Permitting access to either ongoing or closed investigative files would also reveal investigative techniques and procedures, the knowledge of which could enable individuals planning non-criminal acts to structure their operations so as to avoid detection or apprehension.

(iii) Permitting access to investigative files and records could, moreover, disclose the identity of confidential sources and informers and the nature of the information supplied and thereby endanger the physical safety of those sources by exposing them to possible reprisals for having provided the information. Confidential sources and informers might refuse to provide investigators with valuable information unless they believed that their identities would not be revealed through disclosure of their names or the nature of the information they supplied.Loss of access to such sources would seriously impair the Department's ability to carry out its mandate.

(iv) Furthermore, providing access to records contained in the systems of records could reveal the identities of undercover law enforcement officers or other persons who compiled information regarding the individual's illegal activities and thereby endanger the physical safety of those undercover officers, persons, or their families by exposing them to possible reprisals.

(v) By compromising the law enforcement value of the systems of records for the reasons outlined in paragraphs (h)(2)(i) through (iv) of this section, permitting access in keeping with these provisions would discourage other law enforcement and regulatory agencies, foreign and domestic, from freely sharing information with the Department and thus would restrict the Department's access to information necessary to accomplish its mission most effectively.

(vi) Finally, the dissemination of certain information that the Department may maintain in the systems of records is restricted by law.

(3) 5 U.S.C. 552a(d)(2), (3) and (4), (e)(4)(H), and (f)(4) permit an individual to request amendment of a record pertaining to him or her and require the agency either to amend the record, or to note the disputed portion of the record and to provide a copy of the individual's statement of disagreement with the agency's refusal to amend a record to persons or other agencies to whom the record is thereafter disclosed. Since these provisions depend on the individual's having access to his

or her records, and since these rules exempt the systems of records from the provisions of 5 U.S.C. 552a relating to access to records, for the reasons set out in paragraph (h)(2) of this section, these provisions should not apply to the systems of records.

(4) 5 U.S.C. 552a(e)(1) requires an agency to maintain in its records only such information about an individual as is relevant and necessary to accomplish a purpose of the agency required to be accomplished by statute or executive order. The term ''maintain,'' as defined in 5 U.S.C. 552a(a)(3), includes ''collect'' and ''disseminate.'' The application of this provision to the system of records could impair the Department's ability to collect, utilize and disseminate valuable law enforcement information.

(i) At the time that the Department collects information, it often lacks sufficient time to determine whether the information is relevant and necessary to accomplish a Department purpose.

(ii) In many cases, especially in the early stages of investigation, it may be impossible immediately to determine whether information collected is relevant and necessary, and information that initially appears irrelevant and unnecessary often may, upon further evaluation or upon collation with information developed subsequently, prove particularly relevant to a law enforcement program.

(iii) Not all violations of law discovered by the Department analysts fall within the investigative jurisdiction of the Department of the Treasury. To promote effective law enforcement, the Department will have to disclose such violations to other law enforcement agencies, including State, local and foreign agencies that have jurisdiction over the offenses to which the information relates. Otherwise, the Department might be placed in the position of having to ignore information relating to violations of law not within the jurisdiction of the Department of the Treasury when that information comes to the Department's attention during the collation and analysis of information in its records.

(5) U.S.C. 552a (e)(4)(G) and (f)(1) enable individuals to inquire whether a system of records contains records pertaining to them. Application of these provisions to the systems of records would allow individuals to learn whether they have been identified as suspects or subjects of investigation. As further described in the following paragraph, access to such knowledge would impair the Department's ability to carry out its mission, since individuals could:

(i) Take steps to avoid detection;

(ii) Inform associates that an investigation is in progress;

(iii) Learn the nature of the investigation;

(iv) Learn whether they are only suspects or identified as law violators;

(v) Begin, continue, or resume illegal conduct upon learning that they are not identified in the system of records; or

(vi) Destroy evidence needed to prove the violation.

(6) 5 U.S.C. 552a(e)(4)(I) requires an agency to publish a general notice listing the categories of sources for information contained in a system of records. The application of this provision to the systems of records could compromise the Department's ability to complete or continue investigations or to provide useful information to law enforcement agencies, since revealing sources for the information could:

(i) Disclose investigative techniques and procedures;

(ii) Result in threats or reprisals against informers by the subjects of investigations; and

(iii) Cause informers to refuse to give full information to investigators for fear of having their identities as sources disclosed.

(i) *Specific exemptions under 5 U.S.C. 552a(k)(3).* (1) The head of any agency may promulgate rules to exempt any system of records within the agency from certain provisions of the Privacy Act of 1974 if it is maintained in connection with providing protective intelligence to the President of the United States or other individuals pursuant to section 3056 of Title 18. This paragraph applies to the following system of records maintained by the Department which contains material relating to criminal investigations concerned with the enforcement of criminal statutes involving the security of persons and property. Further, this

system contains records described in 5 U.S.C. 552a(k) including, but not limited to, classified material and investigatory material compiled for law enforcement purposes, for which exemption is claimed under 5 U.S.C. 552a(k)(3):

U.S. Secret Service:

Number	System name
USSS .007	Protection Information System.

(2) The Department hereby exempts the system of records listed in (i)(1) of this section from the following provisions of 5 U.S.C. 552a, pursuant to 5 U.S.C. 552a(k)(3): 5 U.S.C. 552a(c)(3), 5 U.S.C. 552a(d)(1), (2), (3),and (4), 5 U.S.C. 552a(e)(1), 5 U.S.C. 552a(e)(4)(G), (H), and (I), and 5 U.S.C. 552a(f).

(j) *Reasons for exemptions under 5 U.S.C. 552a(k)(3).* (1) 5 U.S.C. 552a(c)(3) requires an agency to make accountings of disclosures of a record available to the individual named in the record upon his or her request. The accountings must state the date, nature, and purpose of each disclosure of the record and the name and address of the recipient.

(i) The application of this provision would impair the ability of law enforcement agencies outside the Department of the Treasury to make effective use of information provided by the Department. Making accountings of disclosures available to the subjects of an investigation would alert them to the fact that another agency is conducting an investigation into their criminal activities and could reveal the geographic location of the other agency's investigation, the nature and purpose of that investigation, and the dates on which the investigation was active. Violators possessing such knowledge would be able to take measures to avoid detection or apprehension by altering their operations, by transferring their criminal activities to other geographical areas, or by destroying or concealing evidence that would form the basis for arrest.

(ii) Providing accountings to the subjects of investigations would alert them to the fact that the Department has information regarding their criminal activities and could inform them of the general nature of that information. Access to such information could reveal the operation of the Department's information-gathering and analysis systems and permit violators to take steps to avoid detection or apprehension.

(iii) The release of such information to the subject of a protective intelligence file would provide significant information concerning the nature and scope of an investigation, and could result in impeding or compromising the efforts of Department personnel to detect persons suspected of criminal activities or to collect information necessary for the proper evaluation of persons considered to be of protective interest.

(2) 5 U.S.C. 552a(d)(1), (e)(4)(H) and (f)(2), (3) and (5) grant individuals access to records pertaining to them. The application of these provisions to the systems of records would compromise the Department's ability to provide useful tactical and strategic information to law enforcement agencies.

(i) Permitting access to records contained in the systems of records would provide individuals with information concerning the nature of any current investigations and would enable them to avoid detection or apprehension by:

(A) Discovering the facts that would form the basis for their arrest;

(B) Enabling them to destroy or alter evidence of criminal conduct that would form the basis for their arrest, and

(C) Using knowledge that criminal investigators had reason to believe that a crime was about to be committed, to delay the commission of the crime or commit it at a location that might not be under surveillance.

(ii) Permitting access to either ongoing or closed investigative files would also reveal investigative techniques and procedures, the knowledge of which could enable individuals planning crimes to structure their operations so as to avoid detection or apprehension.

(iii) Permitting access to investigative files and records could, moreover, disclose the identity of confidential sources, and informers and the nature of the information supplied and thereby endanger the physical safety of

those sources by exposing them to possible reprisals for having provided the information. Confidential sources and informers might refuse to provide criminal investigators with valuable information unless they believed that their identities would not be revealed through disclosure of their names or the nature of the information they supplied. Loss of access to such sources would seriously impair the Department's ability to carry out its mandate.

(iv) Furthermore, providing access to records contained in the systems of records could reveal the identities of undercover law enforcement officers who compiled information regarding the individual's criminal activities and thereby endanger the physical safety of those undercover officers or their families by exposing them to possible reprisals.

(v) By compromising the law enforcement value of the systems of records for the reasons outlined in paragraphs (j)(2)(i) through (iv) of this section, permitting access in keeping with these provisions would discourage other law enforcement and regulatory agencies, foreign and domestic, from freely sharing information with the Department and thus would restrict the Department's access to information necessary to accomplish its mission most effectively.

(vi) Limitation on access to the materials contained in the protective intelligence files is considered necessary to the preservation of the utility of intelligence files and in safeguarding those persons the Department is authorized to protect. Access to the protective intelligence files could adversely affect the quality of information available to the Department; compromise confidential sources; hinder the ability of the Department to keep track of persons of protective interest; and interfere with the Department's protective intelligence activities by individuals gaining access to protective intelligence files.

(vii) Many of the persons on whom records are maintained in the protective intelligence files suffer from mental aberrations. Knowledge of their condition and progress comes from authorities, family members and witnesses. Many times this information comes to the Department as a result of two-party conversations where it would be impossible to hide the identity of informants. Sources of information must be developed, questions asked and answers recorded. Trust must be extended and guarantees of confidentiality and anonymity must be maintained. Allowing access of information of this kind to individuals who are the subjects of protective interest may well lead to violence directed against an informant by a mentally disturbed individual.

(viii) Finally, the dissemination of certain information that the Department may maintain in the systems of records is restricted by law.

(3) 5 U.S.C. 552a(d)(2), (3) and (4), (e)(4)(H), and (f)(4) permit an individual to request amendment of a record pertaining to him or her and require the agency either to amend the record, or to note the disputed portion of the record and to provide a copy of the individual's statement of disagreement with the agency's refusal to amend a record to persons or other agencies to whom the record is thereafter disclosed. Since these provisions depend on the individual's having access to his or her records, and since these rules exempt the systems of records from the provisions of 5 U.S.C. 552a relating to access to records, for the reasons set out in paragraph (j)(2) of this section, these provisions should not apply to the systems of records.

(4) 5 U.S.C. 552a(e)(1) requires an agency to maintain in its records only such information about an individual as is relevant and necessary to accomplish a purpose of the agency required to be accomplished by statute or executive order. The term ''maintain,'' as defined in 5 U.S.C. 552a(a)(3), includes ''collect'' and ''disseminate.'' The application of this provision to the systems of records could impair the Department's ability to collect and disseminate valuable law enforcement information.

(i) At the time that the Department collects information, it often lacks sufficient time to determine whether the information is relevant and necessary to accomplish a Department purpose.

(ii) In many cases, especially in the early stages of investigation, it may be impossible immediately to determine whether information collected is relevant and necessary, and information that initially appears irrelevant and unnecessary often may, upon further evaluation or upon collation with information developed subsequently, prove particularly relevant to a law enforcement program.

(iii) Not all violations of law discovered by the Department analysts fall within the scope of the protective intelligence jurisdiction of the Department of the Treasury. To promote effective law enforcement, the Department will have to disclose such violations to other law enforcement agencies, including State, local and foreign agencies, that have jurisdiction over the offenses to which the information relates. Otherwise, the Department might be placed in the position of having to ignore information relating to violations of law not within the jurisdiction of the Department of the Treasury when that information comes to the Department's attention during the collation and analysis of information in its records.

(5) U.S.C. 552a (e)(4)(G) and (f)(1) enable individuals to inquire whether a system of records contains records pertaining to them. Application of these provisions to the systems of records would allow individuals to learn whether they have been identified as suspects or subjects of investigation. As further described in the following paragraph, access to such knowledge would impair the Department's ability to carry out its mission to safeguard those persons the Department is authorized to protect, since individuals could:

(i) Take steps to avoid detection;

(ii) Inform associates that an investigation is in progress;

(iii) Learn the nature of the investigation;

(iv) Learn whether they are only suspects or identified as law violators;

(v) Begin, continue, or resume illegal conduct upon learning that they are not identified in the system of records; or

(vi) Destroy evidence needed to prove the violation.

(6) 5 U.S.C. 552a(e)(4)(I) requires an agency to publish a general notice listing the categories of sources for information contained in a system of records. The application of this provision to the systems of records could compromise the Department's ability to provide useful information to law enforcement agencies, since revealing sources for the information could:

(i) Disclose investigative techniques and procedures;

(ii) Result in threats or reprisals against informers by the subject(s) of a protective intelligence file; and

(iii) Cause informers to refuse to give full information to criminal investigators for fear of having their identities as sources disclosed.

(k) *Specific exemptions under 5 U.S.C. 552a(k)(4).* (1) Under 5 U.S.C. 552a(k)(4), the head of any agency may promulgate rules to exempt any system of records within the agency from certain provisions of the Privacy Act of 1974 if the system is required by statute to be maintained and used solely as statistical records. This paragraph applies to the following system of records maintained by the Department, for which exemption is claimed under 5 U.S.C. 552a(k)(4):

Internal Revenue Service:

Number	System name
IRS 70.001	Statistics of Income-Individual Tax Returns.

(2) The Department hereby exempts the system of records listed in paragraph (k)(1) of this section from the following provisions of 5 U.S.C. 552a, pursuant to 5 U.S.C. 552a(k)(4): 5 U.S.C. 552a(c)(3), 5 U.S.C. 552a(d)(1), (2), (3), and (4), 5 U.S.C. 552a(e)(1), 5 U.S.C. 552a(e)(4)(G), (H), and (I), and 5 U.S.C. 552a(f).

(3) The system of records is maintained under section 6108 of the Internal Revenue Code, which provides that ''the Secretary or his delegate shall prepare and publish annually statistics reasonably available with respect to the operation of the income tax laws, including classifications of taxpayers and of income, the amounts allowed as deductions, exemptions, and credits, and any other facts deemed pertinent and valuable.''

(l) *Reasons for exemptions under 5 U.S.C. 552a(k)(4).* The reason for exempting the system of records is that disclosure of statistical records (including release of accounting for disclosures) would in most instances be of no benefit to a particular individual since the records do not have a direct effect on a given individual.

(m) *Specific exemptions under 5 U.S.C. 552a(k)(5).* (1) Under 5 U.S.C. 552a(k)(5), the head of any agency may promulgate rules to exempt any system of records within the agency from certain provisions of the Privacy Act of 1974 if the system is investigatory material compiled solely for the purpose of determining suitability, eligibility, and qualifications for Federal civilian employment 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 September 27, 1975, under an implied promise that the identity of the source would be held in confidence. Thus to the extent that the records in this system can be disclosed without revealing the identity of a confidential source, they are not within the scope of this exemption and are subject to all the requirements of the Privacy Act. This paragraph applies to the following systems of records maintained by the Department or one of its bureaus:

(i) Departmental Offices:

Number	System name
DO .004	Personnel Security System.
DO .306	TIGTA Recruiting and Placement.

(ii) Bureau of Alcohol, Tobacco and Firearms:

Number	System name
ATF .007	Personnel Record System.

(iii) Comptroller of the Currency:

(iv) U.S. Customs Service:

Number	System name
CS .127	Internal Affairs Records.

(v) Bureau of Engraving and Printing:

Number	System name
[Reserved]	

(vi) Federal Law Enforcement Training Center

(vii) Financial Management Service

(viii) Internal Revenue Service:

Number	System name
IRS 34.021	Personnel Security Investigations, National Background Investigations Center.
IRS 36.008	Recruiting, Examining and Placement Records.
IRS 90.003	Chief Counsel General Administrative Systems.
IRS 90.011	Attorney Recruiting Files.

(ix) U.S. Mint

(x) Bureau of the Public Debt

(xi) U.S. Secret Service

(xii) Office of Thrift Supervision

(xiii) Financial Crimes Enforcement Network:

(2) The Department hereby exempts the systems of records listed in paragraph (m)(1)(i) through (xiii) of this section from the following provisions of 5 U.S.C. 552a, pursuant to 5 U.S.C. 552a(k)(5): 5 U.S.C. 552a(c)(3), 5 U.S.C. 552a(d)(1), (2), (3), and (4), 5 U.S.C. 552a(e)(1), 5 U.S.C. 552a(e)(4)(G), (H), and (I), and 5 U.S.C. 552a(f).

(n) *Reasons for exemptions under 5 U.S.C. 552a(k)(5).* (1) The sections of 5 U.S.C. 552a from which the systems of records are exempt include in general those providing for individuals' access to or amendment of records. When such access or amendment would cause the identity of a confidential source to be revealed, it would impair the future ability of the Department to compile investigatory material for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, Federal contracts, or access to classified information. In addition, the systems shall be exempt from 5 U.S.C. 552a(e)(1) which requires that an agency maintain in its records only such information about an individual as is relevant and necessary to accomplish a purpose of the agency required to be accomplished by statute or executive order. The Department believes that to fulfill the requirements of 5 U.S.C. 552a(e)(1) would unduly restrict the agency in its information gathering inasmuch as it is often not until

well after the investigation that it is possible to determine the relevance and necessity of particular information.

(2) If any investigatory material contained in the above-named systems becomes involved in criminal or civil matters, exemptions of such material under 5 U.S.C. 552a (j)(2) or (k)(2) is hereby claimed.

(o) *Exemption under 5 U.S.C. 552a(k)(6).* (1) Under 5 U.S.C. 552a(k)(6), the head of any agency may promulgate rules to exempt any system of records that is 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. This paragraph applies to the following system of records maintained by the Department, for which exemption is claimed under 5 U.S.C. 552a(k)(6):

Internal Revenue Service:

Number	System name
IRS 36.008	Recruiting, Examining and Placement Records.
DO .306	TIGTA Recruiting and Placement.

(2) The Department hereby exempts the system of records listed in paragraph (o)(1) of this section from the following provisions of 5 U.S.C. 552a, pursuant to 5 U.S.C. 552a(k)(6): 5 U.S.C. 552a(c)(3), 5 U.S.C. 552a(d)(1), (2), (3), and (4), 5 U.S.C. 552a(e)(1), 5 U.S.C. 552a(e)(4)(G), (H), and (I), and 5 U.S.C. 552a(f).

(p) *Reasons for exemptions under 5 U.S.C. 552a(k)(6).* The reason for exempting the system of records is that disclosure of the material in the system would compromise the objectivity or fairness of the examination process.

(q) *Exempt information included in another system.* Any information from a system of records for which an exemption is claimed under 5 U.S.C. 552a(j) or (k) which is also included in another system of records retains the same exempt status such information has in the system for which such exemption is claimed.

[65 FR 69867, Nov. 21, 2000; 65 FR 76005, Dec. 5, 2000, as amended at 66 FR 16603, Mar. 27, 2001; 66 FR 18192, Apr. 6, 2001; 66 FR 48556, Sept. 21, 2001; 67 FR 34403, May 14, 2002; 67 FR 48487, July 24, 2002; 67 FR 62886, Oct. 9, 2002; 68 FR 32638, June 2, 2003; 68 FR 55311, Sept. 25, 2003; 68 FR 67944, Dec. 5, 2003; 69 FR 17299, Apr. 2, 2004; 70 FR 2806, Jan. 18, 2005]

APPENDIX A TO SUBPART C OF PART 1—DEPARTMENTAL OFFICES

1. *In general.* This appendix applies to the Departmental Offices as defined in 31 CFR part 1, subpart C, §1.20. It sets forth specific notification and access procedures with respect to particular systems of records, identifies the officers designated to make the initial determinations with respect to notification and access to records, the officers designated to make the initial and appellate determinations with respect to requests for amendment of records, the officers designated to grant extensions of time on appeal, the officers with whom ''Statement of Disagreement'' may be filed, the officer designated to receive service of process and the addresses for delivery of requests, appeals, and service of process. In addition, it references the notice of systems of records and notices of the routine uses of the information in the system required by 5 U.S.C. 552a(e)(4) and (11) and published annually by the Office of the Federal Register in ''Privacy Act Issuances''.

2. *Requests for notification and access to records and accountings of disclosures.* Initial determinations under 31 CFR 1.26, whether to grant requests for notification and access to records and accountings of disclosures for the Departmental Offices, will be made by the head of the organizational unit having immediate custody of the records requested, or the delegate of such official. This information is contained in the appropriate system notice in the ''Privacy Act Issuances'', published annually by the Office of the Federal Register. Requests for information and specific guidance on where to send requests for records should be addressed to:

Privacy Act Request, DO, Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Requests may be delivered personally to the Main Treasury Building, Room 5030, 1500 Pennsylvania Avenue NW., Washington, DC.

3. *Requests for amendments of records.* Initial determinations under 31 CFR 1.27(a) through (d) with respect to requests to amend records for records maintained by the Departmental Offices will be made by the head of the organization or unit having immediate custody of the records or the delegate of such official. Requests for amendment of records should be

addressed as indicated in the appropriate system notice in ''Privacy Act Issuances'' published by the Office of the Federal Register. Requests for information and specific guidance on where to send these requests should be addressed to: Privacy Act Amendment Request, DO, Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

4. *Administrative appeal of initial determination refusing to amend record.* Appellate determinations under 31 CFR 1.27(e) with respect to records of the Departmental Offices, including extensions of time on appeal, will be made by the Secretary, Deputy Secretary, Under Secretary, General Counsel, or Assistant Secretary having jurisdiction over the organizational unit which has immediate custody of the records, or the delegate of such official, as limited by 5 U.S.C. 552a(d) (2) and (3). Appeals made by mail should be addressed as indicated in the letter of initial decision or to:

Privacy Act Amendment Request, DO Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220. Appeals may be delivered personally to the Library, Room 5030, Main Treasury Building, 1500 Pennsylvania Avenue, NW., Washington, DC.

5. *Statements of disagreement.* ''Statements of Disagreement'' as described in 31 CFR 1.27(e)(4) shall be filed with the official signing the notification of refusal to amend at the address indicated in the letter of notification within 35 days of the date of notification and should be limited to one page.

6. *Service of process.* Service of process will be received by the General Counsel of the Department of the Treasury or the delegate of such official and shall be delivered to the following location:

General Counsel, Department of the Treasury, Room 3000, Main Treasury Building, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

7. *Annual notice of systems of records.* The annual notice of systems of records required to be published by the Office of the Federal Register in the publication entitled ''Privacy Act Issuances'', as specified in 5 U.S.C. 552a (f). Any specific requirements for access, including identification requirements, in addition to the requirements set forth in 31 CFR 1.26 and 1.27 and 8 of this appendix, and locations for access are indicated in the notice for the pertinent system.

8. *Verification of identity.* An individual seeking notification or access to records, or seeking to amend a record, must satisfy one of the following identification requirements before action will be taken by the Departmental Offices on any such request:

(i) An individual seeking notification or access to records in person, or seeking to amend a record in person, may establish identity by the presentation of a single official document bearing a photograph (such as a passport or identification badge) or by the presentation of two items of identification which do not bear a photograph but do bear both a name and signature (such as a driver's license or credit card).

(ii) An individual seeking notification or access to records by mail, or seeking to amend a record by mail, may establish identity by a signature, address, and one other identifier such as a photocopy of a driver's license or other official document bearing the individual's signature.

(iii) Notwithstanding subdivisions (i) and (ii) of this subparagraph, an individual seeking notification or access to records by mail or in person, or seeking to amend a record by mail or in person, who so desires, may establish identity by providing a notarized statement, swearing or affirming to such individual's identity and to the fact that the individual understands the penalties provided in 5 U.S.C. 552a(i)(3) for requesting or obtaining access to records under false pretenses.

Notwithstanding subdivision (i), (ii), or (iii) of this subparagraph, a designated official may require additional proof of an individual's identity before action will be taken on any request, if such official determines that it is necessary to protect against unauthorized disclosure of information in a particular case. In addition, a parent of any minor or a legal guardian of any individual will be required to provide adequate proof of legal relationship before such person may act on behalf of such minor or such individual.

APPENDIX B TO SUBPART C OF PART 1—INTERNAL REVENUE SERVICE

1. *Purpose.* The purpose of this section is to set forth the procedures that have been established by the Internal Revenue Service for individuals to exercise their rights under the Privacy Act of 1974 (88 Stat. 1896) with respect to systems of records maintained by the Internal Revenue Service, including the Office of the Chief Counsel. The procedures contained in this section are to be promulgated under the authority of 5 U.S.C. 552a(f). The procedures contained in this section relate to the following:

(a) The procedures whereby an individual can be notified in response to a request if a system of records named by the individual contains a record pertaining to such individual (5 U.S.C. 552a(f)(1)).

(b) The procedures governing reasonable times, places, and requirements for identifying an individual who requests a record of information pertaining to such individual before the Internal Revenue Service will make the record or information available to the individual (5 U.S.C. 552a (f)(2)).

(c) The procedures for the disclosure to an individual upon a request of a record of information pertaining to such individual, including special procedures for the disclosure

to an individual of medical records, including psychological records. (5 U.S.C. 552a (f)(3)).

(d) The procedures for reviewing a request from an individual concerning the amendment of any record or information pertaining to the individual, for making a determination on the request, for an appeal within the Internal Revenue Service of an initial adverse agency determination, and for whatever additional means may be necessary for individuals to be able to exercise fully their right under 5 U.S.C. 552a (5 U.S.C. 552a (f)(4)).

Any individual seeking to determine whether a system of records maintained by any office of the Internal Revenue Service contains a record or information pertaining to such individual, or seeking access to, or amendment of, such a record, must comply fully with the applicable procedure contained in paragraph (3) or (4) of this section before the Internal Revenue Service will act on the request. Neither the notification and access (or accounting of disclosures) procedures under paragraph (3) of this section nor the amendment procedures under paragraph (4) of this section are applicable to (i) systems of records exempted pursuant to 5 U.S.C. 552a (j) and (k), (ii) information compiled in reasonable anticipation of a civil action or proceeding (see 5 U.S.C. 552a (d)(5)), or (iii) information pertaining to an individual which is contained in, and inseparable from, another individual's record.

2. *Access to and amendment of tax records.* The provisions of the Privacy Act of 1974 may not be used by an individual to amend or correct any tax record. The determination of liability for taxes imposed by the Internal Revenue Service Code, the collection of such taxes, and the payment (including credits or refunds of overpayments) of such taxes are governed by the provisions of the Internal Revenue Service Code and by the procedural rules of the Internal Revenue Service. These provisions set forth the established procedures governing the determination of liability for tax, the collection of such taxes, and the payment (including credits or refunds of overpayments) of such taxes. In addition, these provisions set forth the procedures (including procedures for judicial review) for resolving disputes between taxpayers and the Internal Revenue Service involving the amount of tax owed, or the payment or collection of such tax. These procedures are the exclusive means available to an individual to contest the amount of any liability for tax or the payment or collection thereof. See, for example, 26 CFR 601.103 for summary of general tax procedures. Individuals are advised that Internal Revenue Service procedures permit the examination of tax records during the course of an investigation, audit, or collection activity. Accordingly, individuals should contact the Internal Revenue Service employee conducting an audit or effecting the collection of tax liabilities to gain access to such records, rather than seeking access under the provisions of the Privacy Act. Where, on the other hand, an individual desires information or records not in connection with an investigation, audit, or collection activity, the individual may follow these procedures.

3. *Procedures for access to records*—(a) *In general.* This paragraph sets forth the procedure whereby an individual can be notified in response to a request if a system of records named by the individual which is maintained by the Internal Revenue Service contains a record pertaining to such individual. In addition, this paragraph sets forth the procedure for the disclosure to an individual upon a request of a record or information pertaining to such individual, including the procedures for verifying the identity of the individual before the Internal Revenue Service will make a record available, and the procedure for requesting an accounting of disclosures of such records. An individual seeking to determine whether a particular system of records contains a record or records pertaining to such individual and seeking access to such records (or seeking an accounting of disclosures of such records) shall make a request for notification and access (or a request for an accounting of disclosures) in accordance with the rules provided in paragraph 3(b) of this section.

(b) *Form of request for notification and access or request for an accounting of disclosures.* (i) A request for notification and access (or request for an accounting of disclosures) shall be made in writing and shall be signed by the person making the request.

(ii) Such request shall be clearly marked, ''Request for notification and access,'' or ''Request for accounting of disclosures.''

(iii) Such a request shall contain a statement that it is being made under the provisions of the Privacy Act of 1974.

(iv) Such request shall contain the name and address of the individual making the request. In addition, if a particular system employs an individual's social security number as an essential means of accessing the system, the request must include the individual's social security number. In the case of a record maintained in the name of two or more individuals (e.g., husband and wife), the request shall contain the names, addresses, and social security numbers (if necessary) of both individuals.

(v) Such request shall specify the name and location of the particular system of records (as set forth in the Notice of Systems) for which the individual is seeking notification and access (or an accounting of disclosures), and the title and business address of the official designated in the access section for the particular system (as set forth in the Notice of Systems). In the case of two or more systems of records which are under the control

of the same designated official at the same systems location, a single request may be made for such systems. In the case of two or more systems of records which are not in the control of the same designated official at the same systems location, a separate request must be made for each such system.

(vi) If an individual wishes to limit a request for notification and access to a particular record or records, the request should identify the particular record. In the absence of a statement to the contrary, a request for notification and access for a particular system of records shall be considered to be limited to records which are currently maintained by the designated official at the systems location specified in the request.

(vii) If such request is seeking notification and access to material maintained in a system of records which is exempt from disclosure and access under 5 U.S.C. 552a (k)(2), the individual making the request must establish that such individual has been denied a right, privilege, or benefit that such individual would otherwise be entitled to under Federal law as a result of the maintenance of such material.

(viii) Such request shall state whether the individual wishes to inspect the record in person, or desires to have a copy made and furnished without first inspecting it. If the individual desires to have a copy made, the request must include an agreement to pay the fee for duplication ultimately determined to be due. If the individual does not wish to inspect a record, but merely wishes to be notified whether a particular system or records contains a record pertaining to such individual, the request should so state.

(c) *Time and place for making a request.* A request for notification and access to records under the Privacy Act (or a request for accounting of disclosures) shall be addressed to or delivered in person to the office of the official designated in the access section for the particular system of records for which the individual is seeking notification and access (or an accounting of disclosures). The title and office address of such official is set forth for each system of records in the Notice of Systems of Records. A request delivered to an office in person must be delivered during the regular office hours of that office.

(d) Sample request for notification and access to records. The following are sample requests for notification and access to records which will satisfy the requirements of this paragraph:

REQUEST FOR NOTIFICATION AND ACCESS TO RECORDS BY MAIL

I, John Doe, of 100 Main Street, Boston, MA 02108 (soc. sec. num. 000–00–0000) request under the Privacy Act of 1974 that the following system of records be examined and that I be furnished with a copy of any record (or a specified record) contained therein pertaining to me. I agree that I will pay the fees ultimately determined to be due for duplication of such record. I have enclosed the necessary information.

System Name:
System Location:
Designated Official:

John Doe

REQUEST FOR NOTIFICATION AND ACCESS TO RECORDS IN PERSON

I, John Doe, of 100 Main Street, Boston, MA 02108 (soc. sec. num. 000–00–0000) request under the provisions of the Privacy Act of 1974, that the following system of records be examined and that I be granted access in person to inspect any record (or a specified record) contained therein pertaining to me. I have enclosed the necessary identification.

System Name:
System Location:
Designated Official:

John Doe

(e) *Processing a request for notification and access to records or a request for an accounting of disclosures.* (i) If a request for notification and access (or request for an accounting of disclosures) omits any information which is essential to processing the request, the request will not be acted upon and the individual making the request will be promptly advised of the additional information which must be submitted before the request can be processed.

(ii) Within 30 days (not including Saturdays, Sundays, and legal public holidays) after the receipt of a request for notification and access (or a request for an accounting of disclosures), to a particular system of records by the designated official for such system, a determination will be made as to whether the particular system of records is exempt from the notification and access provisions of the Privacy Act, and if such system is not exempt, whether it does or does not contain a record pertaining to the individual making the request. If a determination cannot be made within 30 days, the individual will be notified of the delay, the reasons therefor, and the approximate time required to make a determination. If it is determined by the designated official that the particular system of records is exempt from the notification and access provisions of the Privacy Act, the individual making the request will be notified of the provisions of the Privacy Act under which the exemption is claimed. On the other hand, if it is determined by the designated official that the particular system of records is not exempted from the notification and access provisions of the Privacy Act and that such system contains a record pertaining to the individual

making the request, the individual will be notified of the time and place where inspection may be made. If an individual has not requested that access be granted to inspect the record in person, but merely requests that a copy of the record be furnished, or if it is determined by the designated official that the granting of access to inspect a record in person is not feasible in a particular case, then the designated official will furnish a copy of the record with the notification, or if a copy cannot be furnished at such time, a statement indicating the approximate time such copy will be furnished. If the request is for an accounting of disclosures from a system of records which is not exempt from the accounting of disclosure provisions of the Privacy Act, the individual will be furnished with an accounting of such disclosures.

(f) *Granting of access.* Normally, an individual will be granted access to inspect a record in person within 30 days (excluding Saturdays, Sundays, and legal public holidays) after the receipt for a request for notification and access by the designated official. If access cannot be granted within 30 days, the notification will state the reasons for the delay and the approximate time such access will be granted. An individual wishing to inspect a record may be accompanied by another person of his choosing. Both the individual seeking access and the individual accompanying him may be required to sign a form supplied by the IRS indicating that the Service is authorized to disclose or discuss the contents of the record in the presence of both individuals. See 26 CFR 601.502 for requirements to be met by taxpayer's representatives in order to discuss the contents of any tax records.

(g) *Medical records.* When access is requested to medical records (including psychological records), the designated official may determine that release of such records will be made only to a physician designated by the individual to have access to such records.

(h) *Verification of identity.* An individual seeking notification or access to records, or seeking to amend a record, must satisfy one of the following identification requirements before action will be taken by the IRS on any such request:

(i) An individual seeking notification or access to records in person, or seeking to amend a record in person, may establish identity by the presentation of a single document bearing a photograph (such as a passport or identification badge) or by the presentation of two items of identification which do not bear a photograph but do bear both a name and signature (such as a driver's license or credit card).

(ii) An individual seeking notification or access to records by mail, or seeking to amend a record by mail, may establish identity by a signature, address, and one other identifier such as a photocopy of a driver's license or other document bearing the individual's signature.

(iii) Notwithstanding subdivisions (i) and (ii) of this subparagraph, an individual seeking notification or access to records by mail or in person, or seeking to amend a record by mail or in person, who so desires, may establish identity by providing a notarized statement, swearing or affirming to such individual's identity and to the fact that the individual understands the penalties provided in 5 U.S.C. 552a(i)(3) for requesting or obtaining access to records under false pretenses.

(iv) Notwithstanding subdivisions (i), (ii), or (iii) of this subparagraph, a designated official may require additional proof of an individual's identity before action will be taken on any request if such official determines that it is necessary to protect unauthorized disclosure of information in a particular case. In addition, a parent of any minor or a legal guardian of any individual will be required to provide adequate proof of legal relationship before such person may act on behalf of such minor or such individual.

(i) *Fees.* The fee for costs required of the IRS in copying records pursuant to this paragraph is $0.15 per page. However, no fee will be charged if the aggregate costs required of the IRS in copying records is less than $3.00. If an individual who has requested access to inspect a record in person is denied such access by the designated official because it would not be feasible in a particular case, copies of such record will be furnished to the individual without payment of the fees otherwise required under this subparagraph. If the IRS estimates that the total fees for costs incurred in complying with a request for copies of records will amount to $50 or more, the individual making the request may be required to enter into a contract for the payment of the actual fees with respect to the request before the Service will furnish the copies requested. Payment of fees for copies of records should be made by check or money order payable to the Internal Revenue Service.

4. *Procedures for amendment of records.* (a) In general. This paragraph sets forth the procedures for reviewing a request from an individual concerning the amendment of any record or information pertaining to such individual, for making a determination on the request, for making an appeal within the IRS of an initial adverse determination, and for judicial review of a final determination.

(b) *Amendment of record.* Under 5 U.S.C. 552a(d)(2), an individual who has been granted access to a record pertaining to such individual may, after inspecting the record, request that the record be amended to make any correction of any portion thereof which

the individual believes is not accurate, relevant, timely, or complete. An individual may seek to amend a record in accordance with the rules provided in paragraph (d)(3) of this section. See paragraph (b) of this section for prohibition against amendment of tax records.

(c) *Form of request for amendment of record.* (i) A request for amendment of a record shall be in writing and shall be signed by the individual making the request.

(ii) Such request shall be clearly marked ''Request for amendment of record.''

(iii) Such request shall contain a statement that it is being made under the provisions of the Privacy Act of 1974.

(iv) Such request shall contain the name and address of the individual making the request. In addition, if a particular system employs an individual's social security number as an essential means of accessing the system, the request must include the individual's social security number. In the case of a record maintained in the name of two or more individuals (e.g., husband and wife), the request shall contain the names, addresses, and social security numbers (if necessary) of both individuals.

(v) Such request shall specify the name and location of the system of records (as set forth in the Notice of Systems) in which such record is maintained, and the title and business address of the official designated in the access section for such system (as set forth in the Notice of Systems).

(vi) Such request shall specify the particular record in the system which the individual is seeking to amend.

(vii) Such request shall clearly state the specific changes which the individual wishes to make in the record and a concise explanation of the reasons for the changes. If the individual wishes to correct or add any information, the request shall contain specific language making the desired correction or addition.

(d) *Time and place for making request.* A request to amend a record under the Privacy Act shall be addressed to or delivered in person to the office of the official designated in the access section for the particular system of records. The title and office address of such official is set forth for each system of records in the Notice of Systems of Records. A request delivered to an office in person must be delivered during the regular office hours of that office.

(e) *Processing a request for amendment of a record.* (i) Within 10 days (not including Saturdays, Sundays, and legal public holidays) after the receipt of a request to amend a record by the designated official, the individual will be sent a written acknowledgement that will state that the request has been received, that action is being taken thereon, and that the individual will be notified within 30 days (not including Saturdays, Sundays, and legal public holidays) after the receipt of the request whether the requested amendments will or will not be made. If a request for amendment of a record omits any information which is essential to processing the request, the request will not be acted upon and the individual making the request will be promptly advised on the additional information which must be submitted before the request can be processed.

(ii) Within 30 days (not including Saturdays, Sundays, and legal public holidays) after the receipt of a request to amend a record by the designated official, a determination will be made as to whether to grant the request in whole or part. The individual will then be notified in writing of the determination. If a determination cannot be made within 30 days, the individual will be notified in writing within such time of the reasons for the delay and the approximate time required to make a determination. If it is determined by the designated official that the request will be granted, the requested changes will be made in the record and the individual will be notified of the changes. In addition, to the extent an accounting was maintained, all prior recipients of such record will be notified of the changes. Upon request, an individual will be furnished with a copy of the record, as amended, subject to the payment of the appropriate fees. On the other hand, if it is determined by the designated official that the request, or any portion thereof, will not be granted, the individual will be notified in writing of the adverse determination. The notification of an adverse determination will set forth the reasons for refusal to amend the record. In addition, the notification will contain a statement informing the individual of such individual's right to request an independent review of the adverse determination by a reviewing officer in the national office of the IRS and the procedures for requesting such a review.

(f) *Administrative review of adverse determination.* Under 5 U.S.C. 552a (d)(3), an individual who disagrees with the refusal of the agency to amend a record may, within 35 days of being notified of the adverse determination, request an independent review of such refusal by a reviewing officer in the national office of the IRS. The reviewing officer for the IRS is the Commission of Internal Revenue, the Deputy Commissioner, or an Assistant Commissioner. In the case of an adverse determination relating to a system of records maintained by the Office of General Counsel for the IRS, the reviewing officer is the Chief Counsel or his delegate. An individual seeking a review of an adverse determination shall make a request for review in accordance with the rules provided in paragraph (d)(7) of this section.

(g) *Form of request for review.* (i) A request for review of an adverse determination shall

be in writing and shall be signed by the individual making the request.

(ii) Such request shall be clearly marked ''Request for review of adverse determination''.

(iii) Such request shall contain a statement that it is being made under the provisions of the Privacy Act of 1974.

(iv) Such request shall contain the name and address of the individual making the request. In addition, if a particular system employs an individual's social security number as an essential means of accessing the system, the request must include the individual's social security number. In the case of a record maintained in the name of two or more individuals (e.g. husband and wife), the request shall contain the names, addresses, and social security numbers (if necessary) of both individuals.

(v) Such request shall specify the particular record which the individual is seeking to amend, the name and location of the system of records (as set forth in the Notice of Systems) in which such record is maintained, and the title and business address of the designated official for such system (as set forth in the Notice of Systems).

(vi) Such request shall include the date of the initial request for amendment of the record, and the date of the letter notifying the individual of the initial adverse determination with respect to such request.

(vii) such request shall clearly state the specific changes which the individual wishes to make in the record and a concise explanation of the reasons for the changes. If the individual wishes to correct or add any information, the request shall contain specific language making the desired correction or addition.

(h) *Time and place for making the request*. A request for review of an adverse determination under the Privacy Act shall be addressed to or delivered in person to the Director, Office of Disclosure, Attention: OP:EX:D Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC 20224. A request for review of an adverse determination will be promptly referred by the Director, Office of Disclosure to the appropriate reviewing officer for his review and final determination.

(i) *Processing a request for review of adverse determination*. Within 30 days (not including Saturdays, Sundays, and legal public holidays) after the receipt of a request for review of an adverse determination by the appropriate reviewing officer, the reviewing officer will review the initial adverse determination, make a final determination whether to grant the request to amend the record in whole or in part, and notify the individual in writing of the final determination. If a final determination cannot be made within 30 days, the Commissioner of Internal Revenue may extend such 30-day period. The individual will be notified in writing within the 30 day period of the cause for the delay and the approximate time required to make a final determination. If it is determined by the reviewing officer that the request to amend the record will be granted, the reviewing officer will cause the requested changes to be made and the individual will be so notified. Upon request, an individual will be furnished with a copy of the record as amended subject to the payment of appropriate fees. On the other hand, if it is determined by the reviewing officer that the request to amend the record, or any portion thereof, will not be granted, the individual will be notified in writing of the final adverse determination. The notification of a final adverse determination will set forth the reasons for the refusal of the reviewing officer to amend the record. The notification shall include a statement informing the individual of the right to submit a concise statement for insertion in the record setting forth the reasons for the disagreement with the refusal of the reviewing officer to amend the record. In addition, the notification will contain a statement informing the individual of the right to seek judicial review by a United States district court of a final adverse determination.

(j) *Statement of disagreement*. Under 5 U.S.C. 552a (d)(3), an individual who disagrees with a final adverse determination not to amend a record subject to amendment under the Privacy Act may submit a concise statement for insertion in the record setting forth the reasons for disagreement with the refusal of the reviewing officer to amend the record. A statement of disagreement should be addressed to or delivered in person to the Director, Office of Disclosure, Attention: OP:EX:D, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC 20224. The Director, Office of Disclosure will foward the statement of disagreement to the appropriate designated official who will cause the statement to be inserted in the individual's record. Any such statement will be available to anyone to whom the record is subsequently disclosed and the prior recipients of the record will be provided with a copy of the statement of disagreement, to the extent an accounting of disclosures was maintained.

(k) *Judicial review*. If, after a review and final determination on a request to amend a record by the appropriate reviewing officer, the individual is notified that the request will not be granted, or if, after the expiration of 30 days (not including Sundays, Saturdays, and legal public holidays) from the receipt of such request by the Director, Disclosure Operations Division, action is not taken thereon in accordance with the requirements of paragraph (d)(9) of this section, an individual may commence an action within the time prescribed by law in a U.S.

District Court pursuant to 5 U.S.C. 552a (g)(1). The statute authorizes an action only against the agency. With respect to records maintained by the IRS, the agency is the Internal Revenue Service, not an officer or employee thereof. Service of process in such an action shall be in accordance with the Federal Rules of Civil Procedure (28 U.S.C. App.) applicable to actions against an agency of the United States. Where provided in such Rules, delivery of process upon the IRS must be directed to the Commissioner of Internal Revenue, Attention: CC:GLS, 1111 Constitution Avenue, NW, Washington, DC 20224. The district court will determine the matter de novo.

5. *Records transferred to Federal Records Centers.* Records transferred to the Administrator of General Services for storage in a Federal Records Center are not used by the Internal Revenue Service in making any determination about any individual while stored at such location and therefore are not subject to the provisions of 5 U.S.C. 552a (e)(5) during such time.

APPENDIX C TO SUBPART C OF PART 1—UNITED STATES CUSTOMS SERVICE

1. *In general.* This appendix applies to the United States Customs Service. It sets forth specific notification and access procedures with respect to particular systems of records, identifies the officer designated to make the initial determinations with respect to notification and access to records and accountings of disclosures of records. This appendix also sets forth the specific procedures for requesting amendment of records and identifies the officers designated to make the initial and appellate determinations with respect to requests for amendment of records. It identifies the officers designated to grant extensions of time on appeal, the officers with whom ''Statements of Disagreement may be filed, the officer designated to receive service of process and the addresses for delivery of requests, appeals, and service of process. In addition, it references the notice of systems of records and notices of the routine uses of the information in the system required by 5 U.S.C. 552a(e) (4) and (11) and published annually by the Office of the Federal Register in ''Privacy Act Issuances''.

2. *Requests for notification and access to records and accounting of disclosures.* (a) For records which are maintained at the United States Customs Service Headquarters, initial requests for notification and access to records and accountings of disclosures under 31 CFR 1.26, should be mailed or personally delivered to the Director, Office of Regulations & Rulings, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, DC 20229. The official who has authority over the maintenance of the file will have the authority to grant or deny the request.

(b) For records maintained at Regional Offices, initial requests for notification and access to records and accountings of disclosures under 31 CFR 1.26, should be mailed or personally delivered to the Regional Commissioner of Customs in whose region the records are located. This official shall have the authority to grant the request or deny the request. The appropriate location of the regional offices is specified in Customs Appendix A in ''Privacy Act Issuances'' published annually by the Office of the Federal Register.

(c) Each request shall comply with the identification and other requirements set forth in 31 CFR 1.26, and in the appropriate system notice in the ''Privacy Act Issuances'' published annually by the Office of the Federal Register. Each request should be conspicuously labeled on the face of the envelope ''Privacy Act Request''.

3. *Request for amendment of records.* (a) For records which are maintained at Customs Service Headquarters, initial requests for amendment of records under 31 CFR 1.27 (a) through (d) should be mailed or personally delivered to the Director, Office of Regulations & Rulings, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, DC 20229. The official who has authority over the maintenance of the file will have the authority to grant or deny the request.

(b) For records not maintained at Customs Service Headquarters, initial requests for amendment of records under 31 CFR 1.27 (a) through (d) should be mailed or personally delivered to the Regional Commissioner of Customs in whose region the records are located. This official shall have the authority to grant or deny the request. A request directed to a Regional Commissioner should be mailed to or personally delivered at the appropriate location specified in Customs Appendix A in ''Privacy Act Issuances'' published annually by the Office of the Federal Register.

(c) Each request shall comply with the identification and other requirements set forth in 31 CFR 1.27, and in the appropriate system notice in ''Privacy Act Issuance published by the Office of the Federal Register. Each request should be conspicuously labeled on the face of the envelope ''Privacy Act Amendment Request''.

4. *Administrative appeal of initial determination refusing to amend records.* Appellate determinations (including extensions of time on appeal under 31 CFR 1.27 (e) with respect to all Customs Service records will be made by the Director, Office of Regulations & Rulings or the delegate of such official. All such appeals should be mailed or personally delivered to the United States Customs Service, Office of Regulations & Rulings, 1301 Constitution Avenue NW., Washington, DC 20229. Each appeal should be conspicuously labeled

on the face of the envelope ''Privacy Act Amendment Appeal''.

5. *Statements of disagreement.* ''Statements of Disagreement'' pursuant to 31 CFR 1.27 (e)(4)(i) shall be filed with the official signing the notification of refusal to amend at the address indicated in the letter of notification within 35 days of the date of such notification and should be limited to one page.

6. *Service of process.* Service of process will be received by the Chief Counsel, United States Customs Service, 1301 Constitution Avenue NW., Washington, DC 20229.

7. *Annual notice of systems of records.* The annual notice of the United States Customs Service systems of records required to be published by the Office of the Federal Register, as specified in 5 U.S.C. 552a(f), is included in the publication entitled ''Privacy Act Issuances''.

8. *Verification of identity.* Each request shall comply with the identification and other requirements set forth in 31 CFR 1.26 and in the appropriate system notice published by the Office of the Federal Register. Each request should be conspicuously labeled on the face of the envelope ''Privacy Act Request''.

APPENDIX D TO SUBPART C OF PART 1—UNITED STATES SECRET SERVICE

1. *In general.* This appendix applies to the United States Secret Service. It sets forth specific notification and access procedures with respect to particular systems of records including identification requirements, and time and places where records may be reviewed; identifies the officers designated to make the initial determinations with respect to notification and access to records and accountings of disclosures of records. This appendix also sets forth the specific procedures for requesting amendment of records and identifies the officers designated to make the initial and appellate determinations with respect to requests for amendment of records. It identifies the officers designated to grant extensions of time on appeal, the officers with whom ''Statements of Disagreement may be filed, the officer designated to receive service of process and the addresses for delivery of requests, appeals, and service of process. In addition, it references the notice of systems of records and notices of the routine uses of the information in the system required by 5 U.S.C. 552a(e) (4) and (11) and published annually by the Office of the Federal Register in ''Privacy Act Issuances''.

2. *Requests for notification and access to records and accountings of disclosures.* Initial determinations under 31 CFR 1.26, whether to grant requests for notification and access to records and accountings of disclosures for the United States Secret Service, will be made by the Freedom of Information and Privacy Act Officer, United States Secret Service. Requests for notification should be made by mail or delivered personally between the hours of 9:00 a.m. and 5:30 of any day excluding Saturdays, Sundays, and legal holidays to: Privacy Act Request, Freedom of Information and Privacy Act Officer, United States Secret Service, Suite 3000, 950 H Street, NW., Washington, DC 20373–5802.

a. *Identification requirements.* In addition to the requirements specified in 31 CFR 1.26, each request for notification, access or amendment of records made by mail shall contain the requesting individual's date and place of birth and a duly notarized statement signed by the requester asserting his or her identity and stipulating that the requesting individual understands that knowingly or willfully seeking or obtaining access to records about another person under false pretences is punishable by a fine of up to $5,000.

b. *Individuals making requests in person.* Individuals making requests in person will be required to exhibit acceptable identifying documents such as employee identification numbers, drivers licenses, medical cards or other documents sufficient to verify the identity of the requester.

c. *Physical inspection of records.* Upon determining that a request for the physical inspection of records is to be granted, the requester shall be notified in writing of the determination, and when and where the requested records may be inspected. The inspection of records will be conducted at the Secret Service field office or other facility located nearest to the residence of the individual making the request. Such inspection shall be conducted during the regular business hours of the Secret Service Field Office or other facility where the disclosure is made. A person of his or her own choosing may accompany the individual making the request provided the individual furnishes a written statement authorizing the disclosure of that individual's record in the accompanying person's presence. Any disclosure of a record will be made in the presence of a representative of the United States Secret Service.

3. *Requests for amendment of records.* Initial determination under 31 CFR part 1, whether to grant requests to amend records will be made by the Freedom of Information and Privacy Act Officer. Requests should be mailed or delivered personally between the hours of 9:00 a.m. and 5:30 p.m. to: Privacy Act Amendment Request, Freedom of Information and Privacy Acts Officer, United States Secret Service, Suite 3000, 950 H Street, NW., Washington, DC 20373–5802.

4. *Administrative appeal of initial determinations refusing amendment of records.* Appellate determinations, including extensions of time on appeal, with respect to records of the United States Secret Service will be made by the Deputy Director, United States Secret Service. Appeals may be mailed or delivered

personally to: Privacy Act Amendment Appeal, Deputy Director, United States Secret Service, 950 H Street, NW., Suite 8300, Washington, DC 20373–5802.

5. *Statements of disagreement.* ''Statements of Disagreements'' under 31 CFR 1.27 (e)(4)(i) shall be filed with the official signing of the notification of refusal to amend at the address indicated in the letter of notification within 35 days of the date of such notification and should be limited to one page.

6. *Service of process.* Service of process will be received by the United States Secret Service General Counsel and shall be delivered to the following location: General Counsel, United States Secret Service, Suite 8300, 950 H Street, NW., Washington, DC 20373–5802.

7. *Annual notice of systems of records.* The annual notice of systems of records is published by the Office of the Federal Register, as specified in 5 U.S.C. 552a(f). The publication is entitled ''Privacy Act Issuances''. Any specific requirements for access, including identification requirements, in addition to the requirements set forth in 31 CFR 1.26 and 1.27 are indicated in the notice for the pertinent system.

[52 FR 26305, July 14, 1987, as amended at 66 FR 9959, Feb. 13, 2001]

APPENDIX E TO SUBPART C OF PART 1—BUREAU OF ALCOHOL, TOBACCO AND FIREARMS

1. *In general.* This appendix applies to the Bureau of Alcohol, Tobacco and Firearms. It sets forth specific notification and access procedures with respect to particular systems of records, identifies the officers designated to make the initial determinations with respect to notification and access to records and accountings of disclosures of records. This appendix also sets forth the specific procedures for requesting amendment of records and identifies the officers designated to make the initial and appellate determinations with respect to requests for amendment of records. It identifies the officers designated to grant extensions of time on appeal, the officers with whom ''Statements of Disagreement'' may be filed, the officer designated to receive service of process and the addresses for delivery of requests, appeals, and service of process. In addition, it references the notice of systems of records and notices of the routine uses of the information in the system required by 5 U.S.C. 552a (3) (4) and (11) and published annually by the Office of the Federal Register in ''Privacy Act Issuances''.

2. *Requests for notification and access to records and accountings of disclosures.* Initial determination under 31 CFR 1.26, whether to grant requests for notification and access to records and accountings of disclosures for the Bureau of Alcohol, Tobacco, and Firearms, will be made by the Chief, Disclosure Branch, Office of the Assistant to the Director or the delegate of such officer. Requests may be mailed or delivered in person to: Privacy Act Request, Chief, Disclosure Branch, Room 4406, Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue, NW., Washington, DC 20226.

3. *Requests for amendment of record.* Initial determinations under 31 CFR 1.27 (a) through (d) with respect to requests to amend records maintained by the Bureau of Alcohol, Tobacco and Firearms will be made by the Chief, Disclosure Branch, Office of the Assistant to the Director. Requests for amendment of records may be mailed or delivered in person to: Privacy Act Request, Chief, Disclosure Branch, Room 4406, Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue, NW., Washington, DC 20226.

4. *Verification of identity.* (a) In addition to the requirements specified in 31 CFR 1.26(d) of this appendix, each request for notification, access or amendment of records made by mail shall contain the requesting individual's date and place of birth and a statement signed by the requester asserting his or her identity and stipulating that the requester understands that knowingly or willfully seeking or obtaining access to records about another person under false pretenses is a misdemeanor and punishable by a fine of up to $5,000 provided, that the Bureau of Alcohol, Tobacco and Firearms may require a signed notarized statement verifying the identity of the requester.

(b) Individuals making requests in person will be required to exhibit at least two acceptable identifying documents such as employee identification cards, driver's license, medical cards, or other documents sufficient to verify the identity of the requester.

(c) The parent or guardian of a minor or a person judicially determined to be incompetent, shall in addition to establishing the identity of the minor or other person he represents as required in (a) and (b), establish his own parentage or guardianship by furnishing a copy of a birth certificate showing parentage (or other satisfactory documentation) or a court order establishing the guardianship.

5. *Request for physical inspection of records.* Upon determining that a request for the physical inspection of records is to be granted, the requester shall be notified in writing of the determination, and when and where the records may be inspected. The inspection of records will be made at the Bureau of Alcohol, Tobacco and Firearms Field Office or other facility located nearest to the residence of the individual making the request. Such inspection shall be conducted during the regular business hours of the field office or other facility where the disclosure is made. A person of the requester's own choosing may accompany the requester provided

the requester furnishes a written statement authorizing the disclosure of the requester's record in the accompanying person's presence. The record inspection will be made in the presence of a representative of the Bureau. Following the inspection of the record, the individual will acknowledge in writing the fact that he or she had an opportunity to inspect the requested record.

6. *Requests for copies of records without prior physical inspection.* Upon determining that an individual's request for copies of his or her records without prior physical inspection is to be granted, the requester shall be notified in writing of the determination, and the location and time for his or her receipt of the requested copies. The copies will be made available at the Bureau of Alcohol, Tobacco and Firearms field office or other facility located nearest to the residence of the individual making the request. Copies shall be received by the requester during the regular business hours of the field office or other facility where the disclosure is made. Transfer of the copies to the individual shall be conditioned upon payment of copying costs and his presentation of at least two acceptable identifying documents such as employee identification cards, driver's license, medical cards, or other documents sufficient to verify the identity of the requester. Following the receipt of the copies, the individual will acknowledge receipt in writing.

7. *Administrative appeal of initial determination refusing to amend record.* Appellate determinations under 31 CFR 1.27(e) with respect to records of the Bureau of Alcohol, Tobacco and Firearms, including extensions of time on appeal, will be made by the Director or the delegate of such officer. Appeals should be addressed to, or delivered in person to: Privacy Act Amendment Appeal, Director, Bureau of Alcohol, Tobacco and Firearms, Room 4406, 1200 Pennsylvania Avenue, NW., Washington, DC 20226.

8. *Statements of disagreement.* ''Statements of Disagreement'' as described in 31 CFR 1.27(e) (4) shall be filed with the official signing the notification within 35 days of the date of such notification and should be limited to one page.

9. *Service of process.* Service of process will be received by the Director of the Bureau of Alcohol, Tobacco and Firearms or the delegate of such official and shall be delivered to the following location: Director, Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue, NW., Washington, DC 20226, Attention: Chief Counsel.

10. *Annual notice of systems of records.* The annual notice of systems of records is published by the Office of the Federal Register, as specified in 5 U.S.C. 552a(f). The publication is entitled ''Privacy Act Issuances''. Any specific requirements for access, including identification requirements, in addition to the requirements set forth in 31 CFR 1.26 and 1.27 are indicated in the notice for each pertinent system.

APPENDIX F TO SUBPART C OF PART 1—BUREAU OF ENGRAVING AND PRINTING

1. *In general.* This appendix applies to the Bureau of Engraving and Printing. It sets forth specific notification and access procedures with respect to particular systems of records including identification requirements, identifies the officers designated to make the initial determinations with respect to notification and access to records and accountings of disclosures of records. This appendix also sets forth the specific procedures for requesting amendment of records and identifies the officers designated to make the initial and appellate determinations with respect to requests for amendment of records. It identifies the officers designated to grant extensions of time on appeal, the officers with whom ''Statements of Disagreement may be filed, the officer designated to receive service of process and the addresses for delivery of requests, appeals, and service of process. In addition, it references the notice of systems of records and notices of the routine uses of the information in the system required by 5 U.S.C. 552a (e) (4) and (11) and published annually by the Office of the Federal Register in ''Privacy Act Issuances.''

2. *Requests for notification and access to records and accountings of disclosures.* Initial determinations under 31 CFR 1.26, whether to grant requests for notification and access to records and accountings of disclosures for the Bureau of Engraving and Printing, will be made by the head of the organizational unit having immediate custody of the records requested, or the delegate of such official. Requests for access to records contained within a particular system of records should be submitted to the address indicated for that system in the access section of the notices published by the Office of the Federal Register in ''Privacy Act Issuances.'' Requests for information and specific guidance should be addressed to: Privacy Act Request, Disclosure Officer (Executive Assistant to the Director), Room 104—18M, Bureau of Engraving and Printing, Washington, DC 20228.

3. *Requests for amendment of records.* Initial determination under 31 CFR 1.27 (a) through (d), whether to grant request to amend records will be made by the head of the organizational unit having immediate custody of the records or the delegate of such official. Requests for amendment should be addressed as indicated in the appropriate system notice in ''Privacy Act Issuances'' published by the Office of the Federal Register. Requests for information and specific guidance on where to send requests for amendment should be

addressed to: Privacy Act Amendment Request, Disclosure Officer (Executive Assistant to the Director), Bureau of Engraving and Printing, Room 104–18M, Washington, DC 20228.

4. *Administrative appeal of initial determinations refusing amendment of records.* Appellate determinations refusing amendment of records under 31 CFR 1.27(e) including extensions of time on appeal, with respect to records of the Bureau of Engraving and Printing will be made by the Director of the Bureau or the delegate of such officer. Appeals made by mail should be addressed to, or delivered personally to: Privacy Act Amendment Appeal, Disclosure Officer (Executive Assistant to the Director), Room 104–18M, Bureau of Engraving and Printing, Washington, DC 20228.

5. *Statements of disagreement.* ''Statements of Disagreement'' under 31 CFR 1.27(e)(4)(8) shall be filed with the official signing the notification of refusal to amend at the address indicated in the letter of notification within 35 days of the date of such notification and should be limited to one page.

6. *Service of process.* Service of process will be received by the Chief Counsel of the Bureau of Engraving and Printing and shall be delivered to the following location: Chief Counsel, Bureau of Engraving and Printing, Room 109–M, 14th and C Streets, SW., Washington, DC 20228.

7. *Verification of identity.* An individual seeking notification or access to records, or seeking to amend a record, or seeking an accounting of disclosures, must satisfy one of the following identification requirements before action will be taken by the Bureau of Engraving and Printing on any such request:

(i) An individual appearing in person may establish identity by the presentation of a single document bearing a photograph (such as a passport or identification badge) or by the presentation of two items of identification which do not bear a photograph, but do bear both a name and signature (such as a credit card).

(ii) An individual may establish identity through the mail by a signature, address, and one other identifier such as a photocopy of a driver's license or other document bearing the individual's signature.

(iii) Notwithstanding subdivisions (i) and (ii) of this subparagraph, an individual who so desires, may establish identity by providing a notarized statement, swearing or affirming to such individual's identity and to the fact that the individual understands the penalties provided in 5 U.S.C. 552a(1)(3) for requesting or obtaining access to records under false pretenses.

Notwithstanding subdivision (i), (ii), or (iii) of this subparagraph, the Executive Assistant or other designated official may require additional proof of an individual's identity before action will be taken on any request if such official determines that it is necessary to protect against unauthorized disclosure of information in a particular case. In addition, a parent of any minor or a legal guardian of any individual will be required to provide adequate proof of legal relationship before such person may act on behalf of such minor or such individual.

8. *Annual notice of systems of records.* The annual notice of systems of records is published by the Office of the Federal Register, as specified in 5 U.S.C. 522a(f). The publication is entitled ''Privacy Act Issuances''. Any specific requirements for access, including identification requirements, in addition to the requirements set forth in 31 CFR 1.26 and 1.27 are indicated in the notice for the pertinent system.

APPENDIX G TO SUBPART C OF PART 1—FINANCIAL MANAGEMENT SERVICE

1. *In general.* This appendix applies to the Financial Management Service. It sets forth specific notification and access procedures with respect to particular systems of records, identifies the officers designated to make the initial determinations with respect to notification and access to records and accountings of disclosures of records. This appendix also sets forth the specific procedures for requesting amendment of records and identifies the officers designated to make the initial and appellate determinations with respect to requests for amendment of records. It identifies the officers designated to grant extensions of time on appeal, the officers with whom ''Statements of Disagreement'' may be filed, the officer designated to receive service of process and the addresses for delivery of requests, appeals, and service of process. In addition, it references the notice of systems of records and notices of the routine uses of the information in the system required by 5 U.S.C. 552a(e) (4) and (11) and published annually by the Office of the Federal Register in ''Privacy Act Issuances''.

2. *Requests for notification and access to records and accountings of disclosures.* Initial determinations under 31 CFR 1.26, whether to grant requests for notification and access to records and accountings of disclosures for the Financial Management Service, will be made by the head of the organizational unit having immediate custody of the records requested or an official designated by this official. This is indicated in the appropriate system notice in ''Privacy Act Issuances'' published annually by the Office of the Federal Register. Requests for information and specific guidance on where to send requests for records may be mailed or delivered personally to: Privacy Act Request, Disclosure Officer, Financial Management Service, Room 108, Treasury Department Annex No. 1, Pennsylvania Avenue and Madison Place, NW., Washington, DC 20226.

3. *Requests for amendment of records.* Initial determination under 31 CFR 1.27(a) through (d), whether to grant requests to amend records will be made by the head of the organzational unit having immediate custody of the records or the delegate of such official. Requests for amendment should be addressed as indicated in the appropriate system notice in ''Privacy Act Issuances'' published by the Office of the Federal Register. Requests for information and specific guidance on where to send requests for amendment should be addressed to: Privacy Act Amendment Request, Disclosure Officer, Financial Management Service, Department of the Treasury, Treasury Annex No. 1, Washington, DC 20226.

4. *Administrative appeal of initial determinations refusing amendment of records.* Appellate determinations refusing amendment of records under 31 CFR 1.27(e) incuding extensions of time on appeal, with respect to records of the Financial Management Service will be made by the Commissioner or the delegate of such official. Appeals made by mail should be addressed to, or delivered personally to: Privacy Act Amendment Appeal Commissioner, Financial Management Service (Privacy), Department of the Treasury, Room 618, Treasury Annex No. 1, Pennsylvania Avenue and Madison Place, NW., Washington, DC 20226.

5. *Statements of disagreement.* ''Statements of Disagreement'' under 31 CFR 1.27(e)(4)(i) shall be filed with the official signing the notification of refusal to amend at the address indicated in the letter of notification within 35 days of the date of such notification and should be limited to one page.

6. *Service of process.* Service of process will be received by the Commissioner, Financial Management Service or the delegate of such official and shall be delivered to the following location: Commissioner, Financial Management Service (Privacy), Department of the Treasury, Room 618, Treasury Annex No. 1, Pennsylvania Avenue and Madison Place, NW, Washington, DC 20226.

7. *Annual notice of systems of records.* The annual notice of systems of records is published by the Office of the Federal Register, as specified in 5 U.S.C. 552a(f). The publication is entitled ''Privacy Act Issuances''. Any specific requirements for access, including identification requirements, in addition to the requirements set forth in 31 CFR 1.26 and 1.27 are indicated in the notice for the pertinent system.

APPENDIX H TO SUBPART C OF PART 1—UNITED STATES MINT

1. *In general.* This appendix applies to the United States Mint. It sets forth specific notification and access procedures with respect to particluar systems of records, identifies the officers designated to make the initial determinations with respect to notification and access to records and accountings of disclosures of records. This appendix also sets forth the specific procedures for requesting amendment of records and identifies the officers designated to make the initial and appellate determinations with respect to requests for amendment of records. It identifies the officers designated to grant extensions of time on appeal, the officers with whom ''Statements of Disagreement'' may be filed, the officer designated to receive service of process and the addresses for delivery of requests, appeals, and service of process. In addition, it references the notice of systems of records and notices of the routine uses of the information in the system required by 5 U.S.C. 552a(e) (4) and (11) and published annually by the Office of the Federal Register in ''Privacy Act Issuances''.

2. *Requests for notification and access to records and accountings of disclosures.* Initial determinations under 31 CFR 1.26, whether to grant requests for notification and access to records and accountings of disclosures for the United States Mint will be made by the head of the organizational unit having immediate custody of the records requested or an official designated by this official. This is indicated in the appropriate system notice in ''Privacy Act Issuances'' published annually by the Office of the Federal Register. Requests should be directed to the Superintendent or Officer in charge of the facility in which the records are located or to the Chief, Administrative Programs Division. Requests for information and specific guidance on where to send requests for records may be mailed or delivered personally to: Privacy Act Request, Chief, Administrative Programs Division, United States Mint, Judiciary Square Building, 633 3rd Street, N.W, Washington, DC 20220.

3. *Requests for amendment of records.* Initial determination under 31 CFR 1.27 (a) through (d), whether to grant requests to amend records will be made by the head of the Mint installation having immediate custody of the records or the delegated official. Requests should be mailed or delivered personally to: Privacy Act Amendment Request, Freedom of Information and Privacy Acts Officer, United States Mint, Judiciary Square Building, 633 3rd Street, Washington, DC 20220.

4. *Administrative appeal of initial determinations refusing amendment of records.* Appellate determinations refusing amendment of records under 31 CFR 1.27 including extensions of time on appeal, with respect to records of the United States Mint will be made by the Director of the Mint or the delegate of the Director. Appeals made by mail should be addressed to, or delivered personally to: Privacy Act Amendment Appeal,

United States Mint, Judiciary Square Building, 633 3rd Street, NW, Washington, DC 20220.

5. *Statements of disagreement.* ''Statements of Disagreement'' under 31 CFR 1.27 (e)(4)(i) shall be filed with the official signing the notification of refusal to amend at the address indicated in the letter of notification within 35 days of the date of such notification and should be limited to one page.

6. *Service of process.* Service of process will be received by the Director of the Mint and shall be delivered to the following location: Director of the Mint, Judiciary Square Building, 633 3rd street, NW., Washington, DC 20220.

7. *Annual notice of systems of records.* The annual notice of systems of records is published by the Office of the Federal Register, as specified in 5 U.S.C. 552a(f). The publication is entitled ''Privacy Act Issuances''. Any specific requirements for access, including identification requirements, in addition to the requirements set forth in 31 CFR 1.26 and 1.27 are indicated in the notice for the pertinent system.

APPENDIX I TO SUBPART C OF PART 1—BUREAU OF THE PUBLIC DEBT

1. *In general.* This appendix applies to the Bureau of the Public Debt. It sets forth specific notification and access procedures with respect to particular systems of records, identifies the officers designated to make the initial determinations with respect to notification and access to records and accountings of disclosures of records. This appendix also sets forth the specific procedures for requesting amendment of records and identifies the officers designated to make the initial and appellate determinations with respect to requests for amendment of records. It identifies the officer designated to grant extension of time on appeal, the officers with whom ''Statements of Disagreement'' may be filed, the officer designated to receive service of process and the addresses for delivery of requests, appeals, and service of process. In addition, it references the notice of systems of records and notices of the routine uses of the information in the system required by 5 U.S.C. 552a(e) (4) and (11) and published annually by the Office of the Federal Register in ''Privacy Act Issuances''.

2. *Requests for notification and access to records and accountings of disclosures.* Initial determinations under 31 CFR 1.26, whether to grant requests for notification and access to records and accountings of disclosures for the Bureau of Public Debt, will be made by the head of the organizational unit having immediate custody of the records requested or an official designated by this official. This is indicated in the appropriate system notice in ''Privacy Act Issuances'' published annually by the Office of the Federal Register. Requests for information and specific guidance on where to send requests for records may be mailed or delivered personally to: Privacy Act Request, Disclosure Officer, Administrative Resource Center, Bureau of the Public Debt, Department of the Treasury, 200 Third Street, Room 211, Parkersburg, WV 26101–5312.

3. *Requests for amendment of records.* Initial determination under 31 CFR 1.27 (a) through (d), whether to grant requests to amend records will be made by the head of the organizational unit having immediate custody of the records or the delegate of such official. Requests for amendment should be addressed as indicated in the appropriate system notice in ''Privacy Act Issuances'' published by the Office of the Federal Register. Requests for information and specific guidance on where to send requests for amendment should be addressed to: Privacy Act Amendment Request, Disclosure Officer, Administrative Resource Center, Bureau of the Public Debt, Department of the Treasury, 200 Third Street, Room 211, Parkersburg, WV 26101–5312.

4. *Administrative appeal of initial determinations refusing amendment of records.* Appellate determinations refusing amendment of records under 31 CFR 1.27(e) including extensions of time on appeal, with respect to records of the Bureau of the Public Debt will be made by the Executive Director, Administrative Resource Center, Bureau of the Public Debt or the delegate of such officer. Appeals made by mail should be addressed to, or delivered personally to: Privacy Act Amendment Appeal, Chief Counsel, Bureau of the Public Debt, Department of the Treasury, Executive Director, Administrative Resource Center, Bureau of the Public Debt.

5. *Statements of disagreement.* ''Statements of Disagreement'' under 31 CFR 1.27 (e)(4)(i) shall be filed with the official signing the notification of refusal to amend at the address indicated in the letter of notification within 35 days of the date of such notification and should be limited to one page.

6. *Service of process.* Service of process will be received by the Chief Counsel of the Bureau of the Public Debt and shall be delivered to the following location: Chief Counsel, Bureau of the Public Debt, Department of the Treasury, 200 Third Street, Room G–15, Parkersburg, WV 26106–1328.

7. *Annual notice of systems of records.* The annual notice of systems of records is published by the Office of the Federal Register, as specified in 5 U.S.C. 552a(f). The publication is entitled ''Privacy Act Issuances''. Any specific requirements for access, including identification requirements, in addition to the requirements set forth in 31 CFR 1.26 and 1.27 are indicated in the notice for the pertinent system.

APPENDIX J TO SUBPART C OF PART 1—OFFICE OF THE COMPTROLLER OF THE CURRENCY

1. *In general.* This appendix applies to the Office of the Comptroller of the Currency. It sets forth specific notification and access procedures with respect to particular systems of records, identifies the officers designated to make the initial determinations with respect to notification and access to records and accountings of disclosures of records. This appendix also sets forth the specific procedures for requesting amendment of records and identifies the officers designated to make the intial and appellate determinations with respect to requests for amendment of records. It identifies the officers designated to grant extensions of time on appeal, the officers with whom ''Statements of Disagreement'' may be filed, the officer designated to receive service of process and the addresses for delivery of requests, appeals, and service of process. In addition, it references the notice of systems of records and notices of the routine uses of the information in the system required by 5 U.S.C. 552a(e) (4) and (11) and published annually by the Office of the Federal Register in ''Privacy Act Issuances''.

2. *Requests for notification and access to records and accountings of disclosures.* Initial determinations under 31 CFR 1.26 whether to grant requests for notification and access to records and accountings of disclosures for the Office of the Comptroller of the Currency will be made by the head of the organizational unit having immediate custody of the records requested or the delegate of that official. This is indicated in the appropriate system notice in ''Privacy Act Issuances'' published biennially by the Office of the Federal Register. Requests for information and specific guidance on where to send requests for records shall be mailed or delivered personally to: Disclosure Officer, Communications Division, Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219.

3. *Requests for amendment of records.* Initial determinations under 31 CFR 1.27 (a) through (d) whether to grant requests to amend records will be made by the Comptroller's delegate or the head of the organizational unit having immediate custody of the records or the delegate of that official. Requests for amendment shall be mailed or delivered personally to: Disclosure Officer, Communications Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

4. *Administrative appeal of initial determinations refusing amendment of records.* Appellate determinations refusing amendment of records under 31 CFR 1.27(e) including extensions of time on appeal, with respect to records of the Office of the Comptroller of the Currency will be made by the Comptroller of the Currency or the Comptroller's delegate. Appeals shall be mailed or delivered personally to: Disclosure Officer, Communications Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

5. *Statements of disagreement.* ''Statements of Disagreement'' under 31 CFR 1.27(e)(4)(i) shall be filed with the OCC's Director of Communications at the address indicated in the letter of notification within 35 days of the date of such notification and should be limited to one page.

6. *Service of process.* Service of process shall be delivered to the Chief Counsel or the Chief Counsel's delegate at the following location: Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

7. *Annual notice of systems of records.* The annual notice of systems of records is published by the Office of the Federal Register, as specified in 5 U.S.C. 552a(f). The publication is entitled ''Privacy Act Issuances''. Any specific requirements for access, including identification requirements, in addition to the requirements set forth in 31 CFR 1.26 and 1.27 are indicated in the notice for the pertinent system.

[52 FR 26305, July 14, 1987, as amended at 60 FR 57333, Nov. 15, 1995; 67 FR 34402, May 14, 2002]

APPENDIX K TO SUBPART C OF PART 1—FEDERAL LAW ENFORCEMENT TRAINING CENTER

1. *In general.* This appendix applies to the Federal Law Enforcement Training Center. It sets forth specific notification and access procedures with respect to particular systems of records, identifies the officers designated to make the initial determinations with respect to notification and access to records and accountings of disclosure of records. This appendix also sets forth the specific procedures for requesting amendment of records and identifies the officers designated to make the initial and appellate determinations with respect to requests for amendment of records. It identifies the officers designated to grant extensions of time on appeal, the officers with whom ''Statements of Disagreement'' may be filed, the officer designated to receive service of process and the addresses for delivery of requests, appeals, and service of process. In addition, it references the notice of systems of records and notices of the routine uses of the information in the system required by 5 U.S.C. 552a(e) (4) and (11) and published annually by the Office of the Federal Register, in ''Privacy Act Issuances''.

2. *Requests for notification and access to records and accounting of disclosures.* Initial determinations under 31 CFR 1.26, whether to

grant requests for notification and acesss to records and accounting of disclosures for the Federal Law Enforcement Training Center, will be made by the head of the organizational unit having immediate custody of the records requested or an official designated by this official. This is indicated in the appropriate system notice in ''Privacy Act Issuances'' published annually by the Office of the Federal Register. Requests for information and specific guidance on where to send requests for records may be mailed or delivered personally to: Privacy Act Request, Library Building 262, Federal Law Enforcement Training Center, Glynco, Georgia 31524.

3. *Requests for amendment of records.* Initial determinations under 31 CFR 1.27 (a) through (d), whether to grant requests to amend records will be made by the head of the organizational unit having immediate custody of the records or the delegate of such official. Requests for amendment should be addressed as indicated in the appropriate system notice in ''Privacy Act Issuances'' published by the Office of the Federal Register. Requests for information and specific guidance on where to send requests for amendment should be addressed to: Privacy Act Amendment Request, Federal Law Enforcement Training Center, Glynco, Georgia 31524.

4. *Administrative appeal of initial determinations refusing amendment of records.* Appellate determinations refusing amendment of records under 31 CFR 1.27(e) including extensions of time on appeal, with respect to records of the Federal Law Enforcement Training Center will be made by the Assistant Secretary (Enforcement), Department of the Treasury or the delegate of such officer. Appeals made by mail should be addressed to, or delivered personally to: Privacy Act Amendment Appeal, FLETC, Assistant Secretary (Enforcement), Department of the Treasury, 1500 Pennsylvania Avenue, NW., Room 4312, Washington, DC 20220.

5. *Statements of disagreement.* ''Statements of Disagreement'' under 31 CFR 1.27(e)(4)(i) shall be filed with the official signing the notification of refusal to amend at the address indicated in the letter of notification within 35 days of the date of such notification and should be limited to one page.

6. *Service of process.* Service of process will be received by the General Counsel of the Department of the Treasury or the delegate of such official and shall be delivered to the following location: General Counsel, Department of the Treasury, Room 3000, Main Treasury Building, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

7. *Annual notice of systems of records.* The annual notice of systems of records is published by the Office of the Federal Register, as specified in 5 U.S.C. 552a(f). The publication is entitled ''Privacy Act Issuances''. Any specific requirements for access, including identification requirements, in addition to the requirements set forth in 31 CFR 1.26 and 1.27 are indicated in the notice for the pertinent system.

[52 FR 26305, July 14, 1987. Redesignated at 65 FR 2334, Jan. 14, 2000]

APPENDIX L TO SUBPART C OF PART 1—OFFICE OF THRIFT SUPERVISION

1. *In general.* This appendix applies to the Office of Thrift Supervision. It sets forth specific notification and access procedures with respect to particular systems of records, and identifies the officers designated to make the initial determinations with respect to notification and access to records, the officers designated to make the initial and appellate determinations with respect to requests for amendment of records, the officers designated to grant extensions of time on appeal, the officers with whom ''Statement of Disagreement'' may be filed, the officer designated to receive services of process and the addresses for delivery of requests, appeals, and service of process. In addition, it references the notice of systems of records and notices of the routine uses of the information in the system required by 5 U.S.C. 552a(e) (4) and (11) and published biennially by the Office of the Federal Register in ''Privacy Act Issuances.''

2. *Requests for notification and access to records and accounting of disclosures.* Initial determinations under 31 CFR 1.26, whether to grant requests for notification and access to records and accountings of disclosures for the Office of Thrift Supervision, will be made by the head of the organizational unit having immediate custody of the records requested, or the delegate of such official. This information is contained in the appropriate system notice in the ''Privacy Act Issuances,'' published biennially by the Office of the Federal Register. Requests for information and specific guidance on where to send requests for records should be addressed to: Privacy Act Request, Chief, Disclosure Branch, Information Services Division, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

Requests may be delivered in person to: Office of Thrift Supervision, Information Services Division, 1700 G Street, NW., Washington, DC.

3. *Requests for amendments of records.* Initial determinations under 31 CFR 1.27 (a) through (d) with respect to requests to amend records maintained by the Office of Thrift Supervision will be made by the head of the organization or unit having immediate custody of the records or the delegates of such official. Requests for amendment of records should be addressed as indicated in the appropriate system notice in ''Privacy Act Issuances'' published by the Office of the

Federal Register. Requests for information and specific guidance on where to send these requests should be addressed to: Privacy Act Amendment Request, Chief, Disclosure Branch, Information Services Division, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

Privacy Act Amendment Requests may be delivered in person to: Office of Thrift Supervision, Information Services Division, 1700 G Street, NW., Washington, DC.

4. *Administrative appeal of initial determination refusing to amend record.* Appellate determination under 31 CFR 1.27(e) with respect to records of the Office of Thrift Supervision, including extensions of time on appeal, will be made by the Director, Public Affairs, Office of Thrift Supervision, or the delegate of such official, as limited by 5 U.S.C. 552a(d) (2) and (3). Appeals made by mail should be addressed as indicated in the letter of initial decision or to: Privacy Act Amendment Request, Chief, Disclosure Branch, Information Services Division, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

Appeals may be delivered in person to: Office of Thrift Supervision, Information Services Division, 1700 G Street, NW., Washington, DC.

5. *Statements of Disagreement.* ''Statements of Disagreement'' as described in 31 CFR 1.27(e)(4) shall be filed with the official signing the notification of refusal to amend at the address indicated in the letter of notification within 35 days of the date of notification and should be limited to one page.

6. *Service of process.* Service of process will be received by the Corporate Secretary of the Office of Thrift Supervision or the delegate of such official and shall be delivered to the following location: Corporate Secretary, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

7. *Annual notice of systems of record.* The annual notice of systems of records required to be published by the Office of the Federal Register is included in the publication entitled ''Privacy Act Issuances,'' as specified in 5 U.S.C. 552a(f). Any specific requirements for access, including identification requirements, in addition to the requirements set forth in 31 CFR 1.26 and 1.27 and (8) below, and locations for access are indicated in the notice for the pertinent system.

8. *Verification of identity.* An individual seeking notification or access to records, or seeking to amend a record, must satisfy one of the following identification requirements before action will be taken by the Office of Thrift Supervision on any such request:

(i) An individual seeking notification or access to records in person, or seeking to amend a record in person, may establish identity by the presentation of a single official document bearing a photograph (such as a passport or identification badge) or by the presentation of two items of identification which do not bear a photograph but do bear both a name and signature (such as a driver's license or credit card).

(ii) An individual seeking notification or access to records by mail, or seeking to amend a record by mail, may establish identity by a signature, address, and one other identifier such as a photocopy of a driver's license or other official document bearing the individual's signature.

(iii) Notwithstanding subdivisions (i) and (ii) of this subparagraph, an individual seeking notification or access to records by mail or in person, or seeking to amend a record by mail or in person, who so desires, may establish identity by providing a notarized statement, swearing or affirming to such individual's identity and to the fact that the individual understands the penalties provided in 5 U.S.C. 552a(i)(3) for requesting or obtaining access to records under false pretenses. Alternatively, an individual may provide a statement that the individual understands the penalties provided in 5 U.S.C. 552a(i)(3) for requesting or obtaining access to records under false pretenses which is subscribed by the individual as true and correct under penalty of perjury pursuant to 28 U.S.C. 1746. Notwithstanding subdivision (i), (ii), or (iii) of this subparagraph, a designated official may require additional proof of an individual's identity before action will be taken on any request, if such official determines that it is necessary to protect against unauthorized disclosure of information in a particular case. In addition, a parent of any minor or a legal guardian of any individual will be required to provide adequate proof of legal relationship before such person may act on behalf of such minor or such individual.

[60 FR 31633, June 16, 1995. Redesignated at 65 FR 2334, Jan. 14, 2000]

APPENDIX M TO SUBPART C [RESERVED]

APPENDIX N TO SUBPART C—FINANCIAL CRIMES ENFORCEMENT NETWORK

1. *In general.* This appendix applies to the Financial Crimes Enforcement Network (FinCEN). It sets forth specific notification and access procedures with respect to particular systems of records, and identifies the officers designated to make the initial determinations with respect to notification and access to records and accountings of disclosures of records. This appendix also sets forth the specific procedures for requesting amendment of records and identifies the officers designated to make the initial and appellate determinations with respect to requests for amendment of records. It identifies the officers designated to grant extensions of time on appeal, the officers with whom ''Statements of Disagreement'' may

be filed, the officer designated to receive service of process and the addresses for delivery of requests, appeals, and service of process. In addition, it references the notice of systems of records and notices of the routine uses of the information in the system required by 5 U.S.C. 552a(4) and (11) and published biennially by the Office of the Federal Register in ''Privacy Act Issuances.''

2. *Requests for notification and access to records and accountings of disclosures.* Initial determinations under 31 CFR 1.26, whether to grant requests for notification and access to records and accountings of disclosures for FinCEN will be made by the Freedom of Information/Privacy Act officer, FinCEN. Requests may be mailed to: Privacy Act Request, Financial Crimes Enforcement Network, Post Office Box 39, Vienna, VA 22183.

3. *Requests for amendments of records.* Initial determinations under 31 CFR 1.27(a) through (d) whether to grant requests to amend records maintained by FinCEN will be made by the Freedom of Information/Privacy Act officer, FinCEN. Requests may be mailed to: Privacy Act Request, Financial Crimes Enforcement Network, Post Office Box 39, Vienna, VA 22183.

4. *Verification of Identity.* An individual seeking notification or access to records, or seeking to amend a record, or seeking an accounting of disclosures, must satisfy one of the following identification requirements before action will be taken by FinCEN on any such request:

(i) An individual may establish identity through the mail by a signature, address, and one other identifier such as a photocopy of a driver's license or other official document bearing the individual's signature.

(ii) Notwithstanding this paragraph (4)(i), an individual may establish identity by providing a notarized statement, swearing or affirming to such individual's identity and to the fact that the individual understands the penalties provided in 5 U.S.C. 552a(i)(3) for requesting or obtaining access to records under false pretenses.

(iii) Notwithstanding this paragraph (4)(i) and (ii), the Freedom of Information Act/Privacy Act Officer or other designated official may require additional proof of an individual's identity before action will be taken on any request, if such official determines that it is necessary to protect against unauthorized disclosure of information in a particular case. In addition, a parent of any minor or a legal guardian of any individual will be required to provide adequate proof of legal relationship before such person may act on behalf of such minor or such individual.

5. *Administrative appeal of initial determinations refusing amendment of records.* Appellate determinations refusing amendment of records under 31 CFR 1.27(e) including extensions of time on appeal with respect to the records of FinCEN will be made by the Director of FinCEN or the delegate of the Director. Appeals should be addressed to: Privacy Act Amendment Appeal, Financial Crimes Enforcement Network, Post Office Box 39, Vienna, VA 22183.

6. *Statements of Disagreement.* ''Statements of Disagreement'' as described in 31 CFR 1.27(e)(4) shall be filed with the official signing the notification of refusal to amend at the address indicated in the letter of notification within 35 days of the date of such notification and should be limited to one page.

7. *Service of Process.* Service of process will be received by the Chief Counsel of FinCEN and shall be delivered to the following location: Office of Chief Counsel, Financial Crimes Enforcement Network, Post Office Box 39, Vienna, VA 22183.

8. *Biennial notice of systems of records.* The biennial notice of systems of records is published by the Office of the Federal Register, as specified in 5 U.S.C. 552a(f). The publication is entitled ''Privacy Act Issuances.'' Any specific requirements for access, including identification requirements, in addition to the requirements set forth in 31 CFR 1.26 and 1.27 and paragraph 4 of this appendix are indicated in the notice for the pertinent system.

[68 FR 55311, Sept. 25, 2003]

PART 2—NATIONAL SECURITY INFORMATION

Subpart A—Original Classification

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2.1 Classification levels [1.1(a)].
2.2 Classification Authority.
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Subpart B—Derivative Classification

2.9 Derivative Classification Authority.
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AUTHORITY: 31 U.S.C. 321; E.O. 12958, 60 FR 19825, 3 CFR, 1995 Comp., p. 333.

SOURCE: 55 FR 1644, Jan. 17, 1990, unless otherwise noted.

Subpart A—Original Classification

§2.1 Classification levels [1.1(a)].[1]

(a) National security information (hereinafter also referred to as ''classified information'') shall be classified at one of the following three levels:

(1) *Top Secret* shall be applied to information, the unauthorized disclosure of which reasonably could be expected to cause exceptionally grave damage to the national security.

(2) *Secret* shall be applied to information, the unauthorized disclosure of which reasonably could be expected to cause serious damage to the national security.

(3) *Confidential* shall be applied to information, the unauthorized disclosure of which reasonably could be expected to cause damage to the national security.

(b) *Limitations [1.1(b)].* Markings other than ''Top Secret,'' ''Secret,'' and ''Confidential,'' shall not be used to identify national security information. No other terms or phrases are to be used in conjunction with these markings to identify national security information, such as ''Secret/Sensitive'' or ''Agency Confidential''. The terms ''Top Secret,'' ''Secret,'' and ''Confidential'' are not to be used to identify non-classified Executive Branch information. The administrative control legend, ''Limited Official Use'', is authorized in Treasury Directive 71–02, ''Safeguarding Officially Limited Information,'' which requires that information so marked is to be handled, safeguarded and stored in a manner equivalent to national security information classified Confidential.

(c) *Reasonable Doubt [1.1(c)].* When there is reasonable doubt about the need to classify information, the information shall be safeguarded as if it were ''Confidential'' information in accordance with subpart D of this regulation, pending a determination about its classification. Upon a final determination of a need for classification, the information that is classified shall be marked as provided in §2.7. When there is reasonable doubt about the appropriate classification level, the information shall be safeguarded at the higher level in accordance with subpart D, pending a determination of its classification level. Upon a final determination of its classification level, the information shall be marked as provided in §2.7.

§2.2 Classification Authority.

Designations of original classification authority for national security information are contained in Treasury Order (TO) 102–19 (or successor order),

[1] Related references are related to sections of Executive Order 12356, 47 FR 14874, April 6, 1982.

which is published in the FEDERAL REGISTER. The authority to classify inheres within the office and may be exercised by a person acting in that capacity. There may be additional redelegations of original classification authority made pursuant to TO 102–19 (or successor order). Officials with original classification authority may derivatively classify at the same classification level.

[63 FR 14357, Mar. 25, 1998]

§ 2.3 Listing of original classification authorities.

Delegations of original Top Secret, Secret and Confidential classification authority shall be in writing and be reported annually to the Departmental Director of Security, who shall maintain such information on behalf of the Assistant Secretary (Management). These delegations are to be limited to the minimum number absolutely required for efficient administration. Periodic reviews and evaluations of such delegations shall be made by the Departmental Director of Security to ensure that the officials so designated have demonstrated a continuing need to exercise such authority. If, after reviewing and evaluating the information, the Departmental Director of Security determines that such officials have not demonstrated a continuing need to exercise such authority, the Departmental Director of Security shall recommend to the Assistant Secretary (Management), as warranted, the reduction or elimination of such authority. The Assistant Secretary (Management) shall take appropriate action in consultation with the affected official(s) and the Departmental Director of Security. Such action may include relinquishment of this authority where the Assistant Secretary (Management) determines that a firm basis for retention does not exist.

§ 2.4 Record requirements.

The Departmental Director of Security shall maintain a listing by name, position title and delegated classification level, of all officials in the Departmental Offices who are authorized under this regulation to originally classify information as Top Secret, Secret or Confidential. Officials within the Departmental Offices with Top Secret classification authority shall report in writing on TD F 71–01.14 (Report of Authorized Classifiers) to the Departmental Director of Security, the names, position titles and authorized classification levels of the officials designated by them in writing to have original Secret or Confidential classification authority. The head of each bureau shall maintain a similar listing of all officials in his or her bureau authorized to apply original Secret and Confidential classification and shall provide a copy of TD F 71–01.14, reflecting the list of officials so authorized, to the Departmental Director of Security. These listings shall be compiled and reported no less than annually each October 15th as required by Treasury Directive 71–01, ''Agency Information Security Program Data''.

§ 2.5 Classification categories.

(a) *Classification in Context of Related Information [1.3(b)].* Certain information which would otherwise be unclassified may require classification when combined or associated with other unclassified or classified information. Such classification on an aggregate basis shall be supported by a written explanation that, at a minimum, shall be maintained with the file or referenced on the record copy of the information.

(b) *Unofficial Publication or Disclosure [1.3(d)].* Following an inadvertent or unauthorized publication or disclosure of information identical or similar to information that has been classified in accordance with the Order or predecessor Orders, the agency of primary interest shall determine the degree of damage to the national security, the need for continued classification, and, in coordination with the agency in which the disclosure occurred, what action must be taken to prevent similar occurrences under procedures contained in § 2.32.

§ 2.6 Duration of classification.

(a) *Information Not Marked for Declassification [1.4].* Information classified under predecessor orders that is not subject to automatic declassification shall remain classified until reviewed for possible declassification.

(b) *Authority to Extend Automatic Declassification Determinations [1.4(b)].* The authority to extend classification of information subject to automatic declassification under any predecessor Executive Order to the Order is limited to those officials who have classification authority over the information and are designated in writing to have original classification authority at the level of the information to remain classified. Any decision to extend the classification on other than a document-by-document basis shall be reported to the Assistant Secretary (Management) who shall, in turn, report this fact to the Director of the Information Security Oversight Office.

§2.7 Identification and markings [1.5(a), (b) and (c)].

The information security system requires that standard markings be applied to classified information. Except in extraordinary circumstances as provided in section 1.5(a) of the Order, or as indicated herein, the marking of paper and electronically created documents shall not deviate from the following prescribed formats. These markings shall also be affixed to material other than paper and electronically created documents, including file folders, film, tape, etc., or the originator shall provide holders or recipients of the information with written instructions for protecting the information.

(a) *Classification Level.* The markings ''Top Secret,'' ''Secret,'' and ''Confidential'' are used to indicate: information that requires protection as classified information under the Order; the highest level of classification contained in a document; the classification level of each page and, in abbreviated form, the classification of each portion of a document.

(1) *Overall Marking.* The highest level of classification of information in a document shall be marked in such a way as to distinguish it clearly from the informational text. Markings shall appear at the top and bottom of the outside of the front cover (if any), on the title page (if any), on the first and last pages bearing text, and on the outside of the back cover (if any).

(2) *Page Marking.* Each interior page of a classified document is to be marked at the top and bottom, either according to the highest classification of the content of the page, including the designation ''UNCLASSIFIED'' when it is applicable, or with the highest overall classification of the document.

(3) *Portion Marking.* Only the Secretary of the Treasury may waive the portion marking requirement for specified classes of documents or information upon a written determination that:

(i) There will be minimal circulation of the specified documents or information and minimal potential usage of the documents or information as a source for derivative classification determinations; or

(ii) There is some other basis to conclude that the potential benefits of portion marking are clearly outweighed by the increased administrative burdens.

(b) Unless the portion marking requirement has been waived as authorized, each portion of a document, including subjects and titles, shall be marked by placing a parenthetical designation either immediately preceding or following the text to which it applies. The symbols, ''(TS)'' for Top Secret, ''(S)'' for Secret, ''(C)'' for Confidential, and ''(U)'' for Unclassified shall be used for this purpose. The symbol, ''(LOU)'' shall be used for Limited Official Use information. If the application of parenthetical designations is not practicable, the document shall contain a statement sufficient to identify the information that is classified and the level of such classification, as well as the information that is *not* classified. If all portions of a document are classified at the same level, this fact may be indicated by a statement to that effect, e.g. ''Entire Text is Classified Confidential.'' If a subject or title requires classification, an unclassified identifier may be applied to facilitate reference.

(c) *Classification Authority.* If the original classifier is other than the signer or approver of the document, his or her indentity shall be shown at the bottom of the first and last pages as

follows: ''CLASSIFIED BY (identification of original classification authority)''.

(d) *Bureau and Office of Origin.* If the identity of the originating bureau or office is not apparent on the face of the document, it shall be clearly indicated below the ''CLASSIFIED BY'' line.

(e) *Downgrading and Declassification Instructions.* Downgrading and, as applicable, declassification instructions shall be shown as follows:

(1) For information to be declassified automatically on a specific date:

Classified by _____
Office _____
Declassify on (date) _____

(2) For information to be declassified automatically upon the occurrence of a specific event:

Classified by _____
Office _____
Declassify on (description of event) _____

(3) For information not to be declassified automatically:

Classified by _____
Office _____
Declassify on *Origination Agency's Determination Required or ''OADR''*

(4) For information to be downgraded automatically on a specific date or upon occurrence of a specific event:

Classified by _____
Office _____
Downgrade to _____
on (date or description of event) _____

(f) *Special Markings*—(1) *Transmittal Documents [1.5(c)].* A transmittal document shall indicate on its first page and last page, if any, the highest classification of any information transmitted by it. It shall also include on the first and last pages the following or similar instruction:

(i) For an unclassified transmittal document:

Unclassified When Classified
Enclosure(s) Detached.

(ii) For a classified transmittal document:

Upon Removal of Attachment(s)
this Document is _____

(classification level of the transmittal document alone), or:

This Document is Classified _____
with Unclassified Attachment(s).

(2) *Restricted Data or Formerly Restricted Data [6.2(a)].* Restricted Data or Formerly Restricted Data shall be marked in accordance with regulations issued under the Atomic Energy Act of 1954, as amended. Restricted Data is information dealing with the design, manufacture, or utilization of atomic weapons, production of special nuclear material or use of special nuclear material in the production of energy. Formerly Restricted Data is classified information that has been removed from the ''restricted data'' category but still remains classified. It relates primarily to the military utilization of atomic weapons.

(3) *Intelligence Sources or Methods [1.5(c)].* Documents that contain information relating to intelligence sources or methods shall include the following marking unless otherwise prescribed by the Director of Central Intelligence: ''WARNING NOTICE—INTELLIGENCE SOURCES OR METHODS INVOLVED'' To avoid confusion as to the extent of dissemination and use restrictions governing the information involved, this marking may not be used in conjunction with special access or sensitive compartmented information controls.

(4) *Foreign Government Information (FGI) [1.5(c)].* Documents that contain FGI shall include either the marking ''FOREIGN GOVERNMENT INFORMATION,'' or a marking that otherwise indicates that the information is foreign government information. If the information is foreign government information that must be concealed, given the relationship or understanding with the foreign government providing the information, the marking shall not be used and the document shall be marked as if it were wholly of United States origin. However, such a marking must be supported by a written explanation that, at a minimum, shall be maintained with the file or referenced on the original or record copy of the document or information.

(5) *National Security Information [4.1(c)].* Classified information furnished outside the Executive Branch shall show the following marking:

NATIONAL SECURITY INFORMATION
Unauthorized Disclosure Subject to
Administrative and Criminal Sanctions

(6) *Automated Data Processing (ADP) and Computer Output [1.5(c)].* (i) Documents that are generated via ADP or as computer output may be marked automatically by systems software. If automatic marking is not practicable, such documents must be marked manually.

(ii) Removable information storage media, however, will bear external labels indicating the security classification of the information and associated security markings, as applicable, such as handling caveats and dissemination controls. Examples of such media include magnetic tape reels, cartridges, and cassettes; removable disks, disk cartridges, disk packs, and diskettes, including ''floppy'' or flexible disks; paper tape reels; and magnetic and punched cards. Two labels may be required on each medium: a color coded security classification label, i.e., orange Standard Form 706 (Top Secret label), red SF 707 (Secret label), blue SF 708 (Confidential label), purple SF 709 (Classified label), green SF 710 (Unclassified label); and a white SF 711 (Data Descriptor label). National stock numbers of the labels, which are available through normal Federal Supply channels, are as follows: SF 706, 7540–01–207–5536; SF 707, 7450–01–207–5537; SF 708, 7450–01–207–5538; SF 709, 7540–01–207–5540; SF 710, 7540–01–207–5539 and SF 711, 7540–01–207–5541. Treasury Directive 71–02 provides for the use of a green ''Officially Limited Information'' label, TD F 71–05.2, to identify information so marked.

(iii) In a mixed environment in which classified and unclassified information in processed or stored, the ''Unclassified'' label must be used to identify the media containing unclassified information. In environments in which only unclassified information is processed or stored, the use of the ''Unclassified'' label is not required. Unclassified media, however, that are on loan from (and must be returned to) vendors do not require the ''Unclassified'' label, but each requires a Data Descriptor label with the words, ''Unclassified Vendor Medium'' entered on it.

(iv) Each medium shall be appropriately affixed with a classification label and, as applicable, with a Data Descriptor label at the earliest practicable time as soon as the proper security classification or control has been established. Labels shall be conspicuously placed on media in a manner that will not adversely affect operation of the equipment in which the media is used. Once applied, the label is not to be removed. A label to identify a higher level of classification may, however, be applied on top of a lower classification level in the event that the content of the media changes, e.g., from Confidential to Secret. A lower classification label may not be applied to media already bearing a higher classification label. Personnel shall be responsible for appropriately labeling and controlling ADP and computer storage media within their possession.

(g) *Electronically Transmitted Information (Messages) [1.5(c)].* Classified information that is transmitted electronically shall be marked as follows:

(1) The highest level of classification shall appear before the first line of text;

(2) A ''CLASSIFIED BY'' line is not required;

(3) The duration of classification shall appear as follows:

(i) For information to be declassified automatically on a specific date: ''DECL: (date)'';

(ii) For information to be declassified upon occurrence of a specific event: ''DECL: (description of event)'';

(iii) For information not to be automatically declassified which requires the originating agency's determination (see also §2.7(e)(3)): ''DECL: OADR'';

(iv) For information to be automatically downgraded: ''DOWNGRADE TO (classification level to which the information is to be downgraded) ON (date or description of event on which downgrading is to occur)''.

(4) Portion marking shall be as prescribed in §2.7(a)(3);

(5) Specially designated markings as prescribed in §2.7(f) (2), (3), and (4) shall appear after the marking for the highest level of classification. These include:

(i) Restricted Data or Formerly Restricted Data;

(ii) Information concerning intelligence sources or methods:

''WNINTEL,'' unless otherwise prescribed by the Director of Central Intelligence; and

(iii) Foreign Government Information (FGI).

(6) Paper copies of electronically transmitted messages shall be marked as provided in § 2.7(a) (1), (2), and (3).

(h) *Changes in Classification Markings [4.1(b)].* When a change is made in the duration of classified information, all holders of record shall be promptly notified. If practicable, holders of record shall also be notified of a change in the level of classification. Holders shall alter the markings on their copy of the information to conform to the change, citing the authority for it. If the remarking of large quantities of information is unduly burdensome, the holder may attach a change of classification notice to the storage unit in lieu of the marking action otherwise required. Items withdrawn from the collection for purposes other than transfer for storage shall be marked promptly in accordance with the change notice.

§ 2.8 Limitations on classification [1.6(c)].

(a) Before reclassifying information as provided in section 1.6(c) of the Order, authorized officials, who must have original classification authority and jurisdiction over the information involved, shall consider the following factors which shall be addressed in a report to the Assistant Secretary (Management) who shall in turn forward a report to the Director of the Information Security Oversight Office:

(1) The elapsed time following disclosure;

(2) The nature and extent of disclosure;

(3) The ability to bring the fact of reclassification to the attention of persons to whom the information was disclosed;

(4) The ability to prevent further disclosure; and

(5) The ability to retrieve the information voluntarily from persons not authorized access in its reclassified state.

(b) Information may be classified or reclassified after it has been requested under the Freedom of Information Act (5 U.S.C. 552), the Privacy Act of 1974 (5 U.S.C. 552a), or the mandatory declassification review provisions of the Order if such classification meets the requirements of the Order and is accomplished personally and on a document-by-document basis by the Secretary of the Treasury, the Deputy Secretary, the Assistant Secretary (Management) or an official with original Top Secret classification authority. Such reclassification actions shall be reported in writing to the Departmental Director of Security.

(c) In no case may information be classified or reclassified in order to conceal violations of law, inefficiency, or administrative error; to prevent embarrassment to a person, organization, or agency; to restrain competition; or to prevent or delay the release of information that does not require protection in the interest of national security.

Subpart B—Derivative Classification

§ 2.9 Derivative Classification Authority.

Designations of derivative classification authority for national security information are contained in Treasury Order 102–19 (or successor order). The authority to derivatively classify inheres within the office and may be exercised by a person acting in that capacity. There may be additional redelegations of derivative classification authority made pursuant to TO 102–19 (or successor order). Officials identified in Treasury Order 102–19 (or successor order) may also administratively control and decontrol sensitive but unclassified information using the legend ''Limited Official Use'' and may redelegate their authority to control and decontrol. Such redelegations shall be in writing on TD F 71–01.20 ''Designation of Controlling/Decontrolling Officials'' (or successor form).

[63 FR 14357, Mar. 25, 1998]

§ 2.10 Listing derivative classification authorities.

Delegations of derivative classification authority to officials not otherwise identified in § 2.9, shall be in writing and reported annually each October

15th to the Departmental Director of Security on TD F 71–01.18 (Report of Authorized Derivative Classifiers). Such delegations shall be limited to the minimum number absolutely required for efficient administration. Periodic reviews and evaluations of such delegations shall be made by the Departmental Director of Security to ensure that officials so designated have demonstrated a continuing need to exercise such authority. If after reviewing and evaluating the information the Departmental Director of Security determines that such officials have not demonstrated a continuing need to exercise such authority, the Departmental Director of Security shall recommend to the Assistant Secretary (Management), as warranted, the reduction or elimination of such authority. The Assistant Secretary (Management) shall take appropriate action in consultation with the affected official(s) and the Departmental Director of Security. Such action may include relinquishment of this authority where the Assistant Secretary (Management) determines that a firm basis for retention does not exist.

§2.11 Use of derivative classification [2.1].

The application of derivative classification markings is a responsibility of those who incorporate, paraphrase, restate, or generate in new form information that is already classified, and of those who apply markings in accordance with instructions from an authorized original classifier or in accordance with an approved classification guide. If an individual who applies derivative classification markings believes that the paraphrasing, restating or summarizing of classified information has changed the level of or removed the basis for classification, that person must consult an appropriate official of the originating agency or office of origin who has the authority to upgrade, downgrade or declassify the information for a final determination. A sample marking of derivatively classified documents is set forth in §2.13.

§2.12 Classification guides.

(a) *General [2.2(a)].* A classification guide is a reference manual which assists document drafters and document classifiers in determining what types or categories of material have already been classified. The classification guide shall, at a minimum:

(1) Identify and categorize the elements of information to be protected;

(2) State which classification level applies to each element or category of information; and

(3) Prescribe declassification instructions for each element or category of information in terms of:

(i) A period of time,

(ii) The occurrence of an event, or

(iii) A notation that the information shall not be declassified automatically without the approval of the originating agency i.e., ''OADR''.

(b) *Review and Record Requirements [2.2(a)].* (1) Each classification guide shall be kept current and shall be reviewed at least once every two years and updated as necessary. Each office within the Departmental Offices and the respective offices of each Treasury bureau possessing original classification authority for national security information shall maintain a list of all classification guides in current use by them. A copy of each such classification guide in current use shall be furnished to the Departmental Director of Security who shall maintain them on behalf of the Assistant Secretary (Management).

(2) Each office and bureau that prepares and maintains a classification guide shall also maintain a record of individuals authorized to apply derivative classification markings in accordance with a classification guide. This record shall be maintained on TD F 71–01.18 (Report of Authorized Derivative Classifiers) which shall be reported annually each October 15th to the Departmental Director of Security.

(c) *Waivers [2.2(c)].* Any authorized official desiring a waiver of the requirement to issue a classification guide shall submit in writing to the Assistant Secretary (Management) a request for approval of such a waiver. Any request for a waiver shall contain, at a minimum, an evaluation of the following factors:

(1) The ability to segregate and describe the elements of information;

(2) The practicality of producing or disseminating the guide because of the nature of the information;

(3) The anticipated usage of the guide as a basis for derivative classification; and

(4) The availability of alternative sources for derivatively classifying the information in a uniform manner.

§ 2.13 Derivative identification and markings [1.5(c) and 2.1(b)].

Information classified derivatively on the basis of source documents or classification guides shall bear all markings prescribed in § 2.7 (a) through (f), as are applicable. Information for these markings shall be taken from the source document or instructions in the appropriate classification guide.

(a) *Classification Authority.* The authority for classification shall be shown as follows:

Derivatively Classified by _____
Office _____
Derived from _____
Declassify on _____

If a document is classified on the basis of more than one source document or classification guide, the authority for classification shall be shown on the ''DERIVED FROM'' line as follows: ''MULTIPLE CLASSIFIED SOURCES''. In these cases, the derivative classifier must maintain the identification of *each* source with the file or record copy of the derivatively classified document. A document derivatively classified on the basis of a source document that is marked ''MULTIPLE CLASSIFIED SOURCES'' shall cite the *source* document on its ''DERIVED FROM'' line rather than the term: ''MULTIPLE CLASSIFIED SOURCES''. Preparers of such documentation shall ensure that the identification of the derivative classifier is indicated. Use of the term ''MULTIPLE CLASSIFIED SOURCES,'' is *not* to be a substitute for the identity of the derivative classification authority.

(b) *Downgrading and Declassification Instructions.* Dates or events for automatic downgrading or declassification shall be carried forward from the source document. This includes the notation ''ORIGINATING AGENCY'S DETERMINATION REQUIRED'' to indicate that the document is not to be downgraded or declassified automatically, or instructions as directed by a classification guide, which shall be shown on a ''DOWNGRADE TO'' or ''DECLASSIFY ON'' line as follows:

DOWNGRADE TO _____
ON (*date, description of event, or OADR*) or,
DECLASSIFY ON (*date, description of event, or OADR*)

Subpart C—Downgrading and Declassification

§ 2.14 Listing downgrading and declassification authorities 3.1(b)].

Downgrading and declassification authority may be exercised by the official authorizing the original classification, if that official is still serving in the same position; a successor in that capacity; a supervisory official of either; or officials delegated such authority in writing by the Secretary of the Treasury or the Assistant Secretary (Management). Such officials may *not* downgrade or declassify information which is classified at a level exceeding their own designated classification authority. A listing of officials delegated such authority, in writing, shall be identified on TD F 71–01.11 (Report of Authorized Downgrading and Declassification Officials) and reported annually each October 15th to the Departmental Director of Security who shall maintain them on behalf of the Assistant Secretary (Management). Current listings of officials so designated shall be maintained by Treasury bureaus and offices within the Departmental Offices.

[55 FR 1644, Jan. 17, 1990; 55 FR 13134, Apr. 9, 1990]

§ 2.15 Declassification policy [3.1].

In making determinations under section 3.1(a) of the Order, officials shall respect the intent of the Order to protect foreign government information and confidential foreign sources.

§ 2.16 Downgrading and declassification markings.

Whenever a change is made in the original classification or in the dates of downgrading or declassification of any classified information, it shall be promptly and conspicuously marked to

indicate the change, the authority for the action, the date of the action, and the identity of the person taking the action. Earlier classification markings shall be cancelled or otherwise obliterated when practicable. See also §2.7(h).

§2.17 Systematic review for declassification [3.3].

(a) *Permanent Records.* Systematic review is applicable only to those classified records and presidential papers or records that the Archivist of the United States, acting under the Federal Records Act, has determined to be of sufficient historical or other value to warrant permanent retention.

(b) *Non-Permanent Classified Records.* Non-permanent classified records shall be disposed of in accordance with schedules approved by the Administrator of General Services under the Records Disposal Act. These schedules shall provide for the continued retention of records subject to an ongoing mandatory declassification review request.

(c) *Systematic Declassification Review Guidelines [3.3(a)].* As appropriate, guidelines for systematic declassification review shall be issued by the Assistant Secretary (Management) in consultation with the Archivist of the United States, the Director of the Information Security Oversight Office and Department officials, to assist the Archivist in the conduct of systematic reviews. Such guidelines shall be reviewed and updated at least every five years unless earlier review is requested by the Archivist.

(d) *Foreign Government Systematic Declassification Review Guidelines [3.3(a)].* As appropriate, guidelines for systematic declassification review of foreign government information shall be issued by the Assistant Secretary (Management) in consultation with the Archivist of the United States, the Director of the Information Security Oversight Office, Department officials and other agencies having declassification authority over the information. These guidelines shall be reviewed and updated every five years unless earlier review is requested by the Archivist.

(e) *Special Procedures.* The Department shall be bound by the special procedures for systematic review of classified cryptologic records and classified records pertaining to intelligence activities (including special activities), or intelligence sources or methods issued by the Secretary of Defense and the Director of Central Intelligence, respectively.

§2.18 Mandatory declassification review [3.4].

(a) Except as provided by section 3.4 (b) of the Order, all information classified by the Department under the Order or any predecessor Executive Order shall be subject to declassification review by the Department, if:

(1) The request is made by a United States citizen or permanent resident alien, a Federal agency, or a state or local government;

(2) The request describes the document or material containing the information with sufficient specificity to enable the Department to locate it with a reasonable amount of effort; and

(3) The requester provides substantial proof as to his or her United States citizenship or status as a permanent resident alien, e.g., a copy of a birth certificate, a certificate of naturalization, official passport or some other means of identity which sufficiently describes the requester's status. A permanent resident alien is any individual, who is not a citizen or national of the United States, who has been lawfully accorded the privilege of residing permanently in the United States as an immigrant in accordance with the immigration laws, such status not having changed. Permanent means a relationship of continuing or lasting nature, as distinguished from temporary, but a relationship may be permanent even though it is one that may be dissolved eventually at the instance either of the United States or of the individual, in accordance with law.

(b) *Processing*—(1) *Initial Requests for Classified Records Originated by the Department.* Requests for mandatory declassification review shall be directed to the Departmental Office of Security, 1500 Pennsylvania Avenue, NW., Washington, DC 20220. Upon receipt of each request for declassification, pursuant to section 3.4 of the Order, the following procedures shall apply:

(i) The Departmental Office of Security shall acknowledge the receipt of the request in writing.

(ii) A valid mandatory declassification review request need not identify the requested information by date or title of the responsive records, but must be of sufficient particularity to allow Treasury personnel to locate the records containing the information sought with a reasonable amount of effort. Whenever a request does not reasonably describe the information sought, the requester shall be notified by the Departmental Office of Security that unless additional information is provided or the scope of the request is narrowed, no further action will be undertaken.

(iii) The Departmental Office of Security shall determine the appropriate office or bureau to take action on the request and shall forward the request to that office or bureau.

(iv) In responding to mandatory declassification review requests, the appropriate reviewing officials shall make a prompt declassification determination. The Departmental Office of Security shall notify the requester if additional time is needed to process the request. Reviewing officials shall also identify the amount of search and/or review time required to process the request. The Department shall make a final determination within one year from the date of receipt except in unusual circumstances. When information cannot be declassified in its entirety, reasonable efforts, consistent with other applicable laws, will be made to release those declassified portions of the requested information which constitute a coherent segment. Upon the denial or partial denial of an initial request, the Departmental Office of Security shall also notify the requester of the right of an administrative appeal which must be filed with the Assistant Secretary (Management) within 60 days of receipt of the denial.

(v) When the Department receives a mandatory declassification review request for records in its possession that were originated by another agency, the Departmental Office of Security shall forward the request to that agency. The Departmental Office of Security shall include a copy of the records requested together with the Department's recommendations for action. Upon receipt, the originating agency shall process the request in accordance with the Directive 32 CFR 2001.32(a)(2)(i). The originating agency shall also be requested to communicate its declassification determination to Treasury.

(vi) When another agency forwards to the Department a request for information in that agency's custody that has been classified by Treasury, the Departmental Office of Security shall:

(A) Advise the other agency as to whether it can notify the requester of the referral;

(B) Review the classified information in coordination with other agencies that have a direct interest in the subject matter; and

(C) Respond to the requester in accordance with the procedures in § 2.18(b)(1)(iv). If requested, Treasury's determination shall be communicated to the referring agency.

(vii) Appeals of denials of a request for declassification shall be referred to the Assistant Secretary (Management) who shall normally make a determination within 30 working days following the receipt of an appeal. If additional time is required to make a determination, the Assistant Secretary (Management) shall notify the requester of the additional time needed and provide the requester with the reason for the extension. The Assistant Secretary (Management) shall notify the requester in writing of the final determination and, as applicable, the reasons for any denial.

(viii) Except as provided in this paragraph, the Department shall process mandatory declassification review requests for classified records containing foreign government information in accordance with § 2.18(a). The agency that initially received or classified the foreign government information shall be responsible for making a declassification determination after consultation with concerned agencies. If upon receipt of the request, the Department determines that Treasury is not the agency that received or classified the foreign government information, it shall refer the request to the appropriate agency for action. Consultation

with the foreign originator through appropriate channels may be necessary prior to final action on the request.

(ix) Mandatory declassification review requests for cryptologic information and/or information concerning intelligence activities (including special activities) or intelligence sources or methods shall be processed solely in accordance with special procedures issued by the Secretary of Defense and the Director of Central Intelligence, respectively.

(x) The fees to be charged for mandatory declassification review requests shall be for search and/or review and duplication. The fee charges for services of Treasury personnel involved in locating and/or reviewing records shall be at the rate of a GS-10, Step 1, for each hour or fraction thereof, except that no charge shall be imposed for search and/or review consuming less than one hour.

(A) Photocopies per page up to 8½″ by 14″ shall be charged at the rate of 10 cents each except that no charge will be imposed for reproducing ten (10) pages or less when search and/or review time requires less than one hour.

(B) When it is estimated that the costs associated with the mandatory declassification review request will exceed $100.00, the Departmental Office of Security shall notify the requester of the likely cost and obtain satisfactory written assurance of full payment or may require the requester to make an advance payment of the entire fee before continuing to process the request. The Department reserves the right to request prepayment after a mandatory declassification review request is processed and before documents are released. In the event the requester does not agree to pay the actual charges, he or she shall advise how to proceed with the mandatory declassification review request. Failure of a requester to pay charges after billing will result in future requests not being honored.

(C) In order for a requester's initial request to be processed it shall be accompanied by a statement that he or she is agreeable to paying fees for search and/or review and copying. In the event the initial request does not include this statement, processing of the request will be held in abeyance until such time as the required statement is received. Failure to provide a response within a reasonable amount of time will serve as the basis for administratively terminating the mandatory declassification review request.

(D) Payment of fees shall be made by check or money order payable to the Treasurer of the United States. Fees levied by the Department of the Treasury for mandatory declassification review requests are separate and distinct from any other fees which might be imposed by a Presidential Library, the National Archives and Records Administration or another agency or department.

§ 2.19 Assistance to the Department of State [3.3(b)].

The Secretary of the Treasury shall assist the Department of State in its preparation of the ''Foreign Relations of the United States'' series by facilitating access to appropriate classified material in Treasury custody and by expediting declassification review of documents proposed for inclusion in the series.

§ 2.20 Freedom of Information/Privacy Act requests [3.4].

The Department of the Treasury shall process requests for records containing classified national security information that are submitted under the provisions of the Freedom of Information Act, as amended, or the Privacy Act of 1974, as amended, in accordance with the provisions of those Acts.

Subpart D—Safeguarding

§ 2.21 General [4.1].

Information classified pursuant to this Order or predecessor Orders shall be afforded a level of protection against unauthorized disclosure commensurate with its level of classification.

§ 2.22 General restrictions on access [4.1].

(a) *Determination of Need-To-Know.* Classified information shall be made available to a person only when the possessor of the classified information establishes in each instance, except as

provided in section 4.3 of the Order, that access is essential to the accomplishment of official United States Government duties or contractual obligations.

(b) *Determination of Trustworthiness.* A person is eligible for access to classified information only after a showing of trustworthiness as determined by the Secretary of the Treasury based upon appropriate investigations in accordance with applicable standards and criteria.

(c) *Classified Information Nondisclosure Agreement.* Standard Form 312 (Classified Information Nondisclosure Agreement) or the prior SF 189, bearing the same title, are nondisclosure agreements between the United States and an individual. The execution of either the SF 312 or SF 189 agreement by an individual is necessary before the United States Government may grant the individual access to classified information. Bureaus and the Departmental Offices must retain executed copies of the SF 312 or prior SF 189 in file systems from which the agreements can be expeditiously retrieved in the event the United States must seek their enforcement. Copies or legally enforceable facsimiles of the SF 312 or SF 189 must be retained for 50 years following their date of execution. The national stock number for the SF 312 is 7540–01–280–5499.

§ 2.23 Access by historical researchers and former presidential appointees [4.3].

(a) Access to classified information may be granted only as is essential to the accomplishment of authorized and lawful United States Government purposes. This requirement may be waived, however, for persons who:

(1) Are engaged in historical research projects, or

(2) Previously have occupied policymaking positions to which they were appointed by the President.

(b) Access to classified information may be granted to historical researchers and to former Presidential appointees upon a determination of trustworthiness; a written determination that such access is consistent with the interests of national security; the requestor's written agreement to safeguard classified information; and the requestor's written consent to have his or her notes and manuscripts reviewed to ensure that no classified information is contained therein. The conferring of historial researcher status does not include authorization to release foreign government information or other agencies' classified information per § 2.24 of this part. By the terms of section 4.3(b)(3) of the Order, former Presidential appointees not engaged in historical research may *only* be granted access to classified documents which they ''originated, reviewed, signed or received while serving as a Presidential appointee.'' Coordination shall be made with the Departmental Director of Security with respect to the required written agreements to be signed by the Department and such historical researchers or former Presidential appointees, as a condition of such access and to ensure the safeguarding of classified information.

(c) If the access requested by historical researchers and former Presidential appointees requires the rendering of services for which fair and equitable fees may be charged pursuant to 31 U.S.C. 9701, the requestor shall be so notified and the fees may be imposed. Treasury's fee schedule identified in § 2.18(b)(1)(x), applicable to mandatory declassification review, shall also apply to fees charged for services provided to historical researchers and former Presidential appointees for search and/or review and copying.

§ 2.24 Dissemination [4.1(d)].

Except as otherwise provided by section 102 of the National Security Act of 1947, 61 Stat. 495, 50 U.S.C. 403, classified information originating in another agency may not be disseminated outside the Department without the consent of the originating agency.

§ 2.25 Standards for security equipment [4.1(b) and 5.1(b)].

The Administrator of General Services issues (in coordination with agencies originating classified information), establishes and publishes uniform standards, specifications, and supply schedules for security equipment designed to provide for secure storage and to destroy classified information.

Treasury bureaus and the Departmental Offices may establish more stringent standards for their own use. Whenever new security equipment is procured, it shall be in conformance with the standards and specifications referred to above and shall, to the maximum extent practicable, be of the type available through the Federal Supply System.

§ 2.26 Accountability procedures [4.1(b)].

(a) *Top Secret Control Officers.* Each Treasury bureau and the Departmental Offices shall designate a primary and alternate Top Secret Control Officer. Within the Departmental Offices, the Top Secret Control Officer function will be established in the Office of the Executive Secretary for collateral Top Secret information and in the Office of the Special Assistant to the Secretary (National Security) with respect to sensitive compartmented information. The term ''collateral'' refers to national security information classified Confidential, Secret, or Top Secret under the provisions of Executive Order 12356 or prior Orders, for which special intelligence community systems of compartmentation (such as sensitive compartmented information) or special access programs are not formally established. Top Secret Control Officers so designated must have a Top Secret security clearance and shall:

(1) Initially receive all Top Secret information entering their respective bureau, including the Departmental Offices. Any Top Secret information received by a Treasury bureau or Departmental Offices employee shall be immediately hand carried to the designated Top Secret Control Officer for proper accountability.

(2) Maintain current accountability records of Top Secret information received within their bureau or office.

(3) Ensure that Top Secret information is properly stored and that Top Secret information under their control is personally destroyed, when required. Top Secret information must be destroyed in the presence of an appropriately cleared official who shall actually witness such destruction. Accordingly, the use of burnbags to store Top Secret information, pending final destruction at a later date, is not authorized.

(4) Ensure that prohibitions against reproduction of Top Secret information are strictly followed.

(5) Conduct annual physical inventories of Top Secret information. An inventory shall be conducted in the presence of an individual with an appropriate security clearance. The inventory shall be completed annually and signed by the Top Secret Control Officer and the witnessing individual.

(6) Ensure that Top Secret documents are downgraded, declassified, retired or destroyed as required by regulations or other markings.

(7) Attach a TD F 71–01.7 (Top Secret Document Record) to the first page or cover of each copy of Top Secret information. The Top Secret Document Record shall be completed by the Top Secret Control Officer and shall serve as a permanent record.

(8) Ensure that all persons having access to Top Secret information sign the Top Secret Document Record. This also includes persons to whom oral disclosure of the contents is made.

(9) Maintain receipts concerning the transfer and destruction of Top Secret information. Record all such actions on the Top Secret Document Record which shall be retained for a minimum of three years.

(10) As received, number in sequence each Top Secret document in a calendar year series (e.g. TS 89–001). This number shall be posted on the face of the document and on all forms required for control of Top Secret information.

(11) Attach a properly executed TD F 71–01.5 (Classified Document Record of Transmittal) when a Top Secret document is transmitted internally or externally.

(12) Verify, prior to releasing Top Secret information, that the recipient has both a security clearance and is authorized access to such information.

(13) Report, in writing, all Top Secret documents unaccounted for to the Assistant Secretary (Management) who shall take appropriate action in conjunction with the Departmental Director of Security.

(14) Assure that no individual within his or her office or bureau transmits

Top Secret information to another individual or office without the knowledge and consent of the Top Secret Control Officer.

(15) Ensure upon receipt that a Standard Form 703 (Top Secret Cover Sheet) is affixed to such information.

(16) Notify office and/or bureau employees annually in writing of the designated control point for all incoming and outgoing Top Secret information.

(17) Be notified as to the transmission, per § 2.28(b), whenever Top Secret information is sent outside of a Treasury bureau or office within the Departmental Offices.

(b) *Top Secret Control Officer Listings.* In order for the Departmental Director of Security to maintain a current listing of Top Secret Control Officers within the Department, each Treasury bureau and the Departmental Offices shall annually report each October 15th in writing to the Departmental Office of Security, the identities of the office(s) and names of the officials designated as their primary and alternate Top Secret Control Officers. Any changes in these designations shall be reported to the Departmental Director of Security within thirty days.

(c) *Top Secret Document Record.* Upon receipt in the Department a green, color coded, TD F 71–01.7 (Top Secret Document Record) shall be attached by the Top Secret Control Officer to the first page or cover of the original and each copy of Top Secret information. The Top Secret Document Record shall remain attached to the Top Secret information until it is either transferred to another United States Government agency, downgraded, declassified or destroyed. The Top Secret Document Record, which shall initially be completed by the Top Secret Control Officer, shall identify the Top Secret information attached, and shall serve as a permanent record of the information. All persons, including stenographic and clerical personnel, having access to the information attached to the Top Secret Document Record must list their name and the date on the TD F 71–01.7 prior to accepting responsibility for its custody. The TD F 71–01.7 shall also indicate those individuals to whom only oral disclosure of the contents is made. Whenever any Top Secret information is transferred to another United States Government agency, downgraded, declassified or destroyed, the Top Secret Control Officer shall record the action on the Top Secret Document Record and retain it for a minimum or three years after which time it may be destroyed. In order to maintain the integrity of the color coding process the photocopying and use of non-color coded Top Secret Document Record forms is prohibited.

(d) *Classified Document Record of Transmittal.* TD F 71–01.5 (Classified Document Record of Transmittal) shall be the exclusive classified document accountability record for use within the Department of the Treasury. No other logs or records shall be required except for the use of TD F 71–01.7 which is applicable to Top Secret information. TD F 71–01.5 shall be used for single or multiple document receipting and for internal and external routing. The inclusion of classified information on TD F 71–01.5 is to be avoided. In the event the subject title is classified, a recognizable short title shall be used, e.g., first letter of each word in the subject title. Several items may be transmitted to the same addressee with one TD F 71–01.5. TD F's 71–01.5 shall be maintained for a three year period after which the form may be destroyed. No record of the actual destruction of the TD F 71–01.5 is necessary.

(1) *Top Secret Information.* Top Secret information shall be subject to a continuous receipt system regardless of how brief the period of custody. TD F 71–01.5 shall be used for this purpose. Top Secret accountability records shall be maintained by Top Secret Control Officers separately from the accountability records of other classified information.

(2) *Secret Information.* Receipt on TD F 71–01.5 shall be required for transmission of Secret information between bureaus, offices and separate agencies. Responsible office heads shall determine administrative procedures required for the internal control within their respective offices. The volume of classified information handled and personnel resources available must be considered in determining the level of adequate security measures while at the

same time maintaining operational efficiency.

(3) *Confidential and Limited Official Use Information.* Receipts for Confidential and Limited Official Use information shall not be required unless the originator indicates that receipting is necessary.

[55 FR 1644, Jan. 17, 1990; 55 FR 13134, Apr. 9, 1990]

§2.27 Storage [4.1(b)].

Classified information shall be stored only in facilities or under conditions designed to prevent unauthorized persons from gaining access to it.

(a) *Minimum Requirements for Physical Barriers*—(1) *Top Secret.* Top Secret information shall be stored in a GSA-approved security container with an approved, built-in, three-position, dial-type, changeable, combination lock; in a vault protected by an alarm system and response force; or in other types of storage facilities that meet the standards for Top Secret information established under the provisions of §2.25. Top Secret information stored outside the United States must be in a facility afforded diplomatic status. One or more of the following supplementary controls is required:

(i) The area that houses the security container or vault shall be subject to the continuous protection of U.S. guard or duty personnel;

(ii) U.S. Guard or duty personnel shall inspect the security container or vault at least once every two hours; or

(iii) The security container or vault shall be controlled by an alarm system to which a force will respond in person within 15 minutes.

Within the United States, the designated security officer in each Treasury bureau and the Department Offices shall prescribe those supplementary controls deemed necessary to restrict unauthorized access to areas in which such information is stored. Any vault used for the storage of sensitive compartmented information shall be configured to the specifications of the Director of Central Intelligence. Prior to an office or bureau operating such a vault, formal written certification for its use must first be obtained from the Special Assistant to the Secretary (National Security) as the senior Treasury official of the Intelligence Community.

(2) *Secret and Confidential.* Secret and Confidential information shall be stored in a manner and under the conditions prescribed for Top Secret information, or in a container, vault, or alarmed area that meets the standards for Secret or Confidential information established under the provisions of §2.25. Secret and Confidential information may also be stored in a safe-type filing cabinet having a built-in, three-position, dial-type, changeable, combination lock, and may continue to be stored in a steel filing cabinet equipped with a steel lock-bar secured by a GSA-approved three-position, dial-type, changeable, combination padlock. The modification, however, of steel filing cabinets to barlock-type as storage equipment for classified information and material is prohibited and efforts are to be made to selectively phase out the use of such barlock cabinets for storage of Secret information. Exceptions may be authorized only by the Departmental Director of Security upon written request from the designated bureau security officer. The designated security officer in each Treasury bureau and the Departmental Offices shall prescribe those supplementary controls deemed necessary to restrict unauthorized access to areas in which such information is stored. Access to bulky Secret and Confidential material in weapons storage areas, strong rooms, evidence vaults, closed areas or similar facilities shall be controlled in accordance with requirements approved by the Department. At a minimum, such requirements shall prescribe the use of GSA-approved, key-operated, high-security padlocks. For Secret and Confidential information stored outside the United States, it shall be stored in the manner authorized for Top Secret, in a GSA-approved safe file, or in a barlick cabinet equipped with a security-approved combination padlock if the cabinet is located in a security-approved vault and/or in a restricted area to which access is controlled by United States citizen personnel on a 24-hour basis.

(b) *Combinations*—(1) *Equipment in Service.* Combinations to dial-type, changeable, combination locks shall be

changed only by persons having an appropriate security clearance, and shall be changed,

(i) Whenever such equipment is placed in use;

(ii) Whenever a person knowing the combination no longer requires access to it;

(iii) Whenever a combination has been subjected to possible compromise;

(iv) Whenever the equipment is taken out of service: or

(v) At least once each year.

Knowledge of combinations shall be limited to the minimum number of persons necessary for operating purposes. Records of combinations shall be classified no lower than the highest level of classified information that is protected by the combination lock. When securing a combination lock, the dial must be turned at least four (4) complete times in the same direction after closing. Defects in or malfunctioning of storage equipment protecting classified national security or officially limited information must be reported immediately to the designated office or bureau security official for appropriate action.

(2) *Equipment Out of Service.* When security equipment, used for the storage of classified national security or officially limited information, is taken out of service, it shall be physically inspected to ensure that no classified information or officialy limited information remains therein. Built-in, three-position, dial-type, changeable, combination locks shall be reset to the standard combination 50–25–50 and combination padlocks shall be reset to the standard combination 10–20–30. The designated security officer in each Treasury bureau and the Departmental Offices shall prescribe such supplementary controls deemed necessary to fulfill their individual needs to be consistent with § 2.27.

(3) *Security Container Check Sheet.* Each piece of security equipment used for the storage of classified information will have attached conspicuously to the outside a Standard Form 702 (Security Container Check Sheet) on which an authorized person will record the date and actual time each business day that they initially unlock and finally lock the security equipment, followed by their initials. Users of this form are to avoid citations which reflect the opening, locking and checking of the security equipment at standardized (non-actual) times, e.g., opened at 8:00 a.m. and closed/checked at 4:00 p.m. Bureaus and the Departmental Offices may continue to use Optional Form 62 (Safe or Cabinet Security Record) in lieu of the SF 702 until September 30, 1990, or such time as their supplies of Optional Form 62 are exhausted. The reprinting or photostatic reproduction and use of Optional Form 62 is *not* authorized. On each normal workday, regardless of whether the security equipment was opened on that particular day, the security equipment shall be checked by authorized personnel to assure that no surreptitious attempt has been made to penetrate the security equipment. Such examinations normally consist of a quick or casual visual check to note either any obvious marks or gashes, or defects or malfunction of the security equipment which are different from their prior observations or experience in operating the equipment concerned. Any such discrepancies in the appearance of or functioning of the security equipment, based upon this visual check, should be reported to appropriate security officials. The ''Checked By'' column of the SF 702 or Optional Form 62 shall be annotated to reflect the date and time of this action followed by that person's initials. Security equipment used for the storage of classified information that has been opened on a particular day shall not be left unattended at the end of that day until it has been locked by an authorized person and checked by a second person. In the event a second person is not available within the office, the individual who locked the equipment shall also annotate the ''Checked By'' column of the SF 702 or Optional Form 62. Reversible ''OPEN-CLOSED'' or ''LOCKED-UNLOCKED'' signs, available through normal supply channels, shall also be used on such security equipment. The respective side of the sign shall be displayed to indicate when the container is open or closed. Except for the SF 702 or Optional Form 62, the top surface area of security equipment is *not* to be used for

storage and must be kept free of extraneous material. SF 702 and/or Optional Form 62 shall be utilized on all security equipment used for storing information bearing the control legend ''Limited Official Use''. The designated security officer in each Treasury bureau and the Department Offices may, as warranted, prescribe supplementary use of the SF 702 or Optional Form 62 to apply to other authorized legends approved by the Department for officially limited information.

(4) *Safe Combination Records.* Combinations to security equipment containing classified information shall be recorded on Standard Form 700 (Security Container Information), national stock number 7540–01–214–5372. Bureaus and the Departmental Offices may continue to use Treasury Form 4032 (Security Container Information) in lieu of the SF 700 until September 30, 1990, or such time as their supplies of Treasury Form 4032 are exhausted. The reprinting of Treasury Form 4032 is not authorized. Each part of the SF 700 shall be completed in its entirety. The names, addresses and home telephone numbers of personnel responsible for the combination, and the classified information stored therein, must be indicated on part 1 of the SF 700. The completed part 1 shall be posted in the front interior of the top, control or locking drawer of the security equipment concerned. Part 2 shall be inserted in the envelop (part 2A) provided, and forwarded via appropriate secure means to the designated bureau or Departmental Offices central repository for security combinations. Part 2 shall have the highest level of classified information, stored in the security equipment concerned, annotated in both the top and bottom border areas of the completed SF 700. Part 2A shall have the highest level of classified information, stored in the security equipment concerned, annotated in the blank space immediately above the word, ''WARNING'' which appears on the SF 700. The completion of the SF 700 or Treasury Form 4032 does not constitute a classification action but serves as an administrative requirement to ensure the protection of classified information stored in such security equipment. SF 700 shall be utilized on all security equipment used for storing information bearing the control legend ''Limited Official Use''. The designated security officer in each Treasury bureau and the Departmental Offices may prescribe supplementary use of the SF 700 to apply to other authorized legends approved by the Department for officially limited information, as warranted.

(c) *Keys.* The designated security officer in each Treasury bureau and the Departmental Offices shall establish administrative procedures for the control and accountability of keys and locks whenever key-operated, high-security padlocks are utilized. The level of protection provided such keys shall be equivalent to that afforded the information being protected by the padlock.

(d) *Classified Document Cover Sheets.* Classified document cover sheets alert personnel that documents or folders are classified and require protection from unauthorized scrutiny. Individuals who prepare or package classified documents are responsible for affixing the appropriate document cover sheet. Orange Standard Form 703 (Top Secret Cover Sheet), red SF 704 (Secret Cover Sheet) and blue SF 706 (Confidential Cover Sheet) are the only authorized cover sheets for collateral classified information. The national stock numbers of these cover sheets are as follows: SF 703, 7540–01–213–7901; SF 704, 7540–01–213–7902; and SF 705, 7540–01–213–7903. In order to maintain the integrity of the color coding process the photocopying and use of non-color coded classified document cover sheets is prohibited. Bureaus and offices shall maintain a supply of classified document cover sheets appropriate for their needs. Classified document cover sheets are designed to be reused and will be removed before classified information is filed to conserve filing space and prior to the destruction of classified information. Document cover sheets are to be used to shield classified documents while in use and particularly when the transmission is made internally within a headquarters by courier, messenger or by personal contact. File folders containing classified information should be otherwise marked, e.g., at the top and bottom of the front and

back covers, to indicate the overall classification of the contents rather than permanently affixing the respective classified document cover sheet. Treasury Directive 71–02 provides for the use of a green cover sheet, TD F 71–01.6 (Limited Official Use Document Cover Sheet) for information bearing the control legend ''Limited Official Use''. Bureaus or offices electing to create and use other cover sheets for officially limited information must obtain prior written approval from the Departmental Director of Security.

(e) *Activity Security Checklist.* Standard Form 701 (Activity Security Checklist) provides a systematic means to make a thorough end-of-day security inspection for a particular work area and to allow for employee accountability in the event that irregularities are discovered. Bureaus and the Departmental Offices may include additional information on the SF 701 to suit their unique needs. The SF 701, available through normal supply channels has a national stock number of 7540–01–213–7900. It shall be the only form used in situations that call for use of an activity security checklist. Completion, storage and disposition of SF 701 will be determined by each bureau and the Departmental Offices.

§ 2.28 Transmittal [4.1(b)].

(a) *Preparation.* Classified information to be transmitted outside of a Treasury facility shall be enclosed in opaque inner and outer covers. The inner cover shall be a sealed wrapper or envelope plainly marked with the assigned security classification and addresses of both sender and addressee. The outer cover shall be sealed and addressed with no identification of the classification of its contents. Whenever classified material is to be transmitted and the size of the material is not suitable for use of envelopes or similar wrappings, it shall be enclosed in two opaque sealed containers, such as boxes or heavy wrappings. Material used for packaging such bulk classified information shall be of sufficient strength and durability as to provide security protection while in transit, to prevent items from breaking out of the container, and to facilitate detection of any tampering therewith.

(b) *Receipting.* A receipt, Treasury Department Form 71–01.5 (Classified Document Record of Transmittal), shall be enclosed in the inner cover, except that Confidential and Limited Official Use information shall require a receipt only if the sender deems it necessary. The receipt shall identify the sender, addressee and describe the document, but shall contain no classified information. It shall be immediately signed by the recipient and returned to the sender. Within a Treasury facility, such information may be transmitted between offices by direct contact of the officials concerned in a single sealed opaque envelope with no security classification category being shown on the outside of the envelope. Classified information shall never be delivered to unoccupied offices or rooms. Senders of classified information should maintain appropriate records of outstanding receipts for which return of the original signed copy is still pending. TD F's 71–01.5 shall be maintained for a three year period after which they may be destroyed. No record of the actual destruction of the TD F 71–01.5 is required.

(c) *Transmittal of Top Secret.* The transmittal of Top Secret information outside of a Treasury facility shall be by specifically designated personnel, by State Department diplomatic pouch, by a messenger-courier system authorized for that purpose, e.g., Defense Courier Service, or over authorized secure communications circuits. Top Secret information may *not* be sent via registered mail.

(d) *Transmittal of Secret.* The transmittal of Secret information shall be effected in the following manner:

(1) *The 50 States, District of Columbia and Puerto Rico.* Secret information may be transmitted within and between the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico by one of the means authorized for Top Secret information, by the United States Postal Service registered mail or express mail service; or by protective services provided by United States air or surface commercial carriers under such conditions as may be prescribed by the Departmental Director of Security. United States Postal Service express mail service

shall be used only when it is the most effective means to accomplish a mission within security, time, cost and accountability constraints. To ensure direct delivery to the addressee, the ''Waiver of Signature and Indemnity'' block on the United States Postal Service Express Mail Label 11–B may not be executed under any circumstances. All Secret express mail shipments are to be processed through mail distribution centers or delivered directly to a United States Postal Service facility or representative. The use of external (street side) express mail collection boxes is prohibited. Only the express mail services of the United States Postal Service are authorized.

(2) *Other Areas.* Secret information may be transmitted from, to, or within areas other than those specified in §2.28(d)(1) by one of the means established for Top Secret information, or by United States registered mail through Military Postal Service facilities provided that the information does not at any time pass out of United States citizen control and does not pass through a foreign postal system. Transmittal outside such areas may also be accomplished under escort of appropriately cleared personnel aboard United States Government owned and United States Government contract vehicles or aircraft, ships of the United States Navy, civil service manned United States Naval ships, and ships of United States Registry. Operators of vehicles, captains or masters of vessels, and pilots of aircraft who are United States citizens, and who are appropriately cleared, may be designated as escorts. Secret information may not be sent via certified mail.

(e) *Transmittal of Confidential and Limited Official Use Information.* Confidential and Limited Official Use information shall be transmitted within and between the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, and United States territories or possessions by one of the means established for higher classifications, or by the United States Postal Service registered mail. Outside these areas, confidential and Limited Official Use information shall be transmitted only as is authorized for higher classifications. Confidential and Limited Official Use information may not be sent via certified mail.

(f) *Hand Carrying of Classified Information in Travel Status*—(1) *General Provisions.* Personnel in travel status shall physically transport classified information across international boundaries only when absolutely essential. Whenever possible, and when time permits, the most desirable way to transmit classified information to the location being visited is by other authorized means identified in §2.28 (c), (d) and (e). The physical transportation of classified information on non-United States flag aircraft should be avoided if possible. Treaury Directive 71–03, ''Screening of Airline Passengers Carrying Classified Information or Material'' provides specifics on the requirements for transporting classified information.

(2) *Specific Safeguards.* If it is determined that the transportation of classified information by an individual in travel status is in the best interest of the United States Government, the following specific safeguards shall be fulfilled:

(i) Classified information shall be in the physical possession of the individual and shall have adequate safeguards at all times if proper storage at a United States Government facility is not available. Under no circumstances shall classified information be stored in a hotel safe or room, locked in automobiles, private residences, train compartments, or any vehicular detachable storage compartments.

(ii) An inventory of all Top Secret classified information, including teletype messages, shall be made prior to departure and a copy of same shall be retained by the traveller's office until the traveller's return at which time all Top Secret classified information shall be accounted for. These same procedures are recommended for information classified Secret, Confidential or Limited Official Use.

(iii) Classified information shall never be displayed or used in any manner in public conveyances or rooms. First class or business travel is not authorized when the justification for commercially available transportation

is based on the need for reviewing classified materials while enroute. Travelers are responsible for reviewing and familiarizing themselves with required classified materials, under appropriately secure circumstances, in advance of their travel and not during such travel.

(iv) In order to avoid unnecessary delays in the screening process prior to boarding commercial air carriers, the traveler shall have in his or her possession written authorization, on Treasury or bureau letterhead, to transport classified information and either an identification card or credential bearing both a photograph and descriptive data. Courier authorizations shall be signed by an appropriate security representative authorized to direct official travel. This courier authorization, along with official travel orders, shall, in most instances, permit the individual to exempt the classified information from inspection. If difficulty is encountered, the traveler should tactfully refuse to exhibit or disclose the classified information to inspection and should insist on the assistance of the local United States diplomatic representative at the port of entry or departure.

(v) Upon completion of the visit, the traveler shall have the information returned to his or her office by approved means. All Top Secret and Secret classified information, including teletype messages transported for the purpose of the visit shall be accounted for. It is highly recommended that Confidential and Limited Official Use information also be accounted for. If any Top Secret or Secret classified items are left with the office being visited for its retention and use, the individual shall obtain a receipt.

[55 FR 1644, Jan. 17, 1990, as amended at 55 FR 50321, Dec. 6, 1990]

§ 2.29 Telecommunications and computer transmissions.

Classified information shall not be communicated by telecommunications or computer transmissions except as may be authorized with respect to the transmission of classified information over authorized secure communications circuits or systems.

§ 2.30 Special access programs [1.2(a) and 4.2(a)].

Only the Secretary of the Treasury may create or continue a special access program if:

(a) Normal management and safeguarding procedures do not limit access sufficiently; and

(b) The number of persons with access is limited to the minimum necessary to meet the objective of providing extra protection for the information.

§ 2.31 Reproduction controls [4.1(b)].

(a) Top Secret documents, except for the controlled initial distribution of information processed or received electronically, shall not be reproduced without the consent of the originator.

(b) Unless restricted by the originating agency, Secret, Confidential and Limited Official Use documents may be reproduced to the extent required by operational needs.

(c) Reproductions of classified documents shall be subject to the same accountability and controls as the original documents.

(d) Paragraphs (a) and (b) of this section shall not restrict the reproduction of documents to facilitate review for possible declassification.

§ 2.32 Loss or possible compromise [4.1(b)].

(a) *Report of Loss or Possible Compromise.* Any Treasury employee who has knowledge of the loss or possible compromise or classified information shall immediately report the circumstances to their designated office or bureau security officer who shall take appropriate action to assess the degree of damage. In turn, the Departmental Director of Security shall be immediately notified by the affected office or bureau security officer of such reported loss or possible compromise. The Departmental Director of Security shall also notify the department or agency which originated the information and any other interested department or agency so that a damage assessment may be conducted and appropriate measures taken to negate or minimize any adverse effect of the loss or possible compromise. Compromises

may occur through espionage, unauthorized disclosures to the press or other members of the public, publication of books and treatises, the known loss of classified information or equipment to foreign powers, or through various other circumstances.

(b) *Inquiry*. The Departmental Director of Security shall notify the Assistant Secretary (Management) who shall then direct an immediate inquiry to be conducted for the purpose of taking corrective measures and assessing damages. Based on the results of this inquiry, it may be deemed appropriate to notify the Inspector General who shall determine whether the Office of the Inspector General or a Treasury bureau will conduct any additional investigation. Upon completion of the investigation by the Inspector General, the Inspector General shall recommend to the Assistant Secretary (Management) and concurrently to the Departmental Director of Security, the appropriate administrative, disciplinary, or legal action to be taken based upon jurisdictional authority of the Treasury components involved.

(c) *Content of Damage Assessments.* At a minimum, damage assessments shall be in writing and contain the following:

(1) Identification of the source, date and circumstances of the compromise.

(2) Classification and description of the specific information which has been lost.

(3) An analysis and statement of the known or probable damage to the national security that has resulted or may result.

(4) An assessment of the possible advantage to foreign powers resulting from the compromise.

(5) An assessment of whether,

(i) The classification of the information involved should be continued without change;

(ii) The specific information, or parts thereof, shall be modified to minimize or nullify the effects of the reported compromise and the classification retained;

(iii) Downgrading, declassification, or upgrading is warranted, and if so, confirmation of prompt notification to holders of any change, and

(6) An assessment of whether countermeasures are appropriate and feasible to negate or minimize the effect of the compromise.

(d) *System for Control of Damage Assessments.* Each Treasury bureau and the Departmental Offices shall establish a system of control and internal procedures to ensure that damage assessments are performed in all cases described in §2.32(a) and that records are maintained in a manner that facilitates their retrieval and use within the Department.

(e) *Cases Involving More Than One Agency*. (1) Whenever a compromise involves the classified information or interests of more than one agency, the Departmental Director of Security shall advise the other affected agencies of the circumstances and findings that affect their information or interests. Whenever a damage assessment, incorporating the product of two or more agencies is needed, the affected agencies shall agree upon the assignment of responsibility for the assessment and Treasury components will provide all data pertinent to the compromise to the agency responsible for conducting the assessment.

(2) Whenever a compromise of United States classified information is the result of actions taken by foreign nationals, by foreign government officials, or by United States nationals in the employ of international organizations, the agency performing the damage assessment shall endeavor to ensure through appropriate intergovernmental liaison channels, that information pertinent to the assessment is obtained. Whenever more than one agency is responsible for the assessment, those agencies shall coordinate the request prior to transmittal through appropriate channels.

(3) Whenever an action is contemplated against any person believed responsible for the loss or compromise of classified information, damage assessments shall be coordinated with appropriate legal counsel. Whenever a violation of criminal law appears to have occured and a criminal prosecution is contemplated, coordination shall be made with the Department of Justice.

(4) The designated representative of the Director of Central Intelligence, or other appropriate officials with responsibility for the information involved, will be consulted whenever a compromise of sensitive compartmented information has occurred.

§ 2.33 Responsibilities of holders [4.1(b)].

Any person having access to and possession of classified information is responsible for protecting it from persons not authorized access, i.e., persons who do not possess an appropriate security clearance, and who do not possess the required need-to-know. This includes keeping classified documents under constant observation and turned face-down or covered when not in use and securing such information in approved security equipment or facilities whenever it is not under the direct supervision of authorized persons. In all instances, such protective means must meet accountability requirements prescribed by the Department.

§ 2.34 Inspections [4.1(b)].

Individuals charged with the custody of classified information shall conduct the necessary inspections within their areas to ensure adherence to procedural safeguards prescribed to protect classified information. Security officers shall ensure that periodic inspections are made to determine whether procedural safeguards prescribed by this regulation and any bureau implementing regulation are in effect at all times. At a minimum such checks shall ensure that all classified information is stored in approved security containers, including removable storage media, e.g., floppy disks used by word processors that contain classified information; burn bags, if utilized, are either stored in approved security containers or destroyed; and classified shorthand notes, carbon paper, carbon and plastic typewriter ribbons, rough drafts and similar papers have been properly stored or destroyed.

§ 2.35 Security violations.

Any individual, at any level of employment, determined to have been responsible for the unauthorized release or disclosure or potential release or disclosure of classified national security information, whether it be knowingly, willfully or through negligence, shall be notified on TD F 71–21.1 (Record of Security Violation) that his or her action is in violation of this regulation, the Order, the Directive, and Executive Order 10450, as amended. Treasury Directive 71–04, entitled, ''Administration of Security Violations'' sets forth provisions concerning security violations which shall apply to each Treasury employee and persons under contract or subcontract to the Department authorized access to Treasury classified national security information.

(a) Repeated abuse of the classification process, either by unnecessary or over-classification, or repeated failure, neglect or disregard of established requirements for safeguarding classified information by any employee shall be grounds for appropriate adverse or disciplinary action. Such actions may include, but are not necessarily limited to, a letter of warning, a letter of reprimand, suspension without pay, or dismissal, as appropriate in the particular case, under applicable personnel rules, regulations and procedures. Where a violation of criminal statutes may be involved, any such case shall be promptly referred to the Department of Justice.

(b) After an affirmative adjudication of a security violation, and as the occasion demands, reports of accountable security violations shall be placed in the employee's personnel security file, and as appropriate, in the employee's official personnel folder. The security official of the office or bureau concerned shall recommend to the respective management official or bureau head that disciplinary action be taken when such action is indicated.

§ 2.36 Disposition and destruction [4.1(b)].

Classified information no longer needed in current working files or for reference or record purposes shall be processed for appropriate disposition in accordance with the provisions of Title 44, United States Code, Chapters 21 and 33, which govern disposition of Federal

records. Classified information approved for destruction shall be destroyed by either burning, melting, chemical decomposition, pulping, mulching, pulverizing, cross-cut shredding or other mutilation in the presence of appropriately cleared and authorized persons. The method of destruction *must* preclude recognition or reconstruction of the classified information. The residue from cross-cut shredding of Top Secret, Secret, and Confidential classified, non-Communications Security (COMSEC), information contained in paper media may not exceed 3/32″ by ½″ with a 1/64″ tolerance.

(a) *Diskettes or Floppy Disks.* Diskettes or floppy disks containing information or data classified up to and including Top Secret may be destroyed by the use of an approved degausser, burning, pulverizing, and chemical decomposition, or by first reformatting or reinitializing the diskette then physically removing the magnetic disk from its protective sleeve and using an approved cross-cut shredder to destroy the magnetic media. Care must be exercised to ensure that the destruction of magnetic disks does not damage the cross-cut shredder. The residue from such destruction, however, may not exceed 1/32″ by ½″ with a 1/64″ tolerance. The destruction of classified COMSEC information on diskettes or floppy disks may only be effected by burning followed by crushing of the ash residue.

(b) *Hard Disks.* Hard disks, including removable hard disks, disk packs, drums or single disk platters that contain classified information must first be degaussed prior to physical destruction. The media must be destroyed by incineration, chemical decomposition or the entire magnetic disk pack, drum, or platter recording surface must be obliterated by use of an emery wheel or disk sander.

(c) *Approval of Use of Mulching and Cross-cut Shredding Equipment.* Prior to obtaining mulching or cross-cut shredding equipment, the Departmental Director of Security shall approve the use of such equipment.

(d) *Use of Burnbags.* Any classified information to be destroyed by burning shall be torn and placed in opaque containers, commonly designated as burnbags, which shall be clearly and distinctly labeled ''BURN'' or ''CLASSIFIED WASTE''. Burnbags awaiting destruction are to be protected by security safeguards commensurate with the classification or control designation of the information involved.

(e) *Records of Destruction.* Appropriate accountability records shall be maintained on TD F 71–01.17 (Classified Document Certificate of Destruction) to reflect the destruction of all Top Secret and Secret information. As deemed necessary by the originator, or as required by special regulations, the TD F 71–01.17 shall be executed for the destruction of information classified Confidential or marked Limited Official Use. TD F's 71–01.17 shall be maintained for a three-year period after which the form may be destroyed. No record of the actual destruction of the TD F 71–01.17 is required.

(f) *Destruction of non-record Classified Information.* Non-record classified information such as extra copies and duplicates, including shorthand notes, preliminary drafts, used carbon paper and other material of similar temporary nature, shall also be destroyed by burning, mulching, or cross-cut shredding as soon as it has served its purpose, but no records of such destruction need be maintained.

[55 FR 1644, Jan. 17, 1990; 55 FR 5118, Feb. 13, 1990]

§2.37 National Security Decision Directive 197.

National Security Decision Directive 197, Reporting Hostile Contacts and Security Awareness, provides that United States Government employees are responsible for reporting to their designated security officer:

(a) Any suspected or apparent attempt by persons, regardless of nationality, to obtain unauthorized access to classified national security information, sensitive or proprietary information or technology and/or;

(b) Instances in which they feel they are being targeted for possible exploitation. Contacts with representatives of designated countries of concern identified in §2.43(f) which involve requests for information which are not ordinarily provided in the course of an employee's job, regular or daily activity, and/or which might possibly lead

to further requests for access to sensitive, proprietary or classified information or technology, are to be reported to designated security officers. Reports of such contacts are to be forwarded by the designated security officer to the Departmental Director of Security for appropriate action and coordination.

Subpart E—Implementation and Review

§ 2.38 Departmental management.

(a) The Assistant Secretary (Management) shall:

(1) Enforce the Order, the Directive and this regulation, and establish, coordinate and maintain active training, orientation and inspection programs for employees concerned with classified information.

(2) Review suggestions and complaints regarding the administration of this regulation.

(b) Pursuant to Treasury Directive 71–08, ''Delegation of Authority Concerning Physical Security Programs'', the Departmental Director of Security shall:

(1) Review all bureau implementing regulations prior to publication and shall require any regulation to be changed, if it is not consistent with the Order, the Directive or this regulation.

(2) Have the authority to conduct onsite reviews of bureau physical security programs and information security programs as they pertain to each Treasury bureau and to require such reports, information and assistance as may be necessary, and

(3) Serve as the principal advisor to the Assistant Secretary (Management) with respect to Treasury physical and information security programs.

§ 2.39 Bureau administration.

Each Treasury bureau and the Departmental Offices shall designate, in writing to the Departmental Director of Security, an officer or official to direct, coordinate and administer its physical security and information security programs which shall include active oversight to ensure effective implementation of the Order, the Directive, this regulation. Bureaus and the Departmental Offices shall revise their existing implementing regulation on national security information to ensure conformance with this regulation. Time frames for bureau and Departmental Offices implementation shall be established by the Departmental Director of Security.

§ 2.40 Emergency planning [4.1(b)].

Each Treasury bureau and the Departmental Offices shall develop plans for the protection, removal, or destruction of classified information in case of fire, natural disaster, civil disturbance, or possible enemy action. These plans shall include the disposition of classified information located in foreign countries.

§ 2.41 Emergency authority [4.1(b)].

The Secretary of the Treasury may prescribe by regulation special provisions for the dissemination, transmittal, destruction, and safeguarding of national security information during combat or other emergency situations which pose an imminent threat to national security information.

§ 2.42 Security education [5.3(a)].

Each Treasury bureau that creates, processes or handles national secutity information, including the Departmental Offices, is required to establish a security education program. The program shall be sufficient to familiarize all necessary personnel with the provisions of the Order, the Directive, this regulation and any other implementing directives and regulations to impress upon them their individual security responsibilities. The program shall also provide for initial, refresher, and termination briefings.

(a) *Briefing of Employees.* All new employees concerned with classified information shall be afforded a security briefing regarding the Order, the Directive and this regulation and sign a security agreement as required in § 2.22(c). Employees concerned with sensitive compartmented information shall be required to read and also sign a security agreement. Copies of applicable laws and pertinent security regulations setting forth the procedures for the protection and disclosure of classified information shall be available for all new employees afforded a security

briefing. All employees given a security briefing shall be required to sign a TD F 71–01.16 (Physical Security Orientation Acknowledgment) which shall be maintained on file as determined by respective office or bureau security officials.

(b) [Reserved]

Subpart F—General Provisions

§2.43 Definitions [6.1].

(a) *Authorized Person.* Those individuals who have a ''need-to-know'' the classified information involved and have been cleared for the receipt of such information. Responsibility for determining whether individuals' duties require that they possess, or have access to, any classified information and whether they are authorized to receive it rests on the individual who has possession, knowledge, or control of the information involved, and not on the prospective recipients.

(b) *Compromise.* The loss of security enabling unauthorized access to classified information. Affected information or material is not automatically declassified.

(c) *Confidential Source.* Any individual or organization that has provided, or that may reasonably be expected to provide, information to the United States on matters pertaining to the national security with the expectation, expressed or implied, that the information or relationship, or both, be held in confidence.

(d) *Declassification.* The determination that particular classified information no longer requires protection against unauthorized disclosure in the interest of national security. Such determination shall be by specific action or occur automatically after the lapse of a requisite period of time or the occurrence of a specified event. If such determination is by specific action, the information or material shall be so marked with the new designation.

(e) *Derivative Classification.* A determination that information is, in substance, the same as informaiton that is currently classified and a designation of the level of classification.

(f) *Designated Countries of Concern.* For purposes of National Security Decision Directive 197 reporting: Afghanistan, Albania, Angola, Bulgaria, Cambodia (Kampuchea), the People's Republic of China (Communist China), Cuba, Czechoslovakia, Ethiopia, East Germany (German Democratic Republic including the Soviet sector of Berlin), Hungary, Iran, Iraq, Laos, Libya, Mongolian People's Republic (Outer Mongolia), Nicaragua, North Korea, Palestine Liberation Organization, Poland, Romania, South Africa, South Yemen, Syria, Taiwan, Union of Soviet Socialist Republics (Russia), Vietnam and Yugoslavia.

(g) *Document.* Any recorded information regardless of its physical form or characteristics, including, without limitation, written or printed material; data processing cards and tapes; maps, charts; painting; drawings; engravings; sketches; working notes and papers; reproductions of such things by any means or process; and sound, voice, or electronic recordings in any form.

(h) *Foreign Government Information.* (1) Information provided by a foreign government or governments, an international organization of governments, or any elements thereof with the expectation, expressed or implied, that the information, the source of the information, or both, are to be held in confidence; or

(2) Information produced by the United States Government pursuant to or as a result of a joint arrangement with a foreign government or governments or an international organization of governments, or any element thereof, requiring that the information, the arrangement, or both, are to be held in confidence.

(i) *Information.* Any data or material, regardless of its physical form or characteristics, that is owned by, produced by or for, or is under the control of the United States Government.

(j) *Information Security.* The administrative policies and procedures for identifying, controlling, and safeguarding from unauthorized disclosure, information the protection of which is authorized by Executive Order or statute.

(k) *Intelligence Activity.* An activity that an agency within the Intelligence Community is authorized to conduct pursuant to Executive Order 12333.

(l) *Intelligence Sources and Methods.* A person, organization, or technical means or method which provides foreign intelligence or foreign counterintelligence to the United States and which, if its identity or capability is disclosed, is vulnerable to counteraction that could nullify or significantly reduce its effectiveness in providing foreign intelligence or foreign counterintelligence to the United States. An intelligence source also means a person or organization which provides foreign intelligence or foreign counterintelligence to the United States only on the condition that its identity remains undisclosed. Intelligence methods are that which, if disclosed, reasonably could lead to the disclosure of an intelligence source or operation.

(m) *Limited Official Use.* The legend authorized for ''Officially Limited Information'' which provides that it be handled, safeguarded and stored in a manner equivalent to national security information classified Confidential.

(n) *Multiple Classified Sources.* The term used to indicate that a document is derivatively classified when it contains classified information derived from other than one source.

(o) *National Security.* The national defense or foreign relations of the United States.

(p) *National Security Information.* Information that has been determined pursuant to the Order or any predecessor Executive Order to require protection against unauthorized disclosure and that is so designated.

(q) *Need-to-Know.* A determination made by the possessor of classified information that a prospective recipient, in the interest of national security, has a requirement for access to, knowledge of, or possession of the classified information in order to perform tasks or services essential to the fulfillment of particular work, including performance on contracts for which such access is required.

(r) *Officially Limited Information.* Information which does not meet the criterion that unauthorized disclosure would at least cause damage to the national security under the Order or a predecessor Executive Order, but which concerns important, delicate, sensitive or proprietary information which is utilized in the development of Treasury policy. This includes the enforcement of criminal and civil laws relating to Treasury operations, the making of decisions on personnel matters and the consideration of financial information provided in confidence.

(s) *Original Classification.* An initial determination that information requires, in the interest of national security, protection against unauthorized disclosure, together with a classification designation signifying the level of protection required.

(t) *Original Classification Authority.* The authority vested in an Executive Branch official to make an initial determination that information requires protection against unauthorized disclosure in the interest of national security.

(u) *Originating Agency.* The agency responsible for the initial determination that particular information is classified.

(v) *Portion.* A segment of a document for purposes of expressing a unified theme; ordinarily a paragraph.

(w) *Sensitive Compartmented Information.* Information and material concerning or derived from intelligence sources, methods, or analytical processes, that requires special controls for restricting handling within compartmented intelligence systems established by the Director of Central Intelligence and for which compartmentation is established.

(x) *Special Access Program.* Any program imposing ''need-to-know'' or access controls beyond those normally provided for access to Confidential, Secret, or Top Secret information. Such a program may include, but is not limited to, special clearance, adjudication, or investigative requirements, special designations of officials authorized to determine ''need-to-know'' or special lists of persons determined to have a ''need-to-know''.

(y) *Special Activity.* An activity conducted in support of national foreign policy objectives abroad which is planned and executed so that the role of the United States Government is not apparent or acknowledged publicly,

and functions in support of such activity, but which is not intended to influence United States political processes, public opinion, policies or media and does not include diplomatic activities or the collection and production of intelligence or related support functions.

(z) *Unauthorized Disclosure.* A communication or physical transfer of classified information to an unauthorized recipient. It includes the unauthorized disclosure of classified information in a newspaper, journal, or other publication where such information is traceable due to a direct quotation or other uniquely identifiable fact.

PART 3—CLAIMS REGULATIONS AND INDEMNIFICATION OF DEPARTMENT OF TREASURY EMPLOYEES

Subpart A—Claims Under the Federal Tort Claims Act

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AUTHORITY: 28 U.S.C. 2672; 28 CFR part 14; 5 U.S.C. 301.

SOURCE: 35 FR 6429, Apr. 22, 1970, unless otherwise noted.

Subpart A—Claims Under the Federal Tort Claims Act

§3.1 Scope of regulations.

(a) The regulations in this part shall apply to claims asserted under the Federal Tort Claims Act, as amended, 28 U.S.C. 2672, accruing on or after January 18, 1967, for money damages against the United States for injury to or loss of property or personal injury or death caused by the negligent or wrongful act or omission of an employee of the Department while acting within the scope of his office or employment, under circumstances where the United States if a private person, would be liable to the claimant for such damage, loss, injury, or death, in accordance with the law of the place where the act or omission occurred. The regulations in this subpart do not apply to any tort claims excluded from the Federal Tort Claims Act, as amended, under 28 U.S.C. 2680.

(b) Unless specifically modified by the regulations in this part, procedures and requirements for filing and handling claims under the Federal Tort Claims Act shall be in accordance with the regulations issued by the Department of Justice, at 28 CFR part 14, as amended.

§3.2 Filing of claims.

(a) *When presented.* A claim shall be deemed to have been presented upon the receipt from a claimant, his duly authorized agent or legal representative of an executed Standard Form 95 or other written notification of an incident, accompanied by a claim for money damages in a sum certain for injury to or loss of property, or personal injury, or death alleged to have occurred by reason of the incident.

(b) *Place of filing claim.* Claims shall be submitted directly or through the local field headquarters to the head of the bureau or office of the Department out of whose activities the incident occurred, if known; or if not known, to the General Counsel, Treasury Department, Washington, DC 20220.

(c) *Contents of claim.* The evidence and information to be submitted with the claim shall conform to the requirements of 28 CFR 14.4.

§3.3 Legal review.

Any claim that exceeds $500, involves personal injuries or automobile damage, or arises out of an incident that is likely to result in multiple claimants, shall be forwarded to the legal division

of the bureau or office out of whose activities the claim arose. The claim, together with the reports of the employee and the investigation, shall be reviewed in the legal division which shall thereupon make a recommendation that the claim be approved, disapproved, or compromised, and shall advise on the need for referral of the claim to the Department of Justice. This recommendation and advice, together with the file, shall be forwarded to the head of the bureau or office or his designee.

[35 FR 6429, Apr. 22, 1970, as amended at 48 FR 16253, Apr. 15, 1983]

§ 3.4 Approval of claims not in excess of $25,000.

(a) Claims not exceeding $25,000 and not otherwise requiring consultation with the Department of Justice pursuant to 28 CFR 14.6(b) shall be approved, disapproved, or compromised by the head of the bureau or office or his designee, taking into consideration the recommendation of the legal division.

§ 3.5 Limitations on authority to approve claims.

(a) All proposed awards, compromises or settlements in excess of $25,000 require the prior written approval of the Attorney General.

(b) All claims which fall within the provisions of 28 CFR 14.6(b) require referral to and consultation with the Department of Justice.

(c) Any claim which falls within paragraph (a) or (b) of this section shall be reviewed by the General Counsel. If the claim, award, compromise, or settlement receives the approval of the General Counsel and the head of the bureau or office or his designee, a letter shall be prepared for the signature of the General Counsel transmitting to the Assistant Attorney General, Civil Division, Department of Justice, the case for approval or consultation as required by 28 CFR 14.6. Such letter shall conform with the requirements set forth in 28 CFR 14.7.

§ 3.6 Final denial of a claim.

The final denial of an administrative claim shall conform with the requirements of 28 CFR 14.9 and shall be signed by the head of the bureau or office, or his designee.

§ 3.7 Action on approved claims.

(a) Any award, compromise, or settlement in an amount of $2,500 or less shall be processed for payment from the appropriations of the bureau or office out of whose activity the claim arose.

(b) Payment of an award, compromise, or settlement in excess of $2,500 and not more than $100,000 shall be obtained by the bureau or office by forwarding Standard Form 1145 to the Claims Division, General Accounting Office.

(c) Payment of an award, compromise, or settlement in excess of $100,000 shall be obtained by the bureau by forwarding Standard Form 1145 to the Bureau of Government Financial Operations, Department of the Treasury, which will be responsible for transmitting the award, compromise, or settlement to the Bureau of the Budget for inclusion in a deficiency appropriation bill.

(d) When an award is in excess of $25,000, Standard Form 1145 must be accompanied by evidence that the award, compromise, or settlement has been approved by the Attorney General or his designee.

(e) When the use of Standard Form 1145 is required, it shall be executed by the claimant. When a claimant is represented by an attorney, the voucher for payment shall designate both the claimant and his attorney as payees; the check shall be delivered to the attorney, whose address shall appear on the voucher.

(f) Acceptance by the claimant, his agent, or legal representative, of any award, compromise or settlement made pursuant to the provisions of section 2672 or 2677 of title 28, United States Code, shall be final and conclusive on the claimant, his agent or legal representative and any other person on whose behalf or for whose benefit the claim has been presented, and shall constitute a complete release of any claim against the United States and against any employee of the Government whose act or omission gave rise

to the claim, by reason of the same subject matter.

[35 FR 6429, Apr. 22, 1970, as amended at 39 FR 19470, June 3, 1974]

§ 3.8 Statute of limitations.

Claims under this subpart must be presented in writing to the Department within 2 years after the claim accrued.

Subpart B—Claims Under the Small Claims Act

§ 3.20 General.

The Act of December 28, 1922, 42 Stat. 1066, the Small Claims Act, authorized the head of each department and establishment to consider, ascertain, adjust, and determine claims of $1,000 or less for damage to, or loss of, privately owned property caused by the negligence of any officer or employee of the Government acting within the scope of his employment. The Federal Tort Claims Act superseded the Small Claims Act with respect to claims that are allowable under the former act. Therefore, claims that are not allowable under the Federal Tort Claims Act, for example, claims arising abroad, may be allowable under the Small Claims Act.

§ 3.21 Action by claimant.

Procedures and requirements for filing claims under this section shall be the same as required for filing claims under the Federal Tort Claims Act as set forth in Subpart A of this part.

§ 3.22 Legal review.

Claims filed under this subpart shall be forwarded to the legal division of the bureau or office out of whose activities the claim arose. The claim, together with the reports of the employee and the investigation, shall be reviewed in the legal division which shall thereupon make a recommendation that the claim be approved, disapproved or compromised.

§ 3.23 Approval of claims.

Claims shall be approved, disapproved, or compromised by the head of the bureau or office or his designee, taking into consideration the recommendation of the legal division.

§ 3.24 Statute of limitations.

No claim will be considered under this subpart unless filed within 1 year from the date of the accrual of said claim.

Subpart C—Indemnification of Department of Treasury Employees

SOURCE: 56 FR 42938, Aug. 30, 1991, unless otherwise noted.

§ 3.30 Policy.

(a) The Department of the Treasury may indemnify, in whole or in part, a Department employee (which for purposes of this regulation shall include a former employee) for any verdict, judgment or other monetary award rendered against such employee, provided the Secretary or his or her designee determines that (1) the conduct giving rise to such verdict, judgment or award was within the scope of his or her employment and (2) such indemnification is in the interest of the Department of the Treasury.

(b) The Department of the Treasury may pay for the settlement or compromise of a claim against a Department employee at any time, provided the Secretary or his or her designee determines that (1) the alleged conduct giving rise to the claim was within the scope of the employee's employment and (2) such settlement or compromise is in the interest of the Department of the Treasury.

(c) Absent exceptional circumstances, as determined by the Secretary or his or her designee, the Department will not entertain a request to indemnify or to pay for settlement of a claim before entry of an adverse judgment, verdict or other determination.

(d) When a Department employee becomes aware that he or she has been named as a party in a proceeding in his or her individual capacity as a result of conduct within the scope of his or her employment, the employee should immediately notify his or her supervisor that such an action is pending. The supervisor shall promptly thereafter notify the chief legal officer of the employee's employing component. The

employee shall immediately apprise the chief legal officer of his or her employing component of any offer to settle the proceeding.

(e) A Department employee may request indemnification to satisfy a verdict, judgment or monetary award entered against the employee or to compromise a claim pending against the employee. The employee shall submit a written request, with appropriate documentation including a copy of the verdict, judgment, award or other order or settlement proposal, in a timely manner to the Secretary or his or her designee for decision.

(f) Any payment under this section either to indemnify a Department employee or to settle a claim shall be contingent upon the availability of appropriated funds for the payment of salaries and expenses of the employing component.

PART 4—EMPLOYEES' PERSONAL PROPERTY CLAIMS

AUTHORITY: 31 U.S.C. 3721(j).

SOURCE: 62 FR 18518, Apr. 16, 1997, unless otherwise noted.

§ 4.1 Procedures.

The procedures for filing a claim with the Treasury Department for personal property that is lost or damaged incident to service are contained in Treasury Directive 32–13, ''Claims for Loss or Damage to Personal Property,'' and Treasury Department Publication 32–13, ''Policies and Procedures For Employees' Claim for Loss or Damage to Personal Property Incident to Service.''

PART 5—TREASURY DEBT COLLECTION

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APPENDIX A TO PART 5—TREASURY DIRECTIVE 34–01—WAIVING CLAIMS AGAINST TREASURY EMPLOYEES FOR ERRONEOUS PAYMENTS

AUTHORITY: 5 U.S.C. 5514; 26 U.S.C. 6402; 31 U.S.C. 321, 3701, 3711, 3716, 3717, 3718, 3720A, 3720B, 3720D.

SOURCE: 67 FR 65845, Oct. 28, 2002, unless otherwise noted.

Subpart A—General Provisions

§5.1 What definitions apply to the regulations in this part?

As used in this part:

Administrative offset or *offset* means withholding funds payable by the United States (including funds payable by the United States on behalf of a State Government) to, or held by the United States for, a person to satisfy a debt owed by the person. The term ''administrative offset'' includes, but is not limited to, the offset of Federal salary, vendor, retirement, and Social Security benefit payments. The terms ''centralized administrative offset'' and ''centralized offset'' refer to the process by which the Treasury Department's Financial Management Service offsets Federal payments through the Treasury Offset Program.

Administrative wage garnishment means the process by which a Federal agency orders a non-Federal employer to withhold amounts from a debtor's wages to satisfy a debt, as authorized by 31 U.S.C. 3720D, 31 CFR 285.11, and this part.

Agency or *Federal agency* means a department, agency, court, court administrative office, or instrumentality in the executive, judicial, or legislative branch of the Federal Government, including government corporations.

Creditor agency means any Federal agency that is owed a debt.

Debt means any amount of money, funds or property that has been determined by an appropriate official of the Federal Government to be owed to the United States by a person. As used in this part, the term ''debt'' does not include debts arising under the Internal Revenue Code of 1986 (26 U.S.C. 1 *et seq.*).

Debtor means a person who owes a debt to the United States.

Delinquent debt means a debt that has not been paid by the date specified in the agency's initial written demand for payment or applicable agreement or instrument (including a post-delinquency payment agreement) unless other satisfactory payment arrangements have been made.

Delinquent Treasury debt means a delinquent debt owed to a Treasury entity.

Disposable pay has the same meaning as that term is defined in 5 CFR 550.1103.

Employee or *Federal employee* means a current employee of the Treasury Department or other Federal agency, including a current member of the Armed Forces, Reserve of the Armed Forces of the United States, or the National Guard.

FCCS means the Federal Claims Collection Standards, which were jointly published by the Departments of the Treasury and Justice and codified at 31 CFR parts 900—904.

Financial Management Service means the Financial Management Service, a bureau of the Treasury Department, which is responsible for the centralized collection of delinquent debts through the offset of Federal payments and other means.

Payment agency or *Federal payment agency* means any Federal agency that transmits payment requests in the form of certified payment vouchers, or other similar forms, to a disbursing official for disbursement. The ''payment agency'' may be the agency that employs the debtor. In some cases, the Treasury Department may be both the creditor agency and payment agency.

Person means an individual, corporation, partnership, association, organization, State or local government, or any other type of entity other than a Federal agency.

Salary offset means a type of administrative offset to collect a debt owed by a Federal employee from the current pay account of the employee.

Secretary means the Secretary of the Treasury.

Tax refund offset is defined in 31 CFR 285.2(a).

Treasury debt means a debt owed to a Treasury entity by a person.

Treasury Department means the United States Department of the Treasury.

Treasury entity means the Office of Inspector General, the Office of Inspector General for Tax Administration, or

a bureau of the Treasury Department, including the Departmental Offices, responsible for the collection of the applicable Treasury debt. Departmental Offices include, but are not limited to, the Office of D.C. Pensions, the Community Development Financial Institution Fund, the Executive Office of Asset Forfeiture, and the Office of Foreign Assets Control. Other bureaus include, but are not limited to, the Bureau of Public Debt; Bureau of Engraving and Printing; U.S. Mint; U.S. Secret Service; Customs Service; Financial Management Service; Internal Revenue Service; Bureau of Alcohol, Tobacco, and Firearms; Office of Comptroller of the Currency; the Office of Thrift Supervision; Federal Law Enforcement Training Center; and the Financial Crimes Enforcement Network.

§ 5.2 Why is the Treasury Department issuing these regulations and what do they cover?

(a) *Scope.* This part provides procedures for the collection of Treasury debts. This part also provides procedures for collection of other debts owed to the United States when a request for offset of a Treasury payment is received by the Treasury Department from another agency (for example, when a Treasury Department employee owes a debt to the United States Department of Education).

(b) *Applicability.* (1) This part applies to the Treasury Department when collecting a Treasury debt, to persons who owe Treasury debts, and to Federal agencies requesting offset of a payment issued by the Treasury Department as a payment agency (including salary payments to Treasury Department employees).

(2) This part does not apply to tax debts nor to any debt for which there is an indication of fraud or misrepresentation, as described in § 900.3 of the FCCS, unless the debt is returned by the Department of Justice to the Treasury Department for handling.

(3) This part does not apply to the Financial Management Service when acting on behalf of other Federal agencies and states to collect delinquent debt referred to the Financial Management Service for collection action as required or authorized by Federal law. *See* 31 CFR part 285.

(4) Nothing in this part precludes collection or disposition of any debt under statutes and regulations other than those described in this part. *See, for example,* 5 U.S.C. 5705, Advancements and Deductions, which authorizes Treasury entities to recover travel advances by offset of up to 100% of a Federal employee's accrued pay. *See, also,* 5 U.S.C. 4108, governing the collection of training expenses. To the extent that the provisions of laws, other regulations, and Treasury Department enforcement policies differ from the provisions of this part, those provisions of law, other regulations, and Treasury Department enforcement policies apply to the remission or mitigation of fines, penalties, and forfeitures, and debts arising under the tariff laws of the United States, rather than the provisions of this part.

(c) *Additional policies and procedures.* Treasury entities may, but are not required to, promulgate additional policies and procedures consistent with this part, the FCCS, and other applicable Federal law, policies, and procedures.

(d) *Duplication not required.* Nothing in this part requires a Treasury entity to duplicate notices or administrative proceedings required by contract, this part, or other laws or regulations.

(e) *Use of multiple collection remedies allowed.* Treasury entities and other Federal agencies may simultaneously use multiple collection remedies to collect a debt, except as prohibited by law. This part is intended to promote aggressive debt collection, using for each debt all available collection remedies. These remedies are not listed in any prescribed order to provide Treasury entities with flexibility in determining which remedies will be most efficient in collecting the particular debt.

§ 5.3 Do these regulations adopt the Federal Claims Collection Standards (FCCS)?

This part adopts and incorporates all provisions of the FCCS. This part also supplements the FCCS by prescribing procedures consistent with the FCCS,

as necessary and appropriate for Treasury Department operations.

Subpart B—Procedures To Collect Treasury Debts

§5.4 What notice will Treasury entities send to a debtor when collecting a Treasury debt?

(a) *Notice requirements.* Treasury entities shall aggressively collect Treasury debts. Treasury entities shall promptly send at least one written notice to a debtor informing the debtor of the consequences of failing to pay or otherwise resolve a Treasury debt. The notice(s) shall be sent to the debtor at the most current address of the debtor in the records of the Treasury entity collecting the debt. Generally, before starting the collection actions described in §§5.5 and 5.9 through 5.17 of this part, Treasury entities will send no more than two written notices to the debtor. The purpose of the notice(s) is to explain why the debt is owed, the amount of the debt, how a debtor may pay the debt or make alternate repayment arrangements, how a debtor may review documents related to the debt, how a debtor may dispute the debt, the collection remedies available to Treasury entities if the debtor refuses to pay the debt, and other consequences to the debtor if the debt is not paid. Except as otherwise provided in paragraph (b) of this section, the written notice(s) shall explain to the debtor:

(1) The nature and amount of the debt, and the facts giving rise to the debt;

(2) How interest, penalties, and administrative costs are added to the debt, the date by which payment should be made to avoid such charges, and that such assessments must be made unless excused in accordance with 31 CFR 901.9 (*see* §5.5 of this part);

(3) The date by which payment should be made to avoid the enforced collection actions described in paragraph (a)(6) of this section;

(4) The Treasury entity's willingness to discuss alternative payment arrangements and how the debtor may enter into a written agreement to repay the debt under terms acceptable to the Treasury entity (*see* §5.6 of this part);

(5) The name, address, and telephone number of a contact person or office within the Treasury entity;

(6) The Treasury entity's intention to enforce collection if the debtor fails to pay or otherwise resolve the debt, by taking one or more of the following actions:

(i) *Offset.* Offset the debtor's Federal payments, including income tax refunds, salary, certain benefit payments (such as Social Security), retirement, vendor, travel reimbursements and advances, and other Federal payments (*see* §§5.10 through 5.12 of this part);

(ii) *Private collection agency.* Refer the debt to a private collection agency (*see* §5.15 of this part);

(iii) *Credit bureau reporting.* Report the debt to a credit bureau (*see* §5.14 of this part);

(iv) *Administrative wage garnishment.* Garnish the debtor's wages through administrative wage garnishment (*see* §5.13 of this part);

(v) *Litigation.* Refer the debt to the Department of Justice to initiate litigation to collect the debt (*see* §5.16 of this part);

(vi) *Treasury Department's Financial Management Service.* Refer the debt to the Financial Management Service for collection (*see* §5.9 of this part);

(7) That Treasury debts over 180 days delinquent must be referred to the Financial Management Service for the collection actions described in paragraph (a)(6) of this section (*see* §5.9 of this part);

(8) How the debtor may inspect and copy records related to the debt;

(9) How the debtor may request a review of the Treasury entity's determination that the debtor owes a debt and present evidence that the debt is not delinquent or legally enforceable (*see* §§5.10(c) and 5.11(c) of this part);

(10) How a debtor may request a hearing if the Treasury entity intends to garnish the debtor's private sector (*i.e.*, non-Federal) wages (*see* §5.13(a) of this part), including:

(i) The method and time period for requesting a hearing;

(ii) That the timely filing of a request for a hearing on or before the 15th business day following the date of

the notice will stay the commencement of administrative wage garnishment, but not necessarily other collection procedures; and

(iii) The name and address of the office to which the request for a hearing should be sent.

(11) How a debtor who is a Federal employee subject to Federal salary offset may request a hearing (*see* § 5.12(e) of this part), including:

(i) The method and time period for requesting a hearing;

(ii) That the timely filing of a request for a hearing on or before the 15th calendar day following receipt of the notice will stay the commencement of salary offset, but not necessarily other collection procedures;

(iii) The name and address of the office to which the request for a hearing should be sent;

(iv) That the Treasury entity will refer the debt to the debtor's employing agency or to the Financial Management Service to implement salary offset, unless the employee files a timely request for a hearing;

(v) That a final decision on the hearing, if requested, will be issued at the earliest practical date, but not later than 60 days after the filing of the request for a hearing, unless the employee requests and the hearing official grants a delay in the proceedings;

(vi) That any knowingly false or frivolous statements, representations, or evidence may subject the Federal employee to penalties under the False Claims Act (31 U.S.C. 3729–3731) or other applicable statutory authority, and criminal penalties under 18 U.S.C. 286, 287, 1001, and 1002, or other applicable statutory authority;

(vii) That unless prohibited by contract or statute, amounts paid on or deducted for the debt which are later waived or found not owed to the United States will be promptly refunded to the employee; and (viii) That proceedings with respect to such debt are governed by 5 U.S.C. 5514 and 31 U.S.C. 3716;

(12) How the debtor may request a waiver of the debt, if applicable (*see, for example,* Treasury Directive 34–01 (Waiving Claims Against Treasury Employees for Erroneous Payments), set forth at Appendix A of this part and at *http://www.treas.gov/regs*);

(13) How the debtor's spouse may claim his or her share of a joint income tax refund by filing Form 8379 with the Internal Revenue Service (*see http://www.irs.gov*)

(14) How the debtor may exercise other statutory or regulatory rights and remedies available to the debtor;

(15) That certain debtors may be ineligible for Federal Government loans, guaranties and insurance (*see* 31 U.S.C. 3720B, 31 CFR 285.13, and § 5.17(a) of this part);

(16) If applicable, the Treasury entity's intention to suspend or revoke licenses, permits or privileges (*see* § 5.17(b) of this part); and

(17) That the debtor should advise the Treasury entity of a bankruptcy proceeding of the debtor or another person liable for the debt being collected.

(b) *Exceptions to notice requirements.* A Treasury entity may omit from a notice to a debtor one or more of the provisions contained in paragraphs (a)(6) through (a)(17) of this section if the Treasury entity, in consultation with its legal counsel, determines that any provision is not legally required given the collection remedies to be applied to a particular debt.

(c) *Respond to debtors; comply with FCCS.* Treasury entities should respond promptly to communications from debtors and comply with other FCCS provisions applicable to the administrative collection of debts. *See* 31 CFR part 901.

§ 5.5 How will Treasury entities add interest, penalty charges, and administrative costs to a Treasury debt?

(a) *Assessment and notice.* Treasury entities shall assess interest, penalties and administrative costs on Treasury debts in accordance with the provisions of 31 U.S.C. 3717 and 31 CFR 901.9, on Treasury debts. Interest shall be charged in accordance with the requirements of 31 U.S.C. 3717(a). Penalties shall accrue at the rate of 6% per year, or such other higher rate as authorized by law. Administrative costs,

that is the costs of processing and handling a delinquent debt, shall be determined by the Treasury entity collecting the Treasury debt. Treasury entities may have additional policies regarding how interest, penalties, and administrative costs are assessed on particular types of debts. Treasury entities are required to explain in the notice to the debtor described in §5.4 of this part how interest, penalties, costs, and other charges are assessed, unless the requirements are included in a contract or repayment agreement.

(b) *Waiver of interest, penalties, and administrative costs.* Unless otherwise required by law, Treasury entities may not charge interest if the amount due on the debt is paid within 30 days after the date from which the interest accrues. *See* 31 U.S.C. 3717(d). Treasury entities may waive interest, penalties, and administrative costs, or any portion thereof, when it would be against equity and good conscience or not in the Treasury entity's best interest to collect such charges, in accordance with Treasury guidelines for waiving claims against Treasury employees for erroneous overpayments. *See* Treasury Directive 34–01 (Waiving Claims Against Treasury Employees for Erroneous Payments) set forth at Appendix A of this part and at *http://www.treas.gov/regs.* Legal counsel approval is not required to waive such charges. Cf., §§5.7 and 5.8 of this part, which require legal counsel approval when compromising a debt or terminating debt collection activity on a debt.

(c) *Accrual during suspension of debt collection.* In most cases, interest, penalties and administrative costs will continue to accrue during any period when collection has been suspended for any reason (for example, when the debtor has requested a hearing). Treasury entities may suspend accrual of any or all of these charges when accrual would be against equity and good conscience or not in the Treasury entity's best interest, in accordance with Treasury guidelines for waiving claims against Treasury employees for erroneous overpayments. *See* Treasury Directive 34–01 (Waiving Claims Against Treasury Employees for Erroneous Payments), set forth at Appendix A of this part and *http://www.treas.gov/regs.*

§5.6 When will Treasury entities allow a debtor to pay a Treasury debt in installments instead of one lump sum?

If a debtor is financially unable to pay the debt in one lump sum, a Treasury entity may accept payment of a Treasury debt in regular installments, in accordance with the provisions of 31 CFR 901.8 and the Treasury entity's policies and procedures.

§5.7 When will Treasury entities compromise a Treasury debt?

If a Treasury entity cannot collect the full amount of a Treasury debt, the Treasury entity may compromise the debt in accordance with the provisions of 31 CFR part 902 and the Treasury entity's policies and procedures. Legal counsel approval to compromise a Treasury debt is required as described in Treasury Directive 34–02 (Credit Management and Debt Collection), which may be found at *http://www.treas.gov/regs.*

§5.8 When will Treasury entities suspend or terminate debt collection on a Treasury debt?

If, after pursuing all appropriate means of collection, a Treasury entity determines that a Treasury debt is uncollectible, the Treasury entity may suspend or terminate debt collection activity in accordance with the provisions of 31 CFR part 903 and the Treasury entity's policies and procedures. Legal counsel approval to terminate debt collection activity is required as described in Treasury Directive 34–02 (Credit Management and Debt Collection), which may be found at *http://www.treas.gov/regs.*

§5.9 When will Treasury entities transfer a Treasury debt to the Treasury Department's Financial Management Service for collection?

(a) Treasury entities will transfer any eligible debt that is more than 180 days delinquent to the Financial Management Service for debt collection services, a process known as ''cross-servicing.'' *See* 31 U.S.C. 3711(g) and 31 CFR 285.12. Treasury entities may transfer debts delinquent 180 days or

less to the Financial Management Service in accordance with the procedures described in 31 CFR 285.12. The Financial Management Service takes appropriate action to collect or compromise the transferred debt, or to suspend or terminate collection action thereon, in accordance with the statutory and regulatory requirements and authorities applicable to the debt and the collection action to be taken. *See* 31 CFR 285.12(b)(2). Appropriate action includes, but is not limited to, contact with the debtor, referral of the debt to the Treasury Offset Program, private collection agencies or the Department of Justice, reporting of the debt to credit bureaus, and administrative wage garnishment.

(b) At least sixty (60) days prior to transferring a Treasury debt to the Financial Management Service, Treasury entities will send notice to the debtor as required by § 5.4 of this part. Treasury entities will certify to the Financial Management Service, in writing, that the debt is valid, delinquent, legally enforceable, and that there are no legal bars to collection. In addition, Treasury entities will certify their compliance with all applicable due process and other requirements as described in this part and other Federal laws. *See* 31 CFR 285.12(i) regarding the certification requirement.

(c) As part of its debt collection process, the Financial Management Service uses the Treasury Offset Program to collect Treasury debts by administrative and tax refund offset. *See* 31 CFR 285.12(g). The Treasury Offset Program is a centralized offset program administered by the Financial Management Service to collect delinquent debts owed to Federal agencies and states (including past-due child support). Under the Treasury Offset Program, before a Federal payment is disbursed, the Financial Management Service compares the name and taxpayer identification number (TIN) of the payee with the names and TINs of debtors that have been submitted by Federal agencies and states to the Treasury Offset Program database. If there is a match, the Financial Management Service (or, in some cases, another Federal disbursing agency) offsets all or a portion of the Federal payment, disburses any remaining payment to the payee, and pays the offset amount to the creditor agency. Federal payments eligible for offset include, but are not limited to, income tax refunds, salary, travel advances and reimbursements, retirement and vendor payments, and Social Security and other benefit payments.

§ 5.10 How will Treasury entities use administrative offset (offset of non-tax Federal payments) to collect a Treasury debt?

(a) *Centralized administrative offset through the Treasury Offset Program.* (1) In most cases, the Financial Management Service uses the Treasury Offset Program to collect Treasury debts by the offset of Federal payments. *See* § 5.9(c) of this part. If not already transferred to the Financial Management Service under § 5.9 of this part, Treasury entities will refer any eligible debt over 180 days delinquent to the Treasury Offset Program for collection by centralized administrative offset. *See* 31 U.S.C. 3716(c)(6); 31 CFR part 285, subpart A; and 31 CFR 901.3(b). Treasury entities may refer any eligible debt less than 180 days delinquent to the Treasury Offset Program for offset.

(2) At least sixty (60) days prior to referring a debt to the Treasury Offset Program, in accordance with paragraph (a)(1) of this section, Treasury entities will send notice to the debtor in accordance with the requirements of § 5.4 of this part. Treasury entities will certify to the Financial Management Service, in writing, that the debt is valid, delinquent, legally enforceable, and that there are no legal bars to collection by offset. In addition, Treasury entities will certify their compliance with the requirements described in this part.

(b) *Non-centralized administrative offset for Treasury debts.* (1) When centralized administrative offset through the Treasury Offset Program is not available or appropriate, Treasury entities may collect past-due, legally enforceable Treasury debts through non-centralized administrative offset. *See* 31 CFR 901.3(c). In these cases, Treasury entities may offset a payment internally or make an offset request directly to a Federal payment agency. If

the Federal payment agency is another Treasury entity, the Treasury entity making the request shall do so through the Deputy Chief Financial Officer as described in §5.20(c) of this part.

(2) At least thirty (30) days prior to offsetting a payment internally or requesting a Federal payment agency to offset a payment, Treasury entities will send notice to the debtor in accordance with the requirements of §5.4 of this part. When referring a debt for offset under this paragraph (b), Treasury entities making the request will certify, in writing, that the debt is valid, delinquent, legally enforceable, and that there are no legal bars to collection by offset. In addition, Treasury entities will certify their compliance with these regulations concerning administrative offset. *See* 31 CFR 901.3(c)(2)(ii).

(c) *Administrative review*. The notice described in §5.4 of this part shall explain to the debtor how to request an administrative review of a Treasury entity's determination that the debtor owes a Treasury debt and how to present evidence that the debt is not delinquent or legally enforceable. In addition to challenging the existence and amount of the debt, the debtor may seek a review of the terms of repayment. In most cases, Treasury entities will provide the debtor with a ''paper hearing'' based upon a review of the written record, including documentation provided by the debtor. Treasury entities shall provide the debtor with a reasonable opportunity for an oral hearing when the debtor requests reconsideration of the debt and the Treasury entity determines that the question of the indebtedness cannot be resolved by review of the documentary evidence, for example, when the validity of the debt turns on an issue of credibility or veracity. Unless otherwise required by law, an oral hearing under this section is not required to be a formal evidentiary hearing, although Treasury entities should carefully document all significant matters discussed at the hearing. Treasury entities may suspend collection through administrative offset and/or other collection actions pending the resolution of a debtor's dispute. Each Treasury entity will have its own policies and procedures concerning the administrative review process consistent with the FCCS and the regulations in this section.

(d) *Procedures for expedited offset*. Under the circumstances described in 31 CFR 901.3(b)(4)(iii), Treasury entities may effect an offset against a payment to be made to the debtor prior to sending a notice to the debtor, as described in §5.4 of this part, or completing the procedures described in paragraph (b)(2) and (c) of this section. Treasury entities shall give the debtor notice and an opportunity for review as soon as practicable and promptly refund any money ultimately found not to have been owed to the Government.

§5.11 How will Treasury entities use tax refund offset to collect a Treasury debt?

(a) *Tax refund offset*. In most cases, the Financial Management Service uses the Treasury Offset Program to collect Treasury debts by the offset of tax refunds and other Federal payments. *See* §5.9(c) of this part. If not already transferred to the Financial Management Service under §5.9 of this part, Treasury entities will refer to the Treasury Offset Program any past-due, legally enforceable debt for collection by tax refund offset. *See* 26 U.S.C. 6402(d), 31 U.S.C. 3720A and 31 CFR 285.2.

(b) *Notice*. At least sixty (60) days prior to referring a debt to the Treasury Offset Program, Treasury entities will send notice to the debtor in accordance with the requirements of §5.4 of this part. Treasury entities will certify to the Financial Management Service's Treasury Offset Program, in writing, that the debt is past-due and legally enforceable in the amount submitted and that the Treasury entities have made reasonable efforts to obtain payment of the debt as described in 31 CFR 285.2(d). In addition, Treasury entities will certify their compliance with all applicable due process and other requirements described in this part and other Federal laws. *See* 31 U.S.C. 3720A(b) and 31 CFR 285.2.

(c) *Administrative review*. The notice described in §5.4 of this part shall provide the debtor with at least 60 days

prior to the initiation of tax refund offset to request an administrative review as described in § 5.10(c) of this part. Treasury entities may suspend collection through tax refund offset and/or other collection actions pending the resolution of the debtor's dispute.

§ 5.12 How will Treasury entities offset a Federal employee's salary to collect a Treasury debt?

(a) *Federal salary offset.* (1) Salary offset is used to collect debts owed to the United States by Treasury Department and other Federal employees. If a Federal employee owes a Treasury debt, Treasury entities may offset the employee's Federal salary to collect the debt in the manner described in this section. For information on how a Federal agency other than a Treasury entity may collect debt from the salary of a Treasury Department employee, see §§ 5.20 and 5.21, subpart C, of this part.

(2) Nothing in this part requires a Treasury entity to collect a Treasury debt in accordance with the provisions of this section if Federal law allows otherwise. *See, for example,* 5 U.S.C. 5705 (travel advances not used for allowable travel expenses are recoverable from the employee or his estate by setoff against accrued pay and other means) and 5 U.S.C. 4108 (recovery of training expenses).

(3) Treasury entities may use the administrative wage garnishment procedure described in § 5.13 of this part to collect a debt from an individual's non-Federal wages.

(b) *Centralized salary offset through the Treasury Offset Program.* As described in § 5.9(a) of this part, Treasury entities will refer Treasury debts to the Financial Management Service for collection by administrative offset, including salary offset, through the Treasury Offset Program. When possible, Treasury entities should attempt salary offset through the Treasury Offset Program before applying the procedures in paragraph (c) of this section. See 5 CFR 550.1109.

(c) *Non-centralized salary offset for Treasury debts.* When centralized salary offset through the Treasury Offset Program is not available or appropriate, Treasury entities may collect delinquent Treasury debts through non-centralized salary offset. *See* 5 CFR 550.1109. In these cases, Treasury entities may offset a payment internally or make a request directly to a Federal payment agency to offset a salary payment to collect a delinquent debt owed by a Federal employee. If the Federal payment agency is another Treasury entity, the Treasury entity making the request shall do so through the Deputy Chief Financial Officer as described in § 5.20(c) of this part. At least thirty (30) days prior to offsetting internally or requesting a Federal agency to offset a salary payment, Treasury entities will send notice to the debtor in accordance with the requirements of § 5.4 of this part. When referring a debt for offset, Treasury entities will certify to the payment agency, in writing, that the debt is valid, delinquent and legally enforceable in the amount stated, and there are no legal bars to collection by salary offset. In addition, Treasury entities will certify that all due process and other prerequisites to salary offset have been met. *See* 5 U.S.C. 5514, 31 U.S.C. 3716(a), and this section for a description of the due process and other prerequisites for salary offset.

(d) *When prior notice not required.* Treasury entities are not required to provide prior notice to an employee when the following adjustments are made by a Treasury entity to a Treasury employee's pay:

(1) Any adjustment to pay arising out of any 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;

(2) A routine intra-agency adjustment of pay that is made to correct an overpayment of pay attributable to clerical or administrative errors or delays in processing pay documents, if the overpayment occurred within the four pay periods preceding the adjustment, and, at the time of such adjustment, or as soon thereafter as practical, the individual is provided written notice of the nature and the amount of the adjustment and point of contact for contesting such adjustment; or

(3) Any adjustment to collect a debt amounting to $50 or less, if, at the time

of such adjustment, or as soon thereafter as practical, the individual is provided written notice of the nature and the amount of the adjustment and a point of contact for contesting such adjustment.

(e) *Hearing procedures.* (1) *Request for a hearing.* A Federal employee who has received a notice that his or her Treasury debt will be collected by means of salary offset may request a hearing concerning the existence or amount of the debt. The Federal employee also may request a hearing concerning the amount proposed to be deducted from the employee's pay each pay period. The employee must send any request for hearing, in writing, to the office designated in the notice described in §5.4. *See* §5.4(a)(11). The request must be received by the designated office on or before the 15th calendar day following the employee's receipt of the notice. The employee must sign the request and specify whether an oral or paper hearing is requested. If an oral hearing is requested, the employee must explain why the matter cannot be resolved by review of the documentary evidence alone. All travel expenses incurred by the Federal employee in connection with an in-person hearing will be borne by the employee.

(2) *Failure to submit timely request for hearing.* If the employee fails to submit a request for hearing within the time period described in paragraph (e)(1) of this section, the employee will have waived the right to a hearing, and salary offset may be initiated. However, Treasury entities should accept a late request for hearing if the employee can show that the late request was the result of circumstances beyond the employee's control or because of a failure to receive actual notice of the filing deadline.

(3) *Hearing official.* Treasury entities must obtain the services of a hearing official who is not under the supervision or control of the Secretary. Treasury entities may contact the Deputy Chief Financial Officer as described in §5.20(c) of this part or an agent of any agency designated in Appendix A to 5 CFR part 581 (List of Agents Designated to Accept Legal Process) to request a hearing official.

(4) *Notice of hearing.* After the employee requests a hearing, the designated hearing official shall inform the employee of the form of the hearing to be provided. For oral hearings, the notice shall set forth the date, time and location of the hearing. For paper hearings, the notice shall notify the employee of the date by which he or she should submit written arguments to the designated hearing official. The hearing official shall give the employee reasonable time to submit documentation in support of the employee's position. The hearing official shall schedule a new hearing date if requested by both parties. The hearing official shall give both parties reasonable notice of the time and place of a rescheduled hearing.

(5) *Oral hearing.* The hearing official will conduct an oral hearing if he or she determines that the matter cannot be resolved by review of documentary evidence alone (for example, when an issue of credibility or veracity is involved). The hearing need not take the form of an evidentiary hearing, but may be conducted in a manner determined by the hearing official, including but not limited to:

(i) Informal conferences with the hearing official, in which the employee and agency representative will be given full opportunity to present evidence, witnesses and argument;

(ii) Informal meetings with an interview of the employee by the hearing official; or

(iii) Formal written submissions, with an opportunity for oral presentation.

(6) *Paper hearing.* If the hearing official determines that an oral hearing is not necessary, he or she will make the determination based upon a review of the available written record, including any documentation submitted by the employee in support of his or her position.

(7) *Failure to appear or submit documentary evidence.* In the absence of good cause shown (for example, excused illness), if the employee fails to appear at an oral hearing or fails to submit documentary evidence as required for a paper hearing, the employee will have waived the right to a hearing, and salary offset may be initiated. Further,

the employee will have been deemed to admit the existence and amount of the debt as described in the notice of intent to offset. If the Treasury entity representative fails to appear at an oral hearing, the hearing official shall proceed with the hearing as scheduled, and make his or her determination based upon the oral testimony presented and the documentary evidence submitted by both parties.

(8) *Burden of proof.* Treasury entities will have the initial burden to prove the existence and amount of the debt. Thereafter, if the employee disputes the existence or amount of the debt, the employee must prove by a preponderance of the evidence that no debt exists or that the amount of the debt is incorrect. In addition, the employee may present evidence that the proposed terms of the repayment schedule are unlawful, would cause a financial hardship to the employee, or that collection of the debt may not be pursued due to operation of law.

(9) *Record.* The hearing official shall maintain a summary record of any hearing provided by this part. Witnesses will testify under oath or affirmation in oral hearings.

(10) *Date of decision.* The hearing official shall issue a written opinion stating his or her decision, based upon documentary evidence and information developed at the hearing, as soon as practicable after the hearing, but not later than 60 days after the date on which the request for hearing was received by the Treasury entity. If the employee requests a delay in the proceedings, the deadline for the decision may be postponed by the number of days by which the hearing was postponed. When a decision is not timely rendered, the Treasury entity shall waive penalties applied to the debt for the period beginning with the date the decision is due and ending on the date the decision is issued.

(11) *Content of decision.* The written decision shall include:

(i) A statement of the facts presented to support the origin, nature, and amount of the debt;

(ii) The hearing official's findings, analysis, and conclusions; and

(iii) The terms of any repayment schedules, if applicable.

(12) *Final agency action.* The hearing official's decision shall be final.

(f) Waiver not precluded. Nothing in this part precludes an employee from requesting waiver of an overpayment under 5 U.S.C. 5584 or 8346(b), 10 U.S.C. 2774, 32 U.S.C. 716, or other statutory authority.

(g) *Salary offset process.* (1) *Determination of disposable pay.* The office of the Deputy Chief Financial Officer will consult with the appropriate Treasury entity payroll office to determine the amount of a Treasury Department employee's disposable pay (as defined in § 5.1 of this part) and will implement salary offset when requested to do so by a Treasury entity, as described in paragraph (c) of this section, or another agency, as described in § 5.20 of this part. If the debtor is not employed by the Treasury Department, the agency employing the debtor will determine the amount of the employee's disposable pay and will implement salary offset upon request.

(2) *When salary offset begins.* Deductions shall begin within three official pay periods following receipt of the creditor agency's request for offset.

(3) *Amount of salary offset.* The amount to be offset from each salary payment will be up to 15 percent of a debtor's disposable pay, as follows:

(i) If the amount of the debt is equal to or less than 15 percent of the disposable pay, such debt generally will be collected in one lump sum payment;

(ii) Installment deductions will be made over a period of no greater than the anticipated period of employment. An installment deduction will not exceed 15 percent of the disposable pay from which the deduction is made unless the employee has agreed in writing to the deduction of a greater amount or the creditor agency has determined that smaller deductions are appropriate based on the employee's ability to pay.

(4) *Final salary payment.* After the employee has separated either voluntarily or involuntarily from the payment agency, the payment agency may make a lump sum deduction exceeding 15 percent of disposable pay from any final salary or other payments pursuant to 31 U.S.C. 3716 in order to satisfy a debt.

(h) *Payment agency's responsibilities.* (1) As required by 5 CFR 550.1109, if the employee separates from the payment agency from which a Treasury entity has requested salary offset, the payment agency must certify the total amount of its collection and notify the Treasury entity and the employee of the amounts collected. If the payment agency is aware that the employee is entitled to payments from the Civil Service Retirement Fund and Disability Fund, the Federal Employee Retirement System, or other similar payments, it must provide written notification to the payment agency responsible for making such payments that the debtor owes a debt, the amount of the debt, and that the Treasury entity has complied with the provisions of this section. Treasury entities must submit a properly certified claim to the new payment agency before the collection can be made.

(2) If the employee is already separated from employment and all payments due from his or her former payment agency have been made, Treasury entities may request that money due and payable to the employee from the Civil Service Retirement Fund and Disability Fund, the Federal Employee Retirement System, or other similar funds, be administratively offset to collect the debt. Generally, Treasury entities will collect such monies through the Treasury Offset Program as described in §5.9(c) of this part.

(3) When an employee transfers to another agency, Treasury entities should resume collection with the employee's new payment agency in order to continue salary offset.

§5.13 How will Treasury entities use administrative wage garnishment to collect a Treasury debt from a debtor's wages?

(a) Treasury entities are authorized to collect debts from a debtor's wages by means of administrative wage garnishment in accordance with the requirements of 31 U.S.C. 3720D and 31 CFR 285.11. This part adopts and incorporates all of the provisions of 31 CFR 285.11 concerning administrative wage garnishment, including the hearing procedures described in 31 CFR 285.11(f). Treasury entities may use administrative wage garnishment to collect a delinquent Treasury debt unless the debtor is making timely payments under an agreement to pay the debt in installments (see §5.6 of this part). At least thirty (30) days prior to initiating an administrative wage garnishment, Treasury entities will send notice to the debtor in accordance with the requirements of §5.4 of this part, including the requirements of §5.4(a)(10) of this part. For Treasury debts referred to the Financial Management Service under §5.9 of this part, Treasury entities may authorize the Financial Management Service to send a notice informing the debtor that administrative wage garnishment will be initiated and how the debtor may request a hearing as described in §5.4(a)(10) of this part. If a debtor makes a timely request for a hearing, administrative wage garnishment will not begin until a hearing is held and a decision is sent to the debtor. See 31 CFR 285.11(f)(4). If a debtor's hearing request is not timely, Treasury entities may suspend collection by administrative wage garnishment in accordance with the provisions of 31 CFR 285.11(f)(5). All travel expenses incurred by the debtor in connection with an in-person hearing will be borne by the debtor.

(b) This section does not apply to Federal salary offset, the process by which Treasury entities collect debts from the salaries of Federal employees (see §5.12 of this part).

§5.14 How will Treasury entities report Treasury debts to credit bureaus?

Treasury entities shall report delinquent Treasury debts to credit bureaus in accordance with the provisions of 31 U.S.C. 3711(e), 31 CFR 901.4, and the Office of Management and Budget Circular A–129, ''Policies for Federal Credit Programs and Nontax Receivables.'' For additional information, see Financial Management Service's ''Guide to the Federal Credit Bureau Program,'' which may be found at *http://www.fms.treas.gov/debt.* At least sixty (60) days prior to reporting a delinquent debt to a consumer reporting agency, Treasury entities will send notice to the debtor in accordance with the requirements of §5.4 of this part.

Treasury entities may authorize the Financial Management Service to report to credit bureaus those delinquent Treasury debts that have been transferred to the Financial Management Service under § 5.9 of this part.

§ 5.15 How will Treasury entities refer Treasury debts to private collection agencies?

Treasury entities will transfer delinquent Treasury debts to the Financial Management Service to obtain debt collection services provided by private collection agencies. See § 5.9 of this part.

§ 5.16 When will Treasury entities refer Treasury debts to the Department of Justice?

(a) *Compromise or suspension or termination of collection activity.* Treasury entities shall refer Treasury debts having a principal balance over $100,000, or such higher amount as authorized by the Attorney General, to the Department of Justice for approval of any compromise of a debt or suspension or termination of collection activity. *See* §§ 5.7 and 5.8 of this part; 31 CFR 902.1; 31 CFR 903.1.

(b) *Litigation.* Treasury entities shall promptly refer to the Department of Justice for litigation delinquent Treasury debts on which aggressive collection activity has been taken in accordance with this part and that should not be compromised, and on which collection activity should not be suspended or terminated. See 31 CFR part 904. Treasury entities may authorize the Financial Management Service to refer to the Department of Justice for litigation those delinquent Treasury debts that have been transferred to the Financial Management Service under § 5.9 of this part.

§ 5.17 Will a debtor who owes a Treasury debt be ineligible for Federal loan assistance or Federal licenses, permits or privileges?

(a) *Delinquent debtors barred from obtaining Federal loans or loan insurance or guaranties.* As required by 31 U.S.C. 3720B and 31 CFR 901.6, Treasury entities will not extend financial assistance in the form of a loan, loan guarantee, or loan insurance to any person delinquent on a debt owed to a Federal agency. This prohibition does not apply to disaster loans. Treasury entities may extend credit after the delinquency has been resolved. See 31 CFR 285.13 for standards defining when a ''delinquency'' is ''resolved'' for purposes of this prohibition.

(b) *Suspension or revocation of eligibility for licenses, permits, or privileges.* Unless prohibited by law, Treasury entities should suspend or revoke licenses, permits, or other privileges for any inexcusable or willful failure of a debtor to pay a debt. The Treasury entity responsible for distributing the licenses, permits, or other privileges will establish policies and procedures governing suspension and revocation for delinquent debtors. If applicable, Treasury entities will advise the debtor in the notice required by § 5.4 of this part of the Treasury entities' ability to suspend or revoke licenses, permits or privileges. *See* § 5.4(a)(16) of this part.

§ 5.18 How does a debtor request a special review based on a change in circumstances such as catastrophic illness, divorce, death, or disability?

(a) *Material change in circumstances.* A debtor who owes a Treasury debt may, at any time, request a special review by the applicable Treasury entity of the amount of any offset, administrative wage garnishment, or voluntary payment, based on materially changed circumstances beyond the control of the debtor such as, but not limited to, catastrophic illness, divorce, death, or disability.

(b) *Inability to pay.* For purposes of this section, in determining whether an involuntary or voluntary payment would prevent the debtor from meeting essential subsistence expenses (costs incurred for food, housing, clothing, transportation, and medical care), the debtor shall submit a detailed statement and supporting documents for the debtor, his or her spouse, and dependents, indicating:

(1) Income from all sources;

(2) Assets;

(3) Liabilities;

(4) Number of dependents;

(5) Expenses for food, housing, clothing, and transportation;

(6) Medical expenses; and

(7) Exceptional expenses, if any.

(c) *Alternative payment arrangement.* If the debtor requests a special review under this section, the debtor shall submit an alternative proposed payment schedule and a statement to the Treasury entity collecting the debt, with supporting documents, showing why the current offset, garnishment or repayment schedule imposes an extreme financial hardship on the debtor. The Treasury entity will evaluate the statement and documentation and determine whether the current offset, garnishment, or repayment schedule imposes extreme financial hardship on the debtor. The Treasury entity shall notify the debtor in writing of such determination, including, if appropriate, a revised offset, garnishment, or payment schedule. If the special review results in a revised offset, garnishment, or repayment schedule, the Treasury entity will notify the appropriate agency or other persons about the new terms.

§5.19 Will Treasury entities issue a refund if money is erroneously collected on a debt?

Treasury entities shall promptly refund to a debtor any amount collected on a Treasury debt when the debt is waived or otherwise found not to be owed to the United States, or as otherwise required by law. Refunds under this part shall not bear interest unless required by law.

Subpart C—Procedures for Offset of Treasury Department Payments To Collect Debts Owed to Other Federal Agencies

§5.20 How do other Federal agencies use the offset process to collect debts from payments issued by a Treasury entity?

(a) *Offset of Treasury entity payments to collect debts owed to other Federal agencies.* (1) In most cases, Federal agencies submit eligible debts to the Treasury Offset Program to collect delinquent debts from payments issued by Treasury entities and other Federal agencies, a process known as ''centralized offset.'' When centralized offset is not available or appropriate, any Federal agency may ask a Treasury entity (when acting as a ''payment agency'') to collect a debt owed to such agency by offsetting funds payable to a debtor by the Treasury entity, including salary payments issued to Treasury entity employees. This section and §5.21 of this subpart C apply when a Federal agency asks a Treasury entity to offset a payment issued by the Treasury entity to a person who owes a debt to the United States.

(2) This subpart C does not apply to Treasury debts. *See* §§5.10 through 5.12 of this part for offset procedures applicable to Treasury debts.

(3) This subpart C does not apply to the collection of non-Treasury debts through tax refund offset. *See* 31 CFR 285.2 for tax refund offset procedures.

(b) *Administrative offset (including salary offset); certification.* A Treasury entity will initiate a requested offset only upon receipt of written certification from the creditor agency that the debtor owes the past-due, legally enforceable debt in the amount stated, and that the creditor agency has fully complied with all applicable due process and other requirements contained in 31 U.S.C. 3716, 5 U.S.C. 5514, and the creditor agency's regulations, as applicable. Offsets will continue until the debt is paid in full or otherwise resolved to the satisfaction of the creditor agency.

(c) *Where a creditor agency makes requests for offset.* Requests for offset under this section shall be sent to the U.S. Department of the Treasury, ATTN: Deputy Chief Financial Officer, 1500 Pennsylvania Avenue, NW., Attention: Metropolitan Square, Room 6228, Washington, DC 20220. The Deputy Chief Financial Officer will forward the request to the appropriate Treasury entity for processing in accordance with this subpart C.

(d) *Incomplete certification.* A Treasury entity will return an incomplete debt certification to the creditor agency with notice that the creditor agency must comply with paragraph (b) of this section before action will be taken to collect a debt from a payment issued by a Treasury entity.

(e) *Review.* A Treasury entity is not authorized to review the merits of the creditor agency's determination with respect to the amount or validity of

the debt certified by the creditor agency.

(f) *When Treasury entities will not comply with offset request.* A Treasury entity will comply with the offset request of another agency unless the Treasury entity determines that the offset would not be in the best interests of the United States, or would otherwise be contrary to law.

(g) *Multiple debts.* When two or more creditor agencies are seeking offsets from payments made to the same person, or when two or more debts are owed to a single creditor agency, the Treasury entity that has been asked to offset the payments may determine the order in which the debts will be collected or whether one or more debts should be collected by offset simultaneously.

(h) *Priority of debts owed to Treasury entity.* For purposes of this section, debts owed to a Treasury entity generally take precedence over debts owed to other agencies. The Treasury entity that has been asked to offset the payments may determine whether to pay debts owed to other agencies before paying a debt owed to a Treasury entity. The Treasury entity that has been asked to offset the payments will determine the order in which the debts will be collected based on the best interests of the United States.

§ 5.21 What does a Treasury entity do upon receipt of a request to offset the salary of a Treasury entity employee to collect a debt owed by the employee to another Federal agency?

(a) *Notice to the Treasury employee.* When a Treasury entity receives proper certification of a debt owed by one of its employees, the Treasury entity will begin deductions from the employee's pay at the next officially established pay interval. The Treasury entity will send a written notice to the employee indicating that a certified debt claim has been received from the creditor agency, the amount of the debt claimed to be owed by the creditor agency, the date deductions from salary will begin, and the amount of such deductions.

(b) *Amount of deductions from Treasury employee's salary.* The amount deducted under § 5.20(b) of this part will be the lesser of the amount of the debt certified by the creditor agency or an amount up to 15% of the debtor's disposable pay. Deductions shall continue until the Treasury entity knows that the debt is paid in full or until otherwise instructed by the creditor agency. Alternatively, the amount offset may be an amount agreed upon, in writing, by the debtor and the creditor agency. *See* § 5.12(g) (salary offset process).

(c) *When the debtor is no longer employed by the Treasury entity.* (1) *Offset of final and subsequent payments.* If a Treasury entity employee retires or resigns or if his or her employment ends before collection of the debt is complete, the Treasury entity will continue to offset, under 31 U.S.C. 3716, up to 100% of an employee's subsequent payments until the debt is paid or otherwise resolved. Such payments include a debtor's final salary payment, lump-sum leave payment, and other payments payable to the debtor by the Treasury entity. *See* 31 U.S.C. 3716 and 5 CFR 550.1104(l) and 550.1104(m).

(2) *Notice to the creditor agency.* If the employee is separated from the Treasury entity before the debt is paid in full, the Treasury entity will certify to the creditor agency the total amount of its collection. If the Treasury entity is aware that the employee is entitled to payments from the Civil Service Retirement and Disability Fund, Federal Employee Retirement System, or other similar payments, the Treasury entity will provide written notice to the agency making such payments that the debtor owes a debt (including the amount) and that the provisions of 5 CFR 550.1109 have been fully complied with. The creditor agency is responsible for submitting a certified claim to the agency responsible for making such payments before collection may begin. Generally, creditor agencies will collect such monies through the Treasury Offset Program as described in § 5.9(c) of this part.

(3) *Notice to the debtor.* The Treasury entity will provide to the debtor a copy of any notices sent to the creditor agency under paragraph (c)(2) of this section.

(d) *When the debtor transfers to another Federal agency.* (1) *Notice to the creditor agency.* If the debtor transfers to another Federal agency before the

debt is paid in full, the Treasury entity will notify the creditor agency and will certify the total amount of its collection on the debt. The Treasury entity will provide a copy of the certification to the creditor agency. The creditor agency is responsible for submitting a certified claim to the debtor's new employing agency before collection may begin.

(2) *Notice to the debtor.* The Treasury entity will provide to the debtor a copy of any notices and certifications sent to the creditor agency under paragraph (d)(1) of this section.

(e) *Request for hearing official.* A Treasury entity will provide a hearing official upon the creditor agency's request with respect to a Treasury entity employee. *See* 5 CFR 550.1107(a).

APPENDIX A TO PART 5—TREASURY DIRECTIVE 34–01—WAIVING CLAIMS AGAINST TREASURY EMPLOYEES FOR ERRONEOUS PAYMENTS

TREASURY DIRECTIVE 34–01

Date: July 12, 2000.

Sunset Review: July 12, 2004.

Subject: Waiving Claims Against Treasury Employees for Erroneous Payments.

1. Purpose

This Directive establishes the Department of the Treasury's policies and procedures for waiving claims by the Government against an employee for erroneous payments of: (1) Pay and allowances (*e.g.*, health and life insurance) and (2) travel, transportation, and relocation expenses and allowances.

2. Background

a. 5 U.S.C. §5584 authorizes the waiver of claims by the United States in whole or in part against an employee arising out of erroneous payments of pay and allowances, travel, transportation, and relocation expenses and allowances. A waiver may be considered when collection of the claim would be against equity and good conscience and not in the best interest of the United States provided that there does not exist, in connection with the claim, an indication of fraud, misrepresentation, fault, or lack of good faith on the part of the employee or any other person having an interest in obtaining a waiver of the claim.

b. The General Accounting Office Act of 1996 (Pub. L. 104–316), Title I, §103(d), enacted October 19, 1996, amended 5 U.S.C. §5584 by transferring the authority to waive claims for erroneous payments exceeding $1,500 from the Comptroller General of the United States to the Office of Management and Budget (OMB). OMB subsequently redelegated this waiver authority to the executive agency that made the erroneous payment. The authority to waive claims not exceeding $1,500, which was vested in the head of each agency prior to the enactment of Pub. L. 104–316, was unaffected by the Act.

c. 5 U.S.C. §5514 authorizes the head of each agency, upon a determination that an employee is indebted to the United States for debts to which the United States is entitled to be repaid at the time of the determination, to deduct up to 15%, or a greater amount if agreed to by the employee, from the employee's pay at officially established pay intervals in order to repay the debt.

3. Delegation

a. The Deputy Assistant Secretary (Administration), the heads of bureaus, the Inspector General, and the Inspector General for Tax Administration are delegated the authority to waive, in whole or in part, a claim of the United States against an employee for an erroneous payment of pay and allowances, travel, transportation, and relocation expenses and allowances, aggregating less than $5,000 per claim, in accordance with the limitations and standards in 5 U.S.C. §5584.

b. Treasury's Deputy Chief Financial Officer is delegated the authority to waive, in whole or in part, a claim of the United States against an employee for an erroneous payment of pay and allowances, travel, transportation, and relocation expenses and allowances, aggregating $5,000 or more per claim, in accordance with the limitations and standards in 5 U.S.C. §5584.

4. Appeals

a. Requests for waiver of claims aggregating less than $5,000 per claim which are denied in whole or in part may be appealed to the Deputy Chief Financial Officer for the Department of the Treasury.

b. Requests for waiver of claims aggregating $5,000 or more per claim which are denied in whole or in part may be appealed to the Assistant Secretary (Management)/Chief Financial Officer.

5. Redelegation

The Deputy Assistant Secretary (Administration), the heads of bureaus, the Inspector General, and the Inspector General for Tax Administration may redelegate their respective authority and responsibility in writing no lower than the bureau deputy chief financial officer unless authorized by Treasury's Deputy Chief Financial Officer. Copies of each redelegation shall be submitted to the Department's Deputy Chief Financial Officer.

6. Responsibilities

a. The Deputy Assistant Secretary (Administration), the heads of bureaus, the Inspector General, and the Inspector General for Tax Administration shall:

(1) Promptly notify an employee upon discovery of an erroneous payment to that employee;

(2) Promptly act to collect the erroneous overpayment, following established debt collection policies and procedures;

(3) Establish time frames for employees to request a waiver in writing and for the bureau to review the waiver request. These time frames must take into consideration the responsibilities of the United States to take prompt action to pursue enforced collection on overdue debts, which may arise from erroneous payments.

(4) Notify employees whose requests for waiver of claims aggregating less than $5,000 per claim are denied in whole or in part of the basis for the denial and the right to appeal the denial to the Deputy Chief Financial Officer of the Department of the Treasury. All such appeals shall:

(a) Be made in writing;

(b) Specify the basis for the appeal;

(c) Include a chronology of the events surrounding the erroneous payments;

(d) Include a statement regarding any mitigating factors; and

(e) Be submitted to the official who denied the waiver request no later than 60 days from receipt by the employee of written notice of the denial of the waiver; and

(f) Attach at least the following documents: the employee's original request for a waiver; the bureau's denial of the request; any personnel actions, *e.g.*, promotions, demotions, step increases, etc. that relate to the overpayment.

(5) Forward to Treasury's Deputy Chief Financial Officer the appeal and supporting documentation, the bureau's recommendation as to why the appeal should be approved or denied; and a statement as to the action taken by the bureau to avoid a recurrence of the error.

(6) Pay a refund when appropriate if a waiver is granted;

(7) Fulfill all labor relations responsibilities when implementing this directive; and

(8) Fulfill any other responsibility of the agency imposed by 5 U.S.C. §5584, or other applicable laws and regulations.

b. Treasury's Deputy Chief Financial Officer shall advise employees whose requests for waiver of claims aggregating $5,000 or more per claim are denied in whole or in part of the basis for the denial and the right to appeal the denial to the Assistant Secretary (Management)/Chief Financial Officer. All such appeals shall be in the format and contain the information and documentation described in subsection 6.a.(4), above. The Deputy Chief Financial Officer shall forward to Assistant Secretary (Management)/Chief Financial Officer the appeal and supporting documentation, his/her recommendation as to why the appeal should be approved or denied, and a statement obtained from the bureau from which the claim arose as to the action taken by the bureau to avoid a recurrence of the error.

7. Reporting Requirements

a. Each bureau, the Deputy Assistant Secretary (Administration) for Departmental Offices, the Inspector General, and the Inspector General for Tax Administration shall maintain a register of waiver actions subject to Departmental review. The register shall cover each fiscal year and be prepared by December 31 of each year for the preceding fiscal year. The register shall contain the following information:

(1) The total amount waived by the bureau;

(2) The number and dollar amount of waiver applications granted in full;

(3) The number and dollar amount of waiver applications granted in part and denied in part, and the dollar amount of each;

(4) The number and dollar amount of waiver applications denied in their entirety;

(5) The number of waiver applications referred to the Deputy Chief Financial Officer for initial action or for appeal;

(6) The dollar amount refunded as a result of waiver action by the bureau; and

(7) The dollar amount refunded as a result of waiver action by the Deputy Chief Financial Officer or the Assistant Secretary (Management)/Chief Financial Officer.

b. Each bureau, the Deputy Assistant Secretary (Administration) for Departmental Offices, the Inspector General, and the Inspector General for Tax Administration shall retain a written record of each waiver action for 6 years and 3 months. At a minimum, the written record shall contain:

(1) The bureau's summary of the events surrounding the erroneous payment;

(2) Any written comments submitted by the employee from whom collection is sought;

(3) An account of the waiver action taken and the reasons for such action; and

(4) Other pertinent information such as any action taken to refund amounts repaid.

8. Effect of Request for Waiver

A request for a waiver of a claim shall not affect an employee's opportunity under 5 U.S.C. §5514(a)(2)(D) for a hearing on the determination of the agency concerning the existence or the amount of the debt, or the terms of the repayment schedule. A request by an employee for a hearing under 5 U.S.C. §5514(a)(2)(D) shall not affect an employee's right to request a waiver of the claim. The determination whether to waive a claim may

be made at the discretion of the deciding official either before or after a final decision is rendered pursuant to 5 U.S.C. §5514(a)(2)(D) concerning the existence or the amount of the debt, or the terms of the repayment schedule.

9. Guidelines for Determining Requests

a. A request for a waiver shall *not* be granted if the deciding official determines there exists, in connection with the claim, an indication of fraud, misrepresentation, fault, or lack of good faith on the part of the employee or any other person having an interest in obtaining a waiver of the claim. There are no exceptions to this rule for financial hardship or otherwise.

(1) ''Fault'' exists if, in light of all the circumstances, it is determined that the employee knew or should have known that an error existed, but failed to take action to have it corrected. Fault can derive from an act or a failure to act. Unlike fraud, fault does not require a deliberate intent to deceive. Whether an employee should have known about an error in pay is determined from the perspective of a reasonable person. Pertinent considerations in finding fault include whether:

(a) The payment resulted from the employee's incorrect, but not fraudulent, statement that the employee should have known was incorrect;

(b) The payment resulted from the employee's failure to disclose material facts in the employee's possession which the employee should have known to be material; or

(c) The employee accepted a payment, which the employee knew or should have known to be erroneous.

(2) Every case must be examined in light of its particular facts. For example, where an employee is promoted to a higher grade but the step level for the employee's new grade is miscalculated, it may be appropriate to conclude that there is no fault on the employee's part because employees are not typically expected to be aware of and understand the rules regarding determination of step level upon promotion. On the other hand, a different conclusion as to fault potentially may be reached if the employee in question is a personnel specialist or an attorney who concentrates on personnel law.

b. If the deciding official finds an indication of fraud, misrepresentation, fault, or lack of good faith on the part of the employee or any other person having an interest in obtaining a waiver of the claim, then the request for a waiver must be denied.

c. If the deciding official finds no indication of fraud, misrepresentation, fault, or lack of good faith on the part of the employee or any other person having an interest in obtaining a waiver of the claim, the employee is *not* automatically entitled to a waiver. Before a waiver can be granted, the deciding official must also determine that collection of the claim against an employee would be against equity and good conscience and not in the best interests of the United States. Factors to consider when determining if collection of a claim against an employee would be against equity and good conscience and not in the best interests of the United States include, but are not limited to:

(1) Whether collection of the claim would cause serious financial hardship to the employee from whom collection is sought.

(2) Whether, because of the erroneous payment, the employee either has relinquished a valuable right or changed positions for the worse, regardless of the employee's financial circumstances.

(a) To establish that a valuable right has been relinquished, it must be shown that the right was, in fact, valuable; that it cannot be regained; and that the action was based chiefly or solely on reliance on the overpayment.

(b) To establish that the employee's position has changed for the worse, it must be shown that the decision would not have been made but for the overpayment, and that the decision resulted in a loss.

(c) An example of a ''detrimental reliance'' would be a decision to sign a lease for a more expensive apartment based chiefly or solely upon reliance on an erroneous calculation of salary, and the funds spent for rent cannot be recovered.

(3) The cost of collecting the claim equals or exceeds the amount of the claim;

(4) The time elapsed between the erroneous payment and discovery of the error and notification of the employee;

(5) Whether failure to make restitution would result in unfair gain to the employee;

(6) Whether recovery of the claim would be unconscionable under the circumstances.

d. The burden is on the employee to demonstrate that collection of the claim would be against equity and good conscience and not in the best interest of the United States.

10. Authorities

a. 5 U.S.C. §5584, ''Claims for Overpayment of Pay and Allowances, and of Travel, Transportation and Relocation Expenses and Allowances.''

b. 31 U.S.C. §3711, ''Collection and Compromise.''

c. 31 U.S.C. §3716, ''Administrative Offset.''

d. 31 U.S.C. §3717, ''Interest and Penalty on Claims.''

e. 5 CFR Part 550, subpart K, ''Collection by Offset from Indebted Government Employees.''

f. 31 CFR Part 5, subpart B, ''Salary Offset.''

g. Determination with Respect to Transfer of Functions Pursuant to Public Law 104–316, OMB, December 17, 1996.

11. Cancellation

TD 34–01, ''Waiver of Claims for Erroneous Payments,'' dated October 25, 1995, is superseded.

12. Office of Primary Interest

Office of Accounting and Internal Control.

PART 6—APPLICATIONS FOR AWARDS UNDER THE EQUAL ACCESS TO JUSTICE ACT

Subpart A—General Provisions

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6.17 Payment of award.

AUTHORITY: Sec. 203(a)(1), Pub. L. 96–481, 94 Stat. 2325 (5 U.S.C. 504(c)(1)).

SOURCE: 47 FR 20765, May 14, 1982, unless otherwise noted.

Subpart A—General Provisions

§ 6.1 Purpose of these rules.

The Equal Access to Justice Act, 5 U.S.C. 504 (called ''the Act'' in this part), provides for the award of attorney fees and other expenses to eligible individuals and entities who are parties to certain administrative proceedings (called ''adversary adjudications'') before agencies of the Government of the United States. An eligible party may receive an award when it prevails over an agency, unless the agency's position in the proceeding was substantially justified or special circumstances make an award unjust. The rules in this part describe the parties eligible for awards and the proceedings that are covered. They also explain how to apply for awards, and the procedures and standards that the Treasury Department will use to make them.

§ 6.2 When the Act applies.

The Act applies to any adversary adjudication pending before an agency at any time between October 1, 1981 and September 30, 1984. This includes proceedings begun before October 1, 1981, if final agency action has not been taken before that date, and proceedings pending on September 30, 1984, regardless of when they were initiated or when final agency action occurs.

§ 6.3 Proceedings covered.

The Act applies to adversary adjudications required to be conducted by the Treasury Department under 5 U.S.C. 554. Within the Treasury Department, these proceedings are:

(a) Bureau of Alcohol, Tobacco and Firearms: (1) Permit proceedings under the Federal Alcohol Administration Act (27 U.S.C. 204); (2) Permit proceedings under the Internal Revenue Code of 1954 (26 U.S.C. 5171, 5271, 5713); (3) License and permit proceedings under the Federal Explosives Laws (18 U.S.C. 843).

(b) Comptroller of the Currency:

All proceedings conducted under 12 CFR part 19, subpart A.

§ 6.4 Eligibility of applicants.

(a) To be eligible for an award of attorney fees and other expenses under the Act, the applicant must be a party to the adversary adjudication for which it seeks an award. The term ''party'' is defined in 5 U.S.C. 551(3). The applicant must show that it meets all conditions of eligibility set out in this subpart and has complied with the requirements in Subpart B of this part.

(b) The types of eligible applicants are as follows:

(1) An individual with a net worth of not more than $1 million;

(2) The sole owner of an unincorporated business who has a net worth of not more than $5 million, including both personal and business interests, and not more than 500 employees;

(3) A charitable or other tax-exempt organization described in section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)) with not more than 500 employees;

(4) A cooperative association as defined in section 15(a) of the Agricultural Marketing Act (12 U.S.C. 1141(a)) with not more than 500 employees, or

(5) Any other partnership, corporation, association, or public or private organization with a net worth of not more than $5 million and not more than 500 employees.

(c) For the purpose of eligibility, the net worth and number of employees of an applicant shall be determined as of the date the proceeding was initiated.

(d) An applicant who owns an unincorporated business will be considered as an ''individual'' rather than a ''sole owner of an unincorporated business'' if the matter in controversy is primarily related to personal interests rather than to business interests.

(e) The employees of an applicant include all persons who regularly perform services for remuneration for the applicant, under the applicant's direction and control. Part-time employees shall be included.

(f) The net worth and number of employees of the applicant and all of its affiliates shall be aggregated to determine eligibility. Any individual or group of individuals, corporation or other entity that directly or indirectly controls or owns a majority of the voting shares of another business, or controls in any manner the election of a majority of that business's board of directors, trustees, or other persons exercising similar functions, will be considered an affiliate of that business for purposes of this part, unless the adjudicative officer determines that such treatment would be unjust and contrary to the purposes of the Act in light of the actual relationship between the afffiliated entities. In addition, the adjudicative officer may determine that financial relationships of the applicant other than those described in this paragraph constitute special circumstances that would make an award unjust.

(g) An applicant that participates in a proceeding primarily on behalf of one or more other persons or entities that would be ineligible is not itself eligible for an award.

§6.5 Standards for awards.

(a) A prevailing applicant may receive an award for fees and expenses incurred in connection with the *final* disposition of a proceeding, unless (1) the position of the agency was substantially justified, or (2) special circumstances make the award unjust. No presumption arises that the agency's position was not substantially justified simply because the agency did not prevail.

(b) An award will be reduced or denied if the applicant has unduly or unreasonably protracted the proceeding or if special circumstances make the award sought unjust.

§6.6 Allowable fees and other expenses.

(a) The following fees and other expenses are allowable under the Act:

(1) Reasonable expenses of expert witnesses;

(2) Reasonable cost of any study, analysis, engineering report, test, or project which the agency finds necessary for the preparation of the party's case;

(3) Reasonable attorney or agent fees.

(b) The amount of fees awarded will be based upon the prevailing market rates for the kind and quality of services furnished, except that

(1) Compensation for an expert witness will not exceed the highest rate paid by the agency for expert witnesses; and

(2) Attorney or agent fees will not be in excess of $75 per hour.

§6.7 Delegations of authority.

The Director, Bureau of Alcohol, Tobacco and Firearms and the Comptroller of the Currency are authorized to take final action on matters pertaining to the Equal Access to Justice Act, 5 U.S.C. 504, in proceedings listed in §6.3 under the respective bureau or office. The Secretary of the Treasury may by order delegate authority to take final action on matters pertaining to the Equal Access to Justice Act in particular cases to other subordinate officials.

Subpart B—Information Required From Applicants

§ 6.8 Contents of application.

(a) An application for an award of fees and expenses under the Act shall identify the applicant and the proceeding for which an award is sought. The application shall show that the applicant has prevailed and identify the position of the agency in the proceeding that the applicant alleges was not substantially justified. The application shall state the basis for the applicant's belief that the position was not substantially justified. Unless the applicant is an individual, the application shall also state the number of employees of the applicant and describe briefly the type and purpose of its organization or business.

(b) The application shall also include a statement that the applicant's net worth does not exceed $1 million (if an individual) or $5 million (for all other applicants, including their affiliates). However, an applicant may omit this statement if:

(1) It attaches a copy of a ruling by the Internal Revenue Service that it qualifies as an organization described in section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)) or, in the case of a tax-exempt organization not required to obtain a ruling from the Internal Revenue Service on its exempt status, a statement that describes the basis for the applicant's belief that it qualifies under such section; or

(2) It states that it is a cooperative association as defined in section 15(a) of the Agricultural Marketing Act (12 U.S.C. 1141j(a)).

(c) The application shall itemize the amount of fees and expenses for which an award is sought.

(d) The application may also include any other matters that the applicant wishes the agency to consider in determining whether and in what amount an award should be made.

(e) The application shall be signed by the applicant or an authorized officer with respect to the eligibility of the applicant and by the attorney of the applicant with respect to fees and expenses sought. It shall also contain or be accompanied by a written verification under oath or under penalty of perjury that the information provided in the application is true and correct.

(Approved by the Office of Management and Budget under control number 1512–0444, for applications filed with the Bureau of Alcohol, Tobacco and Firearms)

(5 U.S.C. 552(a) (80 Stat. 383, as amended))

[47 FR 20765, May 14, 1982, as amended at 49 FR 14944, Apr. 16, 1984]

§ 6.9 Net worth exhibit.

(a) Each applicant except a qualified tax-exempt organization, or cooperative association must provide with its application a detailed exhibit showing the net worth of the applicant and any affiliates (as defined in §6.4(f)) when the proceeding was initiated. In the case of national banking associations, ''net worth'' shall be considered to be the total capital and surplus as reported, in conformity with the applicable instructions and guidelines, on the bank's last Consolidated Report of Condition filed before the initiation of the underlying proceeding.

(b) The exhibit may be in any form convenient to the applicant that provides full disclosure of the applicant's and its affiliates assets and liabilities and is sufficient to determine whether the applicant qualifies under the standards in this part. The adjudicative officer may require an applicant to file additional information to determine its eligibility for an award.

§ 6.10 Documentation of fees and expenses.

(a) The application shall be accompanied by full documentation of the fees and expenses, including the cost of any study, engineering report, test, or project, for which an award is sought.

(b) The documentation shall include an affidavit from any attorney, agent, or expert witness representing or appearing in behalf of the party, stating the actual time expended and the rate at which fees and other expenses were computed and describing the specific services performed.

(1) The affidavit shall state the services performed. In order to establish the hourly rate, the affidavit shall state the hourly rate which is billed

and paid by the majority of clients during the relevant time periods.

(2) If not hourly rate is paid by the majority of clients because, for instance, the attorney or agent represents most clients on a contingency basis, the attorney or agent shall provide information about two attorneys or agents with similar experience, who perform similar work, stating their hourly rate.

(c) The documentation shall also include a description of any expenses for which reimbursement is sought and a statement of the amounts paid and payable by the applicant or by any other person or entity for the services provided.

(d) The adjudicative officer may require the applicant to provide vouchers, receipts, or other substantiation for any expenses claimed.

§6.11 When an application may be filed.

(a) An application may be filed whenever the applicant has prevailed in the proceeding but in no case later than 30 days after the agency's final disposition of the proceeding.

(b) If review or reconsideration is sought or taken of a decision as to which an appplicant believes it has prevailed, proceedings for the award of fees shall be stayed pending final disposition of the underlying controversy.

Subpart C—Procedures for Considering Applications

§6.12 Filing and service of documents.

Any application for an award or other pleading or document related to an application shall be filed and served on all parties to the proceeding in the same manner as other pleadings in the proceeding.

§6.13 Answer to application.

(a) Within 30 days after service of an application, counsel representing the agency against which an award is sought shall file an answer to the application.

(b) If agency counsel and the applicant believe that the issues in the fee application can be settled, they may jointly file a statement of their intent to negotiate a settlement. The filing of this statement shall extend the time for filing an answer for an additional 60 days and further extensions may be granted by the adjudicative officer upon request by agency counsel and the applicant.

(c) The answer shall explain any objections to the award requested and identify the facts relied on in support of agency counsel's position. If the answer is based on any alleged facts not already in the record of the proceeding, agency counsel shall include with the answer supporting affidavits.

§6.14 Decision.

The adjudicative officer shall issue an initial decision on the application within 60 days after completion of proceedings on the application. The decision shall include written findings and conclusions on the applicant's eligibility and status as a prevailing party, and an explanation of the reasons for any difference between the amount requested and the amount awarded. The decision shall also include, if at issue, findings on whether the agency's position was substantially justified, whether the applicant unduly protracted the proceedings, or whether special circumstances make an award unjust.

§6.15 Agency review.

Either the applicant or agency counsel may seek review of the initial decision on the fee application, or the agency may decide to review the decision on its own initiative. If neither the applicant nor agency counsel seeks a review and the agncy does not take review on its own initiative, the initial decision on the application shall become a final decision of the agency 30 days after it is issued. Whether to review a decision is a matter within the discretion of the agency. If review is taken, the agency will issue a final decision on the application or remand the application to the adjudicative officer for further proceedings.

§6.16 Judicial review.

Judicial review of final agency decisions on awards may be sought as provided in 5 U.S.C. 504(c)(2).

§ 6.17 Payment of award.

An applicant seeking payment of an award shall submit to the agency a copy of the agency's final decision granting the award, accompanied by a statement that the applicant will not seek review of the decision in the United States courts. An applicant shall be paid the amount awarded unless judicial review of the award or of the underlying decision of the adversary adjudication has been sought by the applicant or any other party to the proceeding.

PART 7—EMPLOYEE INVENTIONS

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7.1 Purpose.
7.2 Responsibilities of the Department.
7.3 Responsibilities of heads of offices.
7.4 Responsibilities of the General Counsel.
7.5 Responsibilities of employees.
7.6 Effect of awards.
7.7 Appeals.
7.8 Delegation.

AUTHORITY: 80 Stat. 379; 5 U.S.C. 301, sec. 6, E.O. 10096; 3 CFR, 1949–1953 Comp., p. 292, as amended by E.O. 10930; 3 CFR, 1959–1963 Comp., p. 456.

SOURCE: 33 FR 10088, July 13, 1968, unless otherwise noted.

§ 7.1 Purpose.

Provisions defining the right, title, and interest of the Government in and to an invention made by a Government employee under various circumstances and the duties of Government agencies with respect thereto are set forth in Executive Order 10096, 15 FR 389, as amended (35 U.S.C. 266 note). Further definition of the circumstances under which the Government will acquire the right to a patent in such an invention or a nonexclusive, irrevocable, royalty-free license in the invention, and the procedures for the determination of these interests, are set forth in the regulations issued under that Executive order by the Patent Office, 37 CFR part 100. The purpose of this part 7 is to implement for the Treasury Department the foregoing Executive order and regulations of the Patent Office by (a) bringing to the attention of Treasury employees the law and procedure governing their rights to, and interest in, inventions made by them, (b) defining responsibility within the Department for making the necessary determinations, and, (c) establishing internal procedures for action in conformity with the Executive order and the Patent Office regulations.

§ 7.2 Responsibilities of the Department.

The responsibilities of the Treasury Department are to determine initially (a) the occurrence of an invention by an employee, (b) his rights in the invention and the rights of the Government therein, and (c) whether patent protection will be sought in the United States by the Department, and to furnish the required reports to the Patent Office.

§ 7.3 Responsibilities of heads of offices.

(a) Heads of bureaus or offices in the Department shall be responsible for determining initially whether the results of research, development, or other activity of an employee within that bureau or office constitute an invention which falls within the purview of Executive Order 10096, as amended, and is to be handled in accordance with the regulations in this part.

(b) Heads of bureaus or offices are responsible for obtaining from the employee the necessary information and, if the determination under paragraph (a) of this section is affirmative, preparing on behalf of the bureau or office a description of the invention and its relationship to the employee's duties and work assignments.

(c) Heads of bureaus or offices, after such examination and investigation as may be necessary, shall refer to the General Counsel all information obtained concerning the invention and such determination as the head of the bureau or office has made with respect to the character of the activity as an invention. These reports shall include any determination as to the giving of a cash award to the employee for his performance relating to that invention.

§ 7.4 Responsibilities of the General Counsel.

(a) The General Counsel shall be responsible for determining, subject to

review by the Commissioner of Patents, the respective rights of the Government and of the inventor in and to any invention made by an employee of the Department.

(b) On the basis of the foregoing determination, the General Counsel shall determine whether patent protection will be sought by the Department for such an invention.

(c) The General Counsel will prepare and furnish to the Patent Office the reports required by the regulations of that Office and will serve as the liaison officer between the Department and the Commissioner of Patents.

§ 7.5 Responsibilities of employees.

All employees are required to report to the heads of their bureaus or offices any result of research, development, or other activity on their part which may constitute an invention and the circumstances under which this possible invention came into being.

§ 7.6 Effect of awards.

The acceptance by an employee of a cash award for performance which constitutes an invention shall, in accordance with 5 U.S.C. 4502(c), constitute an agreement that the use by the Government of the idea, method, or device for which the award is made does not form the basis of any further claim against the Government by the employee, his heirs or assigns.

§ 7.7 Appeals.

(a) Any employee who is aggrieved by a determination made by the head of his bureau or office under this part may obtain a review of the determination by filing an appeal with the General Counsel within 30 days after receiving the notice of the determination complained of.

(b) Any employee who is aggrieved by a determination made by the General Counsel under this part may obtain a review of the determination by filing a written appeal with the Commissioner of Patents within 30 days after receiving notice of the determination complained of, or within such longer period as the Commissioner may provide. The appeal to the Commissioner shall be processed in accordance with the provisions in the regulations of the Patent Office for an appeal from an agency determination.

§ 7.8 Delegation.

The heads of bureaus or offices and the General Counsel may delegate, as appropriate, the performance of the responsibilities assigned to them under this part.

PART 8—PRACTICE BEFORE THE BUREAU OF ALCOHOL, TOBACCO AND FIREARMS

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AUTHORITY: Sec. 3, 23 Stat. 258 (31 U.S.C. 1026); 5 U.S.C. 301, 500, 551–559; and Reorganization Plan No. 26 of 1950, 15 FR 4935, 64 Stat. 1280, as amended.

SOURCE: 42 FR 33026, June 29, 1977, unless otherwise noted.

Subpart A—General Requirements

§ 8.1 Scope.

This part contains rules governing the recognition of attorneys, certified public accountants, enrolled practitioners, and other persons representing clients before the Bureau of Alcohol, Tobacco and Firearms.

§ 8.2 Persons who may practice.

(a) *Attorneys.* Any attorney who is not currently under suspension or disbarment from practice before the Bureau of Alcohol, Tobacco and Firearms, may practice before the Bureau upon filing a written declaration with the Bureau, that he or she is currently qualified as an attorney and is authorized to represent the particular party on whose behalf he or she acts.

(b) *Certified public accountants.* Any certified public accountant who is not currently under suspension or disbarment before the Bureau of Alcohol, Tobacco and Firearms, may practice before the Bureau upon filing a written declaration with the Bureau, that he or she is currently qualified as a certified public accountant and is authorized to represent the particular party on whose behalf he or she acts.

(c) *Enrollment practitioners.* Any person enrolled as a practitioner under the provisions of subpart C of this part and who is not under suspension or disbarment from enrollment may practice before the Bureau.

(d) *Limited practitioners.* Any person qualified for limited practice without enrollment under the provisions of § 8.29 may practice before the Bureau.

(e) *Restrictions on Government officers and employees.* Any officer or employee of the United States in the executive, legislative, or judicial branch of the Government, or in any agency of the United States, including the District of Columbia, who is otherwise eligible to practice under the provisions of this part, may represent parties before the Bureau when doing so in the conduct of his or her official duties. A Government officer or employee may not otherwise practice before the Bureau except that, subject to the requirements of 18 U.S.C. 205, he or she may represent a member of his or her immediate family or a person or estate for which he or she serves as guardian, executor, administrator, trustee or other personal fiduciary. Member of Congress or Resident Commissioners (elect or serving) may not practice before the Bureau in connection with any matter for which they directly or indirectly seek any compensation.

(f) *Restrictions on State officers and employees.* No officer or employee of any State, or subdivision thereof, whose official responsibilities require him or her to pass upon, investigate, or deal with any State law or regulation concerning alcohol, tobacco, firearms, explosives matters or wagering, may practice before the Bureau if his or her official responsibility may disclose pertinent facts or information relating to matters administered by the Bureau.

(g) *Customhouse brokers.* Customhouse brokers, licensed by the Commissioner of Customs according to 19 CFR part 111, may represent a party for whom they have acted as a customhouse broker before the Bureau with respect to matters relating to the importation

or exportation of merchandise under customs or intenal revenue laws.

(Approved by the Office of Management and Budget under control number 1512–0418)

(18 U.S.C. 203, 205; 5 U.S.C. 552(a) (80 Stat. 383, as amended))

[42 FR 33026, June 29, 1977, as amended at 49 FR 14944, Apr. 16, 1984]

§8.3 Conference and practice requirements.

Conference and practice requrements of the Bureau of Alcohol, Tobacco and Firearms, including requirements for powers of attorney are set forth in:

(a) 26 CFR part 601, subpart E (or those regulations as recodified in 27 CFR part 71 subsequent to the effective date of these regulations, 31 CFR part 8) with respect to all representations before the Bureau except those concerning license or permit proceedings;

(b) 27 CFR part 200 with respect to proceedings concerning permits issued under the Federal Alcohol Administration Act or the Internal Revenue Code;

(c) 27 CFR 47.44 with respect to proceedings concerning licenses issued under the Arms Export Control Act (22 U.S.C. 2778);

(d) 27 CFR part 178, subpart E, with respect to proceedings concerning licenses issued under the Gun Control Act of 1968 (18 U.S.C. Chapter 44); and

(e) 27 CFR part 181, subpart E, with respect to proceedings concerning licenses or permits issued under the Organized Crime Control Act of 1970 (18 U.S.C. Chapter 40).

§8.4 Director of Practice.

(a) *Appointment.* The Secretary shall appoint the Director of Practice. In the event of the absence of the Director of Practice or a vacancy in that office, the Secretary shall designate an officer or employee of the Treasury Department to act as Director of Practice.

(b) *Duties.* The Director of Practice, Office of the Secretary of the Treasury, shall: Act upon appeals from decisions of the Director denying applications for enrollment to practice before the Bureau; institute and provide for the conduct of disciplinary proceedings relating to attorneys, certified public accountants, and enrolled practitioners; make inquiries with respect to matters under his or her jurisdiction; and perform other duties as are necessary or appropriate to carry out his or her functions under this part or as are prescribed by the Secretary.

§8.5 Records.

(a) *Availability.* Registers of all persons admitted to practice before the Bureau, and of all persons disbarred or suspended from practice, which are required to be maintained by the director under the provisions of §8.27, will be available for public inspection at the Office of the Director. Other records may be disclosed upon specific request in accordance with the disclosure regulations of the Bureau (27 CFR part 71) and the Office of the Secretary.

(b) *Disciplinary proceedings.* The Director, may grant a request by an attorney, certified public accountant, or enrolled practitioner to make public a hearing in a disciplinary proceeding, conducted under the provisions of subpart E of this part concerning the attorney, certified public accountant or enrolled practioner, and to make the record of the proceeding available for public inspection by interested persons, if an agreement is reached by stipulation in advance to prevent disclosure of any information which is confidential, in accordance with applicable laws and regulations.

§8.6 Special orders.

The secretary reserves the power to issue special orders as he or she may deem proper in any cases within the scope of this part.

Subpart B—Definitions

§8.11 Meaning of terms.

As used in this part, terms shall have the meaning given in this section. Words in the plural shall include the singular, and vice versa. The terms *include* and *including* do not exclude things not enumerated which are in the same general class.

Administrative Law Judge. The person appointed pursuant to 5 U.S.C. 3105, designated to preside over any administrative proceedings under this part.

Attorney. A person who is a member in good standing of the bar of the highest court of any State, possession, territory, Commonwealth, or the District of Columbia.

Bureau. The Bureau of Alcohol, Tobacco and Firearms, the Department of the Treasury, Washington, DC 20226.

Certified public accountant. Any person who is qualified to practice as a certified public accountant in any State, possession, territory, Commonwealth, or the District of Columbia.

CFR. The Code of Federal Regulations.

Director. The Director, Bureau of Alcohol, Tobacco and Firearms, the Department of the Treasury, Washington, DC.

Enrolled practitioner. Any person enrolled to practice before the Bureau of Alcohol, Tobacco and Firearms pursuant to Subpart C of this part.

Practice before the Bureau. This comprehends all matters connected with presentation to the Bureau or any of its officers or employees relating to a client's rights, privileges or liabilities under laws or regulations administered by the Bureau. Presentations include the preparation and filing of necessary documents, correspondence with and communications to the Bureau, and the representation of a client at conferences, hearings, and meetings. Preparation of a tax return, appearance of an individual as a witness for any party, or furnishing information at the request of the Bureau of any of its officers or employees is not considered practice before the Bureau.

Secretary. The Secretary of the Treasury.

U.S.C. The United States Code.

Subpart C—Enrollment Procedures

§ 8.21 Eligibility for enrollment.

(a) *General qualifications*. The Director may grant enrollment to practice to any person who has not engaged in conduct which would justify the disbarment or suspension of any attorney, certified public accountant, or enrolled practioner. Each person shall demonstrate to the satisfaction of the Director that he or she possesses the necessary technical qualifications to enable him or her to render valuable service before the Bureau, and that he or she is otherwise competent to advise and assists in the presentation of matters before the Bureau.

(b) *Technical qualifications*. The Director may grant enrollment to practice only to persons possessing technical knowledge of the laws and regulations administered by the Bureau.

(1) Minimum criteria required of an enrolled practioner will consist of: 5 years employment with the Treasury Department in a responsible position which would familiarize the person with applicable laws and regualtions; or 5 years employment in a regulated industry in a responsible position which would familiarize the person with applicable laws and regulations; or possession of a law degree; or other significant experience such as the prior respresentation of persons before the Internal Revenue Service or the Bureau of Alcohol, Tobacco and Firearms.

(2) An enrolled paractioner may demonstrate technical knowledge in one or more of the several areas of laws and regulations administered by the Bureau (alcohol, tobacco firearms, or explosives matters).

(c) *Natural persons*. Enrollment to practice may only be granted to natural persons who have become 18 years of age.

(d) *Attorneys, certified public accountants*. Enrollment if not available to persons who are attorneys or certified public accountants who qualify to practice without enrollment under § 8.2 (a) or (b).

[42 FR 33026, June 29, 1977; 42 FR 36455, July 15, 1977]

§ 8.22 Application for enrollment.

(a) *Information to be furnished*. An applicant for enrollment to practice shall state his or her name, address, and business address, citizenship, and age on the application. The applicant shall also state if he or she has ever been suspended or disbarred as an attorney or certified public accountant, or if the applicant's right to practice has ever been revoked by any court, commission, or administrative agency in any jurisdiction. The applicant shall set forth his or her technical qualifications as required by § 8.21(b) which enable him or her to render valuable service

before the Bureau. The applicant shall indicate which area or areas of Bureau matters in which he or she desires to practice (alcohol, tobacco, firearms, or explosives matters).

(b) *Fee.* Each application for enrollment will be accompanied by a check or money order in the amount of $25, payable to the Bureau of Alcohol, Tobacco and Firearms. This fee will be retained by the United States whether or not the applicant is granted enrollment. Agents who are enrolled to practice before the Internal Revenue Service prior to September 27, 1977, need not include this fee and should indicate their enrollment number on the application.

(c) *Execution under oath.* All applications for enrollment will be executed under oath or affirmation.

(d) *Filing.* Applications for enrollment will be filed with the Assistant Director, Regulatory Enforcement, Bureau of Alcohol, Tobacco and Firearms, 1200 Pensylvania Avenue NW., Washington, DC 20226.

(e) *Additional information.* The Director, as a condition to consideration for enrollment, may require the applicant to file additional information as necessary to determine if the applicant is qualified. The Director shall, upon written request, afford an applicant the opportunity to be heard with respect to his or her application for enrollment.

(Approved by the Office of Management and Budget under control number 1512–0418)

(Sec. 501, Pub. L. 82–137, 65 Stat. 290 (31 U.S.C. 483a); 5 U.S.C. 552(a) (80 Stat. 383, as amended))

[42 FR 33026, June 29, 1977; 42 FR 36455, July 15, 1977, as amended at 49 FR 14944, Apr. 16, 1984]

§ 8.23 Denial of enrollment; appeal.

(a) The Director, in denying an application for enrollment, shall inform the applicant as to the reasons. The applicant may, within 30 days after receipt of the notice of denial, file a written appeal together with reasons in support thereof, with the Director of Practice. The Director of Practice shall render a decision on the appeal as soon as practicable.

(b) An applicant may, within 30 days after receipt of the decision of the Director of Practice in sustaining a denial of enrollment, appeal the decision to the Secretary.

§ 8.24 Enrollment cards.

The Director shall issue an enrollment card to each practitioner who is enrolled to practice before the Bureau. Each enrollment card is valid for a period of 5 years as long as the holder remains enrolled and in good standing before the Bureau. Unless advised to the contrary by the Director, any officer or employee of the Bureau may consider the holder of an unexpired enrollment card to be authorized to practice before the Bureau in the subject area or areas indicated upon the card (alcohol, tobacco, firearms, or explosives matters).

§ 8.25 Renewal of enrollment card.

(a) *Period of renewal.* An enrolled practitioner may apply for renewal of his or her enrollment card during a 12-month period prior to the expiration of the enrollment card.

(b) *Application.* Each enrolled practitioner applying for a renewal of enrollment shall apply to the Director. The enrolled practitioner shall include in the application all information required by § 8.22 except information relating to technical qualifications unless the enrolled practitioner is applying for enrollment in a subject area or areas in which he or she was not previously qualified to practice.

(c) *Fee.* Each application for renewal of enrollment will be accompanied by a check or money order in the amount of $5, payable to the Bureau of Alcohol, Tobacco and Firearms.

(Approved by the Office of Management and Budget under control number 1512–0418)

(5 U.S.C. 552(a) (80 Stat. 383, as amended))

[42 FR 33026, June 29, 1977, as amended at 49 FR 14944, Apr. 16, 1984]

§ 8.26 Change in enrollment.

(a) *Change in area of practice.* At any time during a period of enrollment, an enrolled practitioner may apply to practice in a subject area or areas in which he or she was not previously qualified to practice (alcohol, tobacco, firearms, or explosives matters).

(b) *Application.* Each enrolled practitioner applying for a change in enrollment shall apply to the Director. The enrolled practitioner shall include in the application all information required by §8.22 but shall include information relating to technical qualifications only in those additional subject areas in which he or she is applying to practice.

(c) *Fee.* Each application for change in enrollment will be accompanied by a check or money order in the amount of $5, payable to the Bureau of Alcohol, Tobacco and Firearms.

(Approved by the Office of Management and Budget under control number 1512–0418)

(5 U.S.C. 552(a) (80 Stat. 383, as amended))

[42 FR 33026, June 29, 1977, as amended at 49 FR 14944, Apr. 16, 1984]

§ 8.27 Enrollment registers.

The Director shall maintain, for public inspection, a register of all persons enrolled to practice before the Bureau and the subject areas in which each person is enrolled to practice, a register of all persons disbarred or suspended from practice, and a register of all persons whose applications for enrollment before the Bureau have been denied.

§ 8.28 Termination of enrollment.

(a) *Attorneys, certified public accountants.* The enrollment of a practitioner to whom an enrollment card has been issued will terminate when that person becomes eligible to practice without enrollment under §8.2 (a) or (b), and that person shall surrender his or her enrollment card to the Director for cancellation.

(b) *Expiration of enrollment.* The enrollment of any person will automatically terminate after the date indicated on the enrollment card unless, during the 12-month period prior to the expiration date, that person applies for renewal of enrollment with the Director as provided in §8.25. In this case, the person may continue to practice before the Bureau until his or her application has been finally determined.

§ 8.29 Limited practice without enrollment.

(a) *General.* Individuals may appear on their own behalf and may otherwise appear without enrollment, providing they present satisfactory identification, in the following classes of cases:

(1) An individual may represent another individual who is his or her regular full-time employer, may represent a partnership of which he or she is a member or a regular full-time employee, of may represent without compensation a member of his or her immediate family.

(2) Corporations (including parent corporations, subsidiaries or affiliated corporations), trusts, estates, associations, or organized groups may be represented by bona fide officers or regular full-time employees.

(3) Trusts, receiverships, guardianships, or estates may be represented by their trustees, receivers, guardians, administrators, executors, or their regular full-time employees.

(4) Any government unit, agency, or authority may be represented by an officer or regular employee in the course of his or her official duties.

(5) Unenrolled persons may participate in rulemaking as provided in 5 U.S.C. 553.

(b) *Special appearances.* The Director, subject to conditions he or she deems appropriate, may authorize any person to represent a party without enrollment, for the purpose of a particular matter.

Subpart D—Duties and Restrictions Relating to Practice

§ 8.31 Furnishing of information.

(a) *To the Bureau.* No attorney, certified public accountant, or enrolled practitioner may neglect or refuse promptly to submit records or information in any matter before the Bureau, upon proper and lawful request by an authorized officer or employee of the Bureau, or may interfere, or attempt to interfere, with any proper and lawful effort by the Bureau or its officers or employees, to obtain the requested record or information, unless he or she

believes in good faith and on reasonable grounds that the record or information is privileged or that the request for, or effort to obtain, that record or information is of doubtful legality.

(b) *To the Director of Practice.* It is the duty of an attorney or certified public accountant, who practices before the Bureau, or enrolled practitioner when requested by the Director of Practice, to provide the Director of Practice with any information he or she may have concerning violation of the regulations in this part by any person, and to testify thereto in any proceeding instituted under this part for the disbarment or suspension of an attorney, certified public accountant, or enrolled practitioner, unless he or she believes in good faith and on reasonable grounds that that information is privileged or that the request is of doubtful legality.

§ 8.32 Prompt disposition of pending matters.

No attorney, certified public accountant, or enrolled practitioner may unreasonably delay the prompt disposition of any matter before the Bureau.

§ 8.33 Accuracy.

Each attorney, certified public accountant, and enrolled practitioner shall exercise due diligence in:

(a) Preparing or assisting in the preparation of, approving, and filing returns, documents, affidavits, and other papers relating to Bureau matters;

(b) Determining the correctness of any representations made by him or her to the Bureau; and

(c) Determining the correctness of any information which he or she imparts to a client with reference to any matter administered by the Bureau.

§ 8.34 Knowledge of client's omission.

Each attorney, certified public accountant, or enrolled practitioner who knows that a client has not complied with applicable law, or has made an error in or omission from any document, affidavit, or other paper which the law requires the client to execute, shall advise the client promptly of the fact of such noncompliance, error, or omission.

§ 8.35 Assistance from disbarred or suspended persons and former Treasury employees.

No attorney, certified public accountant or enrolled practitioner shall, in practice before the Bureau, knowingly and directly or indirectly:

(a) Employ or accept assistance from any person who is under disbarment or suspension from practice before any agency of the Treasury Department;

(b) Accept employment as associate, correspondent, or subagent from, or share fees with, any such person;

(c) Accept assistance in a specific matter from any person who participated personally and substantially in the matter as an employee of the Treasury Department.

[44 FR 47059, Aug. 10, 1979]

§ 8.36 Practice by partners of Government employees.

No partner of an officer or employee of the executive branch of the U.S. Government, of any independent agency of the United States, or of the District of Columbia, may represent anyone in any matter administered by the Bureau in which the Government employee participates or has participated personally and substantially as a Government employee, or which is the subject of that employee's official responsibility.

§ 8.37 Practice by former Government employees.

(a) *Violation of law.* No former officer or employee of the U.S. Government, of any independent agency of the United States, or of the District of Columbia, may represent anyone in any matter administered by the Bureau if the representation would violate any of the laws of the United States.

(b) *Personal and substantial participation.* No former officer or employee of the executive branch of the U.S. Goverment, of any independent agency of the United States, or of the District of Columbia, may represent anyone with repect to any matter under the administration of the Bureau, if he or she participated personally and substantially in that matter a a Government employee.

(c) *Official responsibility.* No former officer or employee of the executive

branch of the U.S. Government, of any indepenednt agency of the United States, or of the District of Columbia, may within one year after his or her employment has ceased, appear personally as a practitioner before the Bureau with respect to any matter administered by the Bureau if that representation involves a specific matter under the former employee's official responsibility as a Government employee, within a one-year period prior to the termination of that responsibility.

(d) *Aid or assistance.* No former officer or employee of the Bureau, who is eligible to practice before the Bureau, may aid or assist any person in the representation of a specific matter in which the former officer or employee participated personally and substantially as an officer or employee of the Bureau.

(18 U.S.C. 207)

§ 8.38 Notaries.

No attorney, certified public accountant, or enrolled practitioner may, with respect to any matter administered by the Bureau, take acknowledgements, administer oaths, certify papers, or perform any official act in connection with matters in which he or she is employed as counsel, attorney, or practioner, or in which he or she may be in any way interested before the Bureau.

(26 Op. Atty. Gen. 236)

§ 8.39 Fees.

No attorney, certified public accountant, or enrolled practitioner may charge an unconscionable fee for representing a client in any matter before the Bureau.

§ 8.40 Conflicting interests.

No attorney, certified public accountant, or enrolled practitioner may represent conflicting interests in practice before the Bureau, except by express consent of all directly interested parties after full disclosure has been made.

§ 8.41 Solicitation.

(a) *Advertising and solicitation restrictions.* (1) No attorney, certified public accountant or enrolled practitioner shall, with respect to any Bureau matter, in any way use or participate in the use of any form of public communication containing a false, fraudulent, misleading, deceptive, unduly influencing, coercive or unfair statement or claim. For the purposes of this subsection, the prohibition includes, but is not limited to, statements pertaining to the quality of services rendered unless subject to factual verification, claims of specialized expertise not authorized by State or Federal agencies having jurisdiction over the practitioner, and statements or suggestions that the ingenuity and/or prior record of a representative rather than the merit of the matter are principal factors likely to determine the result of the matter.

(2) No attorney, certified public accountant or enrolled practitioner shall make, directly or indirectly, an uninvited solicitation of employment, in matters related to the Bureau. Solicitation includes, but is not limited to, in-person contacts, telephone communications, and personal mailings directed to the specific circumstances unique to the recipient. This restriction does not apply to: (i) Seeking new business from an existing or former client in a related matter; (ii) solicitation by mailings, the contents of which are designed for the general public; or (iii) non-coercive in-person solicitation by those eligible to practice before the Bureau while acting as an employee, member, or officer of an exempt organization listed in sections 501(c) (3) or (4) of the Internal Revenue Code of 1954 (26 U.S.C.).

(b) *Permissible advertising.* (1) Attorneys, certified public accountants and enrolled practitioners may publish, broadcast, or use in a dignified manner through any means of communication set forth in paragraph (d) of this section:

(i) The name, address, telephone number, and office hours of the practitioner or firm.

(ii) The names of individuals associated with the firm.

(iii) A factual description of the services offered.

(iv) Acceptable credit cards and other credit arrangements.

(v) Foreign language ability.

(vi) Membership in pertinent, professional organizations.

(vii) Pertinent professional licenses.

(viii) A statement that an individual's or firm's practice is limited to certain areas.

(ix) In the case of an enrolled practitioner, the phrase ''enrolled to practice before the Bureau of Alcohol, Tobacco and Firearms.''

(x) Other facts relevant to the selection of a practitioner in matters related to the Bureau which are not prohibited by these regulations.

(2) Attorneys, certified public accountants and enrolled practitioners may use, to the extent they are consistent with the regulations in this section, customary biographical insertions in approved law lists and reputable professional journals and directories, as well as professional cards, letterheads and announcements: *Provided,* That (i) attorneys do not violate applicable standards of ethical conduct adopted by the American Bar Association, (ii) certified public accountants do not violate applicable standards of ethical conduct adopted by the American Institute of Certified Public Accountants, and (iii) enrolled practitioners do not violate applicable standards of ethical conduct adopted by the National Society of Public Accountants.

(c) *Fee information.* (1) Attorneys, certified public accountants and enrolled practitioners may disseminate the following fee information:

(i) Fixed fees for specific routine services.

(ii) Hourly rates.

(iii) Range of fees for particular services.

(iv) Fee charged for an initial consultation.

(2) Attorneys, certified public accountants and enrolled practitioners may also publish the availability of a written schedule of fees.

(3) Attorneys, certified public accountants and enrolled practitioners shall be bound to charge the hourly rate, the fixed fee for specific routine services, the range of fees for particular services, or the fee for an initial consultation published for a reasonable period of time, but no less than thirty days from the last publication of such hourly rate or fees.

(d) *Communications.* Communications, including fee information, shall be limited to professional lists, telephone directories, print media, permissible mailings as provided in these regulations, radio and television. In the case of radio and television broadcasting, the broadcast shall be pre-recorded and the practitioner shall retain a recording of the actual audio transmission.

(e) *Improper associations.* An attorney, certified public accountant or enrolled practitioner may, in matters related to the Bureau, employ or accept employment or assistance as an associate, correspondent, or subagent from, or share fees with, any person or entity who, to the knowledge of the practitioner, obtains clients or otherwise practices in a manner forbidden under this section: *Provided,* That an attorney, certified public accountant or enrolled practitioner does not, directly or indirectly, act or hold himself out as authorized to practice before the Bureau in connection with that relationship. Nothing herein shall prohibit an attorney, certified public accountant, or enrolled practitioner from practice before the Bureau in a capacity other than that described above.

[44 FR 47060, Aug. 10, 1979]

§8.42 Practice of law.

Nothing in the regulations in this part may be construed as authorizing persons not members of the bar to practice law.

Subpart E—Disciplinary Proceedings

§8.51 Authority to disbar or suspend.

The Secretary, after due notice and opportunity for hearing, may suspend or disbar from practice before the Bureau any attorney, certified public accountant, or enrolled practitioner shown to be incompetent, disreputable or who refuses to comply with the rules and regulations in this part or who shall, with intent to defraud, in any manner willfully and knowingly deceive, mislead, or threaten any client

or prospective client, by word, circular, letter, or by advertisement.

(Sec. 3, 23 Stat. 258 (31 U.S.C. 1026))

§ 8.52 Disreputable conduct.

Disreputable conduct for which an attorney, certified public accountant, or enrolled practitioner may be disbarred or suspended from practice before the Bureau includes, but is not limited to:

(a) Conviction of any criminal offense under the revenue laws of the United States; under any other law of the United States which the Bureau enforces pursuant to Treasury Department Order No. 221 (37 FR 11696) effective July 1, 1972; or for any offense involving dishonesty or breach of trust.

(b) Giving false or misleading information, or participating in any way in the giving of false or misleading information, to the Bureau or any officer or employee thereof, or to any tribunal authorized to pass upon matters administered by the Bureau in connection with any matter pending or likely to be pending before them, knowing the information to be false or misleading. Facts or other matters contained in testimony, Federal tax returns, financial statements, applications for enrollment, affidavits, declarations, or any other document or statement, written or oral, are included in the term ''information''.

(c) Solicitation of employment as prohibited under § 8.41, the use of false or misleading representations with intent to deceive a client or a prospective client in order to procure employment, or intimating that the practitioner is able improperly to obtain special consideration or action from the Bureau or an officer or employee thereof.

(d) Willfully failing to make a Federal tax return in violation of the revenue laws of the United States, or evading, attempting to evade, or participating in any way in evading or attempting to evade any Federal tax or payment thereof; knowingly counseling or suggesting to a client or prospective client an illegal plan to evade Federal taxes or payment thereof, or concealing assets of himself or herself, or of another in order to evade Federal taxes or payment thereof.

(e) Misappropriation of, or failure properly and promptly to remit funds received from a client for the purpose of payment of taxes or other obligations due the United States.

(f) Directly or indirectly attempting to influence, or offering or agreeing to attempt to influence, the official action of any officer or employee of the Bureau by the use of threats, false accusations, duress or coercion, by the offer of any special inducement or promise of advantage or by the bestowing of any gift, favor, or thing of value.

(g) Disbarment or suspension from practice as an attorney or certified public accountant by any duly constituted authority of any State, possession, Commonwealth, the District of Columbia, or by any Federal court of record.

(h) Disbarment or suspension from practice as an attorney, certified public accountant, or other person admitted to practice before the Internal Revenue Service.

(i) Knowingly aiding and abetting another person to practice before the Bureau during a period of suspension, disbarment, or ineligibility of the other person. Maintaining a partnership for the practice of law, accountancy, or other related professional service with a person who is under disbarment from practice before the Bureau or the Intenal Revenue Service is presumed to be a violation of this provision.

(j) Contemptuous conduct in connection with practice before the Bureau, including the use of abusive language, making false accusations and statements knowing them to be false, or circulating or publishing malicious or libelous matter.

(k) Willful violatin of any of the regulations contained in this part.

[42 FR 33026, June 29, 1977; 42 FR 36455, July 15, 1977]

§ 8.53 Initiation of disciplinary proceedings.

(a) *Receipt of information*. If an officer or employee of the Bureau has reason to believe that an attorney, certified public accountant, or enrolled practitioner has violated any of the provisions of this part or engaged in any disreputable conduct as defined in § 8.52, the employee shall promptly make a

report thereof which will be forwarded to the Director of Practice. Any other person possessing information concerning violations or disreputable conduct may make a report thereof to the Director of Practice or to any officer or employee of the Bureau.

(b) *Institution of proceeding.* When the Director of Practice has reason to believe that any attorney, certified public accountant, or enrolled practitioner has violated any provisions of the laws or regulations governing practice before the Bureau, he or she may reprimand the person or institute a proceeding for the disbarment or suspension of that person. The proceeding will be instituted by a complaint which names the respondent and is signed by the Director of Practice and filed in his or her office. Except in cases of willfulness, or when time, the nature of the proceeding, or the public interest does not permit, the Director of Practice may not institute a proceeding until he or she has called to the attention of the proposed respondent, in writing, facts or conduct which warrant institution of a proceeding, and has accorded the proposed respondent the opportuity to demonstrate or achieve compliance with all lawful requirements.

§ 8.54 Conferences.

(a) *General.* The Director of Practice may confer with an attorney, certified public accountant, or enrolled practioner concerning allegations of misconduct whether or not a proceeding for disbarment or suspension has been instituted. If a conference results in a stipulation in connection with a proceeding in which that person is the respondent, the stipulaton may be entered in the record at the instance of either party to the proceeding.

(b) *Resignation or voluntary suspension.* An attorney, certified public accountant, or enrolled practitioner, in order to avoid the institution or conclusion of a disbarment or suspension proceeding, may offer his or her consent to suspension from practice before the Bureau. An enrolled practitioner may also offer a resignation. The Director of Practice, at his or her discretion, may accept the offered resignation of an enrolled practitioner and may suspend an attorney, certified public accountant, or enrolled practitioner in accordance with the consent offered.

§ 8.55 Contents of complaint.

(a) *Charges.* A complaint will give a plain and concise description of the allegations which constitute the basis for the proceeding. A complaint will be deemed sufficient if it fairly informs the respondent of the charges to that he or she is able to prepare a defense.

(b) *Demand for answer.* The complaint will give notification of the place and time prescribed for the filing of an answer by the respondent; that time will be not less than 15 days from the date of service of the complaint. Notice will be given that a decision by default may be rendered against the respondent if the complaint is not answered as required.

§ 8.56 Service of complaint and other papers.

(a) *Complaint.* A copy of the complaint may be served upon the respondent by certified mail or by first-class mail. The copy of the complaint may be delivered to the respondent or the respondent's attorney or agent of record either in person or by leaving it at the office or place of business of the respondent, attorney or agent, or the complaint may be delivered in any manner which has been agreed to by the respondent. If the service is by certified mail, the post office receipt signed by or on behalf of the respondent will be proof of service. If the certified matter is not claimed or accepted by the respondent and is returned undelivered, complete service may be made upon the respondent by mailing the complaint to him or her by first-class mail, addressed to the respondent at the address under which he or she is enrolled or at the last address known to the Director of Practice. If service is made upon the respondent or the respondent's attorney or agent in person, or by leaving the complaint at the office or place of business of the respondent, attorney or agent, the verified return by the person making service, setting forth the manner of service, will be proof of service.

(b) *Service of other papers.* Any paper other than the complaint may be

served upon an attorney, certified public accountant, or enrolled practitioner as provided in paragraph (a) of this section, or by mailing the paper by first-class mail to the respondent at the last address known to the Director of Practice, or by mailing the paper by first-class mail to the respondent's attorney or agent of record. This mailing will constitute complete service. Notices may be served upon the respondent or his attorney or agent by telegram.

(c) *Filing of papers.* When the filing of a paper is required or permitted in connection with a disbarment or suspension proceeding, and the place of filing is not specified by this subpart or by rule or order of the Administrative Law Judge, the papers will be filed with the Director of Practice, Treasury Department, Washington, DC 20220. All papers will be filed in duplicate.

§ 8.57 Answer.

(a) *Filing.* The respondent shall file the answer in writing within the time specified in the complaint or notice of institution of the proceeding, unless on application the time is extended by the Director of Practice or the Administrative Law Judge. The respondent shall file the answer in duplicate with the director of Practice.

(b) *Contents.* The respondent shall include in the answer a statement of facts which constitute the grounds of defense, and shall specifically admit or deny each allegation set forth in the complaint, except that the respondent shall not deny a material allegation in the complaint which he or she knows to be true, or state that he or she is without sufficient information to form a belief when in fact the respondent possesses that information. The respondent may also state affirmatively special matters of defense.

(c) *Failure to deny or answer allegations in the complaint.* Every allegation in the complaint which is not denied in the answer is deemed to be admitted and may be considered as proven, and no further evidence in respect of that allegation need be adduced at a hearing. Failure to file an answer within the time prescribed in the notice to the respondent, except as the time for answer is extended by the Director of Practice or the Administrative Law Judge, will constitute an admission of the allegations of the complaint and a waiver of hearing, and the Administrative Law Judge may make a decision by default without a hearing or further procedure.

(d) *Reply by Director of Practice.* No reply to the respondent's answer is required, and new matter in the answer will be deemed to be denied, but the Director of Practice may file a reply at his or her discretion or at the request of the Administrative Law Judge.

§ 8.58 Supplemental charges.

If it appears that the respondent in his or her answer, falsely and in bad faith, denies a material allegation of fact in the complaint or states that the respondent has no knowledge sufficient to form a belief, when he or she in fact possesses that information, or if it appears that the respondent has knowingly introduced false testimony during proceedings for his or her disbarment or suspension, the Director of Practice may file supplemental charges against the respondent. These supplemental charges may be tried with other charges in the case, provided the respondent is given due notice and is afforded an opportunity to prepare to a defense to them.

§ 8.59 Proof; variance; amendment of pleadings.

In the case of a variance between the allegations in a pleading, the Administrative Law Judge may order or authorize amendment of the pleading to conform to the evidence. The party who would otherwise be prejudiced by the amendment will be given reasonable opportunty to meet the allegation of the pleading as amended, and the Administrative Law Judge shall make findings on an issue presented by the pleadings as so amended.

§ 8.60 Motions and requests.

Motions and requests may be filed with the Director of Practice or with the Administrative Law Judge.

§ 8.61 Representation.

A respondent or proposed respondent may appear in person or be represented by counsel or other representative who need not be enrolled to practice before

the Bureau. The Director of Practice may be represented by an Attorney or other employee of the Treasury Department.

§ 8.62 Administrative Law Judge.

(a) *Appointment.* An Administrative Law Judge, appointed as provided by 5 U.S.C. 3105, shall conduct proceedings upon complaints for the disbarment or suspension of attorneys, certified public accountants, or enrolled practitioners.

(b) *Responsibilities.* The Administrative Law Judge in connection with any disbarment or suspension proceeding shall have authority to:

(1) Administer oaths and affirmation;

(2) Make rulings upon motions and requests; these rulings may not be appealed prior to the close of the hearing except at the discretion of the Administrative Law Judge in extraordinary circumstances;

(3) Rule upon offers of proof, receive relevant evidence, and examine witnesses;

(4) Take or authorize to the taking of depositions;

(5) Determine the time and place of hearing and regulate its course and conduct;

(6) Hold or provide for the holding of conferences to settle or simplify the issues by consent of the parties;

(7) Receive and consider oral or written arguments on facts or law;

(8) Make initial decisions;

(9) Adopt rules of procedure and modify them from time to time as occasion requires for the orderly disposition of proceedings; and

(10) Perform acts and take measures as necessary to promote the efficient conduct of any proceeding.

§ 8.63 Hearings.

(a) *Conduct.* The Administrative Law Judge shall preside at the hearing on a complaint for the disbarment or suspension of an attorney, certified public accountant, or enrolled practitioner. Hearings will be stenographically recorded and transcribed and the testimony of witnesses will be received under oath or affirmation. The Administrative Law Judge shall conduct hearings pursuant to 5 U.S.C. 556.

(b) *Failure to appear.* If either party to the proceedings fails to appear at the hearing, after due notice has been sent, the Administrative Law Judge may deem them to have waived the right to a hearing and may make a decision against the absent party by default.

§ 8.64 Evidence.

(a) *Rules of evidence.* The rules of evidence prevailing in courts of law and equity are not controlling in hearings. However, the Administrative Law Judge shall exclude evidence which is irrelevant, immaterial, or unduly repetitious.

(b) *Depositions.* Depositions of witnesses taken pursuant to § 8.65 may be admitted as evidence.

(c) *Government documents.* Official documents, records, and papers of the Bureau of Alcohol, Tobacco and Firearms and the Office of the Director of Practice are admissible in evidence without the prouction of an officer or employee to authenticate them. These documents, records and papers may be evidenced by a copy attested or identified by an officer or employee of the Bureau or the Treasury Department.

(d) *Exhibits.* If any document, record, or other paper is introduced in evidence as an exhibit, the Administrative Law Judge may authorize the withdrawal of the exhibit subject to any conditions he or she deems proper.

(e) *Objections.* Objections to evidence will be in short form, stating the grounds of objection and the record may not include arguments thereon, except as ordered by the Administrative Law Judge. Rulings on objections will be a part of the record. No exception to the ruling is necessary to preserve the rights of the parties.

§ 8.65 Depositions.

Depositions for use at a hearing may, with the written approval of the Administrative Law Judge, be taken by either the Director of Practice or the respondent or their authorized representatives. Depositions may be taken upon oral or written questioning, upon not less than 10 days' written notice to the other party before any officer authorized to administer an oath for general purposes or before an officer or

employee of the Bureau authorized to administer an oath pursuant to 27 CFR 70.35. The written notice will state the names of the witnesses and the time and place where the depositions are to be taken. The requirement of 10 days' notice may be waived by the parties in writing, and depositions may then be taken from the persons and at the times and places mutually agreed to by the parties. When a deposition is taken upon written questioning, any cross-examination will be upon written questioning. Copies of the written questioning will be served upon the other party with the notice, and copies of any written cross-interrogation will be mailed or delivered to the opposing party at least 5 days before the date of taking the depositions, unless the parties mutually agree otherwise. A party on whose behalf a deposition is taken must file it with the Administrative Law Judge and serve one copy upon the opposing party. Expenses in the reproduction of depositions will be borne by the party at whose instance the deposition is taken.

§ 8.66 Transcript.

In cases in which the hearing is stenographically reported by a Government contract reporter, copies of the transcript may be obtained from the reporter at rates not to exceed the maximum rates fixed by contract between the Government and the reporter. If the hearing is stenographically reported by a regular employee of the Bureau, a copy of the hearing will be supplied to the respondent either without charge or upon the payment of a reasonable fee. Copies of exhibits introduced at the hearing or at the taking of depositions will be supplied to the parties upon the payment of a reasonable fee.

(Sec. 501, Pub. L. 82–137, 65 Stat. 290 (31 U.S.C. 483a))

§ 8.67 Proposed findings and conclusions.

Except in cases when the respondent has failed to answer the complaint or when a party has failed to appear at the hearing, the Administrative Law Judge, prior to making his or her decision, shall afford the parties a reasonable opportunity to submit proposed findings and conclusions and their supporting reasons.

§ 8.68 Decision of Administrative Law Judge.

As soon as practicable after the conclusion of a hearing and the receipt of any proposed findings and conclusions timely submitted by the parties, the Administrative Law Judge shall make the initial decision in the case. The decision will include (a) a statement of findings and conclusions, as well as the reasons or basis therefor, upon all the material issues of fact, law, or discretion presented on the record, and (b) an order of disbarment, suspension, or reprimand or an order of dismissal of the complaint. The Administrative Law Judge shall file the decision with the Director of Practice and shall transmit a copy to the respondent or the respondent's attorney of record. In the absence of an appeal to the Secretary, or review of the decision upon motion of the Secretary, the decision of the Administrative Law Judge will, without further proceedings, become the decision of the Secretary of the Treasury 30 days from the date of the Administrative Law Judge's decision.

§ 8.69 Appeal to the Secretary.

Within 30 days from the date of the Administrative Law Judge's decision, either party may appeal to the Secretary. The appeal will be filed with the Director of Practice in duplicate and will include exceptions to the decision of the Administrative Law Judge and supporting reasons for those exceptions. If the Director of Practice files the appeal, he or she shall transmit a copy of it to the respondent. Within 30 days after receipt of an appeal or copy thereof, the other party may file a reply brief in duplicate with the Director of Practice. If the Director of Practice files the reply brief, he or she shall transmit a copy of it to the respondent. Upon the filing of an appeal and a reply brief, if any, the Director of Practice shall transmit the entire record to the Secretary.

§ 8.70 Decision of the Secretary.

On appeal from or review of the intial decision of the Administrative Law Judge, the Secretary shall make the

agency decision. In making this decision, the Secretary shall review the record or those portions of the records as may be cited by the parties in order to limit the issues. The Director of Prasctice shall transmit a copy of the Secretary's decision to the respondent.

§8.71 Effect of disbarment or suspension.

(a) *Disbarment.* If the final order against the respondent is for disbarment, the respondent will not thereafter be permitted to practice before the Bureau unless authorized to do so by the Director of Practice pursuant to §8.72.

(b) *Suspension.* If the final order against the respondent is for suspension, the respondent will not thereafter be permitted to practice before the Bureau during the period of suspension.

(c) *Surrender of enrollment card.* If an enrolled practitioner is disbarred or suspended, he or she shall surrender the enrollment card to the Director of Practice for cancellation, in the case of disbarment, or for retention during the period of suspension.

(d) *Notice of disbarment or suspension.* Upon the issuance of a final order for suspension or disbarment, the Director of Practice shall give notice of the order to appropriate officers and employees of the Bureau of Alcohol, Tobacco and Firearms and to interested departments and agencies of the Federal Government. The Director of Practice may also give notice as he or she may determine to the proper authorities of the State in which the disbarred or suspended person was licensed to practice as an attorney or certified public accountant.

§8.72 Petition for reinstatement.

The Director of Practice may entertain a petition for reinstatement from any person disbarred from practice before the Bureau after the expiration of 5 years following disbarment. The director of Practice may not grant reinstatement unless he or she is satisfied that the petitioner is not likely to conduct himself or herself contrary to the regulations in this part, and that granting reinstatement would not be contrary to the public interest.

PART 9—EFFECTS OF IMPORTED ARTICLES ON THE NATIONAL SECURITY

Sec.
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9.3 General.
9.4 Criteria for determining effects of imports on national security.
9.5 Applications for investigation.
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9.9 Report.

AUTHORITY: Sec. 232, as amended, 76 Stat. 877, 80 Stat. 369 (19 U.S.C. 1862); 5 U.S.C. 301; Reorg. Plan No. 1 of 1973; and E.O. 11725, June 27, 1973 (38 FR 17175).

§9.2 Definitions.

As used herein, *Secretary* means the Secretary of the Treasury and *Assistant Secretary* means the Assistant Secretary of the Treasury (Enforcement, Operations, and Tariff Affairs).

[40 FR 50717, Oct. 31, 1975]

§9.3 General.

(a) Upon request of the head of any Government department or agency, upon application of an interested party, or upon his own motion, the Assistant Secretary shall set in motion an immediate investigation to determine the effects on the national security of imports of any article.

(b) The Secretary shall report the findings of his investigation under paragraph (a) of this section with respect to the effect of the importation of such article in such quantities or under such circumstances upon the national security and, based on such findings, his recommendation for action or inaction to the President within one year after receiving an application from an interested party or otherwise beginning an investigation under this section.

[39 FR 10898, Mar. 22, 1974, as amended at 40 FR 50717, Oct. 31, 1975]

§9.4 Criteria for determining effects of imports on national security.

(a) In determining the effect on the national security of imports of the article which is the subject of the investigation, the Secretary is required to take into consideration the following:

(1) Domestic production needed for projected national defense requirements including restoration and rehabilitation.

(2) The capacity of domestic industries to meet such projected requirements, including existing and anticipated availabilities of:

(i) Human resources.

(ii) Products.

(iii) Raw materials.

(iv) Production equipment and facilities.

(v) Other supplies and services essential to the national defense.

(3) The requirement of growth of such industries and such supplies and services including the investment, exploration and development necessary to assure capacity to meet projected defense requirements.

(4) The effect which the quantities, availabilities, character and uses of imported goods have or will have on such industries and the capacity of the United States to meet national security requirements.

(5) The economic welfare of the Nation as it is related to our national security, including the impact of foreign competition on the economic welfare of individual domestic industries. In determining whether such impact may impair the national security, any substantial unemployment, decrease in revenues of government, loss of skills or investment, or other serious effects shall be considered.

(b) The Secretary shall also consider other relevant factors in determining whether the national security is affected by imports of the article.

[39 FR 10898, Mar. 22, 1974]

§ 9.5 Applications for investigation.

(a) Applications shall be in writing. Twenty-five copies shall be filed by mail with the Assistant Secretary (Enforcement, Operations, and Tariff Affairs), Department of the Treasury, Washington, DC 20220.

(b) Applications shall describe how the quantities or circumstances of imports of the particular article affect the national security and shall contain the following information:

(1) Identification of the person, partnership, association, corporation, or other entity on whose behalf the application is filed.

(2) A precise description of the article.

(3) Description of the applicant and the domestic industry concerned, including pertinent information regarding companies and their plants, locations, capacity and current output of the domestic industry concerned with the article in question.

(4) Pertinent statistics showing the quantities and values of both imports and production in the United States.

(5) Nature, sources, and degree of the competition created by imports of the article in question.

(6) The effect, if any, of imports of the article in question upon the restoration of domestic production capacity in an emergency.

(7) Employment and special skills involved in the domestic production of the article.

(8) Extent to which investment and specialized productive capacity is or will be adversely affected.

(9) Revenues of Federal, State, or local Governments which are or may be affected by the volume or circumstances of imports of the article.

(10) Defense or defense supporting uses of the article including data on defense contracts or sub-contracts, both past and current.

(c) Statistical material presented should be on a calendar-year basis for sufficient periods of time to indicate trends and afford the greatest possible assistance to the Assistant Secretary. Monthly or quarterly data for the latest complete years should be included as well as any other breakdowns which may be pertinent to show seasonal or short-term factors.

[39 FR 10898, Mar. 22, 1974, as amended at 40 FR 50717, Oct. 31, 1975]

§ 9.6 Confidential information.

Information submitted in confidence which the Assistant Secretary determines would disclose trade secrets and commercial or financial information obtained from a person and privileged, within the meaning of 5 U.S.C. 552 and 31 CFR part 1, will be accorded confidential treatment. All information submitted in confidence must be on

separate pages marked ''Business Confidential.''

[40 FR 50717, Oct. 31, 1975]

§9.7 Conduct of investigation.

(a) The investigation by the Assistant Secretary or by such official or agency as he may designate, shall be such as to enable the Secretary to arrive at a fully informed opinion as to the effect on the national security of imports of the article in question.

(b) If the Assistant Secretary determines that it is appropriate to hold public hearings or otherwise afford interested parties an opportunity to present information and advice relevant to an investigation, he shall issue a public notice which shall be published in the FEDERAL REGISTER. Such notice shall include a statement of the time, place and nature of any public hearing or shall solicit from any interested party written comments, opinions, or data relative to the investigation, to be submitted to the Assistant Secretary within the time period specified in the notice. Rebuttal to material so submitted may be filed with the Assistant Secretary within such time as is specified in the public notice. All data, comments and opinions shall be submitted with 25 copies.

(c) All applications filed and all comments, opinions, and data submitted pursuant to paragraph (b) of this section, except information determined to be confidential as provided in §9.6, will be available for inspection and copying at the Office of the Assistant Secretary (Enforcement, Operations, and Tariff Affairs), Department of the Treasury, in Washington, DC. The Assistant Secretary will maintain a roster of persons who have submitted materials.

(d) The Assistant Secretary or his designee may also request further data from other sources through the use of questionnaires, correspondence, or other means.

(e) The Assistant Secretary or his delegate shall, in the course of the investigation, seek information or advice from, and consult with, the Secretary of Defense, the Secretary of Commerce, or their delegates, and any other appropriate officer of the United States as the Assistant Secretary shall determine.

(f) In addition, the Assistant Secretary, or his designee, may, when he deems it appropriate, hold public hearings to elicit further information. If a hearing is held:

(1) The time and place thereof will be published in the FEDERAL REGISTER.

(2) It will be conducted by the Assistant Secretary or his designee, and the full record will be considered by the Secretary in arriving at his determination.

(3) Interested parties may appear, either in person or by representation, and produce oral or written evidence relevant and material to the subject matter of the investigation.

(4) After a witness has testified the Assistant Secretary or his designee may question the witness. Questions submitted to the Assistant Secretary or his designee in writing by any interested party may, at the discretion of the Assistant Secretary or his designee, be posed to the witness for reply for the purpose of assisting the Assistant Secretary in obtaining the material facts with respect to the subject matter of the investigation.

(5) The hearing will be stenographically reported. The Assistant Secretary will not cause transcripts of the record of the hearing to be distributed to the interested parties, but a transcript may be inspected at the Office of the Assistant Secretary (Enforcement, Operations, and Tariff Affairs), Department of the Treasury, in Washington, DC, or purchased from the reporter.

[39 FR 10898, Mar. 22, 1974, as amended at 40 FR 50717, Oct. 31, 1975]

§9.8 Emergency action.

In emergency situations or when in his judgment national security interests require it, the Secretary may vary or dispense with any of the procedures set forth above and may formulate his views without following such procedures.

[39 FR 10898, Mar. 22, 1974]

§9.9 Report.

A report will be made and published in the FEDERAL REGISTER upon the disposition of each request, application or motion under §9.3. Copies of the report will be available at the Office of the

Assistant Secretary (Enforcement, Operations, and Tariff Affairs), Department of the Treasury.

[40 FR 50718, Oct. 31, 1975]

PART 10—PRACTICE BEFORE THE INTERNAL REVENUE SERVICE

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AUTHORITY: Sec. 3, 23 Stat. 258, secs. 2–12, 60 Stat. 237 *et seq.*; 5 U.S.C. 301, 500, 551–559; 31 U.S.C. 330; Reorg. Plan No. 26 of 1950, 15 FR 4935, 64 Stat. 1280, 3 CFR, 1949–1953 Comp., p. 1017.

SOURCE: Department Circular 230, Revised, 31 FR 10773, Aug. 13, 1966, unless otherwise noted.

§ 10.0 Scope of part.

This part contains rules governing the recognition of attorneys, certified public accountants, enrolled agents, and other persons representing clients before the Internal Revenue Service. Subpart A of this part sets forth rules relating to authority to practice before the Internal Revenue Service; subpart B of this part prescribes the duties and restrictions relating to such practice;

subpart C of this part contains rules relating to disciplinary proceedings; subpart D of this part contains rules applicable to disqualification of appraisers; and Subpart E of this part contains general provisions, including provisions relating to the availability of official records.

[59 FR 31526, June 20, 1994]

Subpart A—Rules Governing Authority to Practice

SOURCE: 67 FR 48765, July 26, 2002, unless otherwise noted.

§ 10.1 Director of Practice.

(a) *Establishment of office.* The Office of Director of Practice is established in the Office of the Secretary of the Treasury. The Director of Practice is appointed by the Secretary of the Treasury, or his or her designate.

(b) *Duties.* The Director of Practice acts on applications for enrollment to practice before the Internal Revenue Service; makes inquiries with respect to matters under his or her jurisdiction; institutes and provides for the conduct of disciplinary proceedings relating to attorneys, certified public accountants, enrolled agents, enrolled actuaries and appraisers; and performs other duties as are necessary or appropriate to carry out his or her functions under this part or as are prescribed by the Secretary of the Treasury, or his or her delegate.

(c) *Acting Director of Practice.* The Secretary of the Treasury, or his or her delegate, will designate an officer or employee of the Treasury Department to act as Director of Practice in the absence of the Director or a vacancy in that office.

§ 10.2 Definitions.

As used in this part, except where the text clearly provides otherwise:

(a) *Attorney* means any person who is a member in good standing of the bar of the highest court of any State, territory, or possession of the United States, including a Commonwealth, or the District of Columbia.

(b) *Certified public accountant* means any person who is duly qualified to practice as a certified public accountant in any State, territory, or possession of the United States, including a Commonwealth, or the District of Columbia.

(c) *Commissioner* refers to the Commissioner of Internal Revenue.

(d) *Practice before the Internal Revenue Service* comprehends all matters connected with a presentation to the Internal Revenue Service or any of its officers or employees relating to a taxpayer's rights, privileges, or liabilities under laws or regulations administered by the Internal Revenue Service. Such presentations include, but are not limited to, preparing and filing documents, corresponding and communicating with the Internal Revenue Service, and representing a client at conferences, hearings, and meetings.

(e) *Practitioner* means any individual described in paragraphs (a), (b), (c), or (d) of § 10.3.

(f) A *tax return* includes an amended tax return and a claim for refund.

(g) *Service* means the Internal Revenue Service.

§ 10.3 Who may practice.

(a) *Attorneys.* Any attorney who is not currently under suspension or disbarment from practice before the Internal Revenue Service may practice before the Internal Revenue Service by filing with the Internal Revenue Service a written declaration that he or she is currently qualified as an attorney and is authorized to represent the party or parties on whose behalf he or she acts.

(b) *Certified public accountants.* Any certified public accountant who is not currently under suspension or disbarment from practice before the Internal Revenue Service may practice before the Internal Revenue Service by filing with the Internal Revenue Service a written declaration that he or she is currently qualified as a certified public accountant and is authorized to represent the party or parties on whose behalf he or she acts.

(c) *Enrolled agents.* Any individual enrolled as an agent pursuant to this part who is not currently under suspension or disbarment from practice before the Internal Revenue Service may practice before the Internal Revenue Service.

(d) *Enrolled actuaries.* (1) Any individual who is enrolled as an actuary by the Joint Board for the Enrollment of Actuaries pursuant to 29 U.S.C. 1242 who is not currently under suspension or disbarment from practice before the Internal Revenue Service may practice before the Internal Revenue Service by filing with the Internal Revenue Service a written declaration stating that he or she is currently qualified as an enrolled actuary and is authorized to represent the party or parties on whose behalf he or she acts.

(2) Practice as an enrolled actuary is limited to representation with respect to issues involving the following statutory provisions in title 26 of the United States Code: sections 401 (relating to qualification of employee plans), 403(a) (relating to whether an annuity plan meets the requirements of section 404(a)(2)), 404 (relating to deductibility of employer contributions), 405 (relating to qualification of bond purchase plans), 412 (relating to funding requirements for certain employee plans), 413 (relating to application of qualification requirements to collectively bargained plans and to plans maintained by more than one employer), 414 (relating to definitions and special rules with respect to the employee plan area), 419 (relating to treatment of funded welfare benefits), 419A (relating to qualified asset accounts), 420 (relating to transfers of excess pension assets to retiree health accounts), 4971 (relating to excise taxes payable as a result of an accumulated funding deficiency under section 412), 4972 (relating to tax on nondeductible contributions to qualified employer plans), 4976 (relating to taxes with respect to funded welfare benefit plans), 4980 (relating to tax on reversion of qualified plan assets to employer), 6057 (relating to annual registration of plans), 6058 (relating to information required in connection with certain plans of deferred compensation), 6059 (relating to periodic report of actuary), 6652(e) (relating to the failure to file annual registration and other notifications by pension plan), 6652(f) (relating to the failure to file information required in connection with certain plans of deferred compensation), 6692 (relating to the failure to file actuarial report), 7805(b) (relating to the extent to which an Internal Revenue Service ruling or determination letter coming under the statutory provisions listed here will be applied without retroactive effect); and 29 U.S.C. 1083 (relating to the waiver of funding for nonqualified plans).

(3) An individual who practices before the Internal Revenue Service pursuant to paragraph (d)(1) of this section is subject to the provisions of this part in the same manner as attorneys, certified public accountants and enrolled agents.

(e) *Others.* Any individual qualifying under paragraph (d) of § 10.5 or § 10.7 is eligible to practice before the Internal Revenue Service to the extent provided in those sections.

(f) *Government officers and employees, and others.* An individual, who is an officer or employee of the executive, legislative, or judicial branch of the United States Government; an officer or employee of the District of Columbia; a Member of Congress; or a Resident Commissioner may not practice before the Internal Revenue Service if such practice violates 18 U.S.C. 203 or 205.

(g) *State officers and employees.* No officer or employee of any State, or subdivision of any State, whose duties require him or her to pass upon, investigate, or deal with tax matters for such State or subdivision, may practice before the Internal Revenue Service, if such employment may disclose facts or information applicable to Federal tax matters.

§ 10.4 Eligibility for enrollment.

(a) *Enrollment upon examination.* The Director of Practice may grant enrollment to an applicant who demonstrates special competence in tax matters by written examination administered by, or administered under the oversight of, the Director of Practice and who has not engaged in any conduct that would justify the censure, suspension, or disbarment of any practitioner under the provisions of this part.

(b) *Enrollment of former Internal Revenue Service employees.* The Director of Practice may grant enrollment to an applicant who, by virtue of his or her past service and technical experience

in the Internal Revenue Service, has qualified for such enrollment and who has not engaged in any conduct that would justify the censure, suspension, or disbarment of any practitioner under the provisions of this part, under the following circumstances—

(1) The former employee applies for enrollment to the Director of Practice on a form supplied by the Director of Practice and supplies the information requested on the form and such other information regarding the experience and training of the applicant as may be relevant.

(2) An appropriate office of the Internal Revenue Service, at the request of the Director of Practice, will provide the Director of Practice with a detailed report of the nature and rating of the applicant's work while employed by the Internal Revenue Service and a recommendation whether such employment qualifies the applicant technically or otherwise for the desired authorization.

(3) Enrollment based on an applicant's former employment with the Internal Revenue Service may be of unlimited scope or it may be limited to permit the presentation of matters only of the particular class or only before the particular unit or division of the Internal Revenue Service for which the applicant's former employment has qualified the applicant.

(4) Application for enrollment based on an applicant's former employment with the Internal Revenue Service must be made within 3 years from the date of separation from such employment.

(5) An applicant for enrollment who is requesting such enrollment based on his or her former employment with the Internal Revenue Service must have had a minimum of 5 years continuous employment with the Internal Revenue Service during which he or she must have been regularly engaged in applying and interpreting the provisions of the Internal Revenue Code and the regulations thereunder relating to income, estate, gift, employment, or excise taxes.

(6) For the purposes of paragraph (b)(5) of this section, an aggregate of 10 or more years of employment in positions involving the application and interpretation of the provisions of the Internal Revenue Code, at least 3 of which occurred within the 5 years preceding the date of application, is the equivalent of 5 years continuous employment.

(c) *Natural persons.* Enrollment to practice may be granted only to natural persons.

§ 10.5 Application for enrollment.

(a) *Form; address.* An applicant for enrollment must file an application on Form 23, ''Application for Enrollment to Practice Before the Internal Revenue Service,'' properly executed under oath or affirmation, with the Director of Practice. The address of the applicant entered on Form 23 will be the address under which a successful applicant is enrolled and is the address to which the Director of Practice will send correspondence concerning enrollment. An enrolled agent must send notification of any change to his or her enrollment address to the Director of Practice, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224, or at such other address specified by the Director of Practice. This notification must include the enrolled agent's name, old address, new address, social security number or tax identification number, signature, and the date.

(b) *Fee.* The application for enrollment must be accompanied by a check or money order in the amount set forth on Form 23, payable to the Internal Revenue Service, which amount constitutes a fee charged to each applicant for enrollment. This fee will be retained by the United States whether or not the applicant is granted enrollment.

(c) *Additional information; examination.* The Director of Practice, as a condition to consideration of an application for enrollment, may require the applicant to file additional information and to submit to any written or oral examination under oath or otherwise. The Director of Practice will, on written request filed by an applicant, afford such applicant the opportunity to be heard with respect to his or her application for enrollment.

(d) *Temporary recognition.* On receipt of a properly executed application, the

Director of Practice may grant the applicant temporary recognition to practice pending a determination as to whether enrollment to practice should be granted. Temporary recognition will be granted only in unusual circumstances and it will not be granted, in any circumstance, if the application is not regular on its face, if the information stated in the application, if true, is not sufficient to warrant enrollment to practice, or if there is any information before the Director of Practice indicating that the statements in the application are untrue or that the applicant would not otherwise qualify for enrollment. Issuance of temporary recognition does not constitute enrollment to practice or a finding of eligibility for enrollment, and the temporary recognition may be withdrawn at any time by the Director of Practice.

(e) *Appeal from denial of application.* The Director of Practice must inform the applicant as to the reason(s) for any denial of an application for enrollment. The applicant may, within 30 days after receipt of the notice of denial of enrollment, file a written appeal of the denial of enrollment with the Secretary of the Treasury or his or her delegate. A decision on the appeal will be rendered by the Secretary of the Treasury, or his or her delegate, as soon as practicable.

§ 10.6 Enrollment.

(a) *Roster.* The Director of Practice will maintain rosters of all individuals—

(1) Who have been granted active enrollment to practice before the Internal Revenue Service;

(2) Whose enrollment has been placed in inactive status for failure to meet the requirements for renewal of enrollment;

(3) Whose enrollment has been placed in inactive retirement status;

(4) Who have been censured, suspended, or disbarred from practice before the Internal Revenue Service;

(5) Whose offer of consent to resign from enrollment to practice before the Internal Revenue Service has been accepted by the Director of Practice under § 10.61; and

(6) Whose application for enrollment has been denied.

(b) *Enrollment card.* The Director of Practice will issue an enrollment card to each individual whose application for enrollment to practice before the Internal Revenue Service is approved after July 26, 2002. Each enrollment card will be valid for the period stated on the enrollment card. An individual is not eligible to practice before the Internal Revenue Service if his or her enrollment card is not valid.

(c) *Term of enrollment.* Each individual enrolled to practice before the Internal Revenue Service will be accorded active enrollment status subject to his or her renewal of enrollment as provided in this part.

(d) *Renewal of enrollment.* To maintain active enrollment to practice before the Internal Revenue Service, each individual enrolled is required to have his or her enrollment renewed. Failure by an individual to receive notification from the Director of Practice of the renewal requirement will not be justification for the failure to satisfy this requirement.

(1) All individuals licensed to practice before the Internal Revenue Service who have a social security number or tax identification number that ends with the numbers 0, 1, 2, or 3, except for those individuals who received their initial enrollment after November 1, 2003, must apply for renewal between November 1, 2003, and January 31, 2004. The renewal will be effective April 1, 2004.

(2) All individuals licensed to practice before the Internal Revenue Service who have a social security number or tax identification number that ends with the numbers 4, 5, or 6, except for those individuals who received their initial enrollment after November 1, 2004, must apply for renewal between November 1, 2004, and January 31, 2005. The renewal will be effective April 1, 2005.

(3) All individuals licensed to practice before the Internal Revenue Service who have a social security number or tax identification number that ends with the numbers 7, 8, or 9, except for those individuals who received their initial enrollment after November 1, 2005, must apply for renewal between

November 1, 2005, and January 31, 2006. The renewal will be effective April 1, 2006.

(4) Thereafter, applications for renewal will be required between November 1 and January 31 of every subsequent third year as specified in paragraph (d)(1), (2) or (3) of this section according to the last number of the individual's social security number or tax identification number. Those individuals who receive initial enrollment after November 1 and before April 2 of the applicable renewal period will not be required to renew their enrollment before the first full renewal period following the receipt of their initial enrollment.

(5) The Director of Practice will notify the individual of his or her renewal of enrollment and will issue the individual a card evidencing enrollment.

(6) A reasonable nonrefundable fee may be charged for each application for renewal of enrollment filed with the Director of Practice.

(7) Forms required for renewal may be obtained from the Director of Practice, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224.

(e) *Condition for renewal: Continuing professional education.* In order to qualify for renewal of enrollment, an individual enrolled to practice before the Internal Revenue Service must certify, on the application for renewal form prescribed by the Director of Practice, that he or she has satisfied the following continuing professional education requirements.

(1) *For renewed enrollment effective after March 31, 2004.* (i) A minimum of 16 hours of continuing education credit must be completed during each calendar year in the enrollment term.

(2) *For renewed enrollment effective after April 1, 2007.* (i) A minimum of 72 hours of continuing education credit must be completed during each three year period described in paragraph (d)(4) of this section. Each such three year period is known as an enrollment cycle.

(ii) A minimum of 16 hours of continuing education credit, including 2 hours of ethics or professional conduct, must be completed in each year of an enrollment cycle.

(iii) An individual who receives initial enrollment during an enrollment cycle must complete two (2) hours of qualifying continuing education credit for each month enrolled during the enrollment cycle. Enrollment for any part of a month is considered enrollment for the entire month.

(f) *Qualifying continuing education*—(1) General. To qualify for continuing education credit, a course of learning must—

(i) Be a qualifying program designed to enhance professional knowledge in Federal taxation or Federal tax related matters, i.e., programs comprised of current subject matter in Federal taxation or Federal tax related matters, including accounting, tax preparation software and taxation or ethics; and

(ii) Be conducted by a qualifying sponsor.

(2) *Qualifying programs*—(i) *Formal programs.* A formal program qualifies as continuing education programs if it—

(A) Requires attendance. Additionally, the program sponsor must provide each attendee with a certificate of attendance; and

(B) Requires that the program be conducted by a qualified instructor, discussion leader, or speaker, i.e., a person whose background, training, education and experience is appropriate for instructing or leading a discussion on the subject matter of the particular program; and

(C) Provides or requires a written outline, textbook, or suitable electronic educational materials.

(ii) *Correspondence or individual study programs (including taped programs).* Qualifying continuing education programs include correspondence or individual study programs that are conducted by qualifying sponsors and completed on an individual basis by the enrolled individual. The allowable credit hours for such programs will be measured on a basis comparable to the measurement of a seminar or course for credit in an accredited educational institution. Such programs qualify as continuing education programs if they—

(A) Require registration of the participants by the sponsor;

(B) Provide a means for measuring completion by the participants (e.g., a written examination), including the issuance of a certificate of completion by the sponsor; and

(C) Provide a written outline, textbook, or suitable electronic educational materials.

(iii) *Serving as an instructor, discussion leader or speaker.* (A) One hour of continuing education credit will be awarded for each contact hour completed as an instructor, discussion leader, or speaker at an educational program that meets the continuing education requirements of paragraph (f) of this section.

(B) Two hours of continuing education credit will be awarded for actual subject preparation time for each contact hour completed as an instructor, discussion leader, or speaker at such programs. It is the responsibility of the individual claiming such credit to maintain records to verify preparation time.

(C) The maximum credit for instruction and preparation may not exceed 50 percent of the continuing education requirement for an enrollment cycle.

(D) An instructor, discussion leader, or speaker who makes more than one presentation on the same subject matter during an enrollment cycle, will receive continuing education credit for only one such presentation for the enrollment cycle.

(iv) *Credit for published articles, books, etc.* (A) Continuing education credit will be awarded for publications on Federal taxation or Federal tax related matters, including accounting, financial management, tax preparation software, and taxation, provided the content of such publications is current and designed for the enhancement of the professional knowledge of an individual enrolled to practice before the Internal Revenue Service.

(B) The credit allowed will be on the basis of one hour credit for each hour of preparation time for the material. It is the responsibility of the person claiming the credit to maintain records to verify preparation time.

(C) The maximum credit for publications may not exceed 25 percent of the continuing education requirement of any enrollment cycle.

(3) *Periodic examination.* (i) Individuals may establish eligibility for renewal of enrollment for any enrollment cycle by—

(A) Achieving a passing score on each part of the Special Enrollment Examination administered under this part during the three year period prior to renewal; and

(B) Completing a minimum of 16 hours of qualifying continuing education during the last year of an enrollment cycle.

(ii) Courses designed to help an applicant prepare for the examination specified in paragraph (a) of § 10.4 are considered basic in nature and are not qualifying continuing education.

(g) *Sponsors.* (1) Sponsors are those responsible for presenting programs.

(2) To qualify as a sponsor, a program presenter must—

(i) Be an accredited educational institution;

(ii) Be recognized for continuing education purposes by the licensing body of any State, territory, or possession of the United States, including a Commonwealth, or the District of Columbia.

(iii) Be recognized by the Director of Practice as a professional organization or society whose programs include offering continuing professional education opportunities in subject matters within the scope of paragraph (f)(1)(i) of this section; or

(iv) File a sponsor agreement with the Director of Practice and obtain approval of the program as a qualified continuing education program.

(3) A qualifying sponsor must ensure the program complies with the following requirements—

(i) Programs must be developed by individual(s) qualified in the subject matter;

(ii) Program subject matter must be current;

(iii) Instructors, discussion leaders, and speakers must be qualified with respect to program content;

(iv) Programs must include some means for evaluation of technical content and presentation;

(v) Certificates of completion must be provided to the participants who successfully complete the program; and

(vi) Records must be maintained by the sponsor to verify the participants who attended and completed the program for a period of three years following completion of the program. In the case of continuous conferences, conventions, and the like, records must be maintained to verify completion of the program and attendance by each participant at each segment of the program.

(4) Professional organizations or societies wishing to be considered as qualified sponsors must request this status from the Director of Practice and furnish information in support of the request together with any further information deemed necessary by the Director of Practice.

(5) A professional organization or society recognized as a qualified sponsor by the Director of Practice will retain its status for one enrollment cycle. The Director of Practice will publish the names of such sponsors on a periodic basis.

(h) *Measurement of continuing education coursework.* (1) All continuing education programs will be measured in terms of contact hours. The shortest recognized program will be one contact hour.

(2) A contact hour is 50 minutes of continuous participation in a program. Credit is granted only for a full contact hour, *i.e.*, 50 minutes or multiples thereof. For example, a program lasting more than 50 minutes but less than 100 minutes will count as one contact hour.

(3) Individual segments at continuous conferences, conventions and the like will be considered one total program. For example, two 90-minute segments (180 minutes) at a continuous conference will count as three contact hours.

(4) For university or college courses, each semester hour credit will equal 15 contact hours and a quarter hour credit will equal 10 contact hours.

(i) *Recordkeeping requirements.* (1) Each individual applying for renewal must retain for a period of three years following the date of renewal of enrollment the information required with regard to qualifying continuing professional education credit hours. Such information includes—

(i) The name of the sponsoring organization;

(ii) The location of the program;

(iii) The title of the program and description of its content;

(iv) Written outlines, course syllibi, textbook, and/or electronic materials provided or required for the course;

(v) The dates attended;

(vi) The credit hours claimed;

(vii) The name(s) of the instructor(s), discussion leader(s), or speaker(s), if appropriate; and

(viii) The certificate of completion and/or signed statement of the hours of attendance obtained from the sponsor.

(2) To receive continuing education credit for service completed as an instructor, discussion leader, or speaker, the following information must be maintained for a period of three years following the date of renewal of enrollment—

(i) The name of the sponsoring organization;

(ii) The location of the program;

(iii) The title of the program and description of its content;

(iv) The dates of the program; and

(v) The credit hours claimed.

(3) To receive continuing education credit for publications, the following information must be maintained for a period of three years following the date of renewal of enrollment—

(i) The publisher;

(ii) The title of the publication;

(iii) A copy of the publication;

(iv) The date of publication; and

(v) Records that substantiate the hours worked on the publication.

(j) *Waivers.* (1) Waiver from the continuing education requirements for a given period may be granted by the Director of Practice for the following reasons—

(i) Health, which prevented compliance with the continuing education requirements;

(ii) Extended active military duty;

(iii) Absence from the United States for an extended period of time due to employment or other reasons, provided the individual does not practice before the Internal Revenue Service during such absence; and

(iv) Other compelling reasons, which will be considered on a case-by-case basis.

(2) A request for waiver must be accompanied by appropriate documentation. The individual is required to furnish any additional documentation or explanation deemed necessary by the Director of Practice. Examples of appropriate documentation could be a medical certificate or military orders.

(3) A request for waiver must be filed no later than the last day of the renewal application period.

(4) If a request for waiver is not approved, the individual will be placed in inactive status, so notified by the Director of Practice, and placed on a roster of inactive enrolled individuals.

(5) If a request for waiver is approved, the individual will be notified and issued a card evidencing renewal.

(6) Those who are granted waivers are required to file timely applications for renewal of enrollment.

(k) *Failure to comply.* (1) Compliance by an individual with the requirements of this part is determined by the Director of Practice. An individual who fails to meet the requirements of eligibility for renewal of enrollment will be notified by the Director of Practice at his or her enrollment address by first class mail. The notice will state the basis for the determination of noncompliance and will provide the individual an opportunity to furnish information in writing relating to the matter within 60 days of the date of the notice. Such information will be considered by the Director of Practice in making a final determination as to eligibility for renewal of enrollment.

(2) The Director of Practice may require any individual, by notice sent by first class mail to his or her enrollment address, to provide copies of any records required to be maintained under this part. The Director of Practice may disallow any continuing professional education hours claimed if the individual fails to comply with this requirement.

(3) An individual who has not filed a timely application for renewal of enrollment, who has not made a timely response to the notice of noncompliance with the renewal requirements, or who has not satisfied the requirements of eligibility for renewal will be placed on a roster of inactive enrolled individuals. During this time, the individual will be ineligible to practice before the Internal Revenue Service.

(4) Individuals placed in inactive enrollment status and individuals ineligible to practice before the Internal Revenue Service may not state or imply that they are enrolled to practice before the Internal Revenue Service, or use the term *enrolled agent*, the designation ''E. A.,'' or other form of reference to eligibility to practice before the Internal Revenue Service.

(5) An individual placed in an inactive status may be reinstated to an active enrollment status by filing an application for renewal of enrollment and providing evidence of the completion of all required continuing professional education hours for the enrollment cycle. Continuing education credit under this paragraph (k)(5) may not be used to satisfy the requirements of the enrollment cycle in which the individual has been placed back on the active roster.

(6) An individual placed in an inactive status must file an application for renewal of enrollment and satisfy the requirements for renewal as set forth in this section within three years of being placed in an inactive status. The name of such individual otherwise will be removed from the inactive enrollment roster and his or her enrollment will terminate. Eligibility for enrollment must then be reestablished by the individual as provided in this section.

(7) Inactive enrollment status is not available to an individual who is the subject of a disciplinary matter in the Office of Director of Practice.

(l) *Inactive retirement status.* An individual who no longer practices before the Internal Revenue Service may request being placed in an inactive status at any time and such individual will be placed in an inactive retirement status. The individual will be ineligible to practice before the Internal Revenue Service. Such individual must file a timely application for renewal of enrollment at each applicable renewal or enrollment period as provided in this section. An individual who is placed in an inactive retirement status may be reinstated to an active enrollment status by filing an application for renewal of enrollment and providing evidence

of the completion of the required continuing professional education hours for the enrollment cycle. Inactive retirement status is not available to an individual who is subject of a disciplinary matter in the Office of Director of Practice.

(m) *Renewal while under suspension or disbarment.* An individual who is ineligible to practice before the Internal Revenue Service by virtue of disciplinary action is required to be in conformance with the requirements for renewal of enrollment before his or her eligibility is restored.

(n) *Verification.* The Director of Practice may review the continuing education records of an enrolled individual and/or qualified sponsor in a manner deemed appropriate to determine compliance with the requirements and standards for renewal of enrollment as provided in paragraph (f) of this section.

(o) *Enrolled actuaries.* The enrollment and the renewal of enrollment of actuaries authorized to practice under paragraph (d) of § 10.3 are governed by the regulations of the Joint Board for the Enrollment of Actuaries at 20 CFR 901.1 through 901.71.

(Approved by the Office of Management and Budget under Control No. 1545–0946 and 1545–1726)

§ 10.7 Representing oneself; participating in rulemaking; limited practice; special appearances; and return preparation.

(a) *Representing oneself.* Individuals may appear on their own behalf before the Internal Revenue Service provided they present satisfactory identification.

(b) *Participating in rulemaking.* Individuals may participate in rulemaking as provided by the Administrative Procedure Act. *See* 5 U.S.C. 553.

(c) *Limited practice*—(1) *In general.* Subject to the limitations in paragraph (c)(2) of this section, an individual who is not a practitioner may represent a taxpayer before the Internal Revenue Service in the circumstances described in this paragraph (c)(1), even if the taxpayer is not present, provided the individual presents satisfactory identification and proof of his or her authority to represent the taxpayer. The circumstances described in this paragraph (c)(1) are as follows:

(i) An individual may represent a member of his or her immediate family.

(ii) A regular full-time employee of an individual employer may represent the employer.

(iii) A general partner or a regular full-time employee of a partnership may represent the partnership.

(iv) A bona fide officer or a regular full-time employee of a corporation (including a parent, subsidiary, or other affiliated corporation), association, or organized group may represent the corporation, association, or organized group.

(v) A regular full-time employee of a trust, receivership, guardianship, or estate may represent the trust, receivership, guardianship, or estate.

(vi) An officer or a regular employee of a governmental unit, agency, or authority may represent the governmental unit, agency, or authority in the course of his or her official duties.

(vii) An individual may represent any individual or entity, who is outside the United States, before personnel of the Internal Revenue Service when such representation takes place outside the United States.

(viii) An individual who prepares and signs a taxpayer's tax return as the preparer, or who prepares a tax return but is not required (by the instructions to the tax return or regulations) to sign the tax return, may represent the taxpayer before revenue agents, customer service representatives or similar officers and employees of the Internal Revenue Service during an examination of the taxable year or period covered by that tax return, but, unless otherwise prescribed by regulation or notice, this right does not permit such individual to represent the taxpayer, regardless of the circumstances requiring representation, before appeals officers, revenue officers, Counsel or similar officers or employees of the Internal Revenue Service or the Department of Treasury.

(2) *Limitations.* (i) An individual who is under suspension or disbarment from practice before the Internal Revenue Service may not engage in limited practice before the Internal Revenue

Service under paragraph (c)(1) of this section.

(ii) The Director, after notice and opportunity for a conference, may deny eligibility to engage in limited practice before the Internal Revenue Service under paragraph (c)(1) of this section to any individual who has engaged in conduct that would justify censuring, suspending, or disbarring a practitioner from practice before the Internal Revenue Service.

(iii) An individual who represents a taxpayer under the authority of paragraph (c)(1) of this section is subject, to the extent of his or her authority, to such rules of general applicability regarding standards of conduct and other matters as the Director of Practice prescribes.

(d) *Special appearances.* The Director of Practice may, subject to such conditions as he or she deems appropriate, authorize an individual who is not otherwise eligible to practice before the Internal Revenue Service to represent another person in a particular matter.

(e) *Preparing tax returns and furnishing information.* Any individual may prepare a tax return, appear as a witness for the taxpayer before the Internal Revenue Service, or furnish information at the request of the Internal Revenue Service or any of its officers or employees.

(f) *Fiduciaries.* For purposes of this part, a fiduciary (i.e., a trustee, receiver, guardian, personal representative, administrator, or executor) is considered to be the taxpayer and not a representative of the taxpayer.

§ 10.8 Customhouse brokers.

Nothing contained in the regulations in this part will affect or limit the right of a customhouse broker, licensed as such by the Commissioner of Customs in accordance with the regulations prescribed therefor, in any customs district in which he or she is so licensed, at a relevant local office of the Internal Revenue Service or before the National Office of the Internal Revenue Service, to act as a representative in respect to any matters relating specifically to the importation or exportation of merchandise under the customs or internal revenue laws, for any person for whom he or she has acted as a customhouse broker.

Subpart B—Duties and Restrictions Relating to Practice Before the Internal Revenue Service

SOURCE: T.D. 9011, 67 FR 48771, July 26, 2002, unless otherwise noted.

§ 10.20 Information to be furnished.

(a) *To the Internal Revenue Service.* (1) A practitioner must, on a proper and lawful request by a duly authorized officer or employee of the Internal Revenue Service, promptly submit records or information in any matter before the Internal Revenue Service unless the practitioner believes in good faith and on reasonable grounds that the records or information are privileged.

(2) Where the requested records or information are not in the possession of, or subject to the control of, the practitioner or the practitioner's client, the practitioner must promptly notify the requesting Internal Revenue Service officer or employee and the practitioner must provide any information that the practitioner has regarding the identity of any person who the practitioner believes may have possession or control of the requested records or information. The practitioner must make reasonable inquiry of his or her client regarding the identity of any person who may have possession or control of the requested records or information, but the practitioner is not required to make inquiry of any other person or independently verify any information provided by the practitioner's client regarding the identity of such persons.

(b) *To the Director of Practice.* When a proper and lawful request is made by the Director of Practice, a practitioner must provide the Director of Practice with any information the practitioner has concerning an inquiry by the Director of Practice into an alleged violation of the regulations in this part by any person, and to testify regarding this information in any proceeding instituted under this part, unless the practitioner believes in good faith and on reasonable grounds that the information is privileged.

(c) *Interference with a proper and lawful request for records or information.* A

practitioner may not interfere, or attempt to interfere, with any proper and lawful effort by the Internal Revenue Service, its officers or employees, or the Director of Practice, or his or her employees, to obtain any record or information unless the practitioner believes in good faith and on reasonable grounds that the record or information is privileged.

§ 10.21 Knowledge of client's omission.

A practitioner who, having been retained by a client with respect to a matter administered by the Internal Revenue Service, knows that the client has not complied with the revenue laws of the United States or has made an error in or omission from any return, document, affidavit, or other paper which the client submitted or executed under the revenue laws of the United States, must advise the client promptly of the fact of such noncompliance, error, or omission. The practitioner must advise the client of the consequences as provided under the Code and regulations of such noncompliance, error, or omission.

§ 10.22 Diligence as to accuracy.

(a) *In general.* A practitioner must exercise due diligence—

(1) In preparing or assisting in the preparation of, approving, and filing tax returns, documents, affidavits, and other papers relating to Internal Revenue Service matters;

(2) In determining the correctness of oral or written representations made by the practitioner to the Department of the Treasury; and

(3) In determining the correctness of oral or written representations made by the practitioner to clients with reference to any matter administered by the Internal Revenue Service.

(b) *Reliance on others.* Except as provided in §§ 10.33 and 10.34, a practitioner will be presumed to have exercised due diligence for purposes of this section if the practitioner relies on the work product of another person and the practitioner used reasonable care in engaging, supervising, training, and evaluating the person, taking proper account of the nature of the relationship between the practitioner and the person.

§ 10.23 Prompt disposition of pending matters.

A practitioner may not unreasonably delay the prompt disposition of any matter before the Internal Revenue Service.

§ 10.24 Assistance from or to disbarred or suspended persons and former Internal Revenue Service employees.

A practitioner may not, knowingly and directly or indirectly:

(a) Accept assistance from or assist any person who is under disbarment or suspension from practice before the Internal Revenue Service if the assistance relates to a matter or matters constituting practice before the Internal Revenue Service.

(b) Accept assistance from any former government employee where the provisions of § 10.25 or any Federal law would be violated.

§ 10.25 Practice by former Government employees, their partners and their associates.

(a) *Definitions.* For purposes of this section—

(1) *Assist* means to act in such a way as to advise, furnish information to, or otherwise aid another person, directly or indirectly.

(2) *Government employee* is an officer or employee of the United States or any agency of the United States, including a *special government employee* as defined in 18 U.S.C. 202(a), or of the District of Columbia, or of any State, or a member of Congress or of any State legislature.

(3) *Member of a firm* is a sole practitioner or an employee or associate thereof, or a partner, stockholder, associate, affiliate or employee of a partnership, joint venture, corporation, professional association or other affiliation of two or more practitioners who represent nongovernmental parties.

(4) *Practitioner* includes any individual described in paragraph (f) of § 10.2.

(5) *Official responsibility* means the direct administrative or operating authority, whether intermediate or final, and either exercisable alone or with others, and either personally or

through subordinates, to approve, disapprove, or otherwise direct Government action, with or without knowledge of the action.

(6) *Participate or participation* means substantial involvement as a Government employee by making decisions, or preparing or reviewing documents with or without the right to exercise a judgment of approval or disapproval, or participating in conferences or investigations, or rendering advice of a substantial nature.

(7) *Rule* includes Treasury Regulations, whether issued or under preparation for issuance as Notices of Proposed Rule Making or as Treasury Decisions; revenue rulings; and revenue procedures published in the Internal Revenue Bulletin. *Rule* does not include a *transaction* as defined in paragraph (a)(8) of this section.

(8) *Transaction* means any decision, determination, finding, letter ruling, technical advice, Chief Counsel advice, or contract or the approval or disapproval thereof, relating to a particular factual situation or situations involving a specific party or parties whose rights, privileges, or liabilities under laws or regulations administered by the Internal Revenue Service, or other legal rights, are determined or immediately affected therein and to which the United States is a party or in which it has a direct and substantial interest, whether or not the same taxable periods are involved. *Transaction* does not include *rule* as defined in paragraph (a)(7) of this section.

(b) *General rules.* (1) No former Government employee may, subsequent to his or her Government employment, represent anyone in any matter administered by the Internal Revenue Service if the representation would violate 18 U.S.C. 207 or any other laws of the United States.

(2) No former Government employee who participated in a transaction may, subsequent to his or her Government employment, represent or knowingly assist, in that transaction, any person who is or was a specific party to that transaction.

(3) A former Government employee who within a period of one year prior to the termination of Government employment had official responsibility for a transaction may not, within two years after his or her Government employment is ended, represent or knowingly assist in that transaction any person who is or was a specific party to that transaction.

(4) No former Government employee may, within one year after his or her Government employment is ended, appear before any employee of the Treasury Department in connection with the publication, withdrawal, amendment, modification, or interpretation of a rule in the development of which the former Government employee participated or for which, within a period of one year prior to the termination of his or her Government employment, he or she had official responsibility. This paragraph (b)(4) does not, however, preclude such former employee from appearing on his or her own behalf or from representing a taxpayer before the Internal Revenue Service in connection with a transaction involving the application or interpretation of such a rule with respect to that transaction, provided that such former employee does not utilize or disclose any confidential information acquired by the former employee in the development of the rule.

(c) *Firm representation.* (1) No member of a firm of which a former Government employee is a member may represent or knowingly assist a person who was or is a specific party in any transaction with respect to which the restrictions of paragraph (b)(2) or (3) of this section apply to the former Government employee, in that transaction, unless the firm isolates the former Government employee in such a way to ensure that the former Government employee cannot assist in the representation.

(2) When isolation of a former Government employee is required under paragraph (c)(1) of this section, a statement affirming the fact of such isolation must be executed under oath by the former Government employee and by another member of the firm acting on behalf of the firm. The statement must clearly identify the firm, the former Government employee, and the transaction(s) requiring isolation and it must be filed with the Director of

Practice (and at such other place(s) directed by the Director of Practice) and in such other place and in the manner prescribed by rule or regulation.

(d) *Pending representation*. Practice by former Government employees, their partners and associates with respect to representation in pecific matters where actual representation commenced before July 26, 2002 is governed by the regulations set forth at 31 CFR part 10 revised as of July 1, 2002. The burden of showing that representation commenced before July 26, 2002 lies with the former Government employees, and their partners and associates.

§ 10.26 Notaries.

A practitioner may not take acknowledgments, administer oaths, certify papers, or perform any official act as a notary public with respect to any matter administered by the Internal Revenue Service and for which he or she is employed as counsel, attorney, or agent, or in which he or she may be in any way interested.

§ 10.27 Fees.

(a) *Generally*. A practitioner may not charge an unconscionable fee for representing a client in a matter before the Internal Revenue Service.

(b) *Contingent fees*. (1) For purposes of this section, a contingent fee is any fee that is based, in whole or in part, on whether or not a position taken on a tax return or other filing avoids challenge by the Internal Revenue Service or is sustained either by the Internal Revenue Service or in litigation. A contingent fee includes any fee arrangement in which the practitioner will reimburse the client for all or a portion of the client's fee in the event that a position taken on a tax return or other filing is challenged by the Internal Revenue Service or is not sustained, whether pursuant to an indemnity agreement, a guarantee, rescission rights, or any other arrangement with a similar effect.

(2) A practitioner may not charge a contingent fee for preparing an original tax return or for any advice rendered in connection with a position taken or to be taken on an original tax return.

(3) A contingent fee may be charged for preparation of or advice in connection with an amended tax return or a claim for refund (other than a claim for refund made on an original tax return), but only if the practitioner reasonably anticipates at the time the fee arrangement is entered into that the amended tax return or refund claim will receive substantive review by the Internal Revenue Service.

§ 10.28 Return of client's records.

(a) In general, a practitioner must, at the request of a client, promptly return any and all records of the client that are necessary for the client to comply with his or her Federal tax obligations. The practitioner may retain copies of the records returned to a client. The existence of a dispute over fees generally does not relieve the practitioner of his or her responsibility under this section. Nevertheless, if applicable state law allows or permits the retention of a client's records by a practitioner in the case of a dispute over fees for services rendered, the practitioner need only return those records that must be attached to the taxpayer's return. The practitioner, however, must provide the client with reasonable access to review and copy any additional records of the client retained by the practitioner under state law that are necessary for the client to comply with his or her Federal tax obligations.

(b) For purposes of this section, *Records of the client* include all documents or written or electronic materials provided to the practitioner, or obtained by the practitioner in the course of the practitioner's representation of the client, that preexisted the retention of the practitioner by the client. The term also includes materials that were prepared by the client or a third party (not including an employee or agent of the practitioner) at any time and provided to the practitioner with respect to the subject matter of the representation. The term also includes any return, claim for refund, schedule, affidavit, appraisal or any other document prepared by the practitioner, or his or her employee or agent, that was presented to the client with respect to a prior representation if such document is necessary for the taxpayer to comply with his or her current Federal tax obligations. The term

does not include any return, claim for refund, schedule, affidavit, appraisal or any other document prepared by the practitioner or the practitioner's firm, employees or agents if the practitioner is withholding such document pending the client's performance of its contractual obligation to pay fees with respect to such document.

§ 10.29 Conflicting interests.

(a) Except as provided by paragraph (b) of this section, a practitioner shall not represent a client in his or her practice before the Internal Revenue Service if the representation involves a conflict of interest. A conflict of interest exists if:

(1) The representation of one client will be directly adverse to another client; or

(2) There is a significant risk that the representation of one or more clients will be materially limited by the practitioner's responsibilities to another client, a former client or a third person or by a personal interest of the practitioner.

(b) Notwithstanding the existence of a conflict of interest under paragraph (a) of this section, the practitioner may represent a client if:

(1) The practitioner reasonably believes that the practitioner will be able to provide competent and diligent representation to each affected client;

(2) The representation is not prohibited by law;

(3) Each affected client gives informed consent, confirmed in writing.

(c) Copies of the written consents must be retained by the practitioner for at least 36 months from the date of the conclusion of the representation of the affected clients and the written consents must be provided to any officer or employee of the Internal Revenue Service on request. y

(Approved by the Office of Management and Budget under Control No. 1545–1726)

§ 10.30 Solicitation.

(a) *Advertising and solicitation restrictions.* (1) A practitioner may not, with respect to any Internal Revenue Service matter, in any way use or participate in the use of any form of public communication or private solicitation containing a false, fraudulent, or coercive statement or claim; or a misleading or deceptive statement or claim. Enrolled agents, in describing their professional designation, may not utilize the term of art ''certified'' or imply an employer/employee relationship with the Internal Revenue Service. Examples of acceptable descriptions are ''enrolled to represent taxpayers before the Internal Revenue Service,'' ''enrolled to practice before the Internal Revenue Service,'' and ''admitted to practice before the Internal Revenue Service.''

(2) A practitioner may not make, directly or indirectly, an uninvited written or oral solicitation of employment in matters related to the Internal Revenue Service if the solicitation violates Federal or State law or other applicable rule, e.g., attorneys are precluded from making a solicitation that is prohibited by conduct rules applicable to all attorneys in their State(s) of licensure. Any lawful solicitation made by or on behalf of a practitioner eligible to practice before the Internal Revenue Service must, nevertheless, clearly identify the solicitation as such and, if applicable, identify the source of the information used in choosing the recipient.

(b) *Fee information.* (1)(i) A practitioner may publish the availability of a written schedule of fees and disseminate the following fee information—

(A) Fixed fees for specific routine services.

(B) Hourly rates.

(C) Range of fees for particular services.

(D) Fee charged for an initial consultation.

(ii) Any statement of fee information concerning matters in which costs may be incurred must include a statement disclosing whether clients will be responsible for such costs.

(2) A practitioner may charge no more than the rate(s) published under paragraph (b)(1) of this section for at least 30 calendar days after the last date on which the schedule of fees was published.

(c) *Communication of fee information.* Fee information may be communicated in professional lists, telephone directories, print media, mailings, electronic mail, facsimile, hand delivered

flyers, radio, television, and any other method. The method chosen, however, must not cause the communication to become untruthful, deceptive, or otherwise in violation of this part. A practitioner may not persist in attempting to contact a prospective client if the prospective client has made it known to the practitioner that he or she does not desire to be solicited. In the case of radio and television broadcasting, the broadcast must be recorded and the practitioner must retain a recording of the actual transmission. In the case of direct mail and e-commerce communications, the practitioner must retain a copy of the actual communication, along with a list or other description of persons to whom the communication was mailed or otherwise distributed. The copy must be retained by the practitioner for a period of at least 36 months from the date of the last transmission or use.

(d) *Improper associations.* A practitioner may not, in matters related to the Internal Revenue Service, assist, or accept assistance from, any person or entity who, to the knowledge of the practitioner, obtains clients or otherwise practices in a manner forbidden under this section.

(Approved by the Office of Management and Budget under Control No. 1545–1726)

§ 10.31 Negotiation of taxpayer checks.

A practitioner who prepares tax returns may not endorse or otherwise negotiate any check issued to a client by the government in respect of a Federal tax liability.

§ 10.32 Practice of law.

Nothing in the regulations in this part may be construed as authorizing persons not members of the bar to practice law.

§ 10.33 Best practices for tax advisors.

(a) *Best practices.* Tax advisors should provide clients with the highest quality representation concerning Federal tax issues by adhering to best practices in providing advice and in preparing or assisting in the preparation of a submission to the Internal Revenue Service. In addition to compliance with the standards of practice provided elsewhere in this part, best practices include the following:

(1) Communicating clearly with the client regarding the terms of the engagement. For example, the advisor should determine the client's expected purpose for and use of the advice and should have a clear understanding with the client regarding the form and scope of the advice or assistance to be rendered.

(2) Establishing the facts, determining which facts are relevant, evaluating the reasonableness of any assumptions or representations, relating the applicable law (including potentially applicable judicial doctrines) to the relevant facts, and arriving at a conclusion supported by the law and the facts.

(3) Advising the client regarding the import of the conclusions reached, including, for example, whether a taxpayer may avoid accuracy-related penalties under the Internal Revenue Code if a taxpayer acts in reliance on the advice.

(4) Acting fairly and with integrity in practice before the Internal Revenue Service.

(b) *Procedures to ensure best practices for tax advisors.* Tax advisors with responsibility for overseeing a firm's practice of providing advice concerning Federal tax issues or of preparing or assisting in the preparation of submissions to the Internal Revenue Service should take reasonable steps to ensure that the firm's procedures for all members, associates, and employees are consistent with the best practices set forth in paragraph (a) of this section.

(c) *Applicability date.* This section is effective after June 20, 2005.

[T.D. 9011, 67 FR 48771, July 26, 2002, as amended by T.D. 9165, 69 FR 75841, Dec. 20, 2004]

§ 10.34 Standards for advising with respect to tax return positions and for preparing or signing returns.

(a) *Realistic possibility standard.* A practitioner may not sign a tax return as a preparer if the practitioner determines that the tax return contains a position that does not have a realistic possibility of being sustained on its merits (the realistic possibility standard) unless the position is not frivolous

and is adequately disclosed to the Internal Revenue Service. A practitioner may not advise a client to take a position on a tax return, or prepare the portion of a tax return on which a position is taken, unless—

(1) The practitioner determines that the position satisfies the realistic possibility standard; or

(2) The position is not frivolous and the practitioner advises the client of any opportunity to avoid the accuracy-related penalty in section 6662 of the Internal Revenue Code by adequately disclosing the position and of the requirements for adequate disclosure.

(b) *Advising clients on potential penalties.* A practitioner advising a client to take a position on a tax return, or preparing or signing a tax return as a preparer, must inform the client of the penalties reasonably likely to apply to the client with respect to the position advised, prepared, or reported. The practitioner also must inform the client of any opportunity to avoid any such penalty by disclosure, if relevant, and of the requirements for adequate disclosure. This paragraph (b) applies even if the practitioner is not subject to a penalty with respect to the position.

(c) *Relying on information furnished by clients.* A practitioner advising a client to take a position on a tax return, or preparing or signing a tax return as a preparer, generally may rely in good faith without verification upon information furnished by the client. The practitioner may not, however, ignore the implications of information furnished to, or actually known by, the practitioner, and must make reasonable inquiries if the information as furnished appears to be incorrect, inconsistent with an important fact or another factual assumption, or incomplete.

(d) *Definitions.* For purposes of this section—

(1) *Realistic possibility*. A position is considered to have a realistic possibility of being sustained on its merits if a reasonable and well informed analysis of the law and the facts by a person knowledgeable in the tax law would lead such a person to conclude that the position has approximately a one in three, or greater, likelihood of being sustained on its merits. The authorities described in 26 CFR 1.6662–4(d)(3)(iii), or any successor provision, of the substantial understatement penalty regulations may be taken into account for purposes of this analysis. The possibility that a tax return will not be audited, that an issue will not be raised on audit, or that an issue will be settled may not be taken into account.

(2) *Frivolous.* A position is frivolous if it is patently improper.

§ 10.35 Requirements for covered opinions.

(a) A practitioner who provides a covered opinion shall comply with the standards of practice in this section.

(b) *Definitions.* For purposes of this subpart—

(1) A *practitioner* includes any individual described in § 10.2(e).

(2) *Covered opinion*—(i) *In general.* A *covered opinion* is written advice (including electronic communications) by a practitioner concerning one or more Federal tax issues arising from—

(A) A transaction that is the same as or substantially similar to a transaction that, at the time the advice is rendered, the Internal Revenue Service has determined to be a tax avoidance transaction and identified by published guidance as a listed transaction under 26 CFR 1.6011–4(b)(2);

(B) Any partnership or other entity, any investment plan or arrangement, or any other plan or arrangement, the principal purpose of which is the avoidance or evasion of any tax imposed by the Internal Revenue Code; or

(C) Any partnership or other entity, any investment plan or arrangement, or any other plan or arrangement, a significant purpose of which is the avoidance or evasion of any tax imposed by the Internal Revenue Code if the written advice—

(*1*) Is a *reliance opinion;*

(*2*) Is a *marketed opinion;*

(*3*) Is subject to *conditions of confidentiality;* or

(*4*) Is subject to *contractual protection*.

(ii) *Excluded advice.* A *covered opinion* does not include—

(A) Written advice provided to a client during the course of an engagement if a practitioner is reasonably expected to provide subsequent written advice to

the client that satisfies the requirements of this section;

(B) Written advice, other than advice described in paragraph (b)(2)(i)(A) of this section (concerning listed transactions) or paragraph (b)(2)(ii)(B) of this section (concerning the principal purpose of avoidance or evasion) that—

(*1*) Concerns the qualification of a qualified plan;

(*2*) Is a *State or local bond opinion*; or

(*3*) Is included in documents required to be filed with the Securities and Exchange Commission;

(C) Written advice prepared for and provided to a taxpayer, solely for use by that taxpayer, after the taxpayer has filed a tax return with the Internal Revenue Service reflecting the tax benefits of the transaction. The preceding sentence does not apply if the practitioner knows or has reason to know that the written advice will be relied upon by the taxpayer to take a position on a tax return (including for these purposes an amended return that claims tax benefits not reported on a previously filed return) filed after the date on which the advice is provided to the taxpayer;

(D) Written advice provided to an employer by a practitioner in that practitioner's capacity as an employee of that employer solely for purposes of determining the tax liability of the employer; or

(E) Written advice that does not resolve a Federal tax issue in the taxpayer's favor, unless the advice reaches a conclusion favorable to the taxpayer at any confidence level (e.g., not frivolous, realistic possibility of success, reasonable basis or substantial authority) with respect to that issue. If written advice concerns more than one Federal tax issue, the advice must comply with the requirements of paragraph (c) of this section with respect to any Federal tax issue not described in the preceding sentence.

(3) A *Federal tax issue* is a question concerning the Federal tax treatment of an item of income, gain, loss, deduction, or credit, the existence or absence of a taxable transfer of property, or the value of property for Federal tax purposes. For purposes of this subpart, a *Federal tax issue* is significant if the Internal Revenue Service has a reasonable basis for a successful challenge and its resolution could have a significant impact, whether beneficial or adverse and under any reasonably foreseeable circumstance, on the overall Federal tax treatment of the transaction(s) or matter(s) addressed in the opinion.

(4) *Reliance opinion*—(i) Written advice is a *reliance opinion* if the advice concludes at a confidence level of at least more likely than not (a greater than 50 percent likelihood) that one or more significant Federal tax issues would be resolved in the taxpayer's favor.

(ii) For purposes of this section, written advice, other than advice described in paragraph (b)(2)(i)(A) of this section (concerning listed transactions) or paragraph (b)(2)(i)(B) of this section (concerning the principal purpose of avoidance or evasion), is not treated as a *reliance opinion* if the practitioner prominently discloses in the written advice that it was not intended or written by the practitioner to be used, and that it cannot be used by the taxpayer, for the purpose of avoiding penalties that may be imposed on the taxpayer.

(5) *Marketed opinion*—(i) Written advice is a *marketed opinion* if the practitioner knows or has reason to know that the written advice will be used or referred to by a person other than the practitioner (or a person who is a member of, associated with, or employed by the practitioner's firm) in promoting, marketing or recommending a partnership or other entity, investment plan or arrangement to one or more taxpayer(s).

(ii) For purposes of this section, written advice, other than advice described in paragraph (b)(2)(i)(A) of this section (concerning listed transactions) or paragraph (b)(2)(i)(B) of this section (concerning the principal purpose of avoidance or evasion), is not treated as a *marketed opinion* if the practitioner prominently discloses in the written advice that—

(A) The advice was not intended or written by the practitioner to be used, and that it cannot be used by any taxpayer, for the purpose of avoiding penalties that may be imposed on the taxpayer;

(B) The advice was written to support the promotion or marketing of the transaction(s) or matter(s) addressed by the written advice; and

(C) The taxpayer should seek advice based on the taxpayer's particular circumstances from an independent tax advisor.

(6) *Conditions of confidentiality*. Written advice is subject to *conditions of confidentiality* if the practitioner imposes on one or more recipients of the written advice a limitation on disclosure of the tax treatment or tax structure of the transaction and the limitation on disclosure protects the confidentiality of that practitioner's tax strategies, regardless of whether the limitation on disclosure is legally binding. A claim that a transaction is proprietary or exclusive is not a limitation on disclosure if the practitioner confirms to all recipients of the written advice that there is no limitation on disclosure of the tax treatment or tax structure of the transaction that is the subject of the written advice.

(7) *Contractual protection*. Written advice is subject to *contractual protection* if the taxpayer has the right to a full or partial refund of fees paid to the practitioner (or a person who is a member of, associated with, or employed by the practitioner's firm) if all or a part of the intended tax consequences from the matters addressed in the written advice are not sustained, or if the fees paid to the practitioner (or a person who is a member of, associated with, or employed by the practitioner's firm) are contingent on the taxpayer's realization of tax benefits from the transaction. All the facts and circumstances relating to the matters addressed in the written advice will be considered when determining whether a fee is refundable or contingent, including the right to reimbursements of amounts that the parties to a transaction have not designated as fees or any agreement to provide services without reasonable compensation.

(8) *Prominently disclosed*. An item is prominently disclosed if it is readily apparent to a reader of the written advice. Whether an item is readily apparent will depend on the facts and circumstances surrounding the written advice including, but not limited to, the sophistication of the taxpayer and the length of the written advice. At a minimum, to be prominently disclosed an item must be set forth in a separate section (and not in a footnote) in a typeface that is the same size or larger than the typeface of any discussion of the facts or law in the written advice.

(9) *State or local bond opinion*. A *State or local bond opinion* is written advice with respect to a *Federal tax issue* included in any materials delivered to a purchaser of a State or local bond in connection with the issuance of the bond in a public or private offering, including an official statement (if one is prepared), that concerns only the excludability of interest on a State or local bond from gross income under section 103 of the Internal Revenue Code, the application of section 55 of the Internal Revenue Code to a State or local bond, the status of a State or local bond as a qualified tax-exempt obligation under section 265(b)(3) of the Internal Revenue Code, the status of a State or local bond as a qualified zone academy bond under section 1397E of the Internal Revenue Code, or any combination of the above.

(10) *The principal purpose*. For purposes of this section, the principal purpose of a partnership or other entity, investment plan or arrangement, or other plan or arrangement is the avoidance or evasion of any tax imposed by the Internal Revenue Code if that purpose exceeds any other purpose. The principal purpose of a partnership or other entity, investment plan or arrangement, or other plan or arrangement is not to avoid or evade Federal tax if that partnership, entity, plan or arrangement has as its purpose the claiming of tax benefits in a manner consistent with the statute and Congressional purpose. A partnership, entity, plan or arrangement may have a significant purpose of avoidance or evasion even though it does not have the principal purpose of avoidance or evasion under this paragraph (b)(10).

(c) *Requirements for covered opinions*. A practitioner providing a *covered opinion* must comply with each of the following requirements.

(1) *Factual matters*. (i) The practitioner must use reasonable efforts to identify and ascertain the facts, which

may relate to future events if a transaction is prospective or proposed, and to determine which facts are relevant. The opinion must identify and consider all facts that the practitioner determines to be relevant.

(ii) The practitioner must not base the opinion on any unreasonable factual assumptions (including assumptions as to future events). An unreasonable factual assumption includes a factual assumption that the practitioner knows or should know is incorrect or incomplete. For example, it is unreasonable to assume that a transaction has a business purpose or that a transaction is potentially profitable apart from tax benefits. A factual assumption includes reliance on a projection, financial forecast or appraisal. It is unreasonable for a practitioner to rely on a projection, financial forecast or appraisal if the practitioner knows or should know that the projection, financial forecast or appraisal is incorrect or incomplete or was prepared by a person lacking the skills or qualifications necessary to prepare such projection, financial forecast or appraisal. The opinion must identify in a separate section all factual assumptions relied upon by the practitioner.

(iii) The practitioner must not base the opinion on any unreasonable factual representations, statements or findings of the taxpayer or any other person. An unreasonable factual representation includes a factual representation that the practitioner knows or should know is incorrect or incomplete. For example, a practitioner may not rely on a factual representation that a transaction has a business purpose if the representation does not include a specific description of the business purpose or the practitioner knows or should know that the representation is incorrect or incomplete. The opinion must identify in a separate section all factual representations, statements or findings of the taxpayer relied upon by the practitioner.

(2) *Relate law to facts.* (i) The opinion must relate the applicable law (including potentially applicable judicial doctrines) to the relevant facts.

(ii) The practitioner must not assume the favorable resolution of any significant Federal tax issue except as provided in paragraphs (c)(3)(v) and (d) of this section, or otherwise base an opinion on any unreasonable legal assumptions, representations, or conclusions.

(iii) The opinion must not contain internally inconsistent legal analyses or conclusions.

(3) *Evaluation of significant Federal tax issues*—(i) *In general.* The opinion must consider all significant Federal tax issues except as provided in paragraphs (c)(3)(v) and (d) of this section.

(ii) *Conclusion as to each significant Federal tax issue.* The opinion must provide the practitioner's conclusion as to the likelihood that the taxpayer will prevail on the merits with respect to each significant Federal tax issue considered in the opinion. If the practitioner is unable to reach a conclusion with respect to one or more of those issues, the opinion must state that the practitioner is unable to reach a conclusion with respect to those issues. The opinion must describe the reasons for the conclusions, including the facts and analysis supporting the conclusions, or describe the reasons that the practitioner is unable to reach a conclusion as to one or more issues. If the practitioner fails to reach a conclusion at a confidence level of at least more likely than not with respect to one or more significant Federal tax issues considered, the opinion must include the appropriate disclosure(s) required under paragraph (e) of this section.

(iii) *Evaluation based on chances of success on the merits.* In evaluating the significant Federal tax issues addressed in the opinion, the practitioner must not take into account the possibility that a tax return will not be audited, that an issue will not be raised on audit, or that an issue will be resolved through settlement if raised.

(iv) *Marketed opinions.* In the case of a *marketed opinion,* the opinion must provide the practitioner's conclusion that the taxpayer will prevail on the merits at a confidence level of at least more likely than not with respect to each significant Federal tax issue. If the practitioner is unable to reach a more likely than not conclusion with respect to each significant Federal tax issue, the practitioner must not provide the marketed opinion, but may provide written advice that satisfies

the requirements in paragraph (b)(5)(ii) of this section.

(v) *Limited scope opinions.* (A) The practitioner may provide an opinion that considers less than all of the significant Federal tax issues if—

(*1*) The practitioner and the taxpayer agree that the scope of the opinion and the taxpayer's potential reliance on the opinion for purposes of avoiding penalties that may be imposed on the taxpayer are limited to the Federal tax issue(s) addressed in the opinion;

(*2*) The opinion is not advice described in paragraph (b)(2)(i)(A) of this section (concerning listed transactions), paragraph (b)(2)(i)(B) of this section (concerning the principal purpose of avoidance or evasion) or paragraph (b)(5) of this section (a *marketed opinion*); and

(*3*) The opinion includes the appropriate disclosure(s) required under paragraph (e) of this section.

(B) A practitioner may make reasonable assumptions regarding the favorable resolution of a Federal tax issue (an assumed issue) for purposes of providing an opinion on less than all of the significant Federal tax issues as provided in this paragraph (c)(3)(v). The opinion must identify in a separate section all issues for which the practitioner assumed a favorable resolution.

(4) *Overall conclusion.* (i) The opinion must provide the practitioner's overall conclusion as to the likelihood that the Federal tax treatment of the transaction or matter that is the subject of the opinion is the proper treatment and the reasons for that conclusion. If the practitioner is unable to reach an overall conclusion, the opinion must state that the practitioner is unable to reach an overall conclusion and describe the reasons for the practitioner's inability to reach a conclusion.

(ii) In the case of a *marketed opinion,* the opinion must provide the practitioner's overall conclusion that the Federal tax treatment of the transaction or matter that is the subject of the opinion is the proper treatment at a confidence level of at least more likely than not.

(d) *Competence to provide opinion; reliance on opinions of others.* (1) The practitioner must be knowledgeable in all of the aspects of Federal tax law relevant to the opinion being rendered, except that the practitioner may rely on the opinion of another practitioner with respect to one or more significant Federal tax issues, unless the practitioner knows or should know that the opinion of the other practitioner should not be relied on. If a practitioner relies on the opinion of another practitioner, the relying practitioner's opinion must identify the other opinion and set forth the conclusions reached in the other opinion.

(2) The practitioner must be satisfied that the combined analysis of the opinions, taken as a whole, and the overall conclusion, if any, satisfy the requirements of this section.

(e) *Required disclosures.* A covered opinion must contain all of the following disclosures that apply—

(1) *Relationship between promoter and practitioner.* An opinion must prominently disclose the existence of—

(i) Any compensation arrangement, such as a referral fee or a fee-sharing arrangement, between the practitioner (or the practitioner's firm or any person who is a member of, associated with, or employed by the practitioner's firm) and any person (other than the client for whom the opinion is prepared) with respect to promoting, marketing or recommending the entity, plan, or arrangement (or a substantially similar arrangement) that is the subject of the opinion; or

(ii) Any referral agreement between the practitioner (or the practitioner's firm or any person who is a member of, associated with, or employed by the practitioner's firm) and a person (other than the client for whom the opinion is prepared) engaged in promoting, marketing or recommending the entity, plan, or arrangement (or a substantially similar arrangement) that is the subject of the opinion.

(2) *Marketed opinions.* A *marketed opinion* must prominently disclose that—

(i) The opinion was written to support the promotion or marketing of the transaction(s) or matter(s) addressed in the opinion; and

(ii) The taxpayer should seek advice based on the taxpayer's particular circumstances from an independent tax advisor.

(3) *Limited scope opinions.* A limited scope opinion must prominently disclose that—

(i) The opinion is limited to the one or more Federal tax issues addressed in the opinion;

(ii) Additional issues may exist that could affect the Federal tax treatment of the transaction or matter that is the subject of the opinion and the opinion does not consider or provide a conclusion with respect to any additional issues; and

(iii) With respect to any significant Federal tax issues outside the limited scope of the opinion, the opinion was not written, and cannot be used by the taxpayer, for the purpose of avoiding penalties that may be imposed on the taxpayer.

(4) *Opinions that fail to reach a more likely than not conclusion.* An opinion that does not reach a conclusion at a confidence level of at least more likely than not with respect to a significant Federal tax issue must prominently disclose that—

(i) The opinion does not reach a conclusion at a confidence level of at least more likely than not with respect to one or more significant Federal tax issues addressed by the opinion; and

(ii) With respect to those significant Federal tax issues, the opinion was not written, and cannot be used by the taxpayer, for the purpose of avoiding penalties that may be imposed on the taxpayer.

(5) *Advice regarding required disclosures.* In the case of any disclosure required under this section, the practitioner may not provide advice to any person that is contrary to or inconsistent with the required disclosure.

(f) *Effect of opinion that meets these standards*—(1) *In general.* An opinion that meets the requirements of this section satisfies the practitioner's responsibilities under this section, but the persuasiveness of the opinion with regard to the tax issues in question and the taxpayer's good faith reliance on the opinion will be determined separately under applicable provisions of the law and regulations.

(2) *Standards for other written advice.* A practitioner who provides written advice that is not a covered opinion for purposes of this section is subject to the requirements of § 10.37.

(g) *Effective date.* This section applies to written advice that is rendered after June 20, 2005.

[T.D. 9011, 67 FR 48771, July 26, 2002, as amended by T.D. 9165, 69 FR 75842, Dec. 20, 2004; 70 FR 19892, Apr. 15, 2005; 70 FR 28825, May 19, 2005]

§ 10.36 Procedures to ensure compliance.

(a) *Requirements for covered opinions.* Any practitioner who has (or practitioners who have or share) principal authority and responsibility for overseeing a firm's practice of providing advice concerning Federal tax issues must take reasonable steps to ensure that the firm has adequate procedures in effect for all members, associates, and employees for purposes of complying with § 10.35. Any such practitioner will be subject to discipline for failing to comply with the requirements of this paragraph if—

(1) The practitioner through willfulness, recklessness, or gross incompetence does not take reasonable steps to ensure that the firm has adequate procedures to comply with § 10.35, and one or more individuals who are members of, associated with, or employed by, the firm are, or have, engaged in a pattern or practice, in connection with their practice with the firm, of failing to comply with § 10.35; or

(2) The practitioner knows or should know that one or more individuals who are members of, associated with, or employed by, the firm are, or have, engaged in a pattern or practice, in connection with their practice with the firm, that does not comply with § 10.35 and the practitioner, through willfulness, recklessness, or gross incompetence, fails to take prompt action to correct the noncompliance.

(b) *Effective date.* This section is applicable after June 20, 2005.

[T.D. 9011, 67 FR 48771, July 26, 2002, as amended by T.D. 9165, 69 FR 75842, Dec. 20, 2004]

§ 10.37 Requirements for other written advice.

(a) *Requirements.* A practitioner must not give written advice (including electronic communications) concerning

one or more Federal tax issues if the practitioner bases the written advice on unreasonable factual or legal assumptions (including assumptions as to future events), unreasonably relies upon representations, statements, findings or agreements of the taxpayer or any other person, does not consider all relevant facts that the practitioner knows or should know, or, in evaluating a Federal tax issue, takes into account the possibility that a tax return will not be audited, that an issue will not be raised on audit, or that an issue will be resolved through settlement if raised. All facts and circumstances, including the scope of the engagement and the type and specificity of the advice sought by the client will be considered in determining whether a practitioner has failed to comply with this section. In the case of an opinion the practitioner knows or has reason to know will be used or referred to by a person other than the practitioner (or a person who is a member of, associated with, or employed by the practitioner's firm) in promoting, marketing or recommending to one or more taxpayers a partnership or other entity, investment plan or arrangement a significant purpose of which is the avoidance or evasion of any tax imposed by the Internal Revenue Code, the determination of whether a practitioner has failed to comply with this section will be made on the basis of a heightened standard of care because of the greater risk caused by the practitioner's lack of knowledge of the taxpayer's particular circumstances.

(b) *Effective date.* This section applies to written advice that is rendered after June 20, 2005.

[T.D. 9011, 67 FR 48771, July 26, 2002, as amended by T.D. 9165, 69 FR 75842, Dec. 20, 2004; 70 FR 20805, Apr. 21, 2005]

§ 10.38 Establishment of advisory committees.

(a) *Advisory committees.* To promote and maintain the public's confidence in tax advisors, the Director of the Office of Professional Responsibility is authorized to establish one or more advisory committees composed of at least five individuals authorized to practice before the Internal Revenue Service. The Director should ensure that membership of an advisory committee is balanced among those who practice as attorneys, accountants, and enrolled agents. Under procedures prescribed by the Director, an advisory committee may review and make general recommendations regarding professional standards or best practices for tax advisors, including whether hypothetical conduct would give rise to a violation of §§ 10.35 or 10.36.

(b) *Effective date.* This section applies after December 20, 2004.

[T.D. 9011, 67 FR 48771, July 26, 2002, as amended by T.D. 9165, 69 FR 75842, Dec. 20, 2004]

Subpart C—Sanctions for Violation of the Regulations

SOURCE: T.D. 9011, 67 FR 48774, July 26, 2002, unless otherwise noted.

§ 10.50 Sanctions.

(a) *Authority to censure, suspend, or disbar.* The Secretary of the Treasury, or his or her delegate, after notice and an opportunity for a proceeding, may censure, suspend or disbar any practitioner from practice before the Internal Revenue Service if the practitioner is shown to be incompetent or disreputable, fails to comply with any regulation in this part, or with intent to defraud, willfully and knowingly misleads or threatens a client or prospective client. Censure is a public reprimand.

(b) *Authority to disqualify.* The Secretary of the Treasury, or his or her delegate, after due notice and opportunity for hearing, may disqualify any appraiser with respect to whom a penalty has been assessed under section 6701(a) of the Internal Revenue Code.

(1) If any appraiser is disqualified pursuant to this subpart C, such appraiser is barred from presenting evidence or testimony in any administrative proceeding before the Department of Treasury or the Internal Revenue Service, unless and until authorized to do so by the Director of Practice pursuant to § 10.81, regardless of whether such evidence or testimony would pertain to an appraisal made prior to or after such date.

(2) Any appraisal made by a disqualified appraiser after the effective date of disqualification will not have any probative effect in any administrative proceeding before the Department of the Treasury or the Internal Revenue Service. An appraisal otherwise barred from admission into evidence pursuant to this section may be admitted into evidence solely for the purpose of determining the taxpayer's reliance in good faith on such appraisal.

§ 10.51 Incompetence and disreputable conduct.

Incompetence and disreputable conduct for which a practitioner may be censured, suspended or disbarred from practice before the Internal Revenue Service includes, but is not limited to—

(a) Conviction of any criminal offense under the revenue laws of the United States;

(b) Conviction of any criminal offense involving dishonesty or breach of trust;

(c) Conviction of any felony under Federal or State law for which the conduct involved renders the practitioner unfit to practice before the Internal Revenue Service;

(d) Giving false or misleading information, or participating in any way in the giving of false or misleading information to the Department of the Treasury or any officer or employee thereof, or to any tribunal authorized to pass upon Federal tax matters, in connection with any matter pending or likely to be pending before them, knowing such information to be false or misleading. Facts or other matters contained in testimony, Federal tax returns, financial statements, applications for enrollment, affidavits, declarations, or any other document or statement, written or oral, are included in the term *information*.

(e) Solicitation of employment as prohibited under § 10.30, the use of false or misleading representations with intent to deceive a client or prospective client in order to procure employment, or intimating that the practitioner is able improperly to obtain special consideration or action from the Internal Revenue Service or officer or employee thereof.

(f) Willfully failing to make a Federal tax return in violation of the revenue laws of the United States, willfully evading, attempting to evade, or participating in any way in evading or attempting to evade any assessment or payment of any Federal tax, or knowingly counseling or suggesting to a client or prospective client an illegal plan to evade Federal taxes or payment thereof.

(g) Misappropriation of, or failure properly and promptly to remit funds received from a client for the purpose of payment of taxes or other obligations due the United States.

(h) Directly or indirectly attempting to influence, or offering or agreeing to attempt to influence, the official action of any officer or employee of the Internal Revenue Service by the use of threats, false accusations, duress or coercion, by the offer of any special inducement or promise of advantage or by the bestowing of any gift, favor or thing of value.

(i) Disbarment or suspension from practice as an attorney, certified public accountant, public accountant, or actuary by any duly constituted authority of any State, territory, possession of the United States, including a Commonwealth, or the District of Columbia, any Federal court of record or any Federal agency, body or board.

(j) Knowingly aiding and abetting another person to practice before the Internal Revenue Service during a period of suspension, disbarment, or ineligibility of such other person.

(k) Contemptuous conduct in connection with practice before the Internal Revenue Service, including the use of abusive language, making false accusations and statements, knowing them to be false, or circulating or publishing malicious or libelous matter.

(l) Giving a false opinion, knowingly, recklessly, or through gross incompetence, including an opinion which is intentionally or recklessly misleading, or engaging in a pattern of providing incompetent opinions on questions arising under the Federal tax laws. False opinions described in this paragraph (l) include those which reflect or result from a knowing misstatement of fact or law, from an assertion of a position known to be unwarranted under

existing law, from counseling or assisting in conduct known to be illegal or fraudulent, from concealing matters required by law to be revealed, or from consciously disregarding information indicating that material facts expressed in the tax opinion or offering material are false or misleading. For purposes of this paragraph (l), reckless conduct is a highly unreasonable omission or misrepresentation involving an extreme departure from the standards of ordinary care that a practitioner should observe under the circumstances. A pattern of conduct is a factor that will be taken into account in determining whether a practitioner acted knowingly, recklessly, or through gross incompetence. Gross incompetence includes conduct that reflects gross indifference, preparation which is grossly inadequate under the circumstances, and a consistent failure to perform obligations to the client.

§ 10.52 Violation of regulations.

(a) *Prohibited conduct.* A practitioner may be censured, suspended or disbarred from practice before the Internal Revenue Service for any of the following:

(1) Willfully violating any of the regulations (other than § 10.33) contained in this part; or

(2) Recklessly or through gross incompetence (within the meaning of § 10.51(l)) violating §§ 10.34, 10.35, 10.36 or 10.37.

(b) *Effective date.* This section applies after June 20, 2005.

[T.D. 9011, 67 FR 48771, July 26, 2002, as amended by T.D. 9165, 69 FR 75845, Dec. 20, 2004]

Subpart D—Rules Applicable to Disciplinary Proceedings

SOURCE: 67 FR 48774, July 26, 2002, unless otherwise noted.

§ 10.60 Institution of proceeding.

(a) Whenever the Director of Practice determines that a practitioner violated any provision of the laws governing practice before the Internal Revenue Service or the regulations in this part, the Director of Practice may reprimand the practitioner or, in accordance with § 10.62, institute a proceeding for censure, suspension, or disbarment of the practitioner. A proceeding for censure, suspension, or disbarment of a practitioner is instituted by the filing of a complaint, the contents of which are more fully described in § 10.62.

(b) Whenever the Director of Practice is advised or becomes aware that a penalty has been assessed against an appraiser under section 6701(a) of the Internal Revenue Code, the Director of Practice may reprimand the appraiser or, in accordance with § 10.62, institute a proceeding for disqualification of the appraiser. A proceeding for disqualification of an appraiser is instituted by the filing of a complaint, the contents of which are more fully described in § 10.62.

(c) Except as provided in § 10.82, a proceeding will not be instituted under this section unless the proposed respondent previously has been advised in writing of the law, facts and conduct warranting such action and has been accorded an opportunity to dispute facts, assert additional facts, and make arguments (including an explanation or description of mitigating circumstances).

§ 10.61 Conferences.

(a) *In general.* The Director of Practice may confer with a practitioner or an appraiser concerning allegations of misconduct irrespective of whether a proceeding for censure, suspension, disbarment, or disqualification has been instituted against the practitioner or appraiser. If the conference results in a stipulation in connection with an ongoing proceeding in which the practitioner or appraiser is the respondent, the stipulation may be entered in the record by either party to the proceeding.

(b) *Resignation or voluntary censure, suspension or disbarment.* In lieu of a proceeding being instituted or continued under paragraph (a) of § 10.60, a practitioner may offer his or her consent to the issuance of a censure, suspension or disbarment, or, if the practitioner is an enrolled agent, may offer to resign. The Director of Practice may, in his or her discretion, accept or decline the offered censure, suspension, disbarment, or offer of resignation by

an enrolled agent, in accordance with the consent offered. In any declination, the Director of Practice may state that he or she would accept an offer of censure, suspension, or disbarment, or, if the practitioner is an enrolled agent, offer of resignation, containing different terms; the Director of Practice may, in his or her discretion, accept or reject a revised offer of censure, suspension, disbarment, or offer of resignation by an enrolled agent, submitted in response to the declination or may counteroffer and act upon any accepted counteroffer.

(c) *Voluntary disqualification.* In lieu of a proceeding being instituted or continued under paragraph (b) of § 10.60, an appraiser may offer his or her consent to disqualification. The Director of Practice may, in his or her discretion, accept or decline the offered disqualification, in accordance with the consent offered. In any declination, the Director of Practice may state that he or she would accept an offer of disqualification containing different terms; the Director of Practice may, in his or her discretion, accept or reject a revised offer of censure, suspension or disbarment submitted in response to the declination or may counteroffer and act upon any accepted counteroffer.

§ 10.62 Contents of complaint.

(a) *Charges.* A complaint must name the respondent, provide a clear and concise description of the facts and law that constitute the basis for the proceeding, and be signed by the Director of Practice or a person representing the Director of Practice under § 10.69(a)(1). A complaint is sufficient if it fairly informs the respondent of the charges brought so that he or she is able to prepare a defense. In the case of a complaint filed against an appraiser, the complaint is sufficient if it refers to a penalty imposed previously on the respondent under section 6701(a) of the Internal Revenue Code.

(b) *Specification of sanction.* The complaint must specify the sanction sought by the Director of Practice against the practitioner or appraiser. If the sanction sought is a suspension, the duration of the suspension sought must be specified.

(c) *Demand for answer.* The Director of Practice must, in the complaint or in a separate paper attached to the complaint, notify the respondent of the time for answering the complaint, the time for which may not be less than15 days from the date of service of the complaint, the name and address of the Administrative Law Judge with whom the answer must be filed, the name and address of the person representing the Director of Practice to whom a copy of the answer must be served, and that a decision by default may be rendered against the respondent in the event an answer is not filed as required.

§ 10.63 Service of complaint; service and filing of other papers.

(a) *Service of complaint*—(1) *In general.* The complaint or a copy of the complaint must be served on the respondent by any manner described in paragraphs (a)(2) or (3) of this section.

(2) *Service by certified or first class mail.* (i) Service of the complaint may be made on the respondent by mailing the complaint by certified mail to the last known address (as determined under section 6212 of the Internal Revenue Code and the regulations thereunder) of the respondent. Where service is by certified mail, the returned post office receipt duly signed by the respondent will be proof of service.

(ii) If the certified mail is not claimed or accepted by the respondent, or is returned undelivered, service may be made on the respondent, by mailing the complaint to the respondent by first class mail. Service by this method will be considered complete upon mailing, provided the complaint is addressed to the respondent at the respondent's last known address as determined under section 6212 of the Internal Revenue Code and the regulations thereunder.

(3) *Service by other than certified or first class mail.* (i) Service of the complaint may be made on the respondent by delivery by a private delivery service designated pursuant to section 7502(f) of the Internal Revenue Code to the last known address (as determined under section 6212 of the Internal Revenue Code and the regulations thereunder) of the respondent. Service by

this method will be considered complete, provided the complaint is addressed to the respondent at the respondent's last known address as determined under section 6212 of the Internal Revenue Code and the regulations thereunder.

(ii) Service of the complaint may be made in person on, or by leaving the complaint at the office or place of business of, the respondent. Service by this method will be considered complete and proof of service will be a written statement, sworn or affirmed by the person who served the complaint, identifying the manner of service, including the recipient, relationship of recipient to respondent, place, date and time of service.

(iii) Service may be made by any other means agreed to by the respondent. Proof of service will be a written statement, sworn or affirmed by the person who served the complaint, identifying the manner of service, including the recipient, relationship of recipient to respondent, place, date and time of service.

(4) For purposes of this paragraph (a), ''respondent'' means the practitioner or appraiser named in the complaint or any other person having the authority to accept mail on behalf of the practitioner or appraiser.

(b) *Service of papers other than complaint.* Any paper other than the complaint may be served on the respondent, or his or her authorized representative under § 10.69(a)(2) by:

(1) Mailing the paper by first class mail to the last known address (as determined under section 6212 of the Internal Revenue Code and the regulations thereunder) of the respondent or the respondent's authorized representative,

(2) Delivery by a private delivery service designated pursuant to section 7502(f) of the Internal Revenue Code to the last known address (as determined under section 6212 of the Internal Revenue Code and the regulations thereunder) of the respondent or the respondent's authorized representative, or

(3) As provided in paragraphs (a)(3)(ii) and (a)(3)(iii) of this section.

(c) *Service of papers on the Director of Practice.* Whenever a paper is required or permitted to be served on the Director of Practice in connection with a proceeding under this part, the paper will be served on the Director of Practice's authorized representative under § 10.69(a)(1) at the address designated in the complaint, or at an address provided in a notice of appearance. If no address is designated in the complaint or provided in a notice of appearance, service will be made on the Director of Practice, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224.

(d) *Filing of papers.* Whenever the filing of a paper is required or permitted in connection with a proceeding under this part, the original paper, plus one additional copy, must be filed with the Administrative Law Judge at the address specified in the complaint or at an address otherwise specified by the Administrative Law Judge. All papers filed in connection with a proceeding under this part must be served on the other party, unless the Administrative Law Judge directs otherwise. A certificate evidencing such must be attached to the original paper filed with the Administrative Law Judge.

§ 10.64 Answer; default.

(a) *Filing.* The respondent's answer must be filed with the Administrative Law Judge, and served on the Director of Practice, within the time specified in the complaint unless, on request or application of the respondent, the time is extended by the Administrative Law Judge.

(b) *Contents.* The answer must be written and contain a statement of facts that constitute the respondent's grounds of defense. General denials are not permitted. The respondent must specifically admit or deny each allegation set forth in the complaint, except that the respondent may state that the respondent is without sufficient information to admit or deny a specific allegation. The respondent, nevertheless, may not deny a material allegation in the complaint that the respondent knows to be true, or state that the respondent is without sufficient information to form a belief, when the respondent possesses the required information.

The respondent also must state affirmatively any special matters of defense on which he or she relies.

(c) *Failure to deny or answer allegations in the complaint.* Every allegation in the complaint that is not denied in the answer is deemed admitted and will be considered proved; no further evidence in respect of such allegation need be adduced at a hearing.

(d) *Default.* Failure to file an answer within the time prescribed (or within the time for answer as extended by the Administrative Law Judge), constitutes an admission of the allegations of the complaint and a waiver of hearing, and the Administrative Law Judge may make the decision by default without a hearing or further procedure. A decision by default constitutes a decision under § 10.76.

(e) *Signature.* The answer must be signed by the respondent or the respondent's authorized representative under § 10.69(a)(2) and must include a statement directly above the signature acknowledging that the statements made in the answer are true and correct and that knowing and willful false statements may be punishable under 18 U.S.C. 1001.

§ 10.65 Supplemental charges.

If it appears that the respondent, in his or her answer, falsely and in bad faith, denies a material allegation of fact in the complaint or states that the respondent has insufficient knowledge to form a belief, when the respondent in fact possesses such information, or if it appears that the respondent has knowingly introduced false testimony during proceedings for his or her censure, suspension, disbarment, or disqualification, the Director of Practice may file supplemental charges against the respondent. The supplemental charges may be heard with other charges in the case, provided the respondent is given due notice of the charges and is afforded an opportunity to prepare a defense to such charges.

§ 10.66 Reply to answer.

The Director of Practice may file a reply to the respondent's answer, but unless otherwise ordered by the Administrative Law Judge, no reply to the respondent's answer is required. If a reply is not filed, new matter in the answer is deemed denied.

§ 10.67 Proof; variance; amendment of pleadings.

In the case of a variance between the allegations in pleadings and the evidence adduced in support of the pleadings, the Administrative Law Judge, at any time before decision, may order or authorize amendment of the pleadings to conform to the evidence. The party who would otherwise be prejudiced by the amendment must be given a reasonable opportunity to address the allegations of the pleadings as amended and the Administrative Law Judge must make findings on any issue presented by the pleadings as amended.

§ 10.68 Motions and requests.

(a) *Motions.* At any time after the filing of the complaint, any party may file a motion with the Administrative Law Judge. Unless otherwise ordered by the Administrative Law Judge, motions must be in writing and must be served on the opposing party as provided in § 10.63(b). A motion must concisely specify its grounds and the relief sought, and, if appropriate, must contain a memorandum of facts and law in support. Before moving, a party must make a good faith effort to resolve with the other party any dispute that gives rise to, or is a concern of, the motion. The movant must certify such an attempt was made and state, if it is known, whether the opposing party opposes the motion.

(b) *Response.* Unless otherwise ordered by the Administrative Law Judge, the nonmoving party is not required to file a response to a motion. If the Administrative Law Judge does not order the nonmoving party to file a response, the nonmoving party is deemed to oppose the motion.

(c) *Oral motions and arguments.* The Administrative Law Judge may, for good cause and with notice to the parties, permit oral motions and oral opposition to motions. The Administrative Law Judge may, within his or her discretion, permit oral argument on any motion.

§ 10.69 Representation; ex parte communication.

(a) *Representation.* (1) The Director of Practice may be represented in proceedings under this part by an attorney or other employee of the Internal Revenue Service. An attorney or an employee of the Internal Revenue Service representing the Director of Practice in a proceeding under this part may sign the complaint or any document required to be filed in the proceeding on behalf of the Director of Practice.

(2) A respondent may appear in person, be represented by a practitioner, or be represented by an attorney who has not filed a declaration with the Internal Revenue Service pursuant to § 10.3. A practitioner or an attorney representing a respondent or proposed respondent may sign the answer or any document required to be filed in the proceeding on behalf of the respondent.

(b) *Ex parte communication.* The Director of Practice, the respondent, and any representatives of either party, may not attempt to initiate or participate in *ex parte* discussions concerning a proceeding or potential proceeding with the Administrative Law Judge (or any person who is likely to advise the Administrative Law Judge on a ruling or decision) in the proceeding before or during the pendency of the proceeding. Any memorandum, letter or other communication concerning the merits of the proceeding, addressed to the Administrative Law Judge, by or on behalf of any party shall be regarded as an argument in the proceeding and shall be served on the other party.

§ 10.70 Administrative Law Judge.

(a) *Appointment.* Proceedings on complaints for the censure, suspension or disbarment of a practitioner or the disqualification of an appraiser will be conducted by an Administrative Law Judge appointed as provided by 5 U.S.C. 3105.

(b) *Powers of the Administrative Law Judge.* The Administrative Law Judge, among other powers, has the authority, in connection with any proceeding under § 10.60 assigned or referred to him or her, to do the following:

(1) Administer oaths and affirmations;

(2) Make rulings on motions and requests, which rulings may not be appealed prior to the close of a hearing except in extraordinary circumstances and at the discretion of the Administrative Law Judge;

(3) Determine the time and place of hearing and regulate its course and conduct;

(4) Adopt rules of procedure and modify the same from time to time as needed for the orderly disposition of proceedings;

(5) Rule on offers of proof, receive relevant evidence, and examine witnesses;

(6) Take or authorize the taking of depositions;

(7) Receive and consider oral or written argument on facts or law;

(8) Hold or provide for the holding of conferences for the settlement or simplification of the issues with the consent of the parties;

(9) Perform such acts and take such measures as are necessary or appropriate to the efficient conduct of any proceeding; and

(10) Make decisions.

§ 10.71 Hearings.

(a) *In general.* An Administrative Law Judge will preside at the hearing on a complaint filed under paragraph (c) of § 10.60 for the censure, suspension, or disbarment of a practitioner or disqualification of an appraiser. Hearings will be stenographically recorded and transcribed and the testimony of witnesses will be taken under oath or affirmation. Hearings will be conducted pursuant to 5 U.S.C. 556. A hearing in a proceeding requested under paragraph (g) of § 10.82 will be conducted *de novo.* An evidentiary hearing must be held in all proceedings prior to the issuance of a decision by the Administrative Law Judge unless: the Director of Practice withdraws the complaint; the practitioner consents to a sanction pursuant to § 10.61(b); a decision is issued by default pursuant to § 10.64(d), a decision is issued under § 10.82(e); the respondent requests a decision on the record without a hearing; or the Administrative Law Judge issues a decision on a motion that disposes of the case prior to the hearing.

(b) *Publicity of proceedings.* A request by a practitioner or appraiser that a hearing in a disciplinary proceeding concerning him or her be public, and that the record of such disciplinary proceeding be made available for inspection by interested persons may be granted by the Administrative Law Judge where the parties stipulate in advance to protect from disclosure confidential tax information in accordance with all applicable statutes and regulations.

(c) *Location.* The location of the hearing will be determined by the agreement of the parties with the approval of the Administrative Law Judge, but, in the absence of such agreement and approval, the hearing will be held in Washington, D.C.

(d) *Failure to appear.* If either party to the proceeding fails to appear at the hearing, after notice of the proceeding has been sent to him or her, the party will be deemed to have waived the right to a hearing and the Administrative Law Judge may make his or her decision against the absent party by default.

§ 10.72 Evidence.

(a) *In general.* The rules of evidence prevailing in courts of law and equity are not controlling in hearings or proceedings conducted under this part. The Administrative Law Judge may, however, exclude evidence that is irrelevant, immaterial, or unduly repetitious,

(b) *Depositions.* The deposition of any witness taken pursuant to § 10.73 may be admitted into evidence in any proceeding instituted under § 10.60.

(c) *Proof of documents.* Official documents, records, and papers of the Internal Revenue Service and the Office of Director of Practice are admissible in evidence without the production of an officer or employee to authenticate them. Any such documents, records, and papers may be evidenced by a copy attested or identified by an officer or employee of the Internal Revenue Service or the Treasury Department, as the case may be.

(d) *Withdrawal of exhibits.* If any document, record, or other paper is introduced in evidence as an exhibit, the Administrative Law Judge may authorize the withdrawal of the exhibit subject to any conditions that he or she deems proper.

(e) *Objections.* Objections to evidence are to be made in short form, stating the grounds for the objection. Except as ordered by the Administrative Law Judge, argument on objections will not be recorded or transcribed. Rulings on objections are to be a part of the record, but no exception to a ruling is necessary to preserve the rights of the parties.

§ 10.73 Depositions.

(a) Depositions for use at a hearing may be taken, with the written approval of the Administrative Law Judge, by either the Director of Practice or the respondent or their duly authorized representatives. Depositions may be taken before any officer duly authorized to administer an oath for general purposes or before an officer or employee of the Internal Revenue Service who is authorized to administer an oath in internal revenue matters.

(b) The party taking the deposition must provide the deponent and the other party with 10 days written notice of the deposition, unless the deponent and the parties agree otherwise. The notice must specify the name of the deponent, the time and place where the deposition is to be taken, and whether the deposition will be taken by oral or written interrogatories. When a deposition is taken by written interrogatories, any cross-examination also will be by written interrogatories. Copies of the written interrogatories must be served on the other party with the notice of deposition, and copies of any written cross-interrogation must be mailed or delivered to the opposing party at least 5 days before the date that the deposition will be taken, unless the parties mutually agree otherwise. A party on whose behalf a deposition is taken must file the responses to the written interrogatories or a transcript of the oral deposition with the Administrative Law Judge and serve copies on the opposing party and the deponent. Expenses in the reporting of depositions will be borne by the party that requested the deposition.

§ 10.74 Transcript.

In cases where the hearing is stenographically reported by a Government contract reporter, copies of the transcript may be obtained from the reporter at rates not to exceed the maximum rates fixed by contract between the Government and the reporter. Where the hearing is stenographically reported by a regular employee of the Internal Revenue Service, a copy will be supplied to the respondent either without charge or upon the payment of a reasonable fee. Copies of exhibits introduced at the hearing or at the taking of depositions will be supplied to the parties upon the payment of a reasonable fee (Sec. 501, Public Law 82–137)(65 Stat. 290)(31 U.S.C. 483a).

§ 10.75 Proposed findings and conclusions.

Except in cases where the respondent has failed to answer the complaint or where a party has failed to appear at the hearing, the parties must be afforded a reasonable opportunity to submit proposed findings and conclusions and their supporting reasons to the Administrative Law Judge.

§ 10.76 Decision of Administrative Law Judge.

(a) As soon as practicable after the conclusion of a hearing and the receipt of any proposed findings and conclusions timely submitted by the parties, the Administrative Law Judge will enter a decision in the case. The decision must include a statement of findings and conclusions, as well as the reasons or basis for making such findings and conclusions, and an order of censure, suspension, disbarment, disqualification, or dismissal of the complaint. If the sanction is censure or a suspension of less than six month's duration, the Administrative Law Judge, in rendering findings and conclusions, will consider an allegation of fact to be proven if it is established by the party who is alleging the fact by a preponderance of evidence in the record. In the event that the sanction is disbarment or a suspension of a duration of six months or longer, an allegation of fact that is necessary for a finding against the practitioner must be proven by clear and convincing evidence in the record. An allegation of fact that is necessary for a finding of disqualification against an appraiser must be proven by clear and convincing evidence in the record. The Administrative Law Judge will provide the decision to the Director of Practice and a copy of the decision to the respondent or the respondent's authorized representative.

(b) In the absence of an appeal to the Secretary of the Treasury or his or her designee, or review of the decision on motion of the Secretary or his or her designee, the decision of the Administrative Law Judge will, without further proceedings, become the decision of the agency 30 days after the date of the Administrative Law Judge's decision.

§ 10.77 Appeal of decision of Administrative Law Judge.

Within 30 days from the date of the Administrative Law Judge's decision, either party may appeal to the Secretary of the Treasury, or his or her delegate. The respondent must file his or her appeal with the Director of Practice in duplicate and a notice of appeal must include exceptions to the decision of the Administrative Law Judge and supporting reasons for such exceptions. If the Director of Practice files an appeal, he or she must provide a copy to the respondent. Within 30 days after receipt of an appeal or copy thereof, the other party may file a reply brief in duplicate with the Director of Practice. If the reply brief is filed by the Director of Practice, he or she must provide a copy of it to the respondent. The Director of Practice must provide the entire record to the Secretary of the Treasury, or his or her delegate, after the appeal and any reply brief has been filed.

§ 10.78 Decision on appeal.

On appeal from or review of the decision of the Administrative Law Judge, the Secretary of the Treasury, or his or her delegate, will make the agency decision. The Secretary of the Treasury, or his or delegate, will provide a copy of the agency decision to the Director of Practice and the respondent or the respondent's authorized representative. The decision of the Administrative Law Judge will not be reversed unless

the appellant establishes that the decision is clearly erroneous in light of the evidence in the record and applicable law. Issues that are exclusively matters of law will be reviewed de novo. In the event that the Secretary of the Treasury, or his or her delegate, determines that there are unresolved issues raised by the record, the case may be remanded to the Administrative Law Judge to elicit additional testimony or evidence. A copy of the agency decision or that of his or her delegate will be provided to the Director of Practice and the respondent contemporaneously.

§ 10.79 Effect of disbarment, suspension, or censure.

(a) *Disbarment.* When the final decision in a case is against the respondent (or the respondent has offered his or her consent and such consent has been accepted by the Director of Practice) and such decision is for disbarment, the respondent will not be permitted to practice before the Internal Revenue Service unless and until authorized to do so by the Director of Practice pursuant to § 10.81.

(b) *Suspension.* When the final decision in a case is against the respondent (or the respondent has offered his or her consent and such consent has been accepted by the Director of Practice) and such decision is for suspension, the respondent will not be permitted to practice before the Internal Revenue Service during the period of suspension. For periods after the suspension, the practitioner's future representations may be subject to conditions as authorized by paragraph (d) of this section.

(c) *Censure.* When the final decision in the case is against the respondent (or the respondent has offered his or her consent and such consent has been accepted by the Director of Practice) and such decision is for censure, the respondent will be permitted to practice before the Internal Revenue Service, but the respondent's future representations may be subject to conditions as authorized by paragraph (d) of this section. o

(d) *Conditions.* After being subject to the sanction of either suspension or censure, the future representations of a practitioner so sanctioned shall be subject to conditions prescribed by the Director of Practice designed to promote high standards of conduct. These conditions can be imposed for a reasonable period in light of the gravity of the practitioner's violations. For example, where a practitioner is censured because he or she failed to advise his or her clients about a potential conflict of interest or failed to obtain the clients' written consents, the Director of Practice may require the practitioner to provide the Director of Practice or another Internal Revenue Service official with a copy of all consents obtained by the practitioner for an appropriate period following censure, whether or not such consents are specifically requested.

§ 10.80 Notice of disbarment, suspension, censure, or disqualification.

On the issuance of a final order censuring, suspending, or disbarring a practitioner or a final order disqualifying an appraiser, the Director of Practice may give notice of the censure, suspension, disbarment, or disqualification to appropriate officers and employees of the Internal Revenue Service and to interested departments and agencies of the Federal government. The Director of Practice may determine the manner of giving notice to the proper authorities of the State by which the censured, suspended, or disbarred person was licensed to practice.

§ 10.81 Petition for reinstatement.

The Director of Practice may entertain a petition for reinstatement from any person disbarred from practice before the Internal Revenue Service or any disqualified appraiser after the expiration of 5 years following such disbarment or disqualification. Reinstatement may not be granted unless the Director of Practice is satisfied that the petitioner, thereafter, is not likely to conduct himself contrary to the regulations in this part, and that granting such reinstatement would not be contrary to the public interest.

§ 10.82 Expedited suspension upon criminal conviction or loss of license for cause.

(a) *When applicable.* Whenever the Director of Practice determines that a practitioner is described in paragraph (b) of this section, the Director of Practice may institute a proceeding under this section to suspend the practitioner from practice before the Internal Revenue Service.

(b) *To whom applicable.* This section applies to any practitioner who, within 5 years of the date a complaint instituting a proceeding under this section is served:

(1) Has had his or her license to practice as an attorney, certified public accountant, or actuary suspended or revoked for cause (not including a failure to pay a professional licensing fee) by any authority or court, agency, body, or board described in § 10.51(i); or

(2) Has, irrespective of whether an appeal has been taken, been convicted of any crime under title 26 of the United States Code, any crime involving dishonesty or breach of trust, or any felony for which the conduct involved renders the practitioner unfit to practice before the Internal Revenue Service.

(3) Has violated conditions designed to promote high standards of conduct established pursuant to § 10.79(d).

(c) *Instituting a proceeding.* A proceeding under this section will be instituted by a complaint that names the respondent, is signed by the Director of Practice or a person representing the Director of Practice under § 10.69(a)(1), is filed in the Director of Practice's office, and is served according to the rules set forth in paragraph (a) of § 10.63. The complaint must give a plain and concise description of the allegations that constitute the basis for the proceeding. The complaint must notify the respondent—

(1) Of the place and due date for filing an answer;

(2) That a decision by default may be rendered if the respondent fails to file an answer as required;

(3) That the respondent may request a conference with the Director of Practice to address the merits of the complaint and that any such request must be made in the answer; and

(4) That the respondent may be suspended either immediately following the expiration of the period within which an answer must be filed or, if a conference is requested, immediately following the conference.

(d) *Answer.* The answer to a complaint described in this section must be filed no later than 30 calendar days following the date the complaint is served, unless the Director of Practice extends the time for filing. The answer must be filed in accordance with the rules set forth in § 10.64, except as otherwise provided in this section. A respondent is entitled to a conference with the Director of Practice only if the conference is requested in a timely filed answer. If a request for a conference is not made in the answer or the answer is not timely filed, the respondent will be deemed to have waived his or her right to a conference and the Director of Practice may suspend such respondent at any time following the date on which the answer was due.

(e) *Conference.* The Director of Practice or his or her designee will preside at a conference described in this section. The conference will be held at a place and time selected by the Director of Practice, but no sooner than 14 calendar days after the date by which the answer must be filed with the Director of Practice, unless the respondent agrees to an earlier date. An authorized representative may represent the respondent at the conference. Following the conference, upon a finding that the respondent is described in paragraph (b) of this section, or upon the respondent's failure to appear at the conference either personally or through an authorized representative, the Director of Practice may immediately suspend the respondent from practice before the Internal Revenue Service.

(f) *Duration of suspension.* A suspension under this section will commence on the date that written notice of the suspension is issued. A practitioner's suspension will remain effective until the earlier of the following—

(1) The Director of Practice lifts the suspension after determining that the practitioner is no longer described in

paragraph (b) of this section or for any other reason; or

(2) The suspension is lifted by an Administrative Law Judge or the Secretary of the Treasury in a proceeding referred to in paragraph (g) of this section and instituted under § 10.60.

(g) *Proceeding instituted under § 10.60.* If the Director of Practice suspends a practitioner under this section, the practitioner may ask the Director of Practice to issue a complaint under § 10.60. The request must be made in writing within 2 years from the date on which the practitioner's suspension commences. The Director of Practice must issue a complaint requested under this paragraph within 30 calendar days of receiving the request.

Subpart E—General Provisions

SOURCE: T.D. 9011, 67 FR 48774, July 26, 2002, unless otherwise noted.

§ 10.90 Records.

Availability. The Director of Practice will make available for public inspection at the Office of Director Practice the roster of all persons enrolled to practice, the roster of all persons censured, suspended, or disbarred from practice before the Internal Revenue Service, and the roster of all disqualified appraisers. Other records of the Director of Practice may be disclosed upon specific request, in accordance with the applicable disclosure rules of the Internal Revenue Service and the Treasury Department.

§ 10.91 Saving clause.

Any proceeding instituted under regulations in effect prior to July 26, 2002 that is not final prior to July 26, 2002 will not be affected by this part and will apply the rules set forth at 31 CFR part 10 revised as of July 1, 2002. Any proceeding under this part based on conduct engaged in prior to July 26, 2002, which is instituted after that date, shall apply Subpart D and E of this part, but the conduct engaged in prior to July 26, 2002 shall be judged by the regulations in effect at the time the conduct occurred.

§ 10.92 Special orders.

The Secretary of the Treasury reserves the power to issue such special orders as he or she deems proper in any cases within the purview of this part.

§ 10.93 Effective date.

Except as otherwise provided in each section and subject to § 10.91, Part 10 is applicable on July 26, 2002.

[T.D. 9011, 67 FR 48771, July 26, 2002, as amended by T.D. 9165, 69 FR 75845, Dec. 20, 2004]

PART 11—OPERATION OF VENDING FACILITIES BY THE BLIND ON FEDERAL PROPERTY UNDER THE CONTROL OF THE DEPARTMENT OF THE TREASURY

Sec.

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AUTHORITY: 49 Stat. 1559, as amended by Act of Aug. 3, 1954, Pub. L. 83–565, 68 Stat. 663, as further amended by Pub. L. 93–516, 88 Stat. 1622, (20 U.S.C. 107).

SOURCE: 58 FR 57560, Oct. 26, 1993, unless otherwise noted.

§ 11.1 Purpose.

This part contains policy and procedures to ensure the priority of blind vendors in operating vending facilities on property controlled by the Department of the Treasury. The provisions of this part apply to all bureaus, the Departmental Offices and the Office of Inspector General.

§ 11.2 Policy.

Blind vendors licensed by State licensing agencies designated by the Secretary of Education under the provisions of the Randolph-Sheppard Act (20 U.S.C. 107 *et seq.*) shall be given priority in the location and operation of vending facilities, including vending machines, on property controlled by the Department of the Treasury, provided the location or operation of such facility would not adversely affect the

interests of the United States. Treasury bureaus shall ensure that the collection and distribution of vending machine income from vending machines on Treasury-controlled property shall be in compliance with the regulations set forth in 34 CFR 395.32. Blind vendors shall also be given priority on Treasury-controlled property in the operation of cafeterias according to 34 CFR 395.33.

§ 11.3 Definitions.

Terms used are defined in 34 CFR 395.1, except that as used in this part, the following terms shall have the following meanings:

(a) *Department of the Treasury controlled property* means any Federal building, land, or other real property owned, leased, or occupied by a bureau or office of the Department of the Treasury, of which the maintenance, operation, and protection is under the control of the Department of the Treasury.

(b) The term *bureau* means any bureau or office of the Department of the Treasury and such comparable administrative units as may hereafter be created or made a part of the Department, and includes the Departmental Offices and the Office of Inspector General. The ''head of the bureau'' for the Departmental Offices is the Deputy Assistant Secretary (Administration).

§ 11.4 Establishing vending facilities.

(a) Treasury bureaus shall not acquire a building by ownership, rent, or lease, or occupy a building to be constructed, substantially altered, or renovated unless it is determined that such buildings contain or will contain a ''satisfactory site,'' as defined in 34 CFR 395.1(q), for the location and operation of a blind vending facility.

(b) In accordance with 34 CFR 395.31, Treasury bureaus shall provide the appropriate State licensing agency with written notice of the intention to acquire or otherwise occupy such building. Providing notification shall be the responsibility of the bureau on-site property management official.

§ 11.5 Application for permit.

Applications for permits for the operation of vending facilities other than cafeterias shall be made in writing and submitted for the review and approval of the head of the appropriate Treasury bureau or that official's designee.

§ 11.6 Terms of permit.

Every permit shall describe the location of the vending facility, including any vending machines located on other than facility premises, and shall be subject to the following provisions:

(a) The permit shall be issued in the name of the applicant State licensing agency which shall perform the responsibilities set forth in 34 CFR 395.35 (a);

(b) The permit shall be issued for an indefinite period of time subject to suspension or termination on the basis of compliance or noncompliance with agreed upon terms.

(c) The permit shall provide that:

(1) No charge shall be made to the State licensing agency for normal cleaning, maintenance, and repair of the building structure in and adjacent to the vending facility areas;

(2) Cleaning necessary for sanitation; the maintenance of vending facilities and vending machines in an orderly condition at all times; the installation, maintenance, repair, replacement, servicing, and removal of vending facility equipment shall be without cost to the Department of the Treasury; and

(3) Articles sold at vending facilities operated by blind licensees may consist of newspapers, periodicals, publications, confections, tobacco products, foods, beverages, chances for any lottery authorized by State law and conducted by an agency of a State within such State, and other articles or services as are determined by the State licensing agency, in consultation with the appropriate Treasury bureau, to be suitable for a particular location. Such articles and services may be dispensed automatically or manually and may be prepared on or off the premises.

(d) The permit shall further provide that vending facilities shall be operated in compliance with applicable health, sanitation, and building codes or ordinances.

(e) The permit shall further provide that installation, modification, relocation, removal, and renovation of vending facilities shall be subject to the prior approval and supervision of the

bureau on-site property management officer of the appropriate Treasury bureau and the State licensing agency; that costs of relocations initiated by the State licensing agency shall be paid by the State licensing agency; that costs of relocations initiated by a Treasury bureau shall be paid by the Treasury bureau; and that all plumbing, electrical, and mechanical costs related to the renovation of existing facilities shall be paid by the appropriate Treasury bureau.

(f) The operation of a cafeteria by a blind vendor shall be covered by a contractual agreement and not by a permit. The State licensing agency shall be expected to perform under the same contractual arrangement applicable to commercial cafeteria operators.

§ 11.7 Enforcement procedures.

(a) The State licensing agency shall attempt to resolve day-to-day problems pertaining to the operation of the vending facility in an informal manner with the participation of the blind vendor and the on-site property management officials of the respective Treasury bureaus who are responsible for the Treasury-controlled property.

(b) Unresolved disagreements concerning the terms of the permit, the Act, or the regulations in this part and any other unresolved matters shall be reported in writing to the State licensing agency supervisory personnel by the bureau on-site supervisory property management official in an attempt to resolve the issue.

§ 11.8 Reports.

This section establishes a Department of the Treasury reporting requirement to comply with 34 CFR 395.38. At the end of each fiscal year, each property managing bureau shall submit a report to the Director, Office of Management Support Systems, Departmental Offices, containing the elements set forth in 34 CFR 395.38. The Director, Office of Management Support Systems, shall submit a consolidated report to the Secretary of Education after the end of the fiscal year.

PART 12—RESTRICTION OF SALE AND DISTRIBUTION OF TOBACCO PRODUCTS

Sec.
12.1 Purpose.
12.2 Definitions.
12.3 Sale of tobacco products in vending machines prohibited.
12.4 Distribution of free samples of tobacco products prohibited.
12.5 Prohibitions not applicable in areas designated by the Secretary of the Treasury.

AUTHORITY: Sec. 636, Pub. L. 104–52, 109 Stat. 507.

SOURCE: 61 FR 25396, May 21, 1996, unless otherwise noted.

§ 12.1 Purpose.

This part contains regulations implementing the ''Prohibition of Cigarette Sales to Minors in Federal Buildings Act,'' Public Law 104–52, Section 636, with respect to buildings under the jurisdiction of the Department of the Treasury.

§ 12.2 Definitions.

As used in this part—

(1) The term *Federal building under the jurisdiction of the Secretary of the Treasury* includes the real property on which such building is located;

(2) The term *minor* means an individual under the age of 18 years; and

(3) The term *tobacco product* means cigarettes, cigars, little cigars, pipe tobacco, smokeless tobacco, snuff, and chewing tobacco.

§ 12.3 Sale of tobacco products in vending machines prohibited.

The sale of tobacco products in vending machines located in or around any Federal building under the jurisdiction of the Secretary of the Treasury is prohibited, except in areas designated pursuant to § 12.5 of this part.

§ 12.4 Distribution of free samples of tobacco products prohibited.

The distribution of free samples of tobacco products in or around any Federal building under the jurisdiction of the Secretary of the Treasury is prohibited, except in areas designated pursuant to § 12.5 of this part.

§ 12.5 Prohibitions not applicable in areas designated by the Secretary of the Treasury.

The prohibitions set forth in this part shall not apply in areas designated by the Secretary as exempt from the prohibitions, but all designated areas must prohibit the presence of minors.

PART 13—PROCEDURES FOR PROVIDING ASSISTANCE TO STATE AND LOCAL GOVERNMENTS IN PROTECTING FOREIGN DIPLOMATIC MISSIONS

Sec.

13.1 Purpose.
13.2 Definitions.
13.3 Eligibility to receive protection or reimbursement.
13.4 Requests for protection and advance notices of reimbursement requests.
13.5 Utilization of the services, personnel, equipment, and facilities of State and local govenments.
13.6 Reimbursement of State and local governments.
13.7 Reimbursement when the Assistant Secretary makes no determination to utilize State and local government services, personnel, equipment and facilities.
13.8 Protection for motorcades and other places associated with a visit qualifying under section 202(7) of Title 3, U.S. Code.
APPENDIX I(F) TO PART 13—ESTIMATED OVERHEAD AND ADMINISTRATIVE COSTS
APPENDIX II(F) TO PART 13—OVERHEAD AND ADMINISTRATIVE COSTS
APPENDIX I TO PART 13—FORM OF REQUEST FOR ASSISTANCE
APPENDIX II TO PART 13—FORM OF BILL FOR REIMBURSEMENT

AUTHORITY: Secs. 202 and 208, Title 3, U.S. Code, as amended and added, respectively by Pub. L. 94–196 (89 Stat. 1109); 5 U.S.C. 301.

SOURCE: 41 FR 55179, Dec. 17, 1976, unless otherwise noted.

§ 13.1 Purpose.

This part prescribes the procedures governing protective and financial assistance to State and local governments when an extraordinary protective need requires the protection of foreign diplomatic missions as authorized by sections 202 and 208 of Title 3, U.S. Code, as amended and added, respectively, by Pub. L. 94–196 (89 Stat. 1109).

§ 13.2 Definitions.

As used in this part, these terms shall have the following meaning:

(a) The term *Assistant Secretary* means the Assistant Secretary of the Treasury (Enforcement and Operations).

(b) The term *extraordinary protective need* means a need for protection requiring measurable reinforcements of police personnel or equipment, or both, significantly beyond the ordinary deployment of the State or local government, arising out of actual or potential violence related to: (1) Confrontations between nationalist or other groups, (2) threats or acts of violence by terrorist or other groups, (3) a specific diplomatic event or visit, or (4) a specific international event.

(c) The term *foreign diplomatic mission* means a mission (including foreign consular offices) of a foreign country located in the United States.

(d) The term *full time officers* means permanent officers whose duties as foreign diplomatic officers occupy their full time.

(e) The term *international organization* means those international organizations designated by Presidential Executive Order as being entitled to the privileges, immunities, and exemptions accorded under the International Organization Immunities Act of December 29, 1945 (22 U.S.C. 288).

(f) The term *metropolitan area* means a city in the United States (other than the District of Columbia) and those areas contiguous to it.

(g) The term *observer mission* means a mission invited to participate in the work of an international organization by that organization. The invitation to participate shall be extended by the international organization pursuant to the same internal rules of the international organization as are applicable to any permanent mission.

(h) The term *permanent mission* means a fixed continuing mission staffed by full time officers and maintained by a member state of an international organization.

(i) The term *temporary domicile* means a domicile of limited duration of a visiting foreign dignitary or officer in connection with a visit to a permanent

or observer mission to an international organization in a metropolitan area.

[41 FR 55179, Dec. 17, 1976, as amended at 45 FR 30621, May 9, 1980]

§ 13.3 Eligibility to receive protection or reimbursement.

(a) Protection, as determined by the Assistant Secretary, will be provided by the United States Secret Service Uniformed Division, pursuant to section 202 of Title 3, U.S. Code, as amended by Pub. L. 94–196, only to foreign diplomatic missions located in metropolitan areas (other than the District of Columbia) where there are located twenty or more such missions, as determined by the Secretary of State, which are headed by full time officers. According to present State Department figures, the following metropolitan areas have 20 or more such foreign diplomatic missions: Chicago, Houston, Los Angeles, Miami, New York City, New Orleans and San Francisco. The protection provided by State or local governments rather than the United States Secret Service Uniformed Division will be reimbursed pursuant to section 208(a) of Title 3, U.S. Code and §§ 13.6, 13.7 and 13.8 of this part.

(b) Protection or reimbursement will be provided for the metropolitan areas described in paragraph (a) of this section only if:

(1) The affected metropolitan area requests such protection or reimbursement;

(2) The Assistant Secretary determines that an extraordinary protective need exists; and

(3) The extraordinary need arises in association with a visit to or occurs at or, pursuant to § 13.6, in the vicinity of: (i) A permanent mission to an international organization of which the United States is a member, (ii) an observer mission invited to participate in the work of an international organization of which the United States is a member, or (iii) in the case of a visit by a foreign official or dignitary to participate in an activity of an international organization of which the United States is a member, a foreign diplomatic mission, including a consular office of the same country as the visitor.

(c) Protection (or reimbursement) may be extended at places of temporary domicile in connection with a visit under paragraph (b) of this section.

(d) Where an extraordinary protective need exists, protection (or reimbursement) may be extended to missions as described in §§ 13.3(b)(3) (i) and (ii) whether or not associated with a visit by a foreign dignitary.

[45 FR 30621, May 9, 1980]

§ 13.4 Requests for protection and advance notices of reimbursement requests.

(a) In cases where they believe that an extraordinary protective need exists, the State or local governments may request that protection be provided by the United States Secret Service Uniformed Division; or they may give advance notice of their intention to provide, on a reimbursable basis, all or part of the protection themselves.

(1) Requests for protection or advance notices of reimbursement requests shall be made to: Assistant Secretary (Enforcement and Operations), Department of the Treasury, Washington, DC 20220. Each government requesting the protection authorized pursuant to section 202 of Title 3, U.S. Code, as amended by Pub. L. 94–196, or which intends to seek reimbursement pursuant to section 208(a) of Title 3, U.S. Code and §§ 13.6 and 13.7 of this part, shall submit an application describing the extraordinary protective need. Applications made pursuant to this section shall be submitted to the Assistant Secretary 14 days before the extraordinary protective need arises. In association with a visit, the application shall include the name and title of the visiting foreign official or dignitary, the country he represents, and the name and location of the international organization or mission he will be visting. The application shall also include, if available, the temporary domicile of the visiting official or dignitary and his schedule, including dates and times of arrival and departure from the United States. If the extraordinary protective need occurs at a permanent mission to an international organization of which the

United States is a member or an observer mission invited to participate in the work of such organization, or if another foreign diplomatic mission of the country qualifies under § 13.3 (b) or (d), the application shall include the name and location of the mission.

(b) State and local governments shall also indicate on the application whether they are requesting the use of the United States Secret Service Uniformed Division or whether they are giving advance notice of their intention to provide, on a reimbursable basis, all or part of the protection themselves. In order to assist the Assistant Secretary in determining whether to utilize the United States Secret Service Uniformed Division to meet all or part of the extraordinary protective need, or to utilize, with their consent, the services, personnel, equipment, and facilities of the State or local government, or both, the application must include an estimate of the approximate number of personnel by grade and rank, the services, equipment, and facilities required, along with an estimate of the cost of such personnel, services, equipment and facilities. This application must be submitted in a format consistent with that illustrated in Appendix I of this part.

(1) Upon receipt of a request for protection pursuant to paragraph (a)(1) of this section and for the purposes of reimbursement pursuant to §§ 13.6 and 13.7, the Assistant Secretary will determine whether an extraordinary protective need exists and whether the United States Secret Service Uniformed Division will be used for all, part or none of the protection. In making determinations, the Assistant Secretary may consult with appropriate Federal, State and local government agencies.

[45 FR 30621, May 9, 1980]

§ 13.5 Utilization of the services, personnel, equipment, and facilities of State and local governments.

The Assistant Secretary may decide to utilize, on a reimbursable basis, the services, personnel, equipment, and facilities of State and local governments of the affected metropolitan area desiring to provide protection, or he may utilize the United States Secret Service Uniformed Division, or both. If the United States Secret Service Uniformed Division is utilized to meet all the extraordinary protective need, the governments of the affected metropolitan area will not be reimbursed. If the United States Secret Service Uniformed Division is utilized to meet part of the extraordinary protective needs, the governments of the affected metropolitan area will be reimbursed for that qualifying portion of the protection which is provided by State and local police authorities. If the Assistant Secretary decides to utilize, with their consent, the services, personnel, equipment, and facilities of such State and local governments to meet the extraordinary protective need, he will so notify the government as soon as possible after receipt of a request for protection or an advance notice of a reimbursement request made pursuant to § 13.4.

[45 FR 30622, May 9, 1980]

§ 13.6 Reimbursement of State and local governments.

(a) State and local governments providing services, personnel, equipment, or facilities to the affected metropolitan area pursuant to § 13.5 may forward to the Assistant Secretary a bill for reimbursement for the personel, equipment, facilities, and services utilized in meeting the extraordinary protective need. The bill shall be in accordance with the format in Appendix II of this part. The Assistant Secretary will reimburse only those costs directly related to the extraordinary protective need including personnel and equipment costs resulting from assignments made to assist in providing security at an otherwise qualified location in connection with the arrival, departure, or during the visit of a foreign dignitary. Reimbursable costs will also include the costs for establishing both fixed posts at a qualified location and protective perimeters outside of a qualified location when it is clearly established to the satisfaction of the Assistant Secretary that such assignments were necessary to assure the safety of the qualified location. Overhead and administrative costs associated with an extraordinary protective need are

reimbursable as either a flat 18 percent of the total extraordinary protective need costs, or, if such costs can be clearly segregated from routine police costs, on a dollar-for-dollar basis. The jurisdiction seeking such reimbursement may select either method but may not use both. For the purposes of reimbursement the Assistant Secretary will, in all cases, determine when the extraordinary protective need began and terminated.

[45 FR 30622, May 9, 1980]

§ 13.7 Reimbursement when the Assistant Secretary makes no determination to utilize State and local government services, personnel, equipment and facilities.

(a) Where events require the State or local governments of the affected metropolitan area to provide protection to meet an extraordinary protective need otherwise qualifying for reimbursement, such reimbursement may be made even if the provisions of §§ 13.4 and 13.5 have not been complied with fully. In such circumstances the provisions of § 13.6 shall apply.

(b) In cases where State or local governments, or both, utilized their own services, personnel, equipment, and facilities to provide protection for an extraordinary protective need, and no request for protective assistance pursuant to § 13.4 was made because the extraordinary protective need occurred prior to the promulgation of this part but after July 1, 1974, an application by such government to the Assistant Secretary for reimbursement otherwise conforming to the requirements of this part will be considered.

[41 FR 55179, Dec. 17, 1976, as amended at 45 FR 30622, May 9, 1980]

§ 13.8 Protection for motorcades and other places associated with a visit qualifying under section 202(7) of Title 3, U.S. Code.

(a) State and local governments furnishing services, personnel, equipment, and facilities to provide protection for motorcades and at other places associated with a visit qualifying under section 202(7) of Title 3, U.S. Code may forward to the Assistant Secretary a bill for reimbursement for the personnel, equipment, facilities, and services utilized in providing such protection.

(b) Requests for payments under this section shall conform to the procedures established elsewhere in this part governing reimbursements arising out of an extraordinary protective need.

[45 FR 30622, May 9, 1980]

APPENDIX I(F) TO PART 13—ESTIMATED OVERHEAD AND ADMINISTRATIVE COSTS

Date: _____

Select Only One Method

_____ 1. Reimbursement for overhead and administrative costs will be requested as a flat 18 percent of the total extraordinary protective need cost as provided in section 13.6 of these regulations.

_____ 2. Reimbursement for overhead and administrative costs will be requested on a dollar-for-dollar basis. Computation of these costs will be made using the below described method:

(Explain in detail how all of these costs can be directly and exclusively attributed to the extraordinary protective need.)

[45 FR 30622, May 9, 1980]

APPENDIX II(F) TO PART 13—OVERHEAD AND ADMINISTRATIVE COSTS

Date: _____

Select Only One Method

_____ 1. Reimbursement for overhead and administrative costs is requested as a flat 18 percent of the total extraordinary protective need costs as provided in section 13.6 of these regulations.

_____ 2. Reimbursement for overhead and administrative costs is requested on a dollar-for-dollar basis. Computation of these costs has been made using the below described method:

(Explain and show in detail how all of these costs have been directly and exclusively attributed extraordinary protective need costs).

Dated: _____

[45 FR 30622, May 9, 1980]

APPENDIX I TO PART 13—FORM OF REQUEST FOR ASSISTANCE

I hereby request assistance from the Department of the Treasury pursuant to Section 202 of Title 3, U.S. Code, as amended by Pub. L. 94–196. This assistance is needed to enable the affected metropolitan area of

_____ to meet an extraordinary protective need, which is expected to arise on _____ (date).

The nature of the extraordinary protective need prompting this request is as follows:

(If in association with a visit, include the name and title of the visiting foreign official or dignitary, the country represented and the name and location of the international organization involved and/or mission to be visited. The temporary domicile of the visiting official or dignitary and his schedule, including dates and times of arrival and departure from the United States, if available, must also be included. If the extraordinary protective need occurs at or, pursuant to §13.6 of 31 CFR part 13, in the vicinity of, a permanent mission to an international organization of which the United States is a member or at an observer mission invited to participate in the work of the organization, the application shall include the name and location of the mission. If the extraordinary protective need occurs at a foreign diplomatic mission, including a consular office, in conjunction with a qualifying visit by a foreign official or dignitary of the same country as that mission, the application shall include the name and location of the mission or office. If, pursuant to §13.8, the visiting foreign official is to travel by motorcade and/or visit locations other than his foreign mission or temporary domicile, the application shall include a description of the anticipated motorcade routes and all stops on the routes as well as the name (or description) and location of any other places to be visited.

The _____ (Government entity) _____ (is or is not) _____ prepared to provide _____ (all or a portion of) the protection required to meet this need. Attached is an estimate of the appropriate number of personnel, by grade and rank, and the specific services, equipment and facilities which will be required to meet this extraordinary protective need, along with an estimate of the cost of such personnel, services, equipment, and facilities.

(Date) _____

_____

(State or local government of the affected metropolitan area)

_____

(Signature)

_____

(Title)

[45 FR 30622, May 9, 1980]

APPENDIX II TO PART 13—FORM OF BILL FOR REIMBURSEMENT

I hereby request that _____ (Governmental entity) be reimbursed by the Department of the Treasury pursuant to sections 202 and 208 of Title 3, U.S. Code, as amended and added, respectively, by Public Law 94–196 (89 Stat. 1109) (and/or pursuant to Public Law 96–74) for expenses incurred while providing an adequate level of protection during the extraordinary protective need arising in association with a visit of _____ (Official or dignitary's name and title) of _____ (Country) to participate in the work of _____ (International Organization) or occurring at the _____ (Permanent or observer mission) to _____ (International organization) during the period _____ (Date) through _____ (Date).

I certify that the level of protection provided was both reasonable and necessary; that the costs herein billed are only those direct costs associated with meeting the extraordinary protective need; and that the costs herein billed are not costs of an indirect nature such as administrative costs, overhead, and depreciation, except as provided in §13.6(a) of 31 CFR 13.

Access to all records, accounts, receipts, etc., pertaining to the costs herein billed will be accorded to representatives of the Assistant Secretary (Enforcement and Operations) and the General Accounting Office at such reasonable times and places as may be mutually agreed upon by said representatives and _____ (Governmental entity).

Date: _____

_____

(Signature)

_____

(Title)

[45 FR 30623, May 9, 1980]

PART 14—RIGHT TO FINANCIAL PRIVACY ACT

Sec.
14.1 Definitions.
14.2 Purpose.
14.3 Authorization.
14.4 Contents of request.
14.5 Certification.

AUTHORITY: Sec. 1108, Right to Financial Privacy Act of 1978, 92 Stat. 3697 *et seq.*, 12 U.S.C. 3401 *et seq.*; (5 U.S.C. 301); and Reorganization Plan No. 26 of 1950.

SOURCE: 44 FR 16909, Mar. 20, 1979, unless otherwise noted.

§14.1 Definitions.

For purposes of this regulation, the term:

(a) *Financial institution* means any office of a bank, savings bank, card issuer as defined in section 103 of the Consumer Credit Protection Act (15 U.S.C. 1602(n)), industrial loan company, trust company, savings and loan,

building and loan, or homestead association (including cooperative bank), credit union, or consumer financial institution, located in any State or territory of the United States, the District of Columbia, Puerto Rico, Guam, American Samoa, or the Virgin Islands.

(b) *Financial record* means an original of, a copy of, or information known to have been derived from, any record held by a financial institution pertaining to a customer's relationship with the financial institution.

(c) *Person* means an individual or a partnership of five or fewer individuals.

(d) *Customer* means any person or authorized representative of that person who utilized or is utilizing any service of a financial institution, or for whom a financial institution is acting or has acted as a fiduciary, in relation to an account maintained in the person's name.

(e) *Law enforcement inquiry* means a lawful investigation or official proceeding inquiring into a violation of or failure to comply with any criminal or civil statute or any regulation, rule, or order issued pursuant thereto.

(f) *Departmental unit* means those offices, divisions, bureaus, or other components of the Department of the treasury authorized to conduct law enforcement inquiries.

(g) *Act* means the Right to Financial Privacy Act of 1978.

§ 14.2 Purpose.

The purpose of these regulations is to authorize Departmental units to request financial records from a financial institution pursuant to the formal written request procedure authorized by section 1108 of the Act, and to set forth the conditions under which such requests may be made.

§ 14.3 Authorization.

Departmental units are hereby authorized to request financial records of any customer from a financial institution pursuant to a formal written request under the Act only if:

(a) No administrative summons or subpoena authority reasonably appears to be available to the Departmental unit to obtain financial records for the purpose for which the records are sought;

(b) There is reason to believe that the records sought are relevant to a legitimate law enforcement inquiry and will further that inquiry;

(c) The request is issued by a supervisory official of a rank designated by the head of the requesting Departmental unit. Officials so designated shall not delegate this authority to others;

(d) The request adheres to the requirements set forth in § 14.4; and

(e) The notice requirements set forth in section 1108(4) of the Act, or the requirements pertaining to delay of notice in section 1109 of the Act are satisfied, except in situations where no notice is required. (e.g., section 1113(g))

§ 14.4 Contents of request.

The formal written request shall be in the form of a letter or memorandum to an appropriate official of the financial institution from which financial records are requested. The request shall be signed by an issuing official of the requesting Department unit. It shall set forth that official's name, title, business address and business phone number. The request shall also contain the following:

(a) The identity of the customer or customers to whom the records pertain;

(b) A reasonable description of the records sought;

(c) Any other information that the issuing official deems appropriate, e.g., the date on which the requesting Departmental unit expects to present a certificate of compliance with the applicable provisions of the Act, the name and title of the individual to whom disclosure is to be made, etc.

In cases where customer notice is delayed by a court order, a copy of the court order shall be attached to the formal written request.

§ 14.5 Certification.

Prior to obtaining the requested records pursuant to a formal written request, an official of a rank designated by the head of the requesting Departmental unit shall certify in writing to the financial institution

that the Departmental unit has complied with the applicable provisions of the Act.

PART 15—POST EMPLOYMENT CONFLICT OF INTEREST

Subpart A—General Provisions

Sec.
15.737–1 Scope.
15.737–2 Definitions.
15.737–3 Director of Practice.
15.737–4 Other discipline.
15.737–5 Records.

Subpart B—Rules Applicable to Post Employment Practice by Officers and Employees of the Department

15.737–6 Interpretative standards.

Subpart C—Administrative Enforcement Proceedings

15.737–7 Authority to prohibit practice.
15.737–8 Special orders.
15.737–9 Receipt of information concerning former Treasury employee.
15.737–10 Conferences.
15.737–11 Institution of proceeding.
15.737–12 Contents of complaint.
15.737–13 Service of complaint and other papers.
15.737–14 Answer.
15.737–15 Reply to answer.
15.737–16 Proof; variance; amendment of pleadings.
15.737–17 Motions and requests.
15.737–18 Representation.
15.737–19 Administrative Law Judge.
15.737–20 Hearings.
15.737–21 Evidence.
15.737–22 Depositions.
15.737–23 Transcript.
15.737–24 Proposed findings and conclusions.
15.737–25 Decision of the Administrative Law Judge.
15.737–26 Appeal to the General Counsel.
15.737–27 Decision of the General Counsel.
15.737–28 Notice of disciplinary action.

Subpart D—Other Departmental Proceedings

15.737–29 Review by the General Counsel.

AUTHORITY: 92 Stat. 1864 (18 U.S.C. 207), as amended.

SOURCE: 45 FR 39842, June 12, 1980, unless otherwise noted.

Subpart A—General Provisions

§ 15.737–1 Scope.

This part contains rules governing discipline of a former officer or employee of the Department of the Treasury because of a post employment conflict of interest. Such discipline may include prohibition from practice before the Department or a separate statutory agency thereof as those terms are defined in this part.

§ 15.737–2 Definitions.

For the purpose of this part—(a) The term *Department* means the Department of the Treasury and includes the separate statutory agencies thereof.

(b) The term *Director* means the Director of Practice.

(c) The term *General Counsel* means the General Counsel of the Department.

(d) The term *practice* means any informal or formal appearance before, or, with the intent to influence, any oral or written communication to the Department or, where applicable, to a separate statutory agency thereof on a pending matter of business on behalf of any other person (except the United States).

(e) The term *separate statutory agency thereof* means an agency or bureau within the Department designated by rule by the Director, Office of Government Ethics, as a separate agency or bureau. The Internal Revenue Service, Bureau of Alcohol, Tobacco and Firearms, United States Secret Service, Bureau of the Mint, United States Customs Service, Bureau of Engraving and Printing, and Comptroller of the Currency were so designated effective July 1, 1979.

§ 15.737–3 Director of Practice.

There is, in the Office of the Secretary of the Treasury, the Office of Director of Practice. The Director shall institute and provide for the conduct of disciplinary proceedings involving former employees of the Department as authorized by 18 U.S.C. 207(j), and perform such other duties as are necessary or appropriate to carry out his/her functions under this part.

§ 15.737–4 Other discipline.

For activity alleged to violate 18 U.S.C. 207 (a), (b) or (c), the Director may also bring a disciplinary proceeding pursuant to the regulations governing practice before the Bureau of Alcohol, Tobacco and Firearms or the Internal Revenue Service as found in 31 CFR part 8 and 31 CFR part 10, respectively. Such proceeding may be consolidated with any proceeding brought pursuant to this part.

§ 15.737–5 Records.

There are made available to public inspection at the Office of Director of Practice the roster of all persons prohibited from practice before the Department. Other records may be disclosed upon specific request, in accordance with appropriate disclosure regulations of the Department.

Subpart B—Rules Applicable to Post Employment Practice by Officers and Employees of the Department

§ 15.737–6 Interpretative standards.

A determination that a former officer or employee of the Department violated 18 U.S.C. 207 (a), (b) or (c) will be made in conformance with the standards established in the interpretative regulations promulgated by the Office of Government Ethics and published at 5 CFR part 737.

Subpart C—Administrative Enforcement Proceedings

§ 15.737–7 Authority to prohibit practice.

Pursuant to 18 U.S.C. 207(j), if the General Counsel finds, after notice and opportunity for a hearing, that a former officer or employee of the Department violated 18 U.S.C. 207 (a), (b) or (c), the General Counsel in his/her discretion may prohibit that person from engaging in practice before the Department or a separate statutory agency thereof for a period not to exceed five years, or may take other appropriate disciplinary action.

§ 15.737–8 Special orders.

The General Counsel may issue special orders as he/she may consider proper in any case within the purview of this part.

§ 15.737–9 Receipt of information concerning former Treasury employee.

If an officer or employee of the Department has reason to believe that a former officer or employee of the Department has violated 18 U.S.C. 207 (a), (b) or (c), or if any such officer or employee receives information to that effect, he/she shall promptly make a written report thereof, which report or a copy thereof shall be forwarded to the Inspector General, Department of the Treasury. If any other person has information of such violations, he/she may make a report thereof to the Inspector General or to any officer or employee of the Department. The Inspector General shall refer any information he/she deems warranted to the Director.

§ 15.737–10 Conferences.

(a) *In general.* The Director may confer with a former officer or employee concerning allegations of misconduct irrespective of whether an administrative disciplinary proceeding has been instituted against him/her. If such conference results in a stipulation in connection with a proceeding in which such person is the respondent, the stipulation may be entered in the record at the instance of either party to the proceeding.

(b) *Voluntary suspension.* A former officer or employee, in order to avoid the institution or conclusion of a proceeding, may offer his/her consent to suspension from practice before the Department or a separate statutory agency thereof. The Director in his/her discretion, may suspend a former officer or employee in accordance with the consent offered.

§ 15.737–11 Institution of proceeding.

(a) Whenever the Director has reason to believe that any former officer or employee of the Department has violated 18 U.S.C. 207 (a), (b) or (c), he/she may reprimand such person or institute an administrative disciplinary proceeding for that person's suspension

from practice before the Department or a separate statutory agency thereof. The proceeding shall be instituted by a complaint which names the respondent and is signed by the Director and filed in his/her office. Except in cases of willfulness, or where time, the nature of the proceeding, or the public interest does not permit, a proceeding will not be instituted under this section until facts or conduct which may warrant such action have been called to the attention of the proposed respondent in writing and he/she has been accorded the opportunity to provide his/her position on the matter.

(b) The Director shall coordinate proceedings under this part with the Department of Justice in cases where it initiates criminal prosecution.

§ 15.737–12 Contents of complaint.

(a) *Charges.* A complaint shall give a plain and concise description of the allegations which constitute the basis for the proceeding. A complaint shall be deemed sufficient if it fairly informs the respondent of the charges against him/her so that the respondent is able to prepare a defense.

(b) *Demand for answer.* In the complaint, or in a separate paper attached to the complaint, notification shall be given of the place and time within which the respondent shall file his/her answer, which time shall not be less than 15 days from the date of service of the complaint, and notice shall be given that a decision by default may be rendered against the respondent in the event he/she fails to file an answer as required.

§ 15.737–13 Service of complaint and other papers.

(a) *Complaint.* The complaint or a copy thereof may be served upon the respondent by certified mail, or first-class mail as hereinafter provided; by delivering it to the respondent or his/her attorney or agent of record either in person or by leaving it at the office or place of business of the respondent, attorney or agent; or in any other manner which has been agreed to by the respondent. Where the service is by certified mail, the return post office receipt duly signed by or on behalf of the respondent shall be proof of service. If the certified mail is not claimed or accepted by the respondent and is returned undelivered, complete service may be made upon the respondent by mailing the complaint to him/her by first-class mail, addressed to him/her at the last address known to the Director. If service is made upon the respondent or his/her attorney or agent of record in person or by leaving the complaint at the office or place of business of the respondent, attorney or agent, the verified return by the person making service, setting forth the manner of service, shall be proof of such service.

(b) *Service of papers other than complaint.* Any paper other than the complaint may be served upon a respondent as provided in paragraph (a) of this section or by mailing the paper by first-class mail to the respondent at the last address known to the Director, or by mailing the paper by first-class mail to the respondent's attorney or agent of record. Such mailing shall constitute complete service. Notices may be served upon the respondent or his/her attorney or agent of record by telegraph.

(c) *Filing of papers.* Whenever the filing of a paper is required or permitted in connection with a proceeding, and the place of filing is not specified by this subpart or by rule or order of the Administrative Law Judge, the paper shall be filed with the Director of Practice, Department of the Treasury, Washington, DC 20220. All papers shall be filed in duplicate.

§ 15.737–14 Answer.

(a) *Filing.* The respondent's answer shall be filed in writing within the time specified in the complaint, unless on application the time is extended by the Director or the Administrative Law Judge. The answer shall be filed in duplicate with the Director.

(b) *Contents.* The answer shall contain a statement of facts which constitute the grounds of defense, and it shall specifically admit or deny each allegation set forth in the complaint, except that the respondent shall not deny a material allegation in the complaint which he/she knows to be true, or state that he/she is without sufficient information to form a belief when

in fact he/she possesses such information. The respondent may also state affirmatively special matters of defense.

(c) *Failure to deny or answer allegations in the complaint.* Every allegation in the complaint which is not denied in the answer shall be deemed to be admitted and may be considered as proved, and no further evidence in respect of such allegation need be adduced at a hearing. Failure to file an answer within the time prescribed in the notice to the respondent, except as the time for answer is extended by the Director or the Administrative Law Judge, shall constitute an admission of the allegations of the complaint and a waiver of hearing, and the Administrative Law Judge may make his/her decision by default without a hearing or further procedure.

§ 15.737–15 Reply to answer.

No reply to the respondent's answer shall be required, and new matter in the answer shall be deemed to be denied, but the Director may file a reply in his/her discretion or at the request of the Administrative Law Judge.

§ 15.737–16 Proof; variance; amendment of pleadings.

In the case of a variance between the allegations in a pleading and the evidence adduced in support of the pleading, the Administrative Law Judge may order or authorize amendment of the pleading to conform to the evidence: *Provided,* That the party who would otherwise be prejudiced by the amendment is given reasonable opportunity to meet the allegations of the pleading as amended; and the Administrative Law Judge shall make findings on any issue presented by the pleadings as so amended.

§ 15.737–17 Motions and requests.

Motions and requests may be filed with the Director or with the Administrative Law Judge.

§ 15.737–18 Representation.

A respondent or proposed respondent may appear in person or he/she may be represented by counsel or other representative. The Director may be represented by an attorney or other employee of the Department.

§ 15.737–19 Administrative Law Judge.

(a) *Appointment.* An Administrative Law Judge appointed as provided by 5 U.S.C. 3105 (1966), shall conduct proceedings upon complaints for the administrative disciplinary proceedings under this part.

(b) *Power of Administrative Law Judge.* Among other powers, the Administrative Law Judge shall have authority, in connection with any proceeding assigned or referred to him/her, to do the following:

(1) Administer oaths and affirmations;

(2) Make rulings upon motions and requests, which rulings may not be appealed from prior to the close of a hearing except, at the discretion of the Administrative Law Judge, in extraordinary circumstances;

(3) Determine the time and place of hearing and regulate its course and conduct;

(4) Adopt rules of procedure and modify the same from time to time as occasion requires for the orderly disposition of proceedings;

(5) Rule upon offers of proof, receive relevant evidence, and examine witnesses;

(6) Take or authorize the taking of depositions;

(7) Receive and consider oral or written argument on facts or law;

(8) Hold or provide for the holding of conferences for the settlement or simplification of the issues by consent of the parties;

(9) Assess the responsible party extraordinary costs attributable to the location of a hearing;

(10) Perform such acts and take such measures as are necessary or appropriate to the efficient conduct of any proceeding; and

(11) Make initial decisions.

§ 15.737–20 Hearings.

(a) *In general.* The Administrative Law Judge shall preside at the hearing on a complaint for the suspension of a former officer or employee from practice before the Department. Hearings shall be stenographically recorded and transcribed and the testimony of witnesses shall be taken under oath or affirmation. Hearings will be conducted pursuant to 5 U.S.C. 556.

(b) *Public access to hearings.* Hearings will be closed unless an open hearing is requested by the respondent, except that if classified information or protected information of third parties (such as tax information) is likely to be adduced at the hearing, it will remain closed. A request for an open hearing must be included in the answer to be considered.

(c) *Failure to appear.* If either party to the proceeding fails to appear at the hearing, after due notice thereof has been sent to him/her, he/she shall be deemed to have waived the right to a hearing and the Administrative Law Judge may make a decision against the absent party by default.

§ 15.737–21 Evidence.

(a) *In general.* The rules of evidence prevailing in courts of law and equity are not controlling in hearings on complaints for the suspension of a former officer or employee from practice before the Department. However, the Administrative Law Judge shall exclude evidence which is irrelevant, immaterial, or unduly repetitious.

(b) *Depositions.* The deposition of any witness taken pursuant to § 15.737–22 of this part may be admitted.

(c) *Proof of documents.* Official documents, records and papers of the Department shall be admissible in evidence without the production of an officer or employee to authenticate them. Any such documents, records, and papers may be evidenced by a copy attested or identified by an officer or employee of the Department.

(d) *Exhibits.* If any document, record, or other paper is introduced in evidence as an exhibit, the Administrative Law Judge may authorize the withdrawal of the exhibit subject to any conditions which he/she deems proper.

(e) *Objections.* Objections to evidence shall be in short form, stating the grounds of objection relied upon, and the record shall not include argument thereon, except as ordered by the Administrative Law Judge. Rulings on such objections shall be a part of the record. No exception to the ruling is necessary to preserve the rights of the parties.

§ 15.737–22 Depositions.

Depositions for use at a hearing may, with the consent of the parties in writing or the written approval of the Administrative Law Judge, be taken by either the Director or the respondent or their duly authorized representatives. Depositions may be taken upon oral or written interrogatories, upon not less than 10 days' written notice to the other party before any officer duly authorized to administer an oath for general purposes or before an officer or employee of the Department who is authorized to administer an oath. Such notice shall state the names of the witnesses and the time and place where the depositions are to be taken. The requirement of 10 days' notice may be waived by the parties in writing, and depositions may then be taken from the persons and at the times and places mutually agreed to by the parties. When a deposition is taken upon written interrogatories, any cross-examination shall be upon written interrogatories. Copies of such written interrogatories shall be served upon the other party with the notice, and copies of any written cross-interrogation shall be mailed or delivered to the opposing party at least 5 days before the date of taking the depositions, unless the parties mutually agree otherwise. A party upon whose behalf a deposition is taken must file it with the Administrative Law Judge and serve one copy upon the opposing party. Expenses in the reporting of depositions shall be borne by the party at whose instance the deposition is taken.

§ 15.737–23 Transcript.

In cases where the hearing is stenographically reported by a Government contract reporter, copies of the transcript may be obtained from the reporter at rates not to exceed the maximum rates fixed by contract between the Government and the reporter or from the Department at actual cost of duplication. Where the hearing is stenographically reported by a regular employee of the Department, a copy thereof will be supplied to the respondent either without charge or upon payment of a reasonable fee. Copies of exhibits introducted at the hearing or at

the taking of depositions will be supplied to the parties upon the payment of a reasonable fee (Sec. 501, Pub. L. 82–137, 65 Stat. 290 (31 U.S.C. 483a)).

§ 15.737–24 Proposed findings and conclusions.

Except in cases where the respondent has failed to answer the complaint or where a party has failed to appear at the hearing, the Administrative Law Judge prior to making his/her decision, shall afford the parties a reasonable opportunity to submit proposed findings and conclusions and supporting reasons therefor.

§ 15.737–25 Decision of the Administrative Law Judge.

As soon as practicable after the conclusion of a hearing and the receipt of any proposed findings and conclusions timely submitted by the parties, the Administrative Law Judge shall make the initial decision in the case. The decision shall include (a) a statement of findings and conclusions, as well as the reasons or basis therefor, upon all the material issues of fact, law, or discretion presented on the record, and (b) an order of suspension from practice before the Department or separate statutory agency thereof or other appropriate disciplinary action, or an order of dismissal of the complaint. The Administrative Law Judge shall file the decision with the Director and shall transmit a copy thereof to the respondent or his/her attorney of record. In the absence of an appeal to the General Counsel or review of the decision upon motion of the General Counsel, the decision of the Administrative Law Judge shall without further proceedings become the decision of the General Counsel 30 days from the date of the Administrative Law Judge's decision.

§ 15.737–26 Appeal to the General Counsel.

Within 30 days from the date of the Administrative Law Judge's decision, either party may appeal to the General Counsel. The appeal shall be filed with the Director in duplicate and shall include exceptions to the decision of the Administrative Law Judge and supporting reasons for such exceptions. If an appeal is filed by the Director, he/she shall transmit a copy thereof to the respondent. Within 30 days after receipt of an appeal or copy thereof, the other party may file a reply brief in duplicate with the Director. If the reply brief is filed by the Director, he/she shall transmit a copy of it to the respondent. Upon the filing of an appeal and a reply brief, if any, the Director shall transmit the entire record to the General Counsel.

§ 15.737–27 Decision of the General Counsel.

On appeal from or review of the initial decision of the Administrative Law Judge, the General Counsel will make the agency decision. In making his/her decision, the General Counsel will review the record or such portions thereof as may be cited by the parties to permit limiting of the issues. A copy of the General Counsel's decision shall be transmitted to the respondent by the Director.

§ 15.737–28 Notice of disciplinary action.

(a) Upon the issuance of a final order suspending a former officer or employee from practice before the Department or a separate statutory agency thereof, the Director shall give notice thereof to appropriate officers and employees of the Department. Officers and employees of the Department shall refuse to participate in any appearance by such former officer or employee or to accept any communication which constitutes the prohibited practice before the Department or separate statutory agency thereof during the period of suspension.

(b) The Director shall take other appropriate disciplinary action as may be required by the final order.

Subpart D—Other Departmental Proceedings

§ 15.737–29 Review by the General Counsel.

In my proceeding before the Department, if an initial decision is made with respect to the disqualification of a representative or attorney for a party on the grounds of 18 U.S.C. 207(a), (b) or (c), such decision may be appealed to

the General Counsel, who will make the agency decision on the issue.

PART 16—REGULATIONS IMPLEMENTING THE PROGRAM FRAUD CIVIL REMEDIES ACT OF 1986

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AUTHORITY: 31 U.S.C. 3801–3812.

SOURCE: 52 FR 35071, Sept. 17, 1987, unless otherwise noted.

§ 16.1 Basis and purpose.

(a) *Basis.* This part implements the Program Fraud Civil Remedies Act of 1986, Pub. L. 99–509, sections 6101–6104, 100 Stat. 1874 (October 21, 1986), to be codified at 31 U.S.C. 3801–3812. 31 U.S.C. 3809 requires each authority head to promulgate regulations necessary to implement the provisions of the statute.

(b) *Purpose.* This part

(1) Establishes administrative procedures for imposing civil penalties and assessments against persons who make, submit, or present, or cause to be made, submitted, or presented, false, fictitious, or fraudulent claims or written statements to authorities or to their agents, and

(2) Specifies the hearing and appeal rights of persons subject to allegations of liability for such penalties and assessments.

§ 16.2 Definitions.

ALJ means an Administrative Law Judge in the authority appointed pursuant to 5 U.S.C. 3105 or detailed to the authority pursuant to 5 U.S.C. 3344.

Authority means the Department of the Treasury.

Authority head means the Assistant Secretary of the Treasury for Management.

Benefit, when used in the context of false statements made with respect to a benefit, means anything of value including but not limited to any advantage, preference, privilege, license, permit, favorable decision, ruling, status, or loan guarantee. This definition should be distinguished from the limitations on coverage of these regulations with respect to beneficiaries of specific benefit programs which are found in § 16.3(c) of this part.

Claim means any request, demand, or submission—

(a) Made to the authority for property, services, or money (including money representing grants, loans, insurance, or benefits);

(b) Made to a recipient of property, services, or money from the authority or to a party to a contract with the authority—

(1) For property or services if the United States—

(i) Provided such property or services;

(ii) Provided any portion of the funds for the purchase of such property or services; or

(iii) Will reimburse such recipient or party for the purchase of such property or services; or

(2) For the payment of money (including money representing grants, loans, insurance, or benefits) if the United States—

(i) Provided any portion of the money requested or demanded; or

(ii) Will reimburse such recipient or party for any portion of the money paid on such request or demand; or

(c) Made to the authority which has the effect of decreasing an obligation to pay or account for property, services, or money, except that such term does not include any claim made in any return of tax imposed by the Internal Revenue Code of 1954.

Complaint means the administrative complaint served by the reviewing official on the defendant under § 16.7 of this part.

Defendant means any person alleged in a complaint under § 16.7 to be liable for a civil penalty or assessment under § 16.3.

Department means the Department of the Treasury.

Government means the United States Government.

Individual means a natural person.

Initial decision means the written decision of the ALJ required by § 16.10 or § 16.37, and includes a revised initial decision issued following a remand or a motion for reconsideration.

Investigating official means the Inspector General of the Department of the Treasury.

Knows or has reason to know, means that a person, with respect to a claim or statement—

(a) Has actual knowledge that the claim or statement is false, fictitious, or fraudulent;

(b) Acts in deliberate ignorance of the truth or falsity of the claim or statement; or

(c) Acts in reckless disregard of the truth or falsity of the claim or statement.

Makes, wherever it appears, shall include the terms ''presents,'' ''submits,'' and ''causes to be made, presented,'' or ''submitted.'' As the context requires, *making* or *made,* shall likewise include the corresponding forms of such terms.

Person means any individual, partnership, corporation, association, private organization, State, political subdivision of a State, municipality, county, district, and Indian tribe, and includes the plural of that term.

Presiding officer means an administrative law judge appointed in the authority pursuant to 5 U.S.C. 3105 or detailed to the authority pursuant to section 3344 of such title.

Representative means an attorney designated in writing by a defendant to appear on his or her behalf in administrative hearings before the Department and to represent a defendant in all other legal matters regarding a complaint made pursuant to these regulations.

Reviewing official means the General Counsel, or another individual in the Legal Division of the Department designated by the General Counsel, who is—

(a) Serving in a position for which the rate of basic pay is not less than the minimum rate of basic pay for grade GS-16; and

(b) Is not subject to supervision by, or required to report to, the investigating official; and

(c) Is not employed in the organization unit of the authority in which the investigating official is employed.

Statement means any representation, certification, affirmation, document, record, or accounting or bookkeeping entry made—

(a) With respect to a claim or to obtain the approval or payment of a claim (including relating to eligibility to make a claim); or

(b) With respect to (including relating to eligibility for)—

(1) A contract with, or a bid or proposal for a contract with; or

(2) A grant, loan, or benefit from, the authority, or any State, political subdivision of a State, or other party, if the United States Government provides any portion of the money or property under such contract or for such grant, loan, or benefit, or if the government will reimburse such State, political subdivision, or party of any portion of

the money or property under such contract or for such grant, loan, or benefit, except that such term does not include any claim made in any return of tax imposed by the Internal Revenue Code of 1954.

§ 16.3 Basis for civil penalties and assessments.

(a) *Claims.* (1) Except as provided in paragraph (c) of this section, any person who makes a claim that the person knows or has reason to know—

(i) Is false, fictitious, or fraudulent;

(ii) Includes or is supported by any written statement which asserts a material fact which is false, fictitious, or fraudulent;

(iii) Includes or is supported by any written statement that—

(A) Omits a material fact;

(B) Is false, fictitious, or fraudulent as a result of such omission; and

(C) Is a statement in which the person making such statement has a duty to include such material fact; or

(iv) Is for payment for the provision of property or services which the person has not provided as claimed, shall be subject, in addition to any other remedy that may be prescribed by law, to a civil penalty of not more than $5,000 for each such claim.

(2) Each voucher, invoice, claim form, or other individual request or demand for property, services, or money constitutes a separate claim.

(3) A claim shall be considered made to an authority, recipient, or party when such claim is actually made to an agent, fiscal intermediary, or other entity, including any State or political subdivision thereof, acting for or on behalf of such authority, recipient, or party.

(4) Each claim for property, services, or money is subject to a civil penalty under these regulations regardless of whether such property, services, or money is actually delivered or paid.

(5) If the government has made any payment (including transferred property or provided services) on a claim, a person subject to a civil penalty under paragraph (a)(1) of this section shall also be subject to an assessment of not more than twice the amount of such claim or that portion thereof that is determined to be in violation of paragraph (a)(1) of this section. Such assessment shall be in lieu of damages sustained by the Government because of such claim.

(b) *Statements.* (1) Except as provided in paragraph (c) of this section, any person who makes a written statement that—

(i) The person knows or has reason to know—

(A) Asserts a material fact which is false, fictitious, or fraudulent; or

(B) Is false, fictitious, or fraudulent because it omits a material fact that the person making the statement has a duty to include in such statement; and

(ii) Includes or is accompanied by an express certification or affirmation of the truthfulness and accuracy of the content of the statement,

shall be subject, in addition to any other remedy that may be prescribed by law, to a civil penalty of not more than $5,000 for each such statement.

(2) Each written representation, certification, or affirmation constitutes a separate statement.

(3) A statement shall be considered made to an authority when such statement is actually made to an agent, fiscal intermediary, or other entity, including any State or political subdivision thereof, acting for or on behalf of such authority.

(c)(1) In the case of any claim or statement made by any individual relating to any of the benefits listed in paragraph (c)(2) of this section, received by such individual, such individual may be held liable for penalties and assessments under this section only if such claim or statement is made by such individual in making application for such benefits with respect to such individual's eligibility to receive such benefits.

(2) For purposes of this paragraph, the term *benefits* means—

(i) Benefits under the food stamp program (as defined in section 3(h) of the Food Stamp Act of 1977);

(ii) Benefits under Chapters 11, 13, 15, 17, and 21 of Title 38;

(iii) Benefits under the Black Lung Benefits Act;

(iv) Any authority or other benefit under the Railroad Retirement Act of 1974;

(v) Benefits under the National School Lunch Act;

(vi) Benefits under any housing assistance program for lower income families or elderly or handicapped persons which is administered by the Secretary of Housing and Urban Development or the Secretary of Agriculture;

(vii) Benefits under the special supplemental food program for women, infants, and children established under section 17 of the Child Nutrition Act of 1966;

(viii) Benefits under part A of the Energy Conservation in Existing Buildings Act of 1976;

(ix) Benefits under the supplemental security income program under title XVI of the Social Security Act;

(x) Old age, survivors, and disability insurance benefits under title II of the Social Security Act;

(xi) Benefits under title XVIII of the Social Security Act;

(xii) Aid to families with dependent children under a State plan approved under section 402(a) of the Social Security Act;

(xiii) Medical assistance under a State plan approved under section 1902(a) of the Social Security Act;

(xiv) Benefits under title XX of the Social Security Act;

(xv) Benefits under section 336 of the Older Americans Act; or

(xvi) Benefits under the Low-Income Home Energy Assistance Act of 1981, which are intended for the personal use of the individual who receives the benefits or for a member of the individual's family.

(d) No proof of specific intent to defraud is required to establish liability under this section.

(e) In any case in which it is determined that more than one person is liable for making a claim or statement under this section, each such person may be held liable for a civil penalty under this section.

(f) In any case in which it is determined that more than one person is liable for making a claim under this section, and on which the Government has made payment (including transferred property or provided services), an assessment may be imposed against any such person or jointly and severally against any combination of such persons.

§ 16.4 Investigation.

(a) If an investigating official concludes that a subpoena pursuant to the authority conferred by 31 U.S.C. 3804(a) is warranted—

(1) The subpoena so issued shall notify the person to whom it is addressed of the authority under which the subpoena is issued and shall identify the information, records, or documents sought;

(2) The investigating official may designate a person to act on his behalf to receive the information, records, or documents sought; and

(3) The person receiving such subpoena shall be required to tender to the investigating official or to the person designated to receive the information, records, or documents, a certification that the information, records, or documents sought have been produced, or that such information, records, or documents are not available and the reasons therefor, or that such information, records, or documents, suitably identified, have been withheld based upon the assertion of an identified legal privilege.

(b) If the investigating official concludes that an action under the Program Fraud Civil Remedies Act may be warranted, the investigating official shall report the findings and conclusions of such investigation to the reviewing official.

(c) Nothing in this section shall preclude or limit the investigating official's discretion to refer allegations directly to the Department of Justice for suit under the False Claims Act, 31 U.S.C. 3729–3731, or for other civil relief, or to preclude or limit such official's discretion to defer or postpone a report or referral to avoid interference with an investigation into criminal misconduct or a criminal prosecution.

(d) Nothing in this section modifies any responsibility of the investigating official to report violations of criminal law to the Attorney General.

§ 16.5 Review by the reviewing official.

(a) If, based on the report of the investigating official under § 16.4(b), the reviewing official determines that

there is adequate evidence to believe that a person is liable under § 16.3 of this part, the reviewing official shall transmit to the Attorney General a written notice of the reviewing official's intention to issue a complaint under § 16.7.

(b) Such notice shall include—

(1) A statement of the reviewing official's reasons for issuing a complaint;

(2) A statement specifying the evidence that supports the allegations of liability;

(3) A description of the claims or statements upon which the allegations of liability are based;

(4) An estimate of the amount of money or the value, if any, of property, services, or other benefits requested or demanded in violation of § 16.3 of this part; or, if no monetary value can be put on the property, service or benefit, a statement regarding the non-monetary consequences to the agency of a false statement.

(5) A statement of any exculpatory or mitigating circumstances that may relate to the claims or statements known by the reviewing official or the investigating official; and

(6) A statement that there is a reasonable prospect of collecting an appropriate amount of penalties and assessments. Such a statement may be based upon information then known or an absence of any information indicating that the person may be unable to pay such an amount.

§ 16.6 Prerequisites for issuing a complaint.

(a) The reviewing official may issue a complaint under § 16.7 only if—

(1) The Department of Justice approves the issuance of a complaint in a written statement described in 31 U.S.C. 3803(b)(l), and

(2) In the case of allegations of liability under § 16.3(a) with respect to a claim, the reviewing official determines that, with respect to such claim or a group of related claims submitted at the same time such claim is submitted (as defined in paragraph (b) of this section), the amount of money or the value of property or services demanded or requested in violation of § 16.3(a) does not exceed $150,000.

(b) For the purposes of this section, a related group of claims submitted at the same time shall include only those claims arising from the same transaction (e.g., grant, loan, application, or contract) that are submitted simultaneously as part of a single request, demand, or submission.

(c) Nothing in this section shall be construed to limit the reviewing official's authority to join in a single complaint against a person, claims that are unrelated or were not submitted simultaneously, regardless of the amount of money or the value of property or services demanded or requested, as long as the total amount for each claim does not exceed $150,000.

§ 16.7 Complaint.

(a) On or after the date the Attorney General or his designee approves the issuance of a complaint in accordance with 31 U.S.C. 3803(b)(1), the reviewing official may serve a complaint on the defendant, as provided in § 16.8.

(b) The complaint shall state—

(1) The allegations of liability against the defendant, including the statutory basis for liability, an identification of the claims or statements that are the basis for the alleged liability, and the reasons why liability allegedly arises from such claims or statements;

(2) The maximum amount of penalties and assessments for which the defendant may be held liable;

(3) Instructions for filing an answer to request a hearing, including a specific statement of the defendant's right to request a hearing by filing an answer and to be represented by an attorney;

(4) That the defendant has a right to review and obtain certain information pursuant to Section 16.20 herein; and

(5) That failure to file an answer within 30 days of service of the complaint will result in the imposition of the maximum amount of penalties and assessments without right to appeal.

(c) At the same time the reviewing official serves the complaint on the defendant(s), he or she shall serve the defendant with a copy of these regulations.

§ 16.8 Service of complaint.

(a) Service of a complaint must be made by a certified or registered mail or by delivery in any manner authorized by Rule 4(d) of the Federal Rules of Civil Procedure.

(b) Proof of service, stating the name and address of the person on whom the complaint was served, and the manner and date of service, may be made by—

(1) Affidavit of the individual making service;

(2) An acknowledged United States Postal Service return receipt card; or

(3) Written acknowledgement of the defendant or his representative.

§ 16.9 Answer.

(a) The defendant may request a hearing by filing an answer with the reviewing official within 30 days of service of the complaint. An answer shall be deemed to be a request for hearing.

(b) In the answer, the defendant—

(1) Shall admit or deny each of the allegations of liability made in the complaint;

(2) Shall state any defense on which the defendant intends to rely;

(3) May state any reasons why the defendant contends that the penalties and assessments should be less than the statutory maximum; and

(4) Shall state whether the defendant has authorized an attorney to act as defendant's representative, and shall state the name, address, and telephone number of the representative.

§ 16.10 Default upon failure to file an answer.

(a) If the defendant does not file an answer within the time prescribed in § 16.9(a), the reviewing official may refer the complaint to the ALJ for initial decision.

(b) Upon the referral of the complaint, the ALJ shall promptly serve on defendant in the manner prescribed in § 16.8, a notice that an initial decision will be issued under this section.

(c) If the defendant fails to file a timely answer, the ALJ shall assume the facts alleged in the complaint to be true and, if such facts eatablish liability under § 16.3, the ALJ shall issue an initial decision imposing the maximum amount of penalties and assessments allowed under the statute.

(d) Except as otherwise provided in this section, by failing to file a timely answer, the defendant waives any right to further review of the penalties and assessments imposed under paragraph (c) of this section, and the initial decision shall become final and binding upon the parties 30 days after it is issued.

(e) If, before such an initial decision becomes final, the defendant files a motion with the ALJ, and serves a copy on the agency, seeking to reopen on the grounds that extraordinary circumstances prevented the defendant from filing a timely answer, the initial decision shall be stayed pending the ALJ's decision on the motion. The ALJ shall permit the agency a reasonable amount of time, not less than 15 calendar days, to respond to the defendant's motion.

(f) If, on such motion, the defendant can demonstrate extraordinary circumstances excusing the failure to file a timely answer, the ALJ shall withdraw the initial decision, if such a decision has been issued pursuant to paragraph (c) of this section, and shall grant the defendant an opportunity to answer the complaint.

(g) A decision of the ALJ denying a defendant's motion under paragraph (e) of this section is not subject to reconsideration under § 16.38.

(h) The defendant may appeal to the authority head the decision denying a motion to reopen by filing a notice of appeal with the authority head within 15 days after the ALJ denies the motion. The timely filing of a notice of appeal shall stay the initial decision until the authority head decides the issue.

(i) If the defendant files a timely notice of appeal with the authority head, the ALJ shall forward the record of the proceeding to the authority head.

(j) The authority head shall decide expeditiously, and based solely on the record before the ALJ, whether extraordinary circumstances excuse the defendant's failure to file a timely answer.

(k) If the authority head decides that extraordinary circumstances excuse the defendant's failure to file a timely

answer, the authority head shall remand the case to the ALJ with instructions to grant the defendant an opportunity to file an answer.

(l) If the authority head decides that the defendant's failure to file a timely answer is not excused, the authority head shall reinstate the initial decision of the ALJ, which shall become final and binding upon the parties 30 days after the authority head issues such decision.

§ 16.11 Referral of complaint and answer to the ALJ.

Upon receipt of an answer, the reviewing official shall file the complaint and answer with the ALJ.

§ 16.12 Notice of hearing.

(a) When the ALJ receives the complaint and answer, the ALJ shall promptly serve a notice of hearing upon the defendant and the agency representative in the manner prescribed by § 16.8.

(b) Such notice shall include—

(1) The tentative time and place, and the nature of the hearing;

(2) The legal authority and jurisdiction under which the hearing is to be held;

(3) The matters of fact and law to be asserted;

(4) A description of the procedures for the conduct of the hearing;

(5) The names, addresses, and telephone numbers of the representatives of the Government and of the defendant, if any; and

(6) Such other matters as the ALJ deems appropriate.

§ 16.13 Parties to the hearing.

(a) The parties to the hearing shall be the defendant and the authority.

(b) Pursuant to 31 U.S.C. 3730(c)(5), a private plaintiff under the False Claims Act may participate in these proceedings to the extent authorized by the provisions of that Act.

§ 16.14 Separation of functions.

(a) The investigating official, the reviewing official, and any employee or agent of the authority who takes part in investigating, preparing, or presenting a particular case may not, in such case or a factually related case—

(1) Participate in the hearing as the ALJ;

(2) Participate or advise in the initial decision or the review of the initial decision by the authority head, except as a witness or a representative in public proceedings; or

(3) Make the collection of penalties and assessments under 31 U.S.C. 3806.

(b) The ALJ shall not be responsible to, or subject to the supervision or direction of the investigating official or the reviewing official.

(c) Except as provided in paragraph (a) of this section, the representative for the Government may be an attorney employed anywhere in the Legal Division of the Department, or an attorney employed in the offices of either the investigating official or the reviewing official; however the representative of the Government may not participate or advise in the review of the initial decision by the authority head.

§ 16.15 Ex parte contacts.

No party or person (except employees of the ALJ's office) shall communicate in any way with the ALJ on any matter at issue in a case, unless on notice and opportunity for all parties to participate. This provision does not prohibit a person or party from inquiring about the status of a case or asking routine questions concerning administrative functions or procedures.

§ 16.16 Disqualification of reviewing official or ALJ.

(a) A reviewing official or ALJ in a particular case may disqualify himself or herself at any time.

(b) A party may file with the ALJ a motion for disqualification of a reviewing official or an ALJ. Such motion shall be accompanied by an affidavit alleging personal bias or other reason for disqualification.

(c) Such motion and affidavit shall be filed promptly upon the party's discovery of reasons requiring disqualification, or such objections shall be deemed waived.

(d) Such affidavit shall state specific facts that support the party's assertion that personal bias or other reason for disqualification exists and the time

and circumstances of the party's discovery of such facts. It shall be accompanied by a certificate of the representative of record that it is made in good faith.

(e) Upon the filing of such a motion and affidavit, the ALJ shall proceed no further in the case until he or she resolves the matter of disqualification in accordance with paragrpah (f) of this section.

(f)(1) If the ALJ determines that a reviewing official is disqualified, the ALJ shall dismiss the complaint without prejudice.

(2) If the ALJ disqualifies himself or herself, the agency shall seek to have the case promptly reassigned to another ALJ.

(3) If the ALJ denies a motion to disqualify, the authority head may determine the matter only as part of his or her review of the initial decision upon appeal, if any.

§ 16.17 Rights of parties.

Except as otherwise limited by this part, all parties may—

(a) Be accompanied, represented, and advised by an attorney;

(b) Participate in any conference held by the ALJ;

(c) Conduct discovery;

(d) Agree to stipulations of fact or law, which shall be made part of the record;

(e) Present evidence relevant to the issues at the hearing;

(f) Present and cross-examine witnesses;

(g) Present oral arguments at the hearing as permitted by the ALJ; and

(h) Submit written beliefs and proposed findings of fact and conclusions of law after the hearing.

§ 16.18 Authority of the ALJ.

(a) The ALJ shall conduct a fair and impartial hearing, avoid delay, maintain order, and assure that a record of the proceeding is made.

(b) The ALJ has the authority to—

(1) Set and change the date, time, and place of the hearing upon reasonable notice to the parties;

(2) Continue or recess the hearing in whole or in part for a reasonable period of time;

(3) Hold conferences to identify or simplify the issues, or to consider other matters that may aid in the expeditious disposition of the proceeding;

(4) Administer oaths and affirmations;

(5) Issue subpoenas requiring the attendance of witnesses and the production of documents at depositions or at hearings;

(6) Rule on motions and other procedural matters;

(7) Regulate the scope and timing of discovery;

(8) Regulate the course of the hearing and the conduct of representatives and parties;

(9) Examine witnesses;

(10) Receive, rule on, exclude, or limit evidence;

(11) Upon motion of a party, take official notice of facts;

(12) Upon motion of a party, decide cases, in whole or in part, by summary judgment where there is no disputed issue of material fact;

(13) Conduct any conference, argument, or hearing on motions in person or by telephone; and

(14) Exercise such other authority as is necessary to carry out the responsibilities of the ALJ under this part.

(c) The ALJ does not have the authority to make any determinations regarding the validity of Federal statutes or regulations, or Departmental orders, Directives, or other published rules.

§ 16.19 Prehearing conferences.

(a) The ALJ may schedule prehearing conferences as appropriate.

(b) Upon the motion of any party, the ALJ shall schedule at least one prehearing conference at a reasonable time in advance of the hearing.

(c) The ALJ may use prehearing conferences to discuss the following:

(1) Simplification of the issues;

(2) The necessity or desirability of amendments to the pleadings, including the need for a more definite statement;

(3) Stipulations, admissions of fact or the content and authenticity of documents;

(4) Whether the parties can agree to submission of the case on a stipulated record;

(5) Whether a party chooses to waive appearance at an oral hearing and to submit only documentary evidence (subject to the objection of other parties) and written argument;

(6) Limitation of the number of witnesses;

(7) Scheduling dates for the exchange of witness lists and of proposed exhibits;

(8) Discovery;

(9) The time and place for the hearing; and

(10) Such other matters as may tend to expedite the fair and just disposition of the proceedings.

(d) The ALJ may issue an order containing all matters agreed upon by the parties or ordered by the ALJ at a prehearing conference.

§ 16.20 Disclosure of documents.

(a) Upon written request to the reviewing official, the defendant may review any relevant and material documents, transcripts, records, and other material that relate to the allegations set out in the complaint and upon which the findings and conclusions of the investigating official under § 16.4(b) are based unless such documents are subject to a privilege under Federal law. The Department shall schedule such review at a time and place convenient to it. Upon payment of fees for duplication, the defendant may obtain copies of such documents.

(b) Upon written request to the reviewing official, the defendant also may obtian a copy of all exculpatory information in the possession of the reviewing official or investigating official relating to the allegations in the complaint, even if it is contained in a document that would otherwise be privileged. If the document would otherwise be privileged, only that portion containing exculpatory information must be disclosed.

(c) The notice sent to the Attorney General from the reviewing official as described in § 16.5 is not discoverable under any circumstances.

(d) The defendant may file a motion to compel disclosure of the documents subject to the provisions of this section. Such a motion may only be filed with the ALJ following the filing of an answer pursuant to § 16.9.

§ 16.21 Discovery.

(a) The following types of discovery are authorized:

(1) Requests for production of documents for inspection and copying;

(2) Requests for admissions of the authenticity of any relevant document or of the truth of any relevant fact;

(3) Written interrogatories; and

(4) Depositions.

(b) For the purposes of this section and §§ 16.22 and 16.23, the term ''documents'' includes information, documents, reports, answers, records, accounts, papers, and other data, either paper or electronic, and other documentary evidence. Nothing contained herein shall be interpreted to require the creation of a document.

(c) Unless mutually agreed to by the parties, discovery is available only as ordered by the ALJ. The ALJ shall regulate the timing of discovery.

(d) *Motions for discovery.* (1) A party seeking discovery may file a motion with the ALJ if it is not made available by another party on an informal basis. Such a motion shall be accompanied by a copy of the requested discovery, or in the case of depositions, a summary of the scope of the proposed deposition, and a description of the efforts which have been made by the party to obtain discovery.

(2) Within ten days of service, a party may file an opposition to the motion and/or a motion for protective order as provided in § 16.24.

(3) The ALJ may grant a motion for discovery only if he or she finds that the discovery sought—

(i) Is necessary for the expeditious, fair, and reasonable consideration of the issues;

(ii) Is not unduly costly or burdensome;

(iii) Will not unduly delay the proceeding; and

(iv) Does not seek privileged information.

(4) The burden of showing that discovery should be allowed is on the party seeking discovery.

(5) The ALJ may grant discovery subject to a protective order under § 16.24.

(e) *Depositions.* (1) If a motion for deposition is granted, the ALJ shall issue a subpoena for the deponent, which may require the deponent to produce

documents. The subpoena shall specify the time and place at which the deposition will be held.

(2) The party seeking to depose shall serve the subpoena in the manner prescribed in § 16.8.

(3) The deponent may file with the ALJ a motion to quash the subpoena or a motion for a protective order within ten days of service.

(4) The party seeking to depose shall provide for the taking of a verbatim transcript of the deposition, which it shall make available to all other parties for inspection and copying.

(f) Each party shall bear its own costs of discovery.

§ 16.22 Exchange of witness lists, statements, and exhibits.

(a) At least 15 days before the hearing or at such other time as may be ordered by the ALJ, the parties shall exchange witness lists, copies of prior statements of proposed witnesses, and copies of proposed hearing exhibits, including copies of any written statements that the party intends to offer in lieu of live testimony in accordance with § 16.33(b). At the time the above documents are exchanged, any party that intends to rely on the transcript of deposition testimony in lieu of live testimony at the hearing, if permitted by the ALJ, shall provide each party with a copy of the specific pages of the transcript it intends to introduce into evidence.

(b) If a party objects, the ALJ shall not admit into evidence the testimony of any witness whose name does not appear on the witness list or any exhibit not provided to the opposing party as provided above unless the ALJ finds good cause and that there is no prejudice to the objecting party.

(c) Unless another party objects within the time set by the ALJ, documents exchanged in accordance with paragraph (a) of this section, shall be deemed to be authentic for the purpose of admissibility at the hearing.

§ 16.23 Subpoenas for attendance at hearing.

(a) A party wishing to procure the appearance and testimony of any individual at the hearing may request that the ALJ issue a subpoena.

(b) A subpoena requiring the attendance and testimony of an individual may also require the individual to produce documents at the hearing.

(c) A party seeking a subpoena shall file a written request therefor not less than 15 days before the date fixed for the hearing unless otherwise allowed by the ALJ for good cause shown. Such request shall specify any documents to be produced and shall designate the witnesses and describe the address and location thereof with sufficient particularity to permit such witnesses to be found.

(d) The subpoena shall specify the time and place at which the witness is to appear and any documents the witness is to bring with him or her.

(e) The party seeking the subpoena shall serve it in the manner prescribed in § 16.8. A subpoena on a party or upon an individual under the control of a party may be served by first class mail.

(f) A party or the individual to whom the subpoena is directed may file with the ALJ a motion to quash the subpoena within ten days after service or on or before the time specified in the subpoena for compliance if it is less than ten days after service.

§ 16.24 Protective order.

(a) A party or a prospective witness or deponent may file a motion for a protective order with respect to discovery sought by an opposing party or with respect to the hearing, seeking to limit the availability or disclosure of evidence.

(b) In issuing a protective order, the ALJ may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

(1) That the discovery not be had;

(2) That the discovery may be had only on specified terms and conditions, including a designation of the time or place;

(3) That the discovery may be had only through a method of discovery other than that requested;

(4) That certain matters not be inquired into, or that the scope of discovery be limited to certain matters;

(5) That discovery be conducted with no one present except persons designated by the ALJ;

(6) That the contents of discovery or evidence be sealed;

(7) That a deposition after being sealed be opened only by order of the ALJ;

(8) That a trade secret or other confidential research, development, commercial information, or facts pertaining to any criminal investigation, proceeding, or other administrative investigation not be disclosed or be disclosed only in a designated way; or

(9) That the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the ALJ.

§ 16.25 Fees.

The party requesting a subpoena shall pay the cost of the fees and mileage of any witness subpoenaed in the amounts that would be payable to a witness in a proceeding in United States District Court. A check for witness fees and mileage shall accompany the subpoena when served, except that when a subpoena is issued on behalf of the authority, a check for witness fees and mileage need not accompany the subpoena.

§ 16.26 Form, filing and service of papers.

(a) *Form.* (1) Documents filed with the ALJ shall include a original and two copies.

(2) Every pleading and paper filed in the proceeding shall contain a caption setting forth the title of the action, the case number assigned by the ALJ, and a designation of the paper (*e.g.,* motion to quash subpoena).

(3) Every pleading and paper shall be signed by, and shall contain the address and telephone number of the party or the person on whose behalf the paper was filed, or his or her representative.

(4) Papers are considered filed when they are mailed. Date of mailing may be etablished by a certificate from the party or its representative or by proof that the document was sent by certified or registered mail.

(b) *Service.* A party filing a document with the ALJ shall, at the time of filing, serve a copy of such document on every other party. Service upon any party of any document other than the complaint or notice of hearing shall be made by delivering or mailing a copy to the party's last known address. When a party is represented by an attorney, service shall be made upon such representative in lieu of the actual party.

(c) *Proof of service.* A certificate of the individual serving the document by personal delivery or by mail, setting forth the manner of service, shall be proof of service.

§ 16.27 Computation of time.

(a) In computing any period of time under this part or in an order issued thereunder, the time begins with the day following the act, event, or default, and includes the last day of the period, unless it is a Saturday, Sunday, or legal holiday observed by the Federal Government, in which event it includes the next business day.

(b) When the period of time allowed is less than seven days, intermediate Saturdays, Sundays, and legal holidays observed by the Federal Government shall be excluded from the computation. When the period of time allowed is more than seven days, all intervening calendar days are included in the computation.

(c) Where a document has been served or issued by mail, an additional five days will be added to the time permitted for any response.

§ 16.28 Motions.

(a) Any application to the ALJ for an order or ruling shall be by motion. Motions shall state the relief sought, the authority relied upon, and the facts alleged, and shall be filed with the ALJ and served on all other parties.

(b) Except for motions made during a prehearing conference or at the hearing, all motions shall be in writing. The ALJ may require that oral motions be reduced to writing.

(c) Within 15 days after a written motion is served, or such other time as may be fixed by the ALJ, any party may file a response to such motion.

(d) The ALJ may not grant a written motion before the time for filing responses thereto has expired, except

upon consent of the parties or following a hearing on the motion, but may overrule or deny such motion without awaiting a response.

(e) The ALJ shall make a reasonable effort to dispose of all outstanding motions prior to the beginning of the hearing.

§ 16.29 Sanctions.

(a) The ALJ may sanction a person, including any party or representative for—

(1) Failing to comply with an order, rule, or procedure governing the proceeding;

(2) Failing to prosecute or defend an action; or

(3) Engaging in other misconduct that interferes with the speedy, orderly, or fair conduct of the hearing.

(b) Any such sanction, including but not limited to those listed in paragraphs (c), (d), and (e) of this section, shall reasonably relate to the nature of the failure or misconduct.

(c) When a party fails to comply with an order, including an order for taking a deposition, the production of evidence within the party's control, or a request for admission, the ALJ may—

(1) Draw an inference in favor of the requesting party with regard to the information sought;

(2) In the case of requests for admission, deem each matter of which an admission is requested to be admitted;

(3) Prohibit the party failing to comply with such order from introducing evidence concerning, or otherwise relying upon testimony relating to the information sought; and

(4) Strike any part of the pleadings or other submissions of the party failing to comply with such request.

(d) If a party fails to prosecute or defend an action under this part commenced by service of a notice of hearing, the ALJ may dismiss the action or may issue an initial decision imposing penalties and assessments.

(e) The ALJ may refuse to consider any motion, request, response, brief or other document which is not filed in a timely fashion.

§ 16.30 The hearing and burden of proof.

(a) The ALJ shall conduct a hearing on the record in order to determine whether the defendant is liable for a civil penalty or assessment under § 16.3 and, if so, the appropriate amount of any such civil penalty or assessment considering any aggravating or mitigating factors.

(b) The authority shall have the burden of proving defendant's liability and any aggravating factors by a preponderance of the evidence.

(c) The defendant shall have the burden of proving any affirmative defenses and any mitigating factors by a preponderance of the evidence.

(d) The hearing shall be open to the public unless otherwise ordered by the ALJ for good cause shown.

§ 16.31 Determining the amount of penalties and assessments.

(a) In determining an appropriate amount of civil penalties and assessements, the ALJ and upon appeal, the authority head, should evaluate any circumstances that mitigate or aggravate the violation and should articulate in their opinions the reasons that support the penalties and assessments they impose. Because of the intangible costs of fraud, the expense of investigating such conduct, and the need to deter others who might be similarly tempted, double damages and a significant civil penalty ordinarily should be imposed.

(b) Although not exhaustive, the following factors are among those that may influence the ALJ and the authority head in determining the amount of penalties and assessments to impose with respect to the misconduct (i.e., the false, fictitious, or fraudulent claims or statements) charged in the complaint:

(1) The number of false, fictitious, or fraudulent claims or statements;

(2) The time period over which such claims or statements were made;

(3) The degree of the defendant's culpability with respect to the misconduct;

(4) The amount of money or the value of the property, services, or benefit falsely claimed;

(5) The value of the Government's actual loss as a result of the misconduct, including foreseeable consequential damages and the costs of investigation;

(6) The relationship of the amount imposed as civil penalties to the amount of the Government's loss;

(7) The potential or actual impact of the misconduct upon national defense, public health or safety, or public confidence in the management of Government programs and operations;

(8) Whether the defendant has engaged in a pattern of the same or similar misconduct;

(9) Whether the defendant attempted to conceal the misconduct;

(10) The degree to which the defendant has involved others in the misconduct or in concealing it;

(11) Where the misconduct of employees or agents is imputed to the defendant, the extent to which the defendant's practices fostered or attempted to preclude such misconduct;

(12) Whether the defendant cooperated in or obstructed an investigation of the misconduct;

(13) Whether the defendant assisted in identifying and prosecuting other wrongdoers;

(14) The complexity of the program or transaction, and the degree of the defendant's sophistication with respect to it, including the extent of the defendant's prior participation in the program or in similar transactions;

(15) Whether the defendant has been found, in any criminal, civil, or administrative proceeding to have engaged in similar misconduct or to have dealt dishonestly with the Government of the United States or of a State, directly or indirectly; and

(16) The need to deter the defendant and others from engaging in the same or similar misconduct.

(c) Nothing in this section shall be construed to limit the ALJ or the authority head from considering any other factors that in any given case may mitigate or aggravate the offense for which penalties and assessments are imposed.

§ 16.32 Location of hearing.

(a) The hearing may be held—

(1) In any judicial district of the United States in which the defendant resides or transacts business;

(2) In any judicial district of the United States in which the claim or statement in issue was made; or

(3) In such other place as may be agreed upon by the defendant and the ALJ.

(b) Each party shall have the opportunity to present argument with respect to the location of the hearing.

(c) The hearing shall be held at the place and at the time ordered by the ALJ.

§ 16.33 Witnesses.

(a) Except as provided in paragraph (b) of this section, testimony at the hearing shall be given orally by witnesses under oath or affirmation.

(b) At the discretion of the ALJ, testimony may be admitted in the form of a written statement or deposition. Any such written statement must be provided to all other parties along with the last known address of such witness, in a manner which allows sufficient time for other parties to subpoena such witness for cross-examination at the hearing. Prior written statements of witnesses proposed to testify at the hearing and deposition transcripts shall be exchanged as provided in § 16.22(a).

(c) The ALJ shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to—

(1) Make the interrogation and presentation effective for the ascertainment of the truth,

(2) Avoid needless consumption of time, and

(3) Protect witnesses from harassment or undue embarrassment.

(d) The ALJ shall permit the parties to conduct such cross examination as may be required for a full and true disclosure of the facts.

(e) At the discretion of the ALJ, a witness may be cross-examined on matters relevant to the proceeding without regard to the scope of his or her direct examination. To the extent permited

by the ALJ, cross-examination on matters outside the scope of direct examination shall be conducted in the manner of direct examination and may proceed by leading questions only if the witness is a hostile witness, an adverse party, or a witness identified with an adverse party.

(f) Upon motion of any party, the ALJ shall order witnesses excluded so that they cannot hear the testimony of other witnesses. This rule does not authorize exclusion of—

(1) A party who is an individual;

(2) In the case of a party that is not an individual, an officer or employee of the party designated by the party's representative; or

(3) An individual whose presence is shown by a party to be essential to the presentation of its case, including an individual employed by the Government engaged in assisting the representative for the Government.

§ 16.34 Evidence.

(a) The ALJ shall determine the admissibility of evidence.

(b) Except as provided herein, the ALJ shall not be bound by the Federal Rules of Evidence. However, the ALJ may apply the Federal Rules of Evidence where appropriate, *e.g.*, to exclude unreliable evidence.

(c) The ALJ shall exclude irrelevant, immaterial, or incompetent evidence.

(d) Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or by considerations of undue delay or needless presentation of cumulative evidence.

(e) Although relevant, evidence may be excluded if it is privileged under Federal law.

(f) Evidence concerning offers of compromise or settlement shall be inadmissible to the extent provided in Rule 408 of the Federal Rules of Evidence.

(g) The ALJ shall permit the parties to introduce rebuttal witnesses and evidence.

(h) All documents and other evidence offered or taken for the record shall be open to examination by all parties, unless otherwise ordered by the ALJ pursuant to § 16.24.

§ 16.35 The record.

(a) The hearing will be recorded and transcribed. Transcripts may be obtained following the hearing from the ALJ at a cost not to exceed the actual cost of duplication.

(b) The transcript of testimony, exhibits and other evidence admitted at the hearing, and all papers and requests filed in the proceeding constitute the record for the decision by the ALJ and the authority head.

(c) The record may be inspected and copied (upon payment of a reasonable fee) by anyone, unless otherwise ordered by the ALJ pursuant to § 16.24.

§ 16.36 Post-hearing briefs.

The ALJ may require the parties to file post-hearing briefs. The ALJ shall fix the time for filing such briefs, not to exceed 60 days from the date the parties receive the transcript of the hearing or, if applicable, the stipulated record. Such briefs may be accompanied by proposed findings of fact and conclusions of law. The ALJ may permit the parties to file reply briefs.

§ 16.37 Initial decision.

(a) The ALJ shall issue an initial decision, based solely on the record, which shall contain findings of fact, conclusion of law, and the amount of any penalties and assessments imposed.

(b) The findings of fact shall include a finding on each of the following issues:

(1) Whether the claims or statements identified in the complaint, or any portions thereof, violate § 16.3;

(2) If the person is liable for penalties of assessments, the appropriate amount of any such penalties or assessments considering any mitigating or aggravating factors that he or she finds in the case, such as those described in § 16.31.

(c) The ALJ shall promptly serve the initial decision on all parties within 90 days after the time for submission of post-hearing briefs and reply briefs (if permitted) has expired. The ALJ shall at the same time serve all defendants with a statement describing the right of any defendant determined to be liable for a civil penalty or assessment to file a motion for reconsideration with

the ALJ or a notice of appeal with the authority head. If the ALJ fails to meet the deadline contained in this paragraph, he or she shall notify the parties of the reason for the delay and shall set a new deadline.

(d) Unless the initial decision of the ALJ is timely appealed to the authority head, or a motion for reconsideration of the initial decision is timely filed, the initial decision shall constitute the final decision of the authority head and shall be final and binding on the parties 30 days after it is issued by the ALJ.

§ 16.38 Reconsideration of initial decision.

(a) Except as provided in paragraph (d) of this section, any party may file a motion for reconsideration of the initial decision within 20 days of receipt of the initial decision. If service was made by mail, receipt will be presumed to be five days from the date of mailing in the absence of contrary proof.

(b) Every such motion must set forth the matters claimed to have been erroneously decided and the nature of the alleged errors. Such motion shall be accompanied by a supporting brief.

(c) Responses to such motions shall be allowed only upon request of the ALJ.

(d) No party may file a motion for reconsideration of an initial decision that has been revised in response to a previous motion for reconsideration.

(e) The ALJ may dispose of a motion for reconsideration by denying it or by issuing a revised initial decision.

(f) When a motion for reconsideration is made, the time periods for appeal to the authority head contained in § 16.38, and for finality of the initial decision in § 16.36(d), shall begin on the date the ALJ issues the denial of the motion for reconsideration or a revised initial decision, as appropriate.

§ 16.39 Appeal to authority head.

(a) Any defendant who has filed a timely answer and who is determined in an initial decision to be liable for a civil penalty or assessment may appeal such decision to the authority head by filing a notice of appeal with the authority head in accordance with this section.

(b)(1) No notice of appeal may be filed until the time period for filing a motion for reconsideration under § 16.38 has expired.

(2) If a motion for reconsideration is timely filed, a notice of appeal must be filed within 30 days after the ALJ denies the motion or issues a revised initial decision, whichever applies.

(3) If no motion for reconsideration is timely filed, a notice of appeal must be filed within 30 days after the ALJ issues the initial decision.

(4) The authority head may extend the initial 30 days period for an additional 30 days if the defendant files with the authority head a request for extension within the initial 30 days period and shows good cause.

(c) If the defendant files a timely notice of appeal with the authority head, the ALJ shall forward the notice of appeal and record of the proceeding to the authority head.

(d) A notice of appeal shall be accompanied by a written brief specifying exceptions to the initial decision and reasons supporting the exceptions.

(e) The representative for the agency may file a brief in opposition to exceptions within 30 days of receiving the notice of appeal and accompanying brief.

(f) There is no right to appear personally before the authority head.

(g) There is right to appeal any interlocutory ruling by the ALJ.

(h) In reviewing the initial decision, the authority head shall not consider any objection that was not raised before the ALJ unless a demonstration is made of extraordinary circumstances causing the failure to raise the objection.

(i) If any party demonstrates to the satisfaction of the authority head, prior to the issuance of the authority head's decision that additional evidence not presented at such hearing is material and that there were reasonable grounds for the failure to present such evidence at the hearing, the authority head shall remand the matter to the ALJ for consideration of such additional evidence.

(j) The authority head may affirm, reduce, reverse, compromise, remand, or settle any penalty or assessment,

determined by the ALJ in any initial decision.

(k) The authority head shall promptly serve each party to the appeal to the ALJ with a copy of the decision of the authority head. At the same time the authority head shall serve the defendant with a statement describing the defendant's right to seek judicial review.

(l) Unless a petition for judicial review is filed as provided in 31 U.S.C. 3805 after a defendant has exhausted all administrative remedies under this part and within 60 days after the date on which the authority head serves the defendant with a copy of the authority head's decision, a determination that a defendant is liable under § 16.3 is final and is not subject to judicial review.

§ 16.40 Stays ordered by the Department of Justice.

If at any time the Attorney General or an Assistant Attorney General designated by the Attorney General transmits to the authority head a written finding that continuation of the administrative process described in this part with respect to a claim or statement may adversely affect any pending or potential criminal or civil action related to such claim or statement, the authority head shall stay the process immediately. In such a case, the authority head may order the process resumed only upon receipt of the written authorization of the Attorney General.

§ 16.41 Stay pending appeal.

(a) An initial decision is stayed automatically pending disposition of a motion for reconsideration or of an appeal to the authority head.

(b) No administrative stay is available following a final decision of the authority head.

§ 16.42 Judicial review.

Section 3805 of title 31, United States Code, authorizes judicial review by an appropriate United States District Court of a final decision of the authority head imposing penalties or assessments under this part and specifies the procedures for such review.

§ 16.43 Collection of civil penalties and assessments.

Sections 3806 and 3808(b) of title 31, United States Code, authorize actions for collection of civil penalties and assessments imposed under this part and specify the procedures for such actions.

§ 16.44 Right to administrative offset.

The amount of any penalty or assessment which has become final, or for which a judgment has been entered under § 16.42 or § 16.43, or any amount agreed upon in a compromise or settlement under § 16.46, may be collected by administrative offset under 31 U.S.C. 3716, except that an administrative offset may not be made under this subsection against a refund of an overpayment of Federal taxes, then or later owing by the United States to the defendant.

§ 16.45 Deposit in Treasury of United States.

All amounts collected pursuant to this part shall be deposited as miscellaneous receipts in the Treasury of the United States, except as provided in 31 U.S.C. 3806(g).

§ 16.46 Compromise or settlement.

(a) Parties may make offers of compromise or settlement at any time.

(b) The reviewing official has the exclusive authority to compromise or settle a case under this part at any time after the date on which the reviewing official is permitted to issue a complaint and before the date on which the ALJ issues an initial decision.

(c) The authority head has exclusive authority to compromise or settle a case under this part at any time after the date on which the ALJ issues an initial decision, except during the pendency of any review under § 16.42 or during the pendency of any action to collect penalties and assessments under § 16.43.

(d) The Attorney General has exclusive authority to compromise or settle a case under this part during the pendency of any review under § 16.42 or of any action to recover penalties and assessments under 31 U.S.C. 3806.

(e) The investigating official may recommend settlement terms to the reviewing official, the authority head, or

the Attorney General, as appropriate. The reviewing official may recommend settlement terms to the authority head, or the Attorney General, as appropriate.

(f) Any compromise or settlement must be in writing and signed by all parties and their representatives.

§ 16.47 Limitations.

(a) The notice of hearing with respect to a claim or statement must be served in the manner specified in § 16.8 within 6 years after the date on which such claim or statement is made.

(b) If the defendant fails to file a timely answer, service of a notice under § 16.10(b) shall be deemed a notice of hearing for purposes of this section.

(c) The time limits of this statute of limitations may be extended by agreement of the parties.

PART 17—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE DEPARTMENT OF THE TREASURY

Sec.

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AUTHORITY: 29 U.S.C. 794.

SOURCE: 56 FR 40788, Aug. 16, 1991, unless otherwise noted.

§ 17.101 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 (''section 504'') to prohibit discrimination on the basis of handicap in programs or activities conducted by Executive agencies or the United States Postal Service.

§ 17.102 Application.

This part applies to all programs or activities conducted by the agency, except for programs or activities conducted outside the United States that do not involve individuals with handicaps in the United States.

§ 17.103 Definitions.

For purposes of this part, the term—

(a) *Agency* means the Department of the Treasury.

(b) *Assistant Attorney General* means the Assistant Attorney General, Civil Rights Division, United States Department of Justice.

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

(d) *Complete complaint* means a written statement that contains the complainant's name and address, and describes the agency's alleged discriminatory action in sufficient detail to inform the agency of the nature and date of the alleged violation of section 504. It shall be signed by the complainant or by someone authorized to do so on his or her behalf. Complaints filed on behalf of classes of individuals with handicaps shall also identify (where

possible) the alleged victims of discrimination.

(e) *Facility* means all or any portion of a building, structure, equipment, road, walk, parking lot, rolling stock, or other conveyance, or other real or personal property.

(f) *Individual with handicaps* means any person who has a physical or mental impairment that substantially limits one or more of the individual's major life activities, has a record of such an impairment, or is regarded as having such an impairment. As used in this definition, the phrase: (1) *Physical or mental impairment* includes: (i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs, cardiovascular; reproductive, digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or (ii) any mental or psychological disorder such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term *physical or mental impairment* includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, drug addiction and alcoholism.

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

(3) *Has a record of such an impairment* means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more of the individual's 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 subparagraph (1) of this definition but is treated by the agency as having such an impairment.

(g) *Qualified individual with handicaps* means—(1) With respect to an 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 the nature of the program; and

(2) With respect to any other 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; and

(3) For purposes of employment, ''qualified handicapped person'' is defined in 29 CFR 1613.702(f), which is made applicable to this part by § 17.140.

(h) *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. As used in this part, section 504 applies only to programs or activities conducted by Executive agencies and not to federally assisted programs.

§§ 17.104–17.109 [Reserved]

§ 17.110 Self-evaluation.

(a) The agency shall, by two years after the effective date of this part, evaluate its current policies and practices, and the effects thereof, to determine if they meet the requirements of this part. To the extent modification of any such policy and practice 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.

(c) The agency shall, until three years following the completion of the self-evaluation, 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; and

(3) A list of participants in the self-evaluation process.

§ 17.111 Notice.

The agency shall make available to all Treasury employees, and to all interested persons, as appropriate, 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 a manner as is necessary to apprise them of the protections against discrimination assured them by section 504 and this part.

§§ 17.112–17.129 [Reserved]

§ 17.130 General prohibitions against discrimination.

(a) No qualified individual with handicaps in the United States, shall, by reason of his or her handicap, be excluded from the participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

(b)(1) The agency, in providing any aid, benefit, or service, 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;

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

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

(2) For purposes of this part, aids, benefits, and services, to be equally effective, are not required to produce the identical result or level of achievement for individuals with handicaps and for nonhandicapped persons, but must afford individuals with handicaps equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement in the most integrated setting appropriate to the individual's needs.

(3) Even if the agency is permitted, under paragraph (b)(1)(iv) of this section, to operate a separate or different program for individuals with handicaps or for any class of individuals with handicaps, the agency must permit any qualified individual with handicaps who wishes to participate in the program that is not separate or different to do so.

(4) 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.

(5) 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.

(6) 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.

(7) The agency may not administer a licensing or certification program in a manner that subjects qualified individuals with handicaps to discrimination on the basis of handicap, nor may the agency establish requirements for the programs or activities of licensees or certified entities that subject qualified individuals with handicaps to discrimination on the basis of handicap. However, the programs or activities of entities that are licensed or certified by the agency are not, themselves, covered by this part.

(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.

§§ 17.131–17.139 [Reserved]

§ 17.140 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 Department. 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 of federally conducted programs or activities.

§§ 17.141–17.148 [Reserved]

§ 17.149 Program accessibility: Discrimination prohibited.

Except as otherwise provided in § 17.150, 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.

§ 17.150 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 require the agency—

(1) To make structural alterations in each of its existing facilities in order to make them accessible to and usable by individuals with handicaps where other methods are effective in achieving compliance with this section; or

(2) 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 the § 17.150(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 or her designee after considering all agency resources available for use in the funding and operation of the conducted program or activity and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that individuals with handicaps receive the benefits and services of the program or activity.

(b) *Methods.* The agency may comply with the requirements of this section through such means as redesign of equipment, reassignment of services to accessible buildings, assignment of

aides to 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, 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. 4151–4157), 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.

(c) *Time period for compliance.* The agency shall comply with the obligations established under this section within sixty (60) days of the effective date of this part except that where structural changes in facilities are undertaken, such changes in facilities are undertaken, such changes shall be made within three years of the effective date of this part, but in any event as expeditiously as possible.

(d) *Transition plan.* In the event that structural changes to facilities will be undertaken to achieve program accessibility, the agency shall develop within six months of the effective date of this part, a transition plan setting forth the steps necessary to complete such changes. The agency shall provide an opportunity to interested persons, including individuals with handicaps or organizations representing individuals with handicaps, to participate in the development of the transition plan by submitting comments (both telephonic 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 physical 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; and

(4) Indicate the official responsible for implementation of the plan.

§ 17.151 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. 4151–4157), as established in 41 CFR 101–19.600 through 101–19.607 apply to buildings covered by this section.

§§ 17.152–17.159 [Reserved]

§ 17.160 Communications.

(a) The agency shall take appropriate steps to effectively communicate 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 to applicants or participants in programs.

(2) Where the agency communicates with applicants and beneficiaries by telephone, the agency shall use telecommunication devices for deaf persons (TDD's) or equally effective telecommunication systems to communicate with persons with impaired hearing.

(b) The agency shall make available to interested persons, including persons with impaired vision or hearing, information as to the existence and location of accessible services, activities, and facilities.

(c) The agency shall post notices at a primary entrance to each of its inaccessible facilities, directing users to an accessible facility, or 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 § 17.160 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 or her designee after considering all 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 maxium extent possible, individuals with handicaps receive the benefits and services of the program or activity.

§§ 17.161–17.169 [Reserved]

§ 17.170 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 and 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) All other complaints alleging violations of section 504 may be sent to the Director, Office of Equal Opportunity Program, Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220. The Deputy Assistant Secretary for Departmental Finance and Management shall be responsible for coordinating implementation of this section.

(d)(1) Any person who believes that he or she has been subjected to discrimination prohibited by this part may by him or herself or by his or her authorized representative file a complaint. Any person who believes that any specific class of persons has been subjected to discrimination prohibited by this part and who is a member of that class or the authorized representative of a member of that class may file a complaint.

(2) The agency shall accept and investigate all complete complaints over which it has jurisdiction.

(3) 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 receive 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. 4151–4157), is not readily accessible to and usable by individuals with handicaps.

(g)(1) Within 180 days of the receipt of a complete complaint over which it has jurisdiction, the agency shall notify the complainant of the results of the investigation in a letter containing—

(i) Findings of fact and conclusions of law;

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

(iii) A notice of the right to appeal.

(2) Agency employees are required to cooperate in the investigation and attempted resolution of complaints. Employees who are required to participate in any investigation under this section shall do so as part of their official duties and during the course of regular duty hours.

(3) If a complaint is resolved informally, the terms of the agreement shall be reduced to writing and made part of the complaint file, with a copy of the agreement provided to the complainant. The written agreement shall describe the subject matter of the complaint and any corrective action to which the parties have agreed.

(h) Appeals of the findings of fact and conclusions of law or remedies must be filed by the complainant within 60 days of receipt from the agency of the letter required by §17.170(g). The agency may extend this time for good cause.

(i) Timely appeals shall be accepted and processed by the Director, Human Resources Directorate, or his or her designee, who will issue the final agency decision which may include appropriate corrective action to be taken by the agency.

(j) The agency shall notify the complainant of the results of the appeal within 30 days of the receipt of the appeal. If the agency determines that it needs additional information from the complainant, it shall have 30 days from the date it received 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 for an individual case when the Assistant Secretary for Departmental Finance and Management determines that there is good cause, based on the particular circumstances of that case, for the extension.

(l) The agency may delegate its authority for conducting complaint investigations to other Federal agencies or may contract with a nongovernment investigator to perform the investigation, but the authority for making the final determination may not be delegated to another agency.

§§ 17.171–17.999 [Reserved]

PART 18—OFFICIALS DESIGNATED TO PERFORM THE FUNCTIONS AND DUTIES OF CERTAIN OFFICES IN CASE OF ABSENCE, DISABILITY, OR VACANCY

Sec.
18.1 Designation of First Assistants.
18.2 Exceptions.

AUTHORITY: 5 U.S.C. 301; 31 U.S.C. 321.

SOURCE: 64 FR 62112, Nov. 16, 1999, unless otherwise noted.

§18.1 Designation of First Assistants.

Except as provided in §18.2, every office within the Department of the Treasury (including its bureaus) to which appointment is required to be made by the President with the advice and consent of the Senate (''PAS Office'') may have a First Assistant within the meaning of 5 U.S.C. 3345–3349d.

(a) Where there is a position of principal deputy to the PAS Office, the principal deputy shall be the First Assistant.

(b) Where there is only one deputy position to the PAS Office, the official in that position shall be the First Assistant.

(c) Where neither paragraph (a) nor (b) of this section is applicable to the PAS Office, the Secretary of the Treasury may designate in writing the First Assistant.

§18.2 Exceptions.

(a) Section 18.1 shall not apply:

(1) When a statute which meets the requirements of 5 U.S.C. 3347(a) prescribes another means for authorizing an officer or employee to perform the functions and duties of a PAS Office in the Department temporarily in an acting capacity; and

(2) To the office of a member of the Internal Revenue Service Oversight Board.

(b) The Inspector General of the Department of the Treasury shall determine any arrangements for the temporary performance of the functions and duties of the Inspector General of the Department of the Treasury when that office is vacant.

(c) The Treasury Inspector General for Tax Administration shall determine any arrangements for the temporary performance of the functions and duties of the Treasury Inspector General for Tax Administration when that office is vacant.

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Subpart J [Reserved]

APPENDIX TO PART 19—COVERED TRANSACTIONS

AUTHORITY: Sec. 2455, Pub. L. 103–355, 108 Stat. 3327 (31 U.S.C. 6101 note); E.O. 11738 (3 CFR, 1973 Comp., p. 799); E.O. 12549 (3 CFR, 1986 Comp., p. 189); E.O. 12689 (3 CFR, 1989 Comp., p. 235).

SOURCE: 68 FR 66544, 66605, 66607, Nov. 26, 2003, unless otherwise noted.

§ 19.25 How is this part organized?

(a) This part is subdivided into ten subparts. Each subpart contains information related to a broad topic or specific audience with special responsibilities, as shown in the following table:

In subpart . . .	You will find provisions related to . . .
A	general information about this rule.
B	the types of Department of the Treasury transactions that are covered by the Governmentwide nonprocurement suspension and debarment system.
C	the responsibilities of persons who participate in covered transactions.
D	the responsibilities of Department of the Treasury officials who are authorized to enter into covered transactions.
E	the responsibilities of Federal agencies for the *Excluded Parties List System* (Disseminated by the General Services Administration).
F	the general principles governing suspension, debarment, voluntary exclusion and settlement.
G	suspension actions.
H	debarment actions.
I	definitions of terms used in this part.
J	[Reserved]

(b) The following table shows which subparts may be of special interest to you, depending on who you are:

If you are . . .	See subpart(s) . . .
(1) a participant or principal in a nonprocurement transaction.	A, B, C, and I.
(2) a respondent in a suspension action	A, B, F, G and I.
(3) a respondent in a debarment action	A, B, F, H and I.
(4) a suspending official	A, B, D, E, F, G and I.
(5) a debarring official	A, B, D, E, F, H and I.
(6) a (n) Department of the Treasury official authorized to enter into a covered transaction.	A, B, D, E and I.
(7) Reserved	J.

§ 19.50 How is this part written?

(a) This part uses a ''plain language'' format to make it easier for the general public and business community to use. The section headings and text, often in the form of questions and answers, must be read together.

(b) Pronouns used within this part, such as ''I'' and ''you,'' change from subpart to subpart depending on the audience being addressed. The pronoun ''we'' always is the Department of the Treasury.

(c) The ''Covered Transactions'' diagram in the appendix to this part shows the levels or ''tiers'' at which the Department of the Treasury enforces an exclusion under this part.

§ 19.75 Do terms in this part have special meanings?

This part uses terms throughout the text that have special meaning. Those terms are defined in Subpart I of this part. For example, three important terms are—

(a) *Exclusion or excluded,* which refers only to discretionary actions taken by a suspending or debarring official under this part or the Federal Acquisition Regulation (48 CFR part 9, subpart 9.4);

(b) *Disqualification or disqualified,* which refers to prohibitions under specific statutes, executive orders (other than Executive Order 12549 and Executive Order 12689), or other authorities. Disqualifications frequently are not subject to the discretion of an agency official, may have a different scope than exclusions, or have special conditions that apply to the disqualification; and

(c) *Ineligibility or ineligible,* which generally refers to a person who is either excluded or disqualified.

Subpart A—General

§ 19.100 What does this part do?

This part adopts a governmentwide system of debarment and suspension for Department of the Treasury nonprocurement activities. It also provides for reciprocal exclusion of persons who have been excluded under the Federal Acquisition Regulation, and provides for the consolidated listing of all persons who are excluded, or disqualified by statute, executive order, or other legal authority. This part satisfies the requirements in section 3 of Executive Order 12549, ''Debarment and Suspension'' (3 CFR 1986 Comp., p. 189), Executive Order 12689, ''Debarment and Suspension'' (3 CFR 1989 Comp., p. 235) and 31 U.S.C. 6101 note (Section 2455, Public Law 103–355, 108 Stat. 3327).

§ 19.105 Does this part apply to me?

Portions of this part (see table at § 19.25(b)) apply to you if you are a(n)—

(a) Person who has been, is, or may reasonably be expected to be, a participant or principal in a covered transaction;

(b) Respondent (a person against whom the Department of the Treasury has initiated a debarment or suspension action);

(c) Department of the Treasury debarring or suspending official; or

(d) Department of the Treasury official who is authorized to enter into covered transactions with non-Federal parties.

§ 19.110 What is the purpose of the nonprocurement debarment and suspension system?

(a) To protect the public interest, the Federal Government ensures the integrity of Federal programs by conducting business only with responsible persons.

(b) A Federal agency uses the nonprocurement debarment and suspension system to exclude from Federal programs persons who are not presently responsible.

(c) An exclusion is a serious action that a Federal agency may take only to protect the public interest. A Federal agency may not exclude a person or commodity for the purposes of punishment.

§ 19.115 How does an exclusion restrict a person's involvement in covered transactions?

With the exceptions stated in §§ 19.120, 19.315, and 19.420, a person who is excluded by the Department of the Treasury or any other Federal agency may not:

(a) Be a participant in a(n) Department of the Treasury transaction that is a covered transaction under subpart B of this part;

(b) Be a participant in a transaction of any other Federal agency that is a covered transaction under that agency's regulation for debarment and suspension; or

(c) Act as a principal of a person participating in one of those covered transactions.

§ 19.120 May we grant an exception to let an excluded person participate in a covered transaction?

(a) The Secretary of the Treasury may grant an exception permitting an excluded person to participate in a particular covered transaction. If the Secretary of the Treasury grants an exception, the exception must be in writing and state the reason(s) for deviating from the governmentwide policy in Executive Order 12549.

(b) An exception granted by one agency for an excluded person does not extend to the covered transactions of another agency.

§ 19.125 Does an exclusion under the nonprocurement system affect a person's eligibility for Federal procurement contracts?

If any Federal agency excludes a person under its nonprocurement common rule on or after August 25, 1995, the excluded person is also ineligible to participate in Federal procurement transactions under the FAR. Therefore, an exclusion under this part has reciprocal effect in Federal procurement transactions.

§ 19.130 Does exclusion under the Federal procurement system affect a person's eligibility to participate in nonprocurement transactions?

If any Federal agency excludes a person under the FAR on or after August 25, 1995, the excluded person is also ineligible to participate in nonprocurement covered transactions under this part. Therefore, an exclusion under the FAR has reciprocal effect in Federal nonprocurement transactions.

§ 19.135 May the Department of the Treasury exclude a person who is not currently participating in a nonprocurement transaction?

Given a cause that justifies an exclusion under this part, we may exclude any person who has been involved, is currently involved, or may reasonably be expected to be involved in a covered transaction.

§ 19.140 How do I know if a person is excluded?

Check the *Excluded Parties List System (EPLS)* to determine whether a person is excluded. The General Services Administration (GSA) maintains the *EPLS* and makes it available, as detailed in subpart E of this part. When a Federal agency takes an action to exclude a person under the nonprocurement or procurement debarment and suspension system, the agency enters the information about the excluded person into the *EPLS*.

§ 19.145 Does this part address persons who are disqualified, as well as those who are excluded from nonprocurement transactions?

Except if provided for in Subpart J of this part, this part—

(a) Addresses disqualified persons only to—

(1) Provide for their inclusion in the *EPLS;* and

(2) State responsibilities of Federal agencies and participants to check for disqualified persons before entering into covered transactions.

(b) Does not specify the—

(1) Department of the Treasury transactions for which a disqualified person is ineligible. Those transactions vary on a case-by-case basis, because they depend on the language of the specific statute, Executive order, or regulation that caused the disqualification;

(2) Entities to which the disqualification applies; or

(3) Process that the agency uses to disqualify a person. Unlike exclusion, disqualification is frequently not a discretionary action that a Federal agency takes.

Subpart B—Covered Transactions

§ 19.200 What is a covered transaction?

A covered transaction is a nonprocurement or procurement transaction that is subject to the prohibitions of this part. It may be a transaction at—

(a) The primary tier, between a Federal agency and a person (see appendix to this part); or

(b) A lower tier, between a participant in a covered transaction and another person.

§ 19.205 Why is it important if a particular transaction is a covered transaction?

The importance of a covered transaction depends upon who you are.

(a) As a participant in the transaction, you have the responsibilities laid out in Subpart C of this part. Those include responsibilities to the person or Federal agency at the next higher tier from whom you received the transaction, if any. They also include responsibilities if you subsequently enter into other covered transactions with persons at the next lower tier.

(b) As a Federal official who enters into a primary tier transaction, you have the responsibilities laid out in subpart D of this part.

(c) As an excluded person, you may not be a participant or principal in the transaction unless—

(1) The person who entered into the transaction with you allows you to continue your involvement in a transaction that predates your exclusion, as permitted under § 19.310 or § 19.415; or

(2) A(n) Department of the Treasury official obtains an exception from the Secretary of the Treasury to allow you to be involved in the transaction, as permitted under § 19.120.

§ 19.210 Which nonprocurement transactions are covered transactions?

All nonprocurement transactions, as defined in § 19.970, are covered transactions unless listed in § 19.215. (See appendix to this part.)

§ 19.215 Which nonprocurement transactions are not covered transactions?

The following types of nonprocurement transactions are not covered transactions:

(a) A direct award to—

(1) A foreign government or foreign governmental entity;

(2) A public international organization;

(3) An entity owned (in whole or in part) or controlled by a foreign government; or

(4) Any other entity consisting wholly or partially of one or more foreign governments or foreign governmental entities.

(b) A benefit to an individual as a personal entitlement without regard to the individual's present responsibility (but benefits received in an individual's business capacity are not excepted). For example, if a person receives social security benefits under the Supplemental Security Income provisions of the Social Security Act, 42 U.S.C. 1301 et seq., those benefits are not covered transactions and, therefore, are not affected if the person is excluded.

(c) Federal employment.

(d) A transaction that the Department of the Treasury needs to respond to a national or agency-recognized emergency or disaster.

(e) A permit, license, certificate, or similar instrument issued as a means to regulate public health, safety, or the environment, unless the Department of the Treasury specifically designates it to be a covered transaction.

(f) An incidental benefit that results from ordinary governmental operations.

(g) Any other transaction if the application of an exclusion to the transaction is prohibited by law.

§ 19.220 Are any procurement contracts included as covered transactions?

(a) Covered transactions under this part—

(1) Do not include any procurement contracts awarded directly by a Federal agency; but

(2) Do include some procurement contracts awarded by non-Federal participants in nonprocurement covered transactions (see appendix to this part).

(b) Specifically, a contract for goods or services is a covered transaction if any of the following applies:

(1) The contract is awarded by a participant in a nonprocurement transaction that is covered under § 19.210, and the amount of the contract is expected to equal or exceed $25,000.

(2) The contract requires the consent of a(n) Department of the Treasury official. In that case, the contract, regardless of the amount, always is a covered transaction, and it does not matter who awarded it. For example, it could be a subcontract awarded by a contractor at a tier below a nonprocurement transaction, as shown in the appendix to this part.

(3) The contract is for federally-required audit services.

§ 19.225 How do I know if a transaction in which I may participate is a covered transaction?

As a participant in a transaction, you will know that it is a covered transaction because the agency regulations governing the transaction, the appropriate agency official, or participant at the next higher tier who enters into the transaction with you, will tell you that you must comply with applicable portions of this part.

Subpart C—Responsibilities of Participants Regarding Transactions

DOING BUSINESS WITH OTHER PERSONS

§ 19.300 What must I do before I enter into a covered transaction with another person at the next lower tier?

When you enter into a covered transaction with another person at the next lower tier, you must verify that the person with whom you intend to do business is not excluded or disqualified. You do this by:

(a) Checking the *EPLS;* or

(b) Collecting a certification from that person if allowed by this rule; or

(c) Adding a clause or condition to the covered transaction with that person.

§ 19.305 May I enter into a covered transaction with an excluded or disqualified person?

(a) You as a participant may not enter into a covered transaction with an excluded person, unless the Department of the Treasury grants an exception under § 19.120.

(b) You may not enter into any transaction with a person who is disqualified from that transaction, unless you have obtained an exception under the disqualifying statute, Executive order, or regulation.

§ 19.310 What must I do if a Federal agency excludes a person with whom I am already doing business in a covered transaction?

(a) You as a participant may continue covered transactions with an excluded person if the transactions were in existence when the agency excluded the person. However, you are not required to continue the transactions, and you may consider termination. You should make a decision about whether to terminate and the type of termination action, if any, only after a thorough review to ensure that the action is proper and appropriate.

(b) You may not renew or extend covered transactions (other than no-cost time extensions) with any excluded person, unless the Department of the Treasury grants an exception under § 19.120.

§ 19.315 May I use the services of an excluded person as a principal under a covered transaction?

(a) You as a participant may continue to use the services of an excluded person as a principal under a covered transaction if you were using the services of that person in the transaction before the person was excluded. However, you are not required to continue using that person's services as a principal. You should make a decision about whether to discontinue that person's services only after a thorough review to ensure that the action is proper and appropriate.

(b) You may not begin to use the services of an excluded person as a principal under a covered transaction unless the Department of the Treasury grants an exception under § 19.120.

§ 19.320 Must I verify that principals of my covered transactions are eligible to participate?

Yes, you as a participant are responsible for determining whether any of your principals of your covered transactions is excluded or disqualified from participating in the transaction. You may decide the method and frequency by which you do so. You may, but you are not required to, check the *EPLS*.

§ 19.325 What happens if I do business with an excluded person in a covered transaction?

If as a participant you knowingly do business with an excluded person, we may disallow costs, annul or terminate the transaction, issue a stop work order, debar or suspend you, or take other remedies as appropriate.

§ 19.330 What requirements must I pass down to persons at lower tiers with whom I intend to do business?

Before entering into a covered transaction with a participant at the next lower tier, you must require that participant to—

(a) Comply with this subpart as a condition of participation in the transaction. You may do so using any method(s), unless § 19.440 requires you to use specific methods.

(b) Pass the requirement to comply with this subpart to each person with whom the participant enters into a

covered transaction at the next lower tier.

DISCLOSING INFORMATION—PRIMARY TIER PARTICIPANTS

§ 19.335 What information must I provide before entering into a covered transaction with the Department of the Treasury?

Before you enter into a covered transaction at the primary tier, you as the participant must notify the Department of the Treasury office that is entering into the transaction with you, if you know that you or any of the principals for that covered transaction:

(a) Are presently excluded or disqualified;

(b) Have been convicted within the preceding three years of any of the offenses listed in § 19.800(a) or had a civil judgment rendered against you for one of those offenses within that time period;

(c) Are presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses listed in § 19.800(a); or

(d) Have had one or more public transactions (Federal, State, or local) terminated within the preceding three years for cause or default.

§ 19.340 If I disclose unfavorable information required under § 19.335, will I be prevented from participating in the transaction?

As a primary tier participant, your disclosure of unfavorable information about yourself or a principal under § 19.335 will not necessarily cause us to deny your participation in the covered transaction. We will consider the information when we determine whether to enter into the covered transaction. We also will consider any additional information or explanation that you elect to submit with the disclosed information.

§ 19.345 What happens if I fail to disclose information required under § 19.335?

If we later determine that you failed to disclose information under § 19.335 that you knew at the time you entered into the covered transaction, we may—

(a) Terminate the transaction for material failure to comply with the terms and conditions of the transaction; or

(b) Pursue any other available remedies, including suspension and debarment.

§ 19.350 What must I do if I learn of information required under § 19.335 after entering into a covered transaction with the Department of the Treasury?

At any time after you enter into a covered transaction, you must give immediate written notice to the Department of the Treasury office with which you entered into the transaction if you learn either that—

(a) You failed to disclose information earlier, as required by § 19.335; or

(b) Due to changed circumstances, you or any of the principals for the transaction now meet any of the criteria in § 19.335.

DISCLOSING INFORMATION—LOWER TIER PARTICIPANTS

§ 19.355 What information must I provide to a higher tier participant before entering into a covered transaction with that participant?

Before you enter into a covered transaction with a person at the next higher tier, you as a lower tier participant must notify that person if you know that you or any of the principals are presently excluded or disqualified.

§ 19.360 What happens if I fail to disclose the information required under § 19.355?

If we later determine that you failed to tell the person at the higher tier that you were excluded or disqualified at the time you entered into the covered transaction with that person, we may pursue any available remedies, including suspension and debarment.

§ 19.365 What must I do if I learn of information required under § 19.355 after entering into a covered transaction with a higher tier participant?

At any time after you enter into a lower tier covered transaction with a

person at a higher tier, you must provide immediate written notice to that person if you learn either that—

(a) You failed to disclose information earlier, as required by § 19.355; or

(b) Due to changed circumstances, you or any of the principals for the transaction now meet any of the criteria in § 19.355.

Subpart D—Responsibilities of Department of the Treasury Officials Regarding Transactions

§ 19.400 May I enter into a transaction with an excluded or disqualified person?

(a) You as an agency official may not enter into a covered transaction with an excluded person unless you obtain an exception under § 19.120.

(b) You may not enter into any transaction with a person who is disqualified from that transaction, unless you obtain a waiver or exception under the statute, Executive order, or regulation that is the basis for the person's disqualification.

§ 19.405 May I enter into a covered transaction with a participant if a principal of the transaction is excluded?

As an agency official, you may not enter into a covered transaction with a participant if you know that a principal of the transaction is excluded, unless you obtain an exception under § 19.120.

§ 19.410 May I approve a participant's use of the services of an excluded person?

After entering into a covered transaction with a participant, you as an agency official may not approve a participant's use of an excluded person as a principal under that transaction, unless you obtain an exception under § 19.120.

§ 19.415 What must I do if a Federal agency excludes the participant or a principal after I enter into a covered transaction?

(a) You as an agency official may continue covered transactions with an excluded person, or under which an excluded person is a principal, if the transactions were in existence when the person was excluded. You are not required to continue the transactions, however, and you may consider termination. You should make a decision about whether to terminate and the type of termination action, if any, only after a thorough review to ensure that the action is proper.

(b) You may not renew or extend covered transactions (other than no-cost time extensions) with any excluded person, or under which an excluded person is a principal, unless you obtain an exception under § 19.120.

§ 19.420 May I approve a transaction with an excluded or disqualified person at a lower tier?

If a transaction at a lower tier is subject to your approval, you as an agency official may not approve—

(a) A covered transaction with a person who is currently excluded, unless you obtain an exception under § 19.120; or

(b) A transaction with a person who is disqualified from that transaction, unless you obtain a waiver or exception under the statute, Executive order, or regulation that is the basis for the person's disqualification.

§ 19.425 When do I check to see if a person is excluded or disqualified?

As an agency official, you must check to see if a person is excluded or disqualified before you—

(a) Enter into a primary tier covered transaction;

(b) Approve a principal in a primary tier covered transaction;

(c) Approve a lower tier participant if agency approval of the lower tier participant is required; or

(d) Approve a principal in connection with a lower tier transaction if agency approval of the principal is required.

§ 19.430 How do I check to see if a person is excluded or disqualified?

You check to see if a person is excluded or disqualified in two ways:

(a) You as an agency official must check the *EPLS* when you take any action listed in § 19.425.

(b) You must review information that a participant gives you, as required by

§ 19.335, about its status or the status of the principals of a transaction.

§ 19.435 What must I require of a primary tier participant?

You as an agency official must require each participant in a primary tier covered transaction to—

(a) Comply with subpart C of this part as a condition of participation in the transaction; and

(b) Communicate the requirement to comply with Subpart C of this part to persons at the next lower tier with whom the primary tier participant enters into covered transactions.

§ 19.440 What method do I use to communicate those requirements to participants?

To communicate the requirements, you must include a term or condition in the transaction requiring the participants' compliance with subpart C of this part and requiring them to include a similar term or condition in lower-tier covered transactions.

[68 FR 66607, Nov. 26, 2003]

§ 19.445 What action may I take if a primary tier participant knowingly does business with an excluded or disqualified person?

If a participant knowingly does business with an excluded or disqualified person, you as an agency official may refer the matter for suspension and debarment consideration. You may also disallow costs, annul or terminate the transaction, issue a stop work order, or take any other appropriate remedy.

§ 19.450 What action may I take if a primary tier participant fails to disclose the information required under § 19.335?

If you as an agency official determine that a participant failed to disclose information, as required by § 19.335, at the time it entered into a covered transaction with you, you may—

(a) Terminate the transaction for material failure to comply with the terms and conditions of the transaction; or

(b) Pursue any other available remedies, including suspension and debarment.

§ 19.455 What may I do if a lower tier participant fails to disclose the information required under § 19.355 to the next higher tier?

If you as an agency official determine that a lower tier participant failed to disclose information, as required by § 19.355, at the time it entered into a covered transaction with a participant at the next higher tier, you may pursue any remedies available to you, including the initiation of a suspension or debarment action.

Subpart E—Excluded Parties List System

§ 19.500 What is the purpose of the Excluded Parties List System (EPLS)?

The *EPLS* is a widely available source of the most current information about persons who are excluded or disqualified from covered transactions.

§ 19.505 Who uses the EPLS?

(a) Federal agency officials use the *EPLS* to determine whether to enter into a transaction with a person, as required under § 19.430.

(b) Participants also may, but are not required to, use the *EPLS* to determine if—

(1) Principals of their transactions are excluded or disqualified, as required under § 19.320; or

(2) Persons with whom they are entering into covered transactions at the next lower tier are excluded or disqualified.

(c) The *EPLS* is available to the general public.

§ 19.510 Who maintains the EPLS?

In accordance with the OMB guidelines, the General Services Administration (GSA) maintains the *EPLS*. When a Federal agency takes an action to exclude a person under the nonprocurement or procurement debarment and suspension system, the agency enters the information about the excluded person into the *EPLS*.

§ 19.515 What specific information is in the EPLS?

(a) At a minimum, the *EPLS* indicates—

(1) The full name (where available) and address of each excluded or disqualified person, in alphabetical order, with cross references if more than one name is involved in a single action;

(2) The type of action;

(3) The cause for the action;

(4) The scope of the action;

(5) Any termination date for the action;

(6) The agency and name and telephone number of the agency point of contact for the action; and

(7) The Dun and Bradstreet Number (DUNS), or other similar code approved by the GSA, of the excluded or disqualified person, if available.

(b)(1) The database for the *EPLS* includes a field for the Taxpayer Identification Number (TIN) (the social security number (SSN) for an individual) of an excluded or disqualified person.

(2) Agencies disclose the SSN of an individual to verify the identity of an individual, only if permitted under the Privacy Act of 1974 and, if appropriate, the Computer Matching and Privacy Protection Act of 1988, as codified in 5 U.S.C. 552(a).

§ 19.520 Who places the information into the EPLS?

Federal officials who take actions to exclude persons under this part or officials who are responsible for identifying disqualified persons must enter the following information about those persons into the *EPLS*:

(a) Information required by § 19.515(a);

(b) The Taxpayer Identification Number (TIN) of the excluded or disqualified person, including the social security number (SSN) for an individual, if the number is available and may be disclosed under law;

(c) Information about an excluded or disqualified person, generally within five working days, after—

(1) Taking an exclusion action;

(2) Modifying or rescinding an exclusion action;

(3) Finding that a person is disqualified; or

(4) Finding that there has been a change in the status of a person who is listed as disqualified.

§ 19.525 Whom do I ask if I have questions about a person in the EPLS?

If you have questions about a person in the *EPLS*, ask the point of contact for the Federal agency that placed the person's name into the *EPLS*. You may find the agency point of contact from the *EPLS*.

§ 19.530 Where can I find the EPLS?

(a) You may access the *EPLS* through the Internet, currently at *http://epls.arnet.gov*.

(b) As of November 26, 2003, you may also subscribe to a printed version. However, we anticipate discontinuing the printed version. Until it is discontinued, you may obtain the printed version by purchasing a yearly subscription from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, or by calling the Government Printing Office Inquiry and Order Desk at (202) 783–3238.

Subpart F—General Principles Relating to Suspension and Debarment Actions

§ 19.600 How do suspension and debarment actions start?

When we receive information from any source concerning a cause for suspension or debarment, we will promptly report and investigate it. We refer the question of whether to suspend or debar you to our suspending or debarring official for consideration, if appropriate.

§ 19.605 How does suspension differ from debarment?

Suspension differs from debarment in that—

A suspending official . . .	A debarring official . . .
(a) Imposes suspension as a temporary status of ineligibility for procurement and nonprocurement transactions, pending completion of an investigation or legal proceedings.	Imposes debarment for a specified period as a final determination that a person is not presently responsible.

A suspending official . . .	A debarring official . . .
(b) Must—	Must conclude, based on a *preponderance of the evidence,* that the person has engaged in conduct that warrants debarment.
(1) Have *adequate evidence* that there may be a cause for debarment of a person; and.	
(2) Conclude that *immediate action* is necessary to protect the Federal interest.	
(c) Usually imposes the suspension *first,* and then promptly notifies the suspended person, giving the person an opportunity to contest the suspension and have it lifted.	Imposes debarment *after* giving the respondent notice of the action and an opportunity to contest the proposed debarment.

§ 19.610 What procedures does the Department of the Treasury use in suspension and debarment actions?

In deciding whether to suspend or debar you, we handle the actions as informally as practicable, consistent with principles of fundamental fairness.

(a) For suspension actions, we use the procedures in this subpart and subpart G of this part.

(b) For debarment actions, we use the procedures in this subpart and subpart H of this part.

§ 19.615 How does the Department of the Treasury notify a person of a suspension or debarment action?

(a) The suspending or debarring official sends a written notice to the last known street address, facsimile number, or e-mail address of—

(1) You or your identified counsel; or

(2) Your agent for service of process, or any of your partners, officers, directors, owners, or joint venturers.

(b) The notice is effective if sent to any of these persons.

§ 19.620 Do Federal agencies coordinate suspension and debarment actions?

Yes, when more than one Federal agency has an interest in a suspension or debarment, the agencies may consider designating one agency as the lead agency for making the decision. Agencies are encouraged to establish methods and procedures for coordinating their suspension and debarment actions.

§ 19.625 What is the scope of a suspension or debarment?

If you are suspended or debarred, the suspension or debarment is effective as follows:

(a) Your suspension or debarment constitutes suspension or debarment of all of your divisions and other organizational elements from all covered transactions, unless the suspension or debarment decision is limited—

(1) By its terms to one or more specifically identified individuals, divisions, or other organizational elements; or

(2) To specific types of transactions.

(b) Any affiliate of a participant may be included in a suspension or debarment action if the suspending or debarring official—

(1) Officially names the affiliate in the notice; and

(2) Gives the affiliate an opportunity to contest the action.

§ 19.630 May the Department of the Treasury impute conduct of one person to another?

For purposes of actions taken under this rule, we may impute conduct as follows:

(a) *Conduct imputed from an individual to an organization.* We may impute the fraudulent, criminal, or other improper conduct of any officer, director, shareholder, partner, employee, or other individual associated with an organization, to that organization when the improper conduct occurred in connection with the individual's performance of duties for or on behalf of that organization, or with the organization's knowledge, approval or acquiescence. The organization's acceptance of the benefits derived from the conduct is evidence of knowledge, approval or acquiescence.

(b) *Conduct imputed from an organization to an individual, or between individuals.* We may impute the fraudulent, criminal, or other improper conduct of any organization to an individual, or from one individual to another individual, if the individual to whom the improper conduct is imputed either participated in, had knowledge of, or

reason to know of the improper conduct.

(c) *Conduct imputed from one organization to another organization.* We may impute the fraudulent, criminal, or other improper conduct of one organization to another organization when the improper conduct occurred in connection with a partnership, joint venture, joint application, association or similar arrangement, or when the organization to whom the improper conduct is imputed has the power to direct, manage, control or influence the activities of the organization responsible for the improper conduct. Acceptance of the benefits derived from the conduct is evidence of knowledge, approval or acquiescence.

§ 19.635 May the Department of the Treasury settle a debarment or suspension action?

Yes, we may settle a debarment or suspension action at any time if it is in the best interest of the Federal Government.

§ 19.640 May a settlement include a voluntary exclusion?

Yes, if we enter into a settlement with you in which you agree to be excluded, it is called a voluntary exclusion and has governmentwide effect.

§ 19.645 Do other Federal agencies know if the Department of the Treasury agrees to a voluntary exclusion?

(a) Yes, we enter information regarding a voluntary exclusion into the *EPLS*.

(b) Also, any agency or person may contact us to find out the details of a voluntary exclusion.

Subpart G—Suspension

§ 19.700 When may the suspending official issue a suspension?

Suspension is a serious action. Using the procedures of this subpart and subpart F of this part, the suspending official may impose suspension only when that official determines that—

(a) There exists an indictment for, or other adequate evidence to suspect, an offense listed under § 19.800(a), or

(b) There exists adequate evidence to suspect any other cause for debarment listed under § 19.800(b) through (d); and

(c) Immediate action is necessary to protect the public interest.

§ 19.705 What does the suspending official consider in issuing a suspension?

(a) In determining the adequacy of the evidence to support the suspension, the suspending official considers how much information is available, how credible it is given the circumstances, whether or not important allegations are corroborated, and what inferences can reasonably be drawn as a result. During this assessment, the suspending official may examine the basic documents, including grants, cooperative agreements, loan authorizations, contracts, and other relevant documents.

(b) An indictment, conviction, civil judgment, or other official findings by Federal, State, or local bodies that determine factual and/or legal matters, constitutes adequate evidence for purposes of suspension actions.

(c) In deciding whether immediate action is needed to protect the public interest, the suspending official has wide discretion. For example, the suspending official may infer the necessity for immediate action to protect the public interest either from the nature of the circumstances giving rise to a cause for suspension or from potential business relationships or involvement with a program of the Federal Government.

§ 19.710 When does a suspension take effect?

A suspension is effective when the suspending official signs the decision to suspend.

§ 19.715 What notice does the suspending official give me if I am suspended?

After deciding to suspend you, the suspending official promptly sends you a Notice of Suspension advising you—

(a) That you have been suspended;

(b) That your suspension is based on—

(1) An indictment;

(2) A conviction;

(3) Other adequate evidence that you have committed irregularities which

seriously reflect on the propriety of further Federal Government dealings with you; or

(4) Conduct of another person that has been imputed to you, or your affiliation with a suspended or debarred person;

(c) Of any other irregularities in terms sufficient to put you on notice without disclosing the Federal Government's evidence;

(d) Of the cause(s) upon which we relied under § 19.700 for imposing suspension;

(e) That your suspension is for a temporary period pending the completion of an investigation or resulting legal or debarment proceedings;

(f) Of the applicable provisions of this subpart, Subpart F of this part, and any other Department of the Treasury procedures governing suspension decision making; and

(g) Of the governmentwide effect of your suspension from procurement and nonprocurement programs and activities.

§ 19.720 How may I contest a suspension?

If you as a respondent wish to contest a suspension, you or your representative must provide the suspending official with information in opposition to the suspension. You may do this orally or in writing, but any information provided orally that you consider important must also be submitted in writing for the official record.

§ 19.725 How much time do I have to contest a suspension?

(a) As a respondent you or your representative must either send, or make rrangements to appear and present, the information and argument to the suspending official within 30 days after you receive the Notice of Suspension.

(b) We consider the notice to be received by you—

(1) When delivered, if we mail the notice to the last known street address, or five days after we send it if the letter is undeliverable;

(2) When sent, if we send the notice by facsimile or five days after we send it if the facsimile is undeliverable; or

(3) When delivered, if we send the notice by e-mail or five days after we send it if the e-mail is undeliverable.

§ 19.730 What information must I provide to the suspending official if I contest a suspension?

(a) In addition to any information and argument in opposition, as a respondent your submission to the suspending official must identify—

(1) Specific facts that contradict the statements contained in the Notice of Suspension. A general denial is insufficient to raise a genuine dispute over facts material to the suspension;

(2) All existing, proposed, or prior exclusions under regulations implementing E.O. 12549 and all similar actions taken by Federal, state, or local agencies, including administrative agreements that affect only those agencies;

(3) All criminal and civil proceedings not included in the Notice of Suspension that grew out of facts relevant to the cause(s) stated in the notice; and

(4) All of your affiliates.

(b) If you fail to disclose this information, or provide false information, the Department of the Treasury may seek further criminal, civil or administrative action against you, as appropriate.

§ 19.735 Under what conditions do I get an additional opportunity to challenge the facts on which the suspension is based?

(a) You as a respondent will not have an additional opportunity to challenge the facts if the suspending official determines that—

(1) Your suspension is based upon an indictment, conviction, civil judgment, or other finding by a Federal, State, or local body for which an opportunity to contest the facts was provided;

(2) Your presentation in opposition contains only general denials to information contained in the Notice of Suspension;

(3) The issues raised in your presentation in opposition to the suspension are not factual in nature, or are not material to the suspending official's initial decision to suspend, or the official's decision whether to continue the suspension; or

(4) On the basis of advice from the Department of Justice, an office of the United States Attorney, a State attorney general's office, or a State or local prosecutor's office, that substantial interests of the government in pending or contemplated legal proceedings based on the same facts as the suspension would be prejudiced by conducting fact-finding.

(b) You will have an opportunity to challenge the facts if the suspending official determines that—

(1) The conditions in paragraph (a) of this section do not exist; and

(2) Your presentation in opposition raises a genuine dispute over facts material to the suspension.

(c) If you have an opportunity to challenge disputed material facts under this section, the suspending official or designee must conduct additional proceedings to resolve those facts.

§ 19.740 Are suspension proceedings formal?

(a) Suspension proceedings are conducted in a fair and informal manner. The suspending official may use flexible procedures to allow you to present matters in opposition. In so doing, the suspending official is not required to follow formal rules of evidence or procedure in creating an official record upon which the official will base a final suspension decision.

(b) You as a respondent or your representative must submit any documentary evidence you want the suspending official to consider.

§ 19.745 How is fact-finding conducted?

(a) If fact-finding is conducted—

(1) You may present witnesses and other evidence, and confront any witness presented; and

(2) The fact-finder must prepare written findings of fact for the record.

(b) A transcribed record of fact-finding proceedings must be made, unless you as a respondent and the Department of the Treasury agree to waive it in advance. If you want a copy of the transcribed record, you may purchase it.

§ 19.750 What does the suspending official consider in deciding whether to continue or terminate my suspension?

(a) The suspending official bases the decision on all information contained in the official record. The record includes—

(1) All information in support of the suspending official's initial decision to suspend you;

(2) Any further information and argument presented in support of, or opposition to, the suspension; and

(3) Any transcribed record of fact-finding proceedings.

(b) The suspending official may refer disputed material facts to another official for findings of fact. The suspending official may reject any resulting findings, in whole or in part, only after specifically determining them to be arbitrary, capricious, or clearly erroneous.

§ 19.755 When will I know whether the suspension is continued or terminated?

The suspending official must make a written decision whether to continue, modify, or terminate your suspension within 45 days of closing the official record. The official record closes upon the suspending official's receipt of final submissions, information and findings of fact, if any. The suspending official may extend that period for good cause.

§ 19.760 How long may my suspension last?

(a) If legal or debarment proceedings are initiated at the time of, or during your suspension, the suspension may continue until the conclusion of those proceedings. However, if proceedings are not initiated, a suspension may not exceed 12 months.

(b) The suspending official may extend the 12 month limit under paragraph (a) of this section for an additional 6 months if an office of a U.S. Assistant Attorney General, U.S. Attorney, or other responsible prosecuting official requests an extension in writing. In no event may a suspension exceed 18 months without initiating proceedings under paragraph (a) of this section.

(c) The suspending official must notify the appropriate officials under paragraph (b) of this section of an impending termination of a suspension at least 30 days before the 12 month period expires to allow the officials an opportunity to request an extension.

Subpart H—Debarment

§ 19.800 What are the causes for debarment?

We may debar a person for—

(a) Conviction of or civil judgment for—

(1) Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement or transaction;

(2) Violation of Federal or State antitrust statutes, including those proscribing price fixing between competitors, allocation of customers between competitors, and bid rigging;

(3) Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, receiving stolen property, making false claims, or obstruction of justice; or

(4) Commission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects your present responsibility;

(b) Violation of the terms of a public agreement or transaction so serious as to affect the integrity of an agency program, such as—

(1) A willful failure to perform in accordance with the terms of one or more public agreements or transactions;

(2) A history of failure to perform or of unsatisfactory performance of one or more public agreements or transactions; or

(3) A willful violation of a statutory or regulatory provision or requirement applicable to a public agreement or transaction;

(c) Any of the following causes:

(1) A nonprocurement debarment by any Federal agency taken before October 1, 1988, or a procurement debarment by any Federal agency taken pursuant to 48 CFR part 9, subpart 9.4, before August 25, 1995;

(2) Knowingly doing business with an ineligible person, except as permitted under § 19.120;

(3) Failure to pay a single substantial debt, or a number of outstanding debts (including disallowed costs and overpayments, but not including sums owed the Federal Government under the Internal Revenue Code) owed to any Federal agency or instrumentality, provided the debt is uncontested by the debtor or, if contested, provided that the debtor's legal and administrative remedies have been exhausted;

(4) Violation of a material provision of a voluntary exclusion agreement entered into under § 19.640 or of any settlement of a debarment or suspension action; or

(5) Violation of the provisions of the Drug-Free Workplace Act of 1988 (41 U.S.C. 701); or

(d) Any other cause of so serious or compelling a nature that it affects your present responsibility.

§ 19.805 What notice does the debarring official give me if I am proposed for debarment?

After consideration of the causes in § 19.800 of this subpart, if the debarring official proposes to debar you, the official sends you a Notice of Proposed Debarment, pursuant to § 19.615, advising you—

(a) That the debarring official is considering debarring you;

(b) Of the reasons for proposing to debar you in terms sufficient to put you on notice of the conduct or transactions upon which the proposed debarment is based;

(c) Of the cause(s) under § 19.800 upon which the debarring official relied for proposing your debarment;

(d) Of the applicable provisions of this subpart, Subpart F of this part, and any other Department of the Treasury procedures governing debarment; and

(e) Of the governmentwide effect of a debarment from procurement and nonprocurement programs and activities.

§ 19.810 When does a debarment take effect?

A debarment is not effective until the debarring official issues a decision. The debarring official does not issue a

decision until the respondent has had an opportunity to contest the proposed debarment.

§ 19.815 How may I contest a proposed debarment?

If you as a respondent wish to contest a proposed debarment, you or your representative must provide the debarring official with information in opposition to the proposed debarment. You may do this orally or in writing, but any information provided orally that you consider important must also be submitted in writing for the official record.

§ 19.820 How much time do I have to contest a proposed debarment?

(a) As a respondent you or your representative must either send, or make arrangements to appear and present, the information and argument to the debarring official within 30 days after you receive the Notice of Proposed Debarment.

(b) We consider the Notice of Proposed Debarment to be received by you—

(1) When delivered, if we mail the notice to the last known street address, or five days after we send it if the letter is undeliverable;

(2) When sent, if we send the notice by facsimile or five days after we send it if the facsimile is undeliverable; or

(3) When delivered, if we send the notice by e-mail or five days after we send it if the e-mail is undeliverable.

§ 19.825 What information must I provide to the debarring official if I contest a proposed debarment?

(a) In addition to any information and argument in opposition, as a respondent your submission to the debarring official must identify—

(1) Specific facts that contradict the statements contained in the Notice of Proposed Debarment. Include any information about any of the factors listed in § 19.860. A general denial is insufficient to raise a genuine dispute over facts material to the debarment;

(2) All existing, proposed, or prior exclusions under regulations implementing E.O. 12549 and all similar actions taken by Federal, State, or local agencies, including administrative agreements that affect only those agencies;

(3) All criminal and civil proceedings not included in the Notice of Proposed Debarment that grew out of facts relevant to the cause(s) stated in the notice; and

(4) All of your affiliates.

(b) If you fail to disclose this information, or provide false information, the Department of the Treasury may seek further criminal, civil or administrative action against you, as appropriate.

§ 19.830 Under what conditions do I get an additional opportunity to challenge the facts on which a proposed debarment is based?

(a) You as a respondent will not have an additional opportunity to challenge the facts if the debarring official determines that—

(1) Your debarment is based upon a conviction or civil judgment;

(2) Your presentation in opposition contains only general denials to information contained in the Notice of Proposed Debarment; or

(3) The issues raised in your presentation in opposition to the proposed debarment are not factual in nature, or are not material to the debarring official's decision whether to debar.

(b) You will have an additional opportunity to challenge the facts if the debarring official determines that—

(1) The conditions in paragraph (a) of this section do not exist; and

(2) Your presentation in opposition raises a genuine dispute over facts material to the proposed debarment.

(c) If you have an opportunity to challenge disputed material facts under this section, the debarring official or designee must conduct additional proceedings to resolve those facts.

§ 19.835 Are debarment proceedings formal?

(a) Debarment proceedings are conducted in a fair and informal manner. The debarring official may use flexible procedures to allow you as a respondent to present matters in opposition. In so doing, the debarring official is not

required to follow formal rules of evidence or procedure in creating an official record upon which the official will base the decision whether to debar.

(b) You or your representative must submit any documentary evidence you want the debarring official to consider.

§ 19.840 How is fact-finding conducted?

(a) If fact-finding is conducted—

(1) You may present witnesses and other evidence, and confront any witness presented; and

(2) The fact-finder must prepare written findings of fact for the record.

(b) A transcribed record of fact-finding proceedings must be made, unless you as a respondent and the Department of the Treasury agree to waive it in advance. If you want a copy of the transcribed record, you may purchase it.

§ 19.845 What does the debarring official consider in deciding whether to debar me?

(a) The debarring official may debar you for any of the causes in § 19.800. However, the official need not debar you even if a cause for debarment exists. The official may consider the seriousness of your acts or omissions and the mitigating or aggravating factors set forth at § 19.860.

(b) The debarring official bases the decision on all information contained in the official record. The record includes—

(1) All information in support of the debarring official's proposed debarment;

(2) Any further information and argument presented in support of, or in opposition to, the proposed debarment; and

(3) Any transcribed record of fact-finding proceedings.

(c) The debarring official may refer disputed material facts to another official for findings of fact. The debarring official may reject any resultant findings, in whole or in part, only after specifically determining them to be arbitrary, capricious, or clearly erroneous.

§ 19.850 What is the standard of proof in a debarment action?

(a) In any debarment action, we must establish the cause for debarment by a preponderance of the evidence.

(b) If the proposed debarment is based upon a conviction or civil judgment, the standard of proof is met.

§ 19.855 Who has the burden of proof in a debarment action?

(a) We have the burden to prove that a cause for debarment exists.

(b) Once a cause for debarment is established, you as a respondent have the burden of demonstrating to the satisfaction of the debarring official that you are presently responsible and that debarment is not necessary.

§ 19.860 What factors may influence the debarring official's decision?

This section lists the mitigating and aggravating factors that the debarring official may consider in determining whether to debar you and the length of your debarment period. The debarring official may consider other factors if appropriate in light of the circumstances of a particular case. The existence or nonexistence of any factor, such as one of those set forth in this section, is not necessarily determinative of your present responsibility. In making a debarment decision, the debarring official may consider the following factors:

(a) The actual or potential harm or impact that results or may result from the wrongdoing.

(b) The frequency of incidents and/or duration of the wrongdoing.

(c) Whether there is a pattern or prior history of wrongdoing. For example, if you have been found by another Federal agency or a State agency to have engaged in wrongdoing similar to that found in the debarment action, the existence of this fact may be used by the debarring official in determining that you have a pattern or prior history of wrongdoing.

(d) Whether you are or have been excluded or disqualified by an agency of the Federal Government or have not been allowed to participate in State or local contracts or assistance agreements on a basis of conduct similar to

one or more of the causes for debarment specified in this part.

(e) Whether you have entered into an administrative agreement with a Federal agency or a State or local government that is not governmentwide but is based on conduct similar to one or more of the causes for debarment specified in this part.

(f) Whether and to what extent you planned, initiated, or carried out the wrongdoing.

(g) Whether you have accepted responsibility for the wrongdoing and recognize the seriousness of the misconduct that led to the cause for debarment.

(h) Whether you have paid or agreed to pay all criminal, civil and administrative liabilities for the improper activity, including any investigative or administrative costs incurred by the government, and have made or agreed to make full restitution.

(i) Whether you have cooperated fully with the government agencies during the investigation and any court or administrative action. In determining the extent of cooperation, the debarring official may consider when the cooperation began and whether you disclosed all pertinent information known to you.

(j) Whether the wrongdoing was pervasive within your organization.

(k) The kind of positions held by the individuals involved in the wrongdoing.

(l) Whether your organization took appropriate corrective action or remedial measures, such as establishing ethics training and implementing programs to prevent recurrence.

(m) Whether your principals tolerated the offense.

(n) Whether you brought the activity cited as a basis for the debarment to the attention of the appropriate government agency in a timely manner.

(o) Whether you have fully investigated the circumstances surrounding the cause for debarment and, if so, made the result of the investigation available to the debarring official.

(p) Whether you had effective standards of conduct and internal control systems in place at the time the questioned conduct occurred.

(q) Whether you have taken appropriate disciplinary action against the individuals responsible for the activity which constitutes the cause for debarment.

(r) Whether you have had adequate time to eliminate the circumstances within your organization that led to the cause for the debarment.

(s) Other factors that are appropriate to the circumstances of a particular case.

§ 19.865 How long may my debarment last?

(a) If the debarring official decides to debar you, your period of debarment will be based on the seriousness of the cause(s) upon which your debarment is based. Generally, debarment should not exceed three years. However, if circumstances warrant, the debarring official may impose a longer period of debarment.

(b) In determining the period of debarment, the debarring official may consider the factors in § 19.860. If a suspension has preceded your debarment, the debarring official must consider the time you were suspended.

(c) If the debarment is for a violation of the provisions of the Drug-Free Workplace Act of 1988, your period of debarment may not exceed five years.

§ 19.870 When do I know if the debarring official debars me?

(a) The debarring official must make a written decision whether to debar within 45 days of closing the official record. The official record closes upon the debarring official's receipt of final submissions, information and findings of fact, if any. The debarring official may extend that period for good cause.

(b) The debarring official sends you written notice, pursuant to § 19.615 that the official decided, either—

(1) Not to debar you; or

(2) To debar you. In this event, the notice:

(i) Refers to the Notice of Proposed Debarment;

(ii) Specifies the reasons for your debarment;

(iii) States the period of your debarment, including the effective dates; and

(iv) Advises you that your debarment is effective for covered transactions and contracts that are subject to the

Federal Acquisition Regulation (48 CFR chapter 1), throughout the executive branch of the Federal Government unless an agency head or an authorized designee grants an exception.

§ 19.875 May I ask the debarring official to reconsider a decision to debar me?

Yes, as a debarred person you may ask the debarring official to reconsider the debarment decision or to reduce the time period or scope of the debarment. However, you must put your request in writing and support it with documentation.

§ 19.880 What factors may influence the debarring official during reconsideration?

The debarring official may reduce or terminate your debarment based on—

(a) Newly discovered material evidence;

(b) A reversal of the conviction or civil judgment upon which your debarment was based;

(c) A bona fide change in ownership or management;

(d) Elimination of other causes for which the debarment was imposed; or

(e) Other reasons the debarring official finds appropriate.

§ 19.885 May the debarring official extend a debarment?

(a) Yes, the debarring official may extend a debarment for an additional period, if that official determines that an extension is necessary to protect the public interest.

(b) However, the debarring official may not extend a debarment solely on the basis of the facts and circumstances upon which the initial debarment action was based.

(c) If the debarring official decides that a debarment for an additional period is necessary, the debarring official must follow the applicable procedures in this subpart, and subpart F of this part, to extend the debarment.

Subpart I—Definitions

§ 19.900 Adequate evidence.

Adequate evidence means information sufficient to support the reasonable belief that a particular act or omission has occurred.

§ 19.905 Affiliate.

Persons are *affiliates* of each other if, directly or indirectly, either one controls or has the power to control the other or a third person controls or has the power to control both. The ways we use to determine control include, but are not limited to—

(a) Interlocking management or ownership;

(b) Identity of interests among family members;

(c) Shared facilities and equipment;

(d) Common use of employees; or

(e) A business entity which has been organized following the exclusion of a person which has the same or similar management, ownership, or principal employees as the excluded person.

§ 19.910 Agency.

Agency means any United States executive department, military department, defense agency, or any other agency of the executive branch. Other agencies of the Federal government are not considered ''agencies'' for the purposes of this part unless they issue regulations adopting the governmentwide Debarment and Suspension system under Executive orders 12549 and 12689.

§ 19.915 Agent or representative.

Agent or representative means any person who acts on behalf of, or who is authorized to commit, a participant in a covered transaction.

§ 19.920 Civil judgment.

Civil judgment means the disposition of a civil action by any court of competent jurisdiction, whether by verdict, decision, settlement, stipulation, other disposition which creates a civil liability for the complained of wrongful acts, or a final determination of liability under the Program Fraud Civil Remedies Act of 1988 (31 U.S.C. 3801–3812).

§ 19.925 Conviction.

Conviction means—

(a) A judgment or any other determination of guilt of a criminal offense by any court of competent jurisdiction,

whether entered upon a verdict or plea, including a plea of nolo contendere; or

(b) Any other resolution that is the functional equivalent of a judgment, including probation before judgment and deferred prosecution. A disposition without the participation of the court is the functional equivalent of a judgment only if it includes an admission of guilt.

§ 19.930 Debarment.

Debarment means an action taken by a debarring official under subpart H of this part to exclude a person from participating in covered transactions and transactions covered under the Federal Acquisition Regulation (48 CFR chapter 1). A person so excluded is debarred.

§ 19.935 Debarring official.

(a) *Debarring official* means an agency official who is authorized to impose debarment. A debarring official is either—

(1) The agency head; or

(2) An official designated by the agency head.

(b) [Reserved]

§ 19.940 Disqualified.

Disqualified means that a person is prohibited from participating in specified Federal procurement or nonprocurement transactions as required under a statute, Executive order (other than Executive Orders 12549 and 12689) or other authority. Examples of disqualifications include persons prohibited under—

(a) The Davis-Bacon Act (40 U.S.C. 276(a));

(b) The equal employment opportunity acts and Executive orders; or

(c) The Clean Air Act (42 U.S.C. 7606), Clean Water Act (33 U.S.C. 1368) and Executive Order 11738 (3 CFR, 1973 Comp., p. 799).

§ 19.945 Excluded or exclusion.

Excluded or exclusion means—

(a) That a person or commodity is prohibited from being a participant in covered transactions, whether the person has been suspended; debarred; proposed for debarment under 48 CFR part 9, subpart 9.4; voluntarily excluded; or

(b) The act of excluding a person.

§ 19.950 Excluded Parties List System

Excluded Parties List System (EPLS) means the list maintained and disseminated by the General Services Administration (GSA) containing the names and other information about persons who are ineligible. The *EPLS* system includes the printed version entitled, ''List of Parties Excluded or Disqualified from Federal Procurement and Nonprocurement Programs,'' so long as published.

§ 19.955 Indictment.

Indictment means an indictment for a criminal offense. A presentment, information, or other filing by a competent authority charging a criminal offense shall be given the same effect as an indictment.

§ 19.960 Ineligible or ineligibility.

Ineligible or ineligibility means that a person or commodity is prohibited from covered transactions because of an exclusion or disqualification.

§ 19.965 Legal proceedings.

Legal proceedings means any criminal proceeding or any civil judicial proceeding, including a proceeding under the Program Fraud Civil Remedies Act (31 U.S.C. 3801–3812), to which the Federal Government or a State or local government or quasi-governmental authority is a party. The term also includes appeals from those proceedings.

§ 19.970 Nonprocurement transaction.

(a) *Nonprocurement transaction* means any transaction, regardless of type (except procurement contracts), including, but not limited to the following:

(1) Grants.

(2) Cooperative agreements.

(3) Scholarships.

(4) Fellowships.

(5) Contracts of assistance.

(6) Loans.

(7) Loan guarantees.

(8) Subsidies.

(9) Insurances.

(10) Payments for specified uses.

(11) Donation agreements.

(b) A nonprocurement transaction at any tier does not require the transfer of Federal funds.

§ 19.975 Notice.

Notice means a written communication served in person, sent by certified mail or its equivalent, or sent electronically by e-mail or facsimile. (See § 19. 615.)

§ 19.980 Participant.

Participant means any person who submits a proposal for or who enters into a covered transaction, including an agent or representative of a participant.

§ 19.985 Person.

Person means any individual, corporation, partnership, association, unit of government, or legal entity, however organized.

§ 19.990 Preponderance of the evidence.

Preponderance of the evidence means proof by information that, compared with information opposing it, leads to the conclusion that the fact at issue is more probably true than not.

§ 19.995 Principal.

Principal means—

(a) An officer, director, owner, partner, principal investigator, or other person within a participant with management or supervisory responsibilities related to a covered transaction; or

(b) A consultant or other person, whether or not employed by the participant or paid with Federal funds, who—

(1) Is in a position to handle Federal funds;

(2) Is in a position to influence or control the use of those funds; or,

(3) Occupies a technical or professional position capable of substantially influencing the development or outcome of an activity required to perform the covered transaction.

§ 19.1000 Respondent.

Respondent means a person against whom an agency has initiated a debarment or suspension action.

§ 19.1005 State.

(a) *State* means—

(1) Any of the states of the United States;

(2) The District of Columbia;

(3) The Commonwealth of Puerto Rico;

(4) Any territory or possession of the United States; or

(5) Any agency or instrumentality of a state.

(b) For purposes of this part, *State* does not include institutions of higher education, hospitals, or units of local government.

§ 19.1010 Suspending official.

(a) *Suspending official* means an agency official who is authorized to impose suspension. The suspending official is either:

(1) The agency head; or

(2) An official designated by the agency head.

(b) [Reserved]

§ 19.1015 Suspension.

Suspension is an action taken by a suspending official under subpart G of this part that immediately prohibits a person from participating in covered transactions and transactions covered under the Federal Acquisition Regulation (48 CFR chapter 1) for a temporary period, pending completion of an agency investigation and any judicial or administrative proceedings that may ensue. A person so excluded is suspended.

§ 19.1020 Voluntary exclusion or voluntarily excluded.

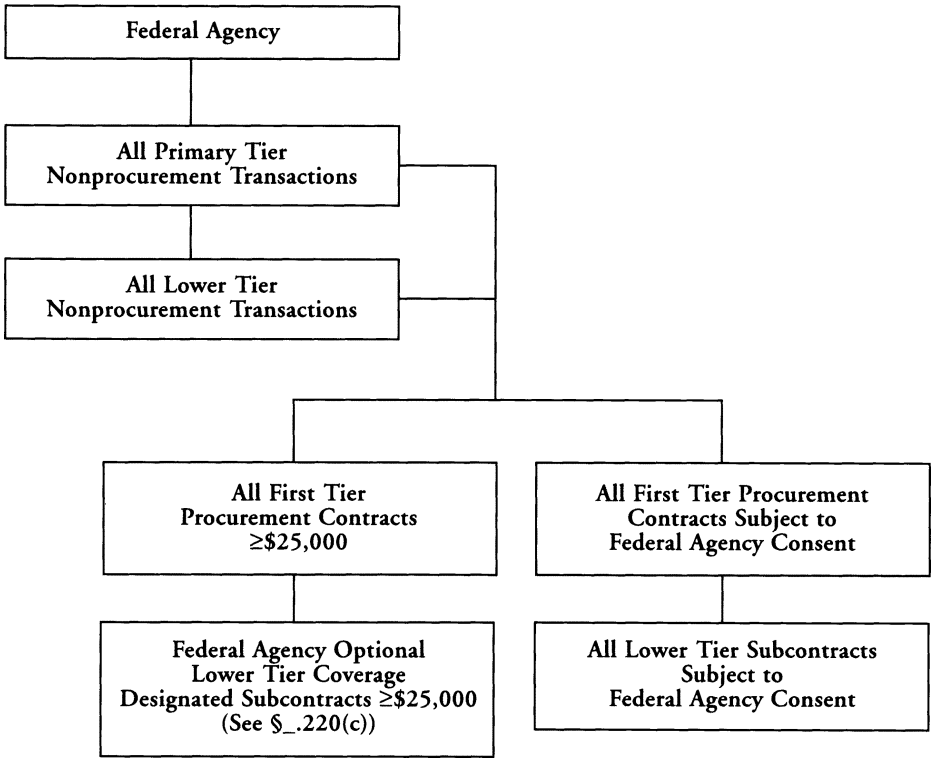
(a) *Voluntary exclusion* means a person's agreement to be excluded under the terms of a settlement between the person and one or more agencies. Voluntary exclusion must have governmentwide effect.

(b) *Voluntarily excluded* means the status of a person who has agreed to a voluntary exclusion.

Subpart J [Reserved]

APPENDIX TO PART 19—COVERED TRANSACTIONS

COVERED TRANSACTIONS



PART 20—GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (FINANCIAL ASSISTANCE)

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20.105 Does this part apply to me?
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AUTHORITY: 41 U.S.C. 701, *et seq.*

SOURCE: 68 FR 66557, 66607, Nov. 26, 2003, unless otherwise noted.

Subpart A—Purpose and Coverage

§ 20.100 What does this part do?

This part carries out the portion of the Drug-Free Workplace Act of 1988 (41 U.S.C. 701 *et seq.*, as amended) that applies to grants. It also applies the provisions of the Act to cooperative agreements and other financial assistance awards, as a matter of Federal Government policy.

§ 20.105 Does this part apply to me?

(a) Portions of this part apply to you if you are either—

(1) A recipient of an assistance award from the Department of the Treasury; or

(2) A(n) Department of the Treasury awarding official. (See definitions of award and recipient in §§ 20.605 and 20.660, respectively.)

(b) The following table shows the subparts that apply to you:

If you are . . .	see subparts . . .
(1) A recipient who is not an individual	A, B and E.
(2) A recipient who is an individual	A, C and E.
(3) A(n) Department of the Treasury awarding official	A, D and E.

§ 20.110 Are any of my Federal assistance awards exempt from this part?

This part does not apply to any award that the Secretary of the Treasury determines that the application of this part would be inconsistent with the international obligations of the United States or the laws or regulations of a foreign government.

§ 20.115 Does this part affect the Federal contracts that I receive?

It will affect future contract awards indirectly if you are debarred or suspended for a violation of the requirements of this part, as described in § 20.510(c). However, this part does not apply directly to procurement contracts. The portion of the Drug-Free Workplace Act of 1988 that applies to Federal procurement contracts is carried out through the Federal Acquisition Regulation in chapter 1 of Title 48 of the Code of Federal Regulations (the drug-free workplace coverage currently is in 48 CFR part 23, subpart 23.5).

Subpart B—Requirements for Recipients Other Than Individuals

§ 20.200 What must I do to comply with this part?

There are two general requirements if you are a recipient other than an individual.

(a) First, you must make a good faith effort, on a continuing basis, to maintain a drug-free workplace. You must agree to do so as a condition for receiving any award covered by this part.

The specific measures that you must take in this regard are described in more detail in subsequent sections of this subpart. Briefly, those measures are to—

(1) Publish a drug-free workplace statement and establish a drug-free awareness program for your employees (see §§ 20.205 through 20.220); and

(2) Take actions concerning employees who are convicted of violating drug statutes in the workplace (see § 20.225).

(b) Second, you must identify all known workplaces under your Federal awards (see § 20.230).

§ 20.205 What must I include in my drug-free workplace statement?

You must publish a statement that—

(a) Tells your employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in your workplace;

(b) Specifies the actions that you will take against employees for violating that prohibition; and

(c) Lets each employee know that, as a condition of employment under any award, he or she:

(1) Will abide by the terms of the statement; and

(2) Must notify you in writing if he or she is convicted for a violation of a criminal drug statute occurring in the workplace and must do so no more than five calendar days after the conviction.

§ 20.210 To whom must I distribute my drug-free workplace statement?

You must require that a copy of the statement described in § 20.205 be given to each employee who will be engaged in the performance of any Federal award.

§ 20.215 What must I include in my drug-free awareness program?

You must establish an ongoing drug-free awareness program to inform employees about—

(a) The dangers of drug abuse in the workplace;

(b) Your policy of maintaining a drug-free workplace;

(c) Any available drug counseling, rehabilitation, and employee assistance programs; and

(d) The penalties that you may impose upon them for drug abuse violations occurring in the workplace.

§ 20.220 By when must I publish my drug-free workplace statement and establish my drug-free awareness program?

If you are a new recipient that does not already have a policy statement as described in § 20.205 and an ongoing awareness program as described in § 20.215, you must publish the statement and establish the program by the time given in the following table:

If . . .	then you . . .
(a) The performance period of the award is less than 30 days	must have the policy statement and program in place as soon as possible, but before the date on which performance is expected to be completed.
(b) The performance period of the award is 30 days or more ...	must have the policy statement and program in place within 30 days after award.
(c) You believe there are extraordinary circumstances that will require more than 30 days for you to publish the policy statement and establish the awareness program.	may ask the Department of the Treasury awarding official to give you more time to do so. The amount of additional time, if any, to be given is at the discretion of the awarding official.

§ 20.225 What actions must I take concerning employees who are convicted of drug violations in the workplace?

There are two actions you must take if an employee is convicted of a drug violation in the workplace:

(a) First, you must notify Federal agencies if an employee who is engaged in the performance of an award informs you about a conviction, as required by § 20.205(c)(2), or you otherwise learn of the conviction. Your notification to the Federal agencies must__

(1) Be in writing;

(2) Include the employee's position title;

(3) Include the identification number(s) of each affected award;

(4) Be sent within ten calendar days after you learn of the conviction; and

(5) Be sent to every Federal agency on whose award the convicted employee was working. It must be sent to every awarding official or his or her official designee, unless the Federal agency has specified a central point for the receipt of the notices.

(b) Second, within 30 calendar days of learning about an employee's conviction, you must either__

(1) Take appropriate personnel action against the employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973 (29 U.S.C. 794), as amended; or

(2) Require the employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for these purposes by a Federal, State or local health, law enforcement, or other appropriate agency.

§ 20.230 How and when must I identify workplaces?

(a) You must identify all known workplaces under each Department of the Treasury award. A failure to do so is a violation of your drug-free workplace requirements. You may identify the workplaces__

(1) To the Department of the Treasury official that is making the award, either at the time of application or upon award; or

(2) In documents that you keep on file in your offices during the performance of the award, in which case you must make the information available for inspection upon request by Department of the Treasury officials or their designated representatives.

(b) Your workplace identification for an award must include the actual address of buildings (or parts of buildings) or other sites where work under the award takes place. Categorical descriptions may be used (*e.g.*, all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios).

(c) If you identified workplaces to the Department of the Treasury awarding official at the time of application or award, as described in paragraph (a)(1) of this section, and any workplace that you identified changes during the performance of the award, you must inform the Department of the Treasury awarding official.

Subpart C—Requirements for Recipients Who Are Individuals

§ 20.300 What must I do to comply with this part if I am an individual recipient?

As a condition of receiving a(n) Department of the Treasury award, if you are an individual recipient, you must agree that—

(a) You will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity related to the award; and

(b) If you are convicted of a criminal drug offense resulting from a violation occurring during the conduct of any award activity, you will report the conviction:

(1) In writing.

(2) Within 10 calendar days of the conviction.

(3) To the Department of the Treasury awarding official or other designee for each award that you currently have, unless § 20.301 or the award document designates a central point for the receipt of the notices. When notice is made to a central point, it must include the identification number(s) of each affected award.

§ 20.301 [Reserved]

Subpart D—Responsibilities of Department of the Treasury Awarding Officials

§ 20.400 What are my responsibilities as a(n) Department of the Treasury awarding official?

As a(n) Department of the Treasury awarding official, you must obtain each recipient's agreement, as a condition of the award, to comply with the requirements in—

(a) Subpart B of this part, if the recipient is not an individual; or

(b) Subpart C of this part, if the recipient is an individual.

Subpart E—Violations of this Part and Consequences

§ 20.500 How are violations of this part determined for recipients other than individuals?

A recipient other than an individual is in violation of the requirements of this part if the Secretary of the Treasury determines, in writing, that—

(a) The recipient has violated the requirements of subpart B of this part; or

(b) The number of convictions of the recipient's employees for violating criminal drug statutes in the workplace is large enough to indicate that the recipient has failed to make a good faith effort to provide a drug-free workplace.

§ 20.505 How are violations of this part determined for recipients who are individuals?

An individual recipient is in violation of the requirements of this part if the Secretary of the Treasury determines, in writing, that—

(a) The recipient has violated the requirements of subpart C of this part; or

(b) The recipient is convicted of a criminal drug offense resulting from a violation occurring during the conduct of any award activity.

§ 20.510 What actions will the Federal Government take against a recipient determined to have violated this part?

If a recipient is determined to have violated this part, as described in § 20.500 or § 20.505, the Department of the Treasury may take one or more of the following actions—

(a) Suspension of payments under the award;

(b) Suspension or termination of the award; and

(c) Suspension or debarment of the recipient under 22 CFR Part 19, for a period not to exceed five years.

§ 20.515 Are there any exceptions to those actions?

The Secretary of the Treasury may waive with respect to a particular award, in writing, a suspension of payments under an award, suspension or termination of an award, or suspension or debarment of a recipient if the Secretary of the Treasury determines that such a waiver would be in the public interest. This exception authority cannot be delegated to any other official.

Subpart F—Definitions

§ 20.605 Award.

Award means an award of financial assistance by the Department of the Treasury or other Federal agency directly to a recipient.

(a) The term award includes:

(1) A Federal grant or cooperative agreement, in the form of money or property in lieu of money.

(2) [Reserved]

(b) The term award does not include:

(1) Technical assistance that provides services instead of money.

(2) Loans.

(3) Loan guarantees.

(4) Interest subsidies.

(5) Insurance.

(6) Direct appropriations.

(7) Veterans' benefits to individuals (*i.e.,* any benefit to veterans, their families, or survivors by virtue of the service of a veteran in the Armed Forces of the United States).

§ 20.610 Controlled substance.

Controlled substance means a controlled substance in schedules I through V of the Controlled Substances Act (21 U.S.C. 812), and as further defined by regulation at 21 CFR 1308.11 through 1308.15.

§ 20.615 Conviction.

Conviction means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes.

§ 20.620 Cooperative agreement.

Cooperative agreement means an award of financial assistance that, consistent with 31 U.S.C. 6305, is used to enter into the same kind of relationship as a grant (see definition of grant in § 20.650), except that substantial involvement is expected between the Federal agency and the recipient when carrying out the activity contemplated

by the award. The term does not include cooperative research and development agreements as defined in 15 U.S.C. 3710a.

§ 20.625 Criminal drug statute.

Criminal drug statute means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance.

§ 20.630 Debarment.

Debarment means an action taken by a Federal agency to prohibit a recipient from participating in Federal Government procurement contracts and covered nonprocurement transactions. A recipient so prohibited is debarred, in accordance with the Federal Acquisition Regulation for procurement contracts (48 CFR part 9, subpart 9.4) and the common rule, Government-wide Debarment and Suspension (Nonprocurement), that implements Executive Order 12549 and Executive Order 12689.

§ 20.635 Drug-free workplace.

Drug-free workplace means a site for the performance of work done in connection with a specific award at which employees of the recipient are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance.

§ 20.640 Employee.

(a) *Employee* means the employee of a recipient directly engaged in the performance of work under the award, including—

(1) All direct charge employees;

(2) All indirect charge employees, unless their impact or involvement in the performance of work under the award is insignificant to the performance of the award; and

(3) Temporary personnel and consultants who are directly engaged in the performance of work under the award and who are on the recipient's payroll.

(b) This definition does not include workers not on the payroll of the recipient (*e.g.*, volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the payroll; or employees of subrecipients or subcontractors in covered workplaces).

§ 20.645 Federal agency or agency.

Federal agency or agency means any United States executive department, military department, government corporation, government controlled corporation, any other establishment in the executive branch (including the Executive Office of the President), or any independent regulatory agency.

§ 20.650 Grant.

Grant means an award of financial assistance that, consistent with 31 U.S.C. 6304, is used to enter into a relationship—

(a) The principal purpose of which is to transfer a thing of value to the recipient to carry out a public purpose of support or stimulation authorized by a law of the United States, rather than to acquire property or services for the Federal Government's direct benefit or use; and

(b) In which substantial involvement is not expected between the Federal agency and the recipient when carrying out the activity contemplated by the award.

§ 20.655 Individual.

Individual means a natural person.

§ 20.660 Recipient.

Recipient means any individual, corporation, partnership, association, unit of government (except a Federal agency) or legal entity, however organized, that receives an award directly from a Federal agency.

§ 20.665 State.

State means any of the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States.

§ 20.670 Suspension.

Suspension means an action taken by a Federal agency that immediately prohibits a recipient from participating in Federal Government procurement contracts and covered nonprocurement transactions for a temporary period, pending completion of

an investigation and any judicial or administrative proceedings that may ensue. A recipient so prohibited is suspended, in accordance with the Federal Acquisition Regulation for procurement contracts (48 CFR part 9, subpart 9.4) and the common rule, Government-wide Debarment and Suspension (Nonprocurement), that implements Executive Order 12549 and Executive Order 12689. Suspension of a recipient is a distinct and separate action from suspension of an award or suspension of payments under an award.

PART 21—NEW RESTRICTIONS ON LOBBYING

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21.110 Certification and disclosure.

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Subpart E—Exemptions

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APPENDIX A TO PART 21—CERTIFICATION REGARDING LOBBYING
APPENDIX B TO PART 21—DISCLOSURE FORM TO REPORT LOBBYING

AUTHORITY: Sec. 319, Pub. L. 101–121 (31 U.S.C. 1352); 31 U.S.C. 321.

SOURCE: 55 FR 6737, 6751, Feb. 26, 1990, unless otherwise noted.

CROSS REFERENCE: See also Office of Management and Budget notice published at 54 FR 52306, December 20, 1989.

Subpart A—General

§ 21.100 Conditions on use of funds.

(a) No appropriated funds may be expended by the recipient of a Federal contract, grant, loan, or cooperative ageement to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(b) Each person who requests or receives from an agency a Federal contract, grant, loan, or cooperative agreement shall file with that agency a certification, set forth in Appendix A, that the person has not made, and will not make, any payment prohibited by paragraph (a) of this section.

(c) Each person who requests or receives from an agency a Federal contract, grant, loan, or a cooperative agreement shall file with that agency a disclosure form, set forth in Appendix B, if such person has made or has agreed to make any payment using nonappropriated funds (to include profits from any covered Federal action), which would be prohibited under paragraph (a) of this section if paid for with appropriated funds.

(d) Each person who requests or receives from an agency a commitment providing for the United States to insure or guarantee a loan shall file with that agency a statement, set forth in Appendix A, whether that person has made or has agreed to make any payment to influence or attempt to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with that loan insurance or guarantee.

(e) Each person who requests or receives from an agency a commitment providing for the United States to insure or guarantee a loan shall file with

that agency a disclosure form, set forth in Appendix B, if that person has made or has agreed to make any payment to influence or attempt to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with that loan insurance or guarantee.

§ 21.105 Definitions.

For purposes of this part:

(a) *Agency,* as defined in 5 U.S.C. 552(f), includes Federal executive departments and agencies as well as independent regulatory commissions and Government corporations, as defined in 31 U.S.C. 9101(1).

(b) *Covered Federal action* means any of the following Federal actions:

(1) The awarding of any Federal contract;

(2) The making of any Federal grant;

(3) The making of any Federal loan;

(4) The entering into of any cooperative agreement; and,

(5) The extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

Covered Federal action does not include receiving from an agency a commitment providing for the United States to insure or guarantee a loan. Loan guarantees and loan insurance are addressed independently within this part.

(c) *Federal contract* means an acquisition contract awarded by an agency, including those subject to the Federal Acquisition Regulation (FAR), and any other acquisition contract for real or personal property or services not subject to the FAR.

(d) *Federal cooperative agreement* means a cooperative agreement entered into by an agency.

(e) *Federal grant* means an award of financial assistance in the form of money, or property in lieu of money, by the Federal Government or a direct appropriation made by law to any person. The term does not include technical assistance which provides services instead of money, or other assistance in the form of revenue sharing, loans, loan guarantees, loan insurance, interest subsidies, insurance, or direct United States cash assistance to an individual.

(f) *Federal loan* means a loan made by an agency. The term does not include loan guarantee or loan insurance.

(g) *Indian tribe* and *tribal organization* have the meaning provided in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450B). Alaskan Natives are included under the definitions of Indian tribes in that Act.

(h) *Influencing or attempting to influence* means making, with the intent to influence, any communication to or appearance before an officer or employee or any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any covered Federal action.

(i) *Loan guarantee* and *loan insurance* means an agency's guarantee or insurance of a loan made by a person.

(j) *Local government* means a unit of government in a State and, if chartered, established, or otherwise recognized by a State for the performance of a governmental duty, including a local public authority, a special district, an intrastate district, a council of governments, a sponsor group representative organization, and any other instrumentality of a local government.

(k) *Officer or employee of an agency* includes the following individuals who are employed by an agency:

(1) An individual who is appointed to a position in the Government under title 5, U.S. Code, including a position under a temporary appointment;

(2) A member of the uniformed services as defined in section 101(3), title 37, U.S. Code;

(3) A special Government employee as defined in section 202, title 18, U.S. Code; and,

(4) An individual who is a member of a Federal advisory committee, as defined by the Federal Advisory Committee Act, title 5, U.S. Code appendix 2.

(l) *Person* means an individual, corporation, company, association, authority, firm, partnership, society, State, and local government, regardless of whether such entity is operated for profit or not for profit. This term

excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

(m) *Reasonable compensation* means, with respect to a regularly employed officer or employee of any person, compensation that is consistent with the normal compensation for such officer or employee for work that is not furnished to, not funded by, or not furnished in cooperation with the Federal Government.

(n) *Reasonable payment* means, with respect to perfessional and other technical services, a payment in an amount that is consistent with the amount normally paid for such services in the private sector.

(o) *Recipient* includes all contractors, subcontractors at any tier, and subgrantees at any tier of the recipient of funds received in connection with a Federal contract, grant, loan, or cooperative agreement. The term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

(p) *Regularly employed* means, with respect to an officer or employee of a person requesting or receiving a Federal contract, grant, loan, or cooperative agreement or a commitment providing for the United States to insure or guarantee a loan, an officer or employee who is employed by such person for at least 130 working days within one year immediately preceding the date of the submission that initiates agency consideration of such person for receipt of such contract, grant, loan, cooperative agreement, loan insurance commitment, or loan guarantee commitment. An officer or employee who is employed by such person for less than 130 working days within one year immediately preceding the date of the submission that initiates agency consideration of such person shall be considered to be regularly employed as soon as he or she is employed by such person for 130 working days.

(q) *State* means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States, an agency or instrumentality of a State, and a multi-State, regional, or interstate entity having governmental duties and powers.

§ 21.110 Certification and disclosure.

(a) Each person shall file a certification, and a disclosure form, if required, with each submission that initiates agency consideration of such person for:

(1) Award of a Federal contract, grant, or cooperative agreement exceeding $100,000; or

(2) An award of a Federal loan or a commitment providing for the United States to insure or guarantee a loan exceeding $150,000.

(b) Each person shall file a certification, and a disclosure form, if required, upon receipt by such person of:

(1) A Federal contract, grant, or cooperative agreement exceeding $100,000; or

(2) A Federal loan or a commitment providing for the United States to insure or guarantee a loan exceeding $150,000, unless such person previously filed a certification, and a disclosure form, if required, under paragraph (a) of this section.

(c) Each person shall file a disclosure form at the end of each calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed by such person under paragraph (a) or (b) of this section. An event that materially affects the accuracy of the information reported includes:

(1) A cumulative increase of $25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered Federal action; or

(2) A change in the person(s) or individual(s) influencing or attempting to influence a covered Federal action; or,

(3) A change in the officer(s), employee(s), or Member(s) contacted to influence or attempt to influence a covered Federal action.

(d) Any person who requests or receives from a person referred to in paragraph (a) or (b) of this section:

(1) A subcontract exceeding $100,000 at any tier under a Federal contract;

(2) A subgrant, contract, or subcontract exceeding $100,000 at any tier under a Federal grant;

(3) A contract or subcontract exceeding $100,000 at any tier under a Federal loan exceeding $150,000; or,

(4) A contract or subcontract exceeding $100,000 at any tier under a Federal cooperative agreement, shall file a certification, and a disclosure form, if required, to the next tier above.

(e) All disclosure forms, but not certifications, shall be forwarded from tier to tier until received by the person referred to in paragraph (a) or (b) of this section. That person shall forward all disclosure forms to the agency.

(f) Any certification or disclosure form filed under paragraph (e) of this section shall be treated as a material representation of fact upon which all receiving tiers shall rely. All liability arising from an erroneous representation shall be borne solely by the tier filing that representation and shall not be shared by any tier to which the erroneous representation is forwarded. Submitting an erroneous certification or disclosure constitutes a failure to file the required certification or disclosure, respectively. If a person fails to file a required certification or disclosure, the United States may pursue all available remedies, including those authorized by section 1352, title 31, U.S. Code.

(g) For awards and commitments in process prior to December 23, 1989, but not made before that date, certifications shall be required at award or commitment, covering activities occurring between December 23, 1989, and the date of award or commitment. However, for awards and commitments in process prior to the December 23, 1989 effective date of these provisions, but not made before December 23, 1989, disclosure forms shall not be required at time of award or commitment but shall be filed within 30 days.

(h) No reporting is required for an activity paid for with appropriated funds if that activity is allowable under either subpart B or C.

Subpart B—Activities by Own Employees

§ 21.200 Agency and legislative liaison.

(a) The prohibition on the use of appropriated funds, in § 21.100 (a), does not apply in the case of a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a Federal contract, grant, loan, or cooperative agreement if the payment is for agency and legislative liaison activities not directly related to a covered Federal action.

(b) For purposes of paragraph (a) of this section, providing any information specifically requested by an agency or Congress is allowable at any time.

(c) For purposes of paragraph (a) of this section, the following agency and legislative liaison activities are allowable at any time only where they are not related to a specific solicitation for any covered Federal action:

(1) Discussing with an agency (including individual demonstrations) the qualities and characteristics of the person's products or services, conditions or terms of sale, and service capabilities; and,

(2) Technical discussions and other activities regarding the application or adaptation of the person's products or services for an agency's use.

(d) For purposes of paragraph (a) of this section, the following agencies and legislative liaison activities are allowable only where they are prior to formal solicitation of any covered Federal action:

(1) Providing any information not specifically requested but necessary for an agency to make an informed decision about initiation of a covered Federal action;

(2) Technical discussions regarding the preparation of an unsolicited proposal prior to its official submission; and,

(3) Capability presentations by persons seeking awards from an agency pursuant to the provisions of the Small Business Act, as amended by Pub. L. 95–507 and other subsequent amendments.

(e) Only those activities expressly authorized by this section are allowable under this section.

§ 21.205 Professional and technical services.

(a) The prohibition on the use of appropriated funds, in § 21.100 (a), does not apply in the case of a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a Federal contract, grant, loan, or cooperative agreement or an extension, continuation, renewal, amendment, or modification of a Federal contract, grant, loan, or cooperative agreement if payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal contract, grant, loan, or cooperative agreement or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal contract, grant, loan, or cooperative agreement.

(b) For purposes of paragraph (a) of this section, ''professional and technical services'' shall be limited to advice and analysis directly applying any professional or technical discipline. For example, drafting of a legal document accompanying a bid or proposal by a lawyer is allowable. Similarly, technical advice provided by an engineer on the performance or operational capability of a piece of equipment rendered directly in the negotiation of a contract is allowable. However, communications with the intent to influence made by a professional (such as a licensed lawyer) or a technical person (such as a licensed accountant) are not allowable under this section unless they provide advice and analysis directly applying their professional or technical expertise and unless the advice or analysis is rendered directly and solely in the preparation, submission or negotiation of a covered Federal action. Thus, for example, communications with the intent to influence made by a lawyer that do not provide legal advice or analysis directly and solely related to the legal aspects of his or her client's proposal, but generally advocate one proposal over another are not allowable under this section because the lawyer is not providing professional legal services. Similarly, communications with the intent to influence made by an engineer providing an engineering analysis prior to the preparation or submission of a bid or proposal are not allowable under this section since the engineer is providing technical services but not directly in the preparation, submission or negotiation of a covered Federal action.

(c) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation, or reasonably expected to be required by law or regulation, and any other requirements in the actual award documents.

(d) Only those services expressly authorized by this section are allowable under this section.

§ 21.210 Reporting.

No reporting is required with respect to payments of reasonable compensation made to regularly employed officers or employees of a person.

Subpart C—Activities by Other Than Own Employees

§ 21.300 Professional and technical services.

(a) The prohibition on the use of appropriated funds, in § 21.100 (a), does not apply in the case of any reasonable payment to a person, other than an officer or employee of a person requesting or receiving a covered Federal action, if the payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal contract, grant, loan, or cooperative agreement or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal contract, grant, loan, or cooperative agreement.

(b) The reporting requirements in § 21.110 (a) and (b) regarding filing a disclosure form by each person, if required, shall not apply with respect to professional or technical services rendered directly in the preparation, submission, or negotiation of any commitment providing for the United States to insure or guarantee a loan.

(c) For purposes of paragraph (a) of this section, ''professional and technical services'' shall be limited to advice and analysis directly applying any professional or technical discipline. For example, drafting or a legal document accompanying a bid or proposal by a lawyer is allowable. Similarly, technical advice provided by an engineer on the performance or operational capability of a piece of equipment rendered directly in the negotiation of a contract is allowable. However, communications with the intent to influence made by a professional (such as a licensed lawyer) or a technical person (such as a licensed accountant) are not allowable under this section unless they provide advice and analysis directly applying their professional or technical expertise and unless the advice or analysis is rendered directly and solely in the preparation, submission or negotiation of a covered Federal action. Thus, for example, communications with the intent to influence made by a lawyer that do not provide legal advice or analysis directly and solely related to the legal aspects of his or her client's proposal, but generally advocate one proposal over another are not allowable under this section because the lawyer is not providing professional legal services. Similarly, communications with the intent to influence made by an engineer providing an engineering analysis prior to the preparation or submission of a bid or proposal are not allowable under this section since the engineer is providing technical services but not directly in the preparation, submission or negotiation of a covered Federal action.

(d) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation, or reasonably expected to be required by law or regulation, and any other requirements in the actual award documents.

(e) Persons other than officers or employees of a person requesting or receiving a covered Federal action include consultants and trade associations.

(f) Only those services expressly authorized by this section are allowable under this section.

Subpart D—Penalties and Enforcement

§ 21.400 Penalties.

(a) Any person who makes an expenditure prohibited herein shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such expenditure.

(b) Any person who fails to file or amend the disclosure form (see Appendix B) to be filed or amended if required herein, shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

(c) A filing or amended filing on or after the date on which an administrative action for the imposition of a civil penalty is commenced does not prevent the imposition of such civil penalty for a failure occurring before that date. An administrative action is commenced with respect to a failure when an investigating official determines in writing to commence an investigation of an allegation of such failure.

(d) In determining whether to impose a civil penalty, and the amount of any such penalty, by reason of a violation by any person, the agency shall consider the nature, circumstances, extent, and gravity of the violation, the effect on the ability of such person to continue in business, any prior violations by such person, the degree of culpability of such person, the ability of the person to pay the penalty, and such other matters as may be appropriate.

(e) First offenders under paragraphs (a) or (b) of this section shall be subject to a civil penalty of $10,000, absent aggravating circumstances. Second and subsequent offenses by persons shall be subject to an appropriate civil penalty between $10,000 and $100,000, as determined by the agency head or his or her designee.

(f) An imposition of a civil penalty under this section does not prevent the United States from seeking any other remedy that may apply to the same conduct that is the basis for the imposition of such civil penalty.

§ 21.405 Penalty procedures.

Agencies shall impose and collect civil penalties pursuant to the provisions of the Program Fraud and Civil Remedies Act, 31 U.S.C. sections 3803 (except subsection (c)), 3804, 3805, 3806, 3807, 3808, and 3812, insofar as these provisions are not inconsistent with the requirements herein.

§ 21.410 Enforcement.

The head of each agency shall take such actions as are necessary to ensure that the provisions herein are vigorously implemented and enforced in that agency.

Subpart E—Exemptions

§ 21.500 Secretary of Defense.

(a) The Secretary of Defense may exempt, on a case-by-case basis, a covered Federal action from the prohibition whenever the Secretary determines, in writing, that such an exemption is in the national interest. The Secretary shall transmit a copy of each such written exemption to Congress immediately after making such a determination.

(b) The Department of Defense may issue supplemental regulations to implement paragraph (a) of this section.

Subpart F—Agency Reports

§ 21.600 Semi-annual compilation.

(a) The head of each agency shall collect and compile the disclosure reports (see Appendix B) and, on May 31 and November 30 of each year, submit to the Secretary of the Senate and the Clerk of the House of Representatives a report containing a compilation of the information contained in the disclosure reports received during the six-month period ending on March 31 or September 30, respectively, of that year.

(b) The report, including the compilation, shall be available for public inspection 30 days after receipt of the report by the Secretary and the Clerk.

(c) Information that involves intelligence matters shall be reported only to the Select Committee on Intelligence of the Senate, the Permanent Select Committee on Intelligence of the House of Representatives, and the Committees on Appropriations of the Senate and the House of Representatives in accordance with procedures agreed to by such committees. Such information shall not be available for public inspection.

(d) Information that is classified under Executive Order 12356 or any successor order shall be reported only to the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives or the Committees on Armed Services of the Senate and the House of Representatives (whichever such committees have jurisdiction of matters involving such information) and to the Committees on Appropriations of the Senate and the House of Representatives in accordance with procedures agreed to by such committees. Such information shall not be available for public inspection.

(e) The first semi-annual compilation shall be submitted on May 31, 1990, and shall contain a compilation of the disclosure reports received from December 23, 1989 to March 31, 1990.

(f) Major agencies, designated by the Office of Management and Budget (OMB), are required to provide machine-readable compilations to the Secretary of the Senate and the Clerk of the House of Representatives no later than with the compilations due on May 31, 1991. OMB shall provide detailed specifications in a memorandum to these agencies.

(g) Non-major agencies are requested to provide machine-readable compilations to the Secretary of the Senate and the Clerk of the House of Representatives.

(h) Agencies shall keep the originals of all disclosure reports in the official files of the agency.

§ 21.605 Inspector General report.

(a) The Inspector General, or other official as specified in paragraph (b) of this section, of each agency shall prepare and submit to Congress each year, commencing with submission of the President's Budget in 1991, an evaluation of the compliance of that agency with, and the effectiveness of, the requirements herein. The evaluation may include any recommended changes that

may be necessary to strengthen or improve the requirements.

(b) In the case of an agency that does not have an Inspector General, the agency official comparable to an Inspector General shall prepare and submit the annual report, or, if there is no such comparable official, the head of the agency shall prepare and submit the annual report.

(c) The annual report shall be submitted at the same time the agency submits its annual budget justifications to Congress.

(d) The annual report shall include the following: All alleged violations relating to the agency's covered Federal actions during the year covered by the report, the actions taken by the head of the agency in the year covered by the report with respect to those alleged violations and alleged violations in previous years, and the amounts of civil penalties imposed by the agency in the year covered by the report.

APPENDIX A TO PART 21—CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, ''Disclosure Form to Report Lobbying,'' in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Statement for Loan Guarantees and Loan Insurance

The undersigned states, to the best of his or her knowledge and belief, that:

If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form-LLL, ''Disclosure Form to Report Lobbying,'' in accordance with its instructions.

Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

APPENDIX B TO PART 21—DISCLOSURE FORM TO REPORT LOBBYING

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB
0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action:
☐ a. contract
b. grant
c. cooperative agreement
d. loan
e. loan guarantee
f. loan insurance

2. Status of Federal Action:
☐ a. bid/offer/application
b. initial award
c. post-award

3. Report Type:
☐ a. initial filing
b. material change
For Material Change Only:
year _____ quarter _____
date of last report _____

4. Name and Address of Reporting Entity:
☐ Prime ☐ Subawardee
Tier _____, *if known*:

Congressional District, *if known*:

5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:

Congressional District, *if known*:

6. Federal Department/Agency:

7. Federal Program Name/Description:

CFDA Number, *if applicable*: _____

8. Federal Action Number, *if known*:

9. Award Amount, *if known*:
$

10. a. Name and Address of Lobbying Entity
(if individual, last name, first name, MI):

b. Individuals Performing Services *(including address if different from No. 10a)*
(last name, first name, MI):

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

11. Amount of Payment *(check all that apply)*:
$ _____ ☐ actual ☐ planned

12. Form of Payment *(check all that apply)*:
☐ a. cash
☐ b. in-kind; specify: nature _____
value _____

13. Type of Payment *(check all that apply)*:
☐ a. retainer
☐ b. one-time fee
☐ c. commission
☐ d. contingent fee
☐ e. deferred
☐ f. other; specify: _____

14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

15. Continuation Sheet(s) SF-LLL-A attached: ☐ Yes ☐ No

16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature: _____
Print Name: _____
Title: _____
Telephone No.: _____ **Date:** _____

Federal Use Only:

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Standard Form - LLL

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee", then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).
11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.
12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.
13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.
14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.
15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.
16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 mintues per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503.

DISCLOSURE OF LOBBYING ACTIVITIES
CONTINUATION SHEET

Approved by OMB
0348-0046

Reporting Entity: _____ **Page** _____ **of** _____

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Standard Form - LLL-A

PART 25—PREPAYMENT OF FOREIGN MILITARY SALES LOANS MADE BY THE DEFENSE SECURITY ASSISTANCE AGENCY AND FOREIGN MILITARY SALES LOANS MADE BY THE FEDERAL FINANCING BANK AND GUARANTEED BY THE DEFENSE SECURITY ASSISTANCE AGENCY

Subpart A—General

Sec.
25.100 Definitions.
25.101 OMB control number.

Subpart B—Qualifications for Prepayment

25.200 General rules.

Subpart C—Procedures

25.300 Application procedure.
25.301 Approval procedure.
25.302 Application withdrawal; effect of approval.
25.303 Closing procedure.

Subpart D—Form of Private Loan

25.400 Loan provisions.
25.401 Fees.
25.402 Transferability.
25.403 Registration.
25.404 Non-separability.
25.405 Form of guaranty.
25.406 Savings clause.

AUTHORITY: Title III, Pub. L. 100–202; 31 U.S.C. 321.

SOURCE: 53 FR 25426, July 6, 1988, unless otherwise noted.

Subpart A—General

§ 25.100 Definitions.

In this part, unless the context indicates otherwise:

(a) *Act* means the provisions entitled ''Foreign Military Sales Debt Reform,'' of Title III, entitled ''Military Assistance,'' of an act entitled ''Foreign Operations, Export Financing and Related Programs Appropriations Act, 1988'' (Pub. L. 100–202), enacted December 22, 1987.

(b) *AECA* means the Arms Export Control Act, as amended (22 U.S.C. 2751 *et seq.*).

(c) *Borrower* means the obligor on an FMS Advance.

(d) *Closing date* means:

(1) With respect to the prepayment of the amounts permitted by this part to be prepaid of FMS Loans held by DSAA, the date designated by the mutual agreement of both the Borrower and DSAA on which the Guaranty will be attached to the Private Loan Note or the Private Loan Portion Notes, as the case may be, the Private Loan will be funded, and the Total Permitted Prepayment Amount, or the portion thereof which the Borrower has selected to prepay, will be prepaid; and

(2) With respect to the prepayment of the amounts permitted by this part to be prepaid of FMS Loans held by the FFB and guaranteed by DSAA, the date designated by the mutual agreement of the Borrower, the FFB, and DSAA on which the Guaranty will be attached to the Private Loan Note or the Private Loan Portion Notes, as the case may be, the Private Loan will be funded, and the Total Permitted Prepayment Amount, or Portion thereof which the Borrower has selected to prepay, will be prepaid.

(e) *Derivative* means any right, interest, instrument or security issued or traded on the credit of the Private Loan or any Private Loan Portion, including but not limited to:

(1) Any participation share of, or undivided ownership or other equity interest in, the Private Loan or any Private Loan Portion;

(2) Any note, bond or other debt instrument or obligation which is collateralized or otherwise secured by a pledge of, or secruity interest in, the Private Loan or any Private Loan Portion; or

(3) Any such interest in such an interest or any such instrument secured by such an instrument.

(f) *DSAA* means the Defense Security Assistance Agency, an agency within the Department of Defense.

(g) *Eligible FMS advance* means any FMS Advance which:

(1) Was outstanding on December 22, 1987;

(2) Has principal amounts becoming due and payable after September 30, 1989; and

(3) Bears interest at a rate equal to or greater than 10 percentum per annum.

Eligible FMS Advance may include FMS Advances meeting the criteria of Eligible FMS Advance which are made on account of FMS Loans even when such FMS Loans do not, in themselves, meet the criteria of Eligible FMS Loan.

(h) *Eligible FMS loan* means any FMS Loan which:

(1) Was outstanding on December 22, 1987;

(2) Has principal amounts becoming due and payable after September 30, 1989; and

(3) Bears interest pursuant to the terms of the loan agreement relating thereto at a consolidated rate equal to or greater than 10 percentum per annum.

Eligible FMS Loans may include FMS Advances which are made on account of FMS Loans meeting the criteria of Eligible FMS Loan even when such FMS Advances do not, in themselves, meet the criteria of Eligible FMS Advance.

(i) *Eligible private lender* means either:

(1) Any of the following entities:

(i) Any banking, savings, or lending institution, or any subsidiary or affiliate thereof, chartered or otherwise lawfully organized under the laws of any State, the District of Columbia, the United States or any territory or possession of the United States, including, but not limited to, any bank, trust company, industrial bank, investment banking company, savings association, savings and loan association, building and loan association, savings bank, credit union, or finance company, which is doing business in the United States;

(ii) Any broker or dealer registered with the Securities and Exchange Commission pursuant to the Securities Exchange Act of 1934;

(iii) Any company lawfully organized as an insurance company, and which is subject to supervision by the insurance commissioner or a similar official or agency of a State; or

(iv) Any United States pension fund; or

(2) Any trust or other special purpose financing entity which is funded initially by an entity or entities of the type described in paragraph (i)(1) of this section.

(j) *FFB* means the Federal Financing Bank, and instrumentality and wholly-owned corporation of the United States.

(k) *FMS* means Foreign Military Sales.

(l) *FMA advance* means:

(1) A disbursement of funds made pursuant to a loan agreement between the Borrower and DSAA, which loan agreement provides for making of an FMS Loan; or

(2) A disbursement of funds made pursuant to a loan agreement between the Borrower and the FFB, which loan agreement provides for the making of an FMS Loan.

(m) *FMS loan* means either:

(1) A loan made directly by the Secretary of Defense pursuant to section 23 of AECA; or

(2) A loan made by the FFB and guaranteed by the Secretary of Defense pursuant to section 24 of AECA; and ''FMS Loans'' mean the aggregate of such loans made to or for the account of a Borrower.

(n) *Guaranteed-amount debt derivative* means any note, bond or other debt instrument or obligation which is collateralized or otherwise secured by a pledge of, or security interest in, the Private Loan Note or any Private Loan Portion Note or any Derivative, as the case may be, which has an exclusive or preferred claim to the Guaranteed Loan Amount or the respective Guaranteed Loan Portion Amount or the respective Guaranteed-Amount Equivalent, as the case may be.

(o) *Guaranteed-amount equity derivative* means any participation share of, or undivided ownership or other equity interest in, the Private Loan or any Private Loan Portion or any Derivative, as the case may be, which has an exclusive or preferred claim to the Guaranteed Loan Amount or the respective Guaranteed Loan Portion Amount or the respective Guaranteed-Amount Equivalent, as the case may be.

(p) *Guaranteed-amount equivalent* means:

(1) With respect to any Derivative which is equal in principal amount to the Private Loan or any Private Loan Portion, that amount of payment on account of such Derivative which is

equal to the Guaranteed Loan Amount or the respective Guaranteed Loan Portion Amount, as the case may be; or

(2) With respect to any Derivatives which in the aggregate are equal in principal amount to the Private Loan or any Private Loan Portion, that amount of payment on account of such derivatives which is equal to the Guaranteed Loan Amount or the respective Guaranteed Loan Portion Amount, as the case may be.

(q) *Guaranteed loan amount* means that amount of payment on account of the Private Loan which is guaranteed under the terms of the Guaranty.

(r) *Guaranteed loan portion amount* means that amount of payment on account of any Private Loan Portion which is guaranteed under the terms of the Guaranty.

(s) *Guaranty* means either a new guaranty of the United States issued by DSAA or an existing guaranty of the United States transferred by DSAA, in the form of guaranty set forth in § 25.405, which guaranty will be attached to a Private Loan Note or Private Loan Portion Note.

(t) *Interest rate difference* means the difference between:

(1) The cost of funds to the Borrower for the Private Loan (expressed in terms of the true rate of interest applicable to the Private Loan) if paragraph (a) of § 25.404 applies to the Private Loan; and

(2) The cost of funds to the Borrower for the Private Loan (expressed in terms of the true rate of interest applicable to the Private Loan) if paragraph (a) of § 25.404 does not apply to the Private Loan.

(u) *Non-registered obligation* means a bearer obligation which does not comply with all of the registration requirements of the Internal Revenue Code.

(v) *Permitted arrears prepayment amount* means the sum of all arrears, if any, on all FMS Loans, which arrears are outstanding on the Closing Date.

(w) *Permitted guaranty holder* means:

(1) An individual domiciled in the United States;

(2) A corporation incorporated, chartered or otherwise organized in the United States; or

(3) A partnership or other juridical entity doing business in the United States.

(x) *Permitted P&I prepayment amount* means, with respect to each Eligible FMS Loan or Eligible FMS Advance, as the case may be, the sum of:

(1) All principal amounts which become due and payable after September 30, 1989, on the respective Eligible FMS Loan or Eligible FMS Advance; and

(2) All unpaid interest, if any, on the respective Eligible FMS Loan or Eligible FMS Advance accrued as of the Closing Date.

(y) *Private loan* means, collectively, the loan or loans that is or are obtained by the Borrower from an Eligible Private Lender to prepay the Total Permitted Prepayment Amount, or the portion thereof which the Borrower has selected to prepay.

(z) *Private loan note* means, collectively, the note or notes executed and delivered by the Borrower to evidence the Private Loan.

(aa) *Private loan portion* means any portion of the Private Loan.

(bb) *Private loan portion note* means any note executed and delivered by the Borrower to evidence a Private Loan Portion.

(cc) *Total permitted prepayment amount* means the sum of:

(1) The aggregate of the respective Permitted P&I Prepayment amount for all Eligible FMS Loans and all Eligible FMS Advances on account of FMS Loans which FMS Loans do not, in themselves, meet the criteria of Eligible FMS Loans; and

(2) The Permitted Arrears Prepayment Amount.

(dd) *Unguaranteed-amount equivalent* means all amounts of payment on account of any Derivative other than the respective Guaranteed-Amount Equivalent.

(ee) *Unguaranteed loan amount* means all amounts of payment on account of the Private Loan other than the Guaranteed Amount.

(ff) *Unguaranteed loan portion amount* means all amounts of payment on account of any Private Loan Portion other than the respective Guaranteed Loan Portion Amount.

§ 25.101 OMB control number.

The reporting requirements in this part have been approved under the Office of Management and Budget control number 1505–0109.

Subpart B—Qualifications for Prepayment

§ 25.200 General rules.

(a) To qualify for a loan prepayment at par pursuant to subsection (a) of the Act, a Borrower must have an Eligible FMS Loan or an Eligible FMS Advance.

(b) A Borrower may prepay the Total Permitted Prepayment Amount in portions using more than one closing; however, all prepayments of the Total Permitted Prepayment Amount must have a Closing Date that is not later than September 30, 1991.

(c) A Borrower may prepay all or a portion of the Total Permitted Prepayment Amount; however, if a Borrower selects to prepay any Permitted P&I Prepayment Amount of an FMS Advance, the Borrower must prepay the entire Permitted P&I Prepayment Amount of such FMS Advance.

(d) If the payment billings of an FMS Loan have been consolidated in accordance with the terms of the respective loan agreement, and if any principal payments have been made on account of the FMS Loan, then the outstanding principal balances of any Eligible FMS Advances shall be determined in accordance with the principal of ''first disbursed, first repaid,'' that is, advances on account of the FMS Loan shall be deemed to have been repaid in the chronological order in which they were disbursed.

Subpart C—Procedures

§ 25.300 Application procedure.

(a) Each Borrower that wishes to prepay at par the Total Permitted Prepayment Amount, or any portion thereof, must submit a written prepayment application. To be considered complete, a prepayment application must contain the following information and materials:

(1) Part I of the prepayment application shall be the identification of each Eligible FMS Loan or Eligible FMS Advance, as the case may be, with respect to which the Borrower has selected to prepay the amount thereof permitted by this part to be prepaid, setting forth with respect to each such Eligible FMS Loan or Eligible FMS Advance:

(i) The date on which the Eligible FMS Advance was made or the date on which the Eligible FMS Loan was signed;

(ii) The original amount of the Eligible FMS Loan or Eligible FMS Advance;

(iii) The principal and interest payment schedule of the Eligible FMS Loan or Eligible FMS Advance; and

(iv) The maturity of the Eligible FMS Loan or Eligible FMS Advance.

(2) Part II of the prepayment application shall be the Borrower's estimate of the Permitted Arrears Prepayment Amount calculated as of the date of the application;

(3) Part III of the prepayment application shall be a description of each Private Loan, 90 percent of which the Borrower seeks to have guaranteed, setting forth with respect to each Private Loan:

(i) The total amount of the Private Loan,

(ii) The proposed principal and interest payment schedule of the Private Loan,

(iii) The proposed maturity of the Private Loan, and

(iv) The identity of each Eligible FMS Loan or Eligible FMS Advance with respect to which amount thereof permitted by this part to be prepaid is to be prepaid with the proceeds of the Private Loan;

(4) Part IV of the prepayment application shall be all material transaction documents, in substantially final form, relating to the prepayment of the Total Permitted Prepayment Amount, or the portion thereof which the Borrower has selected to prepay, with the proceeds of the Private Loan; and

(5) Part V of the prepayment application shall be the name, address, and telephone number of the Borrower's contact person with whom the FFB or DSAA will communicate to arrange for prepayment and closing.

(b) Each prepayment application shall be submitted in triplicate to

DSAA at the following address: Defense Security Assistance Agency, The Pentagon, Washington, DC 20301–2800, Attention: Deputy Comptroller.

(c) A Borrower wishing to obtain preliminary, nonbinding review of a plan to prepay at par the Total Permitted Prepayment Amount, or any portion thereof, may, at the Borrower's option, prior to submitting a prepayment application in accordance with paragraph (a) of this section, submit to DSAA, at the address set forth in paragraph (b) of this section, a written plan of prepayment. To qualify for review, a plan of prepayment must include a detailed description of the proposed financing structure clearly addressing the terms and conditions of the proposed Private Loan. DSAA will review each plan of prepayment submitted by Borrowers and may engage in informal, non-binding discussions with each Borrower that submitted a plan of prepayment to assist such Borrower in preparing a prepayment application.

§ 25.301 Approval procedure.

(a) *Distribution, Review, and Processing by DSAA.* (1) Upon receipt of three copies of a completed prepayment application from a Borrower, DSAA will promptly deliver one copy of Parts I and II of the prepayment application to the State Department and one copy of Parts I, II, and V of the prepayment application to the Treasury Department.

(2) DSAA will review each completed prepayment application to ensure that the Private Loan complies with the requirements of this part, including without limitation the requirements of § 25.400. DSAA will also review each completed prepayment application to ensure that the provisions of subsection (d) of the Act (Purposes and Reports) are considered. DSAA will process each completed prepayment application within 16 days after receipt by DSAA of the respective completed application from a Borrower.

(3) After DSAA has processed a completed prepayment application, DSAA will either:

(i) Return the application to the Borrower; or

(ii) Deliver to the State Department written evidence of the approval of the prepayment application by DSAA.

(b) *Review and Processing by the State Department.* (1) The State Department will review Parts I and II of each prepayment application received by the State Department from DSAA to ensure that the provisions of subsection (d) of the Act (Purposes and Reports) are considered. The State Department will process Parts I and II of each prepayment application within 7 days after receipt by the State Department of written evidence of the approval of the prepayment application by DSAA.

(2) After the State Department has processed Parts I and II of a prepayment application, the State Department will either:

(i) Return the parts of the application to DSAA for return to the Borrower; or

(ii) Deliver to the Treasury Department written evidence of the approvals of the prepayment application by DSAA and the State Department.

(c) *Processing by the Treasury Department*—(1) *FMS Loans held by DSAA.* (i) The Treasury Department will process Parts I and II of each prepayment application regarding an Eligible FMS Loan made by DSAA or an Eligible FMS Advance on account of an FMS Loan made by DSAA, as the case may be, within 7 days after receipt by the Treasury Department of written evidence of the approvals of the prepayment application by DSAA and the State Department;

(ii) After the Treasury Department has processed Parts I and II of a prepayment application, the Treasury Department will return the parts of the application to DSAA, and thereupon DSAA will commence the Closing Procedures described in § 25.303(a) with respect to the application.

(2) *FMS Loans held by the FFB.* (i) The Treasury Department will process Parts I and II of each prepayment application regarding an Eligible FMS Loan made by the FFB and guaranteed by DSAA or an Eligible FMS Advance on account of an FMS Loan made by the FFB and guaranteed by DSAA, as the case may be, within 7 days after receipt by the Treasury Department from the State Department of written evidence of the approvals of the prepayment application by DSAA and the State Department; and

(ii) After the Treasury Department has processed Parts I and II of a prepayment application, the Treasury Department will commence the Closing Procedures described in § 25.303(b) with respect to the application.

§ 25.302 Application withdrawal; effect of approval.

A Borrower that submits a prepayment application may withdraw the prepayment application at any time prior to its approval. Even after a Borrower's prepayment application has been approved, the Borrower is not obligated to prepay its Eligible FMS Loans or Eligible FMS Advances.

§ 25.303 Closing procedure.

(a) *FMS loans held by DSAA.* (1) After the Treasury has processed Parts I and II of a prepayment application regarding an Eligible FMS Loan made by DSAA or an Eligible FMS Advance on account of an FMS Loan made by DSAA, as the case may be, DSAA will communicate with the Borrower's contact person identified in Part V of the prepayment application to establish a Closing Date mutually agreeable to the Borrower and DSAA. DSAA will inform the Borrower of the final amount of the Total Permitted Prepayment Amount, or the portion thereof which the Borrower has selected to prepay, as of the Closing Date established. The determination by DSAA of the final amount of the Total Permitted Prepayment Amount, or the portion thereof which the Borrower has selected to prepay, shall be conclusive.

(2) On the Closing Date, the Guaranty will be attached to the Private Loan Note or the Private Loan Portion Notes, as the case may be, the Private Loan shall be funded, and the Total Permitted Prepayment Amount, or the portion thereof which the Borrower has selected to prepay, will be prepaid.

(3) The attachment of the Guaranty to the Private Loan Note or the Private Loan Portion Notes, as the case may be, will take place at such location as may be designated by the mutual agreement of the Borrower and DSAA.

(4) Prior to 1:00 p.m. prevailing local time in New York, New York, on the Closing Date, immediately available funds in amounts sufficient to prepay the Total Permitted Prepayment Amount, or the portion thereof which the Borrower has selected to prepay, shall be transferred by electronic funds transfer to DSAA at the Treasury Department account at the Federal Reserve Bank of New York. The funds transfer message must include the following credit information:

United States Treasury, New York, New York, 021030004, TREAS NYC/ (5037).

For credit to the Defense Security Assistance Agency, The Pentagon, Washington, DC 20301–2800.

This information must be *exactly* in this form (including spacing between words and numbers) to insure timely receipt by the DSAA. Checks, drafts, and other orders for payment will not be accepted.

(b) *FMS Loans held by the FFB.* (1) After the Treasury Department has processed Parts I and II of a prepayment application regarding an Eligible FMS Loan made by the FFB and guaranteed by DSAA or an Eligible FMS Advance on account of an FMS Loan made by the FFB and guaranteed by DSAA, as the case may be, the FFB will communicate with the Borrower's contact person identified in Part V of the prepayment application to establish a Closing Date mutually agreeable to the Borrower, the FFB, and DSAA. The FFB will inform the Borrower of the final amount of the Total Permitted Prepayment Amount, or the portion thereof which the Borrower has selected to prepay, as of the Closing Date established. The determination by the FFB of the final amount of the Total Permitted Prepayment Amount, or the portion thereof which the Borrower has selected to prepay, shall be conclusive.

(2) On the Closing Date, the Guaranty will be attached to the Private Loan Note or the Private Loan Portion Notes, as the case may be, the Private Loan will be funded, and the Total Permitted Prepayment Amount, or the portion thereof which the Borrower has selected to prepay, will be prepaid.

(3) The attachment of the Guaranty to the Private Loan Note or the Private Loan Portion Notes, as the case

may be, will take place at such location as may be designated by the mutual agreement of the Borrower and DSAA.

(4) Prior to 1:00 p.m. prevailing local time in New York, New York, on the Closing Date, immediately available funds in amounts sufficient to prepay at par the Permitted Prepayment Amount, or the portion thereof which the Borrower has selected to prepay, shall be transferred by electronic funds transfer to the Treasury Department account at the Federal Reserve Bank of New York. The funds transfer message must include the following credit information:

United States Treasury, New York, New York, 021030004, TREAS NYC/ (20180006).

For credit to the Federal Financing Bank, Room 143, Liberty Center Building, 401 14th Street SW., Washington, DC 20227.

This information must be *exactly* in this form (including spacing between words and numbers) to insure timely receipt by the FFB. Checks, drafts, and others for payment will not be accepted.

(c) *Changes in the closing date.* If a Borrower does not prepay the Total Permitted Prepayment Amount or the portion thereof which the Borrower has selected to prepay, on the mutually agreed upon Closing Date, the Borrower may prepay the Total Permitted Prepayment Amount, or the portion thereof which the Borrower has selected to prepay, on a new Closing Date, *provided* that the new Closing Date is mutually agreeable to all interested parties, and *provided, further,* that the Borrower prepays such amount in accordance with the approved prepayment application, adjusted for changes in accrued interest.

Subpart D—Form of Private Loan

§ 25.400 Loan provisions.

(a) Subject to the provisions of paragraph (b) of this section, the principal and interest payment schedule and maturity of the Private Loan must be the same as the payment schedules and maturities of the Eligible FMS Loans or Eligible FMS Advances, as the case may be, which the Borrower has selected to prepay with the proceeds of the Private Loan.

(b) Notwithstanding the preceding paragraph, an Eligible Private Lender that proposes to make a Private Loan, the proceeds of which will be used to prepay Eligible FMS Loans or Eligible FMS Advances, as the case may be, having differing payment structures and maturities, may:

(1) Consolidate the differing payment structures of the Eligible FMS Loans or the Eligible FMS Advances, as the case may be, into a single payment structure which complies with the following criteria:

(i) The Private Loan shall have one set of semi-annual payment dates;

(ii) Interest on and principal of the Private Loan shall be payable semi-annually; and

(iii) The amount of principal to be paid each year on account of the Private Loan shall be equal (rounded to the nearest $1,000.00 if desired, except for the final payment) to the aggregate amount of principal that is scheduled to be paid in such year on account of the respective Eligible FMS Loans or Eligible FMS Advances; or

(2) Consolidate the differing payment structures and maturities of the Eligible FMS Loans or the Eligible FMS Advances, as the case may be, into a single payment structure and maturity complying with the following criteria:

(i) The final maturity date of the Private Loan shall be the approximate weighted average of the final maturity dates of the Eligible FMS Loans or the Eligible FMS Advances with respect to which the Borrower has selected to prepay amounts thereof permitted by this part to be prepaid;

(ii) The initial principal payment date of the Private Loan shall occur no later than the earliest scheduled principal payment date of the Eligible FMS Loans or the Eligible FMS Advances with respect to which the Borrower has selected to prepay amounts thereof permitted by this part to be prepaid;

(iii) The Private Loan shall have one set of semi-annual payment dates;

(iv) Interest on the Private Loan shall be payable semi-annually; and

(v) The principal of the Private Loan shall be payable in equal installments

(rounded to the nearest $1,000.00 if desired, except for the final payment) and shall be payable either semi-annually or annually.

§ 25.401 Fees.

The interest rate on the Private Loan may include compensation for costs at prevailing market rates with the agreement of the Borrower and the Eligible Private Lender selected by the Borrower.

§ 25.402 Transferability.

Each Private Loan Note, with the Guaranty attached, shall be fully and freely transferable to any Permitted Guaranty Holder.

§ 25.403 Registration.

The Guaranty shall cease to be effective with respect to the Private Loan or any Private Loan Portion or any Derivative to the extent that the Private Loan or the respective Private Loan Portion or the respective Derivative, as the case may be, is used to provide significant support for a Non-Registered Obligation.

§ 25.404 Non-separability.

(a) The Guaranty shall cease to be effective with respect to any Guaranteed Loan Amount or any Guaranteed Loan Portion Amount or any Guaranteed-Amount Equivalent to the extent that:

(1) The Guaranteed Amount or the respective Guaranteed Loan Portion Amount or the respective Guaranteed-Amount Equivalent, as the case may be, is separated at any time from the Unguaranteed Loan Amount or the respective Unguaranteed Loan Portion Amount or the respective Unguaranteed-Amount Equivalent, as the case may be, in any way, directly or through the issuance of any Guaranteed-Amount Equity Derivative or any Guaranteed-Amount Debt Derivative; or

(2) Any holder of the Private Loan Note or any Private Loan Portion Note or any Derivative, as the case may be, having a claim to payments on the Private Loan receives more than 90 percent of any payment due to such holder from payments made under the Guaranty at any time during the term of the Private Loan.

(b) Notwithstanding the preceding paragraph, if any Guaranteed-Amount Debt Derivative is issued, the Guaranty shall not cease to be effective with respect to any Guaranteed Loan Amount or any Guaranteed Loan Portion Amount or any Guaranteed-Amount Equivalent, as the case may be, if both of the circumstances described in paragraphs (b)(1) and (b)(2) of this section.

(1) A Borrower shall have delivered to the Secretary of the treasury evidence, in form and substance satisfactory to the Secretary of the Treasury, that the Interest Rate Difference will be substantial.

(i) To be considered, the evidence must meet the following requirements:

(A) The Borrower must show that the Interest Rate Difference is directly attributable to paragraph (a) of this section being applied to the Private Loan, that is, that the Interest Rate Difference will exist even when all other financing terms of the Private Loan, including any collateralization of the Unguaranteed Loan Amount or the respective Unguaranteed Loan Portion Amount or the respective Unguaranteed-Amount Equivalent, as the case may be, are identical;

(B) When calculating the Interest Rate Difference, the Borrower must assume that the Unguaranteed Loan Amount or the respective Unguaranteed Loan Portion Amount or the respective Unguaranteed-Amount Equivalent, as the case may be, will be collateralized by securities backed by the full faith and credit of the United States, unless the Borrower is legally prohibited from so collateralizing the Unguaranteed Loan Amount or the respective Unguaranteed Loan Portion Amount or the respective Unguaranteed-Amount Equivalent, as the case may be, or the Borrower has demonstrated to the satisfaction of the Secretary of the Treasury that the Borrower is unable to so collateralize the Unguaranteed Loan Amount or the respective Unguaranteed Loan Portion Amount or the respective Unguaranteed-Amount Equivalent;

(C) If the Borrower is legally prohibited from collateralizing the Unguaranteed Loan Amount or the respective Loan Guaranteed Portion

Amount or the respective Unguaranteed-Amount Equivalent, as the case may be, with securities backed by the full faith and credit of the United States or has demonstrated to the satisfaction of the Secretary of the Treasury that the Borrower is unable to so collateralize the Unguaranteed Loan Amount or the respective Unguaranteed Loan Portion Amount or the respective Unguaranteed-Amount Equivalent, as the case may be, then the Borrower may calculate the Interest Rate Difference using whatever collateralization assumptions the Borrower elects;

(D) If the Borrower delivers evidence to the Secretary of the Treasury respecting the Interest Rate Difference, which evidence assumes either that the Unguaranteed Loan Amount or the respective Unguaranteed Loan Portion Amount or the respective Unguaranteed-Amount Equivalent, as the case may be, will not be collateralized at all or that the Unguaranteed Loan Amount or the respective Unguaranteed Loan Portion Amount or the respective Unguaranteed-Amount Equivalent, as the case may be, will be collateralized, but not by securities backed by the full faith and credit of the United States, then the Borrower must also deliver to the Secretary of the Treasury the written agreement of the Borrower, which agreement shall be in form and substance satisfactory to the Secretary of the Treasury, that the Borrower will not collateralize the Unguaranteed Loan Amount or the respective Unguaranteed Loan Portion Amount or the respective Unguaranteed-Amount Equivalent, as the case may be, at any time during the term of the Private Loan in any way different from the assumptions used in calculating the Interest Rate Difference; and

(E) The Borrower must deliver to the Secretary of the Treasury the evidence pertaining to the Interest Rate Difference at the time that the Borrower submits to DSAA its plan for prepayment, if any, if no plan of prepayment is submitted, then no later than 10 days prior to the time that the Borrower submits to DSAA its prepayment application.

(ii) If the Secretary of the Treasury determines that the evidence submitted by the Borrower pertaining to the Interest Rate Difference is satisfactory in form and in substance, and that the Interest Rate Difference is substantial, a modified version of the Guaranty (deleting therefrom the provision that the Guaranty shall cease to be effective if any Guaranteed-Amount Debt Derivative is issued) will be attached to the Private Loan Note or the Private Loan Portion Notes, as the case may be.

(2) The Secretary of the Treasury shall have determined, in the sole discretion of the Secretary of the Treasury, that the respective Borrower's loan prepayment at par pursuant to subsection (a) of the Act through the issuance of any Guaranteed-Amount Debt Derivative is necessary to achieve the international economic policy interests of the United States.

§ 25.405 Form of guaranty.

(a) The Guaranty that will be attached to the Private Loan Note on the Closing Date shall be in the following form (except that the bracketed words shall be deleted if the conditions specified in § 25.404(b) shall have occurred):

For Value Received, the Defense Security Assistance Agency of the Department of Defense (''DSAA''), hereby guarantees to (Name of Lender) (''Lender''), incorporated under the laws of (U.S. State or other U.S. jurisdiction) or if not so incorporated or organized, then the principal place of doing business is (U.S. location, address, and zip code), under the authority of Section 24 of the Arms Export Control Act, as amended (''Act''), the due and punctual payment of ninety percent (90%) of amounts due: (1) on the promissory note (''Note'') in the principal amount of up to $_____ dated _____ issued to the Lender by the Government of (Name of Borrower) (''Borrower'') pursuant to the Loan Agreement between the Lender and the Borrower dated the ___th day of _____ (''Agreement''); and (2) the Lender from the Borrower pursuant to the Agreement.

This Guaranty is a guaranty of payment covering all political and credit risks of nonpayment, including any nonpayment arising out of any claim which the Borrower may now or hereafter have against any person, corporation, or other entity (including without limitation, the United States, the Lender, and any supplier of defense items) in connection with any transaction, for any reason whatsoever. This Guaranty shall inure to the

benefit of and shall be enforceable by the Lender and any Permitted Guaranty Holder (as hereinafter defined). This Guaranty shall not be impaired by any law, regulation or decree of the Borrower now or hereafter in effect which might in any manner change any of the terms of the Note or Agreement. The obligation of DSAA hereunder shall be binding irrespective of the irregularity, invalidity or unenforceability under any laws, regulations or decrees of the Borrower of the Note, the Agreement or other instruments related thereto.

DSAA hereby waives diligence, demand, protest, presentment and any requirement that the Lender exhaust any right or power to take any action against the Borrower and any notice of any kind whatsoever other than the demand for payment required to be given to DSAA hereunder in the event of default on a payment due under the Note.

In the event of failure of the Borrower to make payment, when and as due, of any installment of principal or interest under the Note, the DSAA shall make payment immediately to the Lender upon demand to the DSAA after the Borrower's failure to pay has continued for 10 calendar days. The amount payable under this Guaranty shall be ninety percent (90%) of the amount of the overdue installment of principal and interest, plus ninety percent (90%) of any and all late charges and interest thereon as provided in the Agreement. Upon payment by DSAA to the Lender, the Lender will assign to DSAA, without recourse or warranty, ninety percent (90%) of all of its rights in the Note and the Agreement with respect to such payment.

In the event of a default under the Agreement or the Note by the Borrower and so long as this Guaranty is in effect and the DSAA is not in default hereunder:

(i) The Lender or other Permitted Guaranty Holder shall not accelerate or reschedule payment of the principal or interest on the Note or any other note of the Borrower guaranteed by DSAA except with the written approval of DSAA; and

(ii) The Lender or other Permitted Guaranty Holder shall, if so directed by DSAA, invoke the default provisions of the Agreement.

Subject to the limitations set forth below, the Lender's rights under this Guaranty may be assigned to any ''Permitted Guaranty Holder,'' that is: (1) An individual domiciled in the United States; (2) a corporation incorporated, chartered or otherwise organized in the United States; or (3) a partnership or other juridical entity doing business in the United States. In the event of such assignment DSAA shall be promptly notified. The Lender will not agree to any material amendment of the Agreement or Note or consent to any material deviation from the provisions thereof without the prior written consent of DSAA.

Permitted Guaranty Holders shall be severally bound by, and shall be severally entitled to, the rights and obligations of the Lender under the Note, the Agreement, and this Guaranty. The Lender shall maintain a current, accurate written record of the names, addresses, amount of financial interest in the Note and Agreement, and date of acquisition of such interest of each Permitted Guaranty Holder and shall furnish DSAA a copy of such record on its demand without charge. No assignment by the Lender or by any Permitted Guaranty Holder shall be effective for purposes of this Guaranty unless and until so recorded by the Lender.

The total amount of this Guaranty shall not at any time exceed ninety percent (90%) of the outstanding principal, unpaid accrued interest and arrearages, if any, under the Agreement and the Note, including any portion of the Note, or any derivative of the Note or any portion of the Note.

This Guaranty shall cease to be effective with respect to the guaranteed amount of the total amount of the Note (the ''Guaranteed Loan Amount'') or with respect to the guaranteed amount of any portion of the Note (the ''Guaranteed Loan Portion Amount'') [or with respect to the amount of any derivative or derivatives of the Note or any portion of the Note equal, or in the aggregate equal, in principal amount to the total amount of the Note or such portion of the Note, as the case may be, which amount of such derivative or derivatives is equal to the respective Guaranteed Loan Amount or Guaranteed Loan Portion Amount, as the case may be (the ''Guaranteed-Amount Equivalent'')] to the extent that (1) the Guaranteed Loan Amount or the respective Guaranteed Loan Portion Amount [or the respective Guaranteed-Amount Equivalent], as the case may be, is at any time separated from the unguaranteed amount of the total amount of the Note or the unguaranteed amount of the respective portion of the Note [or the amount of such derivative or derivatives of the Note which is not the amount which is equal to the Guaranteed Loan Amount or Guaranteed Loan Portion Amount, as the case may be], in any way, (a) directly, or (b) through the issuance of participation shares of, or undivided ownership or other equity interests in, the Note, or any portion of the Note, or any derivative of the Note or any portion of the Note, which have an exclusive or preferred claim to the Guaranteed Loan Amount or the respective Guaranteed Loan Portion Amount [or the respective Guaranteed-Amount Equivalent], as the case may be [or (c) through the issuance of

notes, bonds or other debt instruments or obligations which are collateralized or otherwise secured by a pledge of, or security interest in, the Note, or any portion of the Note or any derivative of the Note or any portion of the Note, which has an exclusive or preferred claim to the Guaranteed Loan Amount or the respective Guaranteed Loan Portion Amount or the respective Guaranteed-Amount Equivalent, as the case may be]; or (2) any holder of the Note, or any portion of the Note, or any derivative of the Note or any portion of the Note, as the case may be, having claim to payment made on the Note, receives more than ninety percent of any payment due to such holder from payments made under this Guaranty at any time during the term of the Note or the Agreement.

This Guaranty is fully and freely transferable to any Permitted Guaranty Holder, except that it shall cease to be effective with respect to the Agreement or the Note, or any portion of the Note, or any derivative of the Note or any portion of the Note, to the extent that the Agreement or the Note, or the respective portion of the Note, or the respective derivative of the Note or any portion of the Note, as the case may be, is used to provide significant support for any non-registered obligation.

The full faith and credit of the United States is pledged to the performance of this Guaranty. No claim which the United States may now or hereafter have against the Lender or any Permitted Guaranty Holder for any reason whatsoever shall affect in any way the right of the Lender or any Permitted Guaranty Holder to receive full and prompt payment of any amount otherwise due under this Guaranty. The United States represents and warrants that (a) it has full power, authority and legal right to execute, deliver and perform this Guaranty, (b) this Guaranty has been executed in accordance with and pursuant to the terms and provisions of section 24 of the Act, the provisions of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1988, under the hearing ''Foreign Military Sales Debt Reform,'' and title 31, part 25, of the Code of Federal Regulations, (c) this Guaranty has been duly executed and delivered by a duly authorized representative of DSAA, and (d) this Guaranty constitutes the valid and legally binding obligations of the United States, enforceable in accordance with the terms hereof.

Any notice, demand, or other communication hereunder shall be deemed to have been given if in writing and actually delivered to the Comptroller, DSAA, the Pentagon, Washington, DC 20301–2800, or the successor, or such other place as may be designated in writing by the Comptroller, DSAA or the successor thereof.

By acceptance of the Note, the Lender agrees to the terms and conditions of this Guaranty.

Dated: _____

By: _____

Director, DSAA.

(b) The obligations of DSAA under the Guaranty are expressly limited to those obligations contained in the form of Guaranty set forth in paragraph (a) of this section. Any provisions of any agreement relating to the Private Loan purporting to create obligations on the part of DSAA which are inconsistent with the terms of the Guaranty or any other provision of this part be unenforceable against DSAA.

§ 25.406 Savings clause.

Nothing in this rule is intended to authorize any person or entity to engage in any activity not otherwise authorized or permitted for such person or entity under any applicable laws of the United States, any territory or possession of the United States, any State, or the District of Columbia.

PART 26—ENVIRONMENTAL REVIEW OF ACTIONS BY MULTILATERAL DEVELOPMENT BANDS (MDBs)

Sec.
26.1 Purpose.
26.2 Availability of project listings.
26.3 Availability of Environmental Impact Assessment Summaries (EIA Summaries) and Environmental Impact Assessments (EIAs).
26.4 Comments on MDB projects.
26.5 Upgrades and additional environmental information.

AUTHORITY: 22 U.S.C. 262m–7, 31 U.S.C. 321.

SOURCE: 57 FR 24545, June 10, 1992, unless otherwise noted.

§ 26.1 Purpose.

This part prescribes procedures for the environmental review of, and comment by Federal agencies and the public on, proposed projects of multilateral development banks (MDBs).

§ 26.2 Availability of project listings.

(a) The Office of Multilateral Development Banks of the Department of the Treasury (hereinafter ''MDB Office'') will ensure that the Environmental Protection Agency (EPA), the

Council on Environmental Quality (CEQ), the Department of State, the Agency for International Development (AID), the National Oceanic and Atmospheric Administration (NOAA), and the Bank Information Center (BIC) (which is a private, nongovernmental organization located in Washington, DC), receive copies from each multilateral development bank (MDB) of project listings describing future MDB projects and assigning environmental categories based on the environmental impact of each project. If an MDB has not provided a project listing to one of these entities, these entities may obtain the project listing by contacting the MDB Office, 1500 Pennsylvania Avenue NW., Washington, DC 20220, (202) 622–0765.

(b)(1) Members of the public may obtain copies of project listings from the BIC, 2025 Eye Street NW., suite 522, Washington, DC 20006 ((202) 466–8191, not a toll-free call).

(2) If a copy is not available from the BIC, members of the public may arrange to review and/or copy a project listing by contacting the MDB Office which will make a copy available at the Department of the Treasury Library, 1500 Pennsylvania Avenue NW., Washington, DC ((202) 622–0990, not a toll-free call). Members of the public are advised that they must make an appointment with the Treasury Library before they visit and that a charge (currently 15 cents per page) is imposed for the use of the library photocopier.

§26.3 Availability of Environmental Impact Assessment Summaries (EIA Summaries) and Environmental Impact Assessments (EIAs).

(a) *EIA summaries.* (1) The MDB Office will provide for the distribution of EIA Summaries to the entities identified in section 26.2(a).

(2) (i) Members of the public may obtain copies of EIA Summaries from the BIC, 2025 Eye Street, NW., suite 522, Washington, DC 20006 ((202) 466–8191, not a toll-free call).

(ii) If a copy of an EIA Summary is not available from the BIC, members of the public may arrange to review and/or copy an EIA Summary by contacting the MDB Office at (202) 622–0765 (not a toll-free call), which will make a copy available at the Department of the Treasury Library, 1500 Pennsylvania Avenue NW., Washingon, DC. Members of the public are advised that they must make an appointment with the Treasury Library (202) 622–0990) before they visit, and that a charge (currently 15 cents per page) is imposed for the use of the library photocopier. To the extent possible, EIA Summaries will be available for review and copying at least 120 days before scheduled consideration of a project by the MDB Executive Directors.

(b) *EIAs*—(1) *The African Development Bank, the European Bank for Reconstruction and Development, and the Asian Development Bank.* Arrangements to review an EIA may be made by contacting the MDB Office ((202) 622–0765 (not a toll-free call)), which will obtain a copy of the EIA through the Office of the United States Executive Director of the appropriate MDB and make it available for review and copying in the Department of the Treasury Library. Members of the public are advised that they must make an appointment with the Treasury Library, ((202) 622–0900 (not a toll-free call), before they visit, and that a charge (currently 15 cents per page) is imposed for the use of the library photocopier.

(2) *The International Bank for Reconstruction and Development, the International Development Association, and the Inter-American Development Bank.* (i) Members of the public may review EIAs at the public reading room of the concerned MDB.

(ii) If a particular MDB does not have a public reading room, members of the public may arrange to review and/or copy an EIA by contacting the MDB Office ((202) 622–0765 (not a toll-free call)), which will obtain a copy through the Office of the United States Executive Director of the concerned MDB and make it available in the Department of the Treasury Library, 1500 Pennsylvania Avenue NW., Washington, DC. Members of the public are advised that they must make an appointment with the Treasury Library ((202) 622–0990 not a toll-free call) before they visit, and that a charge (currently 15 cents per page) is imposed for the use of the library photocopier.

§ 26.4 Comments on MDB projects.

(a) *Public comments*—(1) *Written comments* (i) A member of the public wishing to provide written comments on a MDB project must provide 2 copies of the comments to the Office of Multilateral Development Banks, U.S. Department of the Treasury, 1500 Pennsylvania Avenue NW., room 5400, Washington, DC 20220. Written comments should be submitted not later than two weeks after the member of the public has access to the particular document on which it wishes to offer comments—either the project listing, the EIA Summary, or the EIA for a particular project. Written public comments will be provided by the MDB Office to the U.S. Government agencies participating in meetings of the Working Group for Multilateral Assistance (WGMA), which meetings are described in § 26.4(c). The WGMA is an intergovernmental subcommittee of the Development Coordination Committee whose functions are set forth in the Presidential announcement of May 19, 1978, Vol. 14, No. 20, p. 932 of the Weekly Compilation of Presidential Documents. The WGMA meets to discuss the U.S. position on upcoming MDB projects.

(ii) All written comments will be available for inspection and copying in their entirety in the Department of the Treasury Library, 1500 Pennsylvania Avenue NW., Washington, DC ((202) 622–0990). Members of the public are advised that they must make an appointment with the Treasury Library before they visit, and that a charge (currently 15 cents per page) is imposed for the use of the library photocopier.

(2) *Oral comments.* Oral comments from a member of the public may be made in periodic meetings convened by the BIC. Information concerning these meetings may be obtained by contacting the BIC or the MDB Office. The MDB Office will summarize and present such comments in the WGMA meetings described in § 26.4(c).

(b) *U.S. agency comments.* Comments from U.S. agencies shall be provided through the WGMA.

(c) *Consideration of comments.* The WGMA will consider all comments made by the public and U.S. agencies. The WGMA may review a project up to three times. The first review will consider whether the project has been assigned the appropriate environmental category by the MDB. This review will take place as far in advance as possible of Board consideration of the project. The second review will consider the EIA Summary or the EIA (or information discussed in § 26.5(b)(1)), and comments received from the public on such documentation. The third WGMA review, which will take place shortly before Board consideration of the project, will consider the position of the U.S. Government on the project.

§ 26.5 Upgrades and additional environmental information.

(a) *Environmental category upgrades.* If the WGMA and the Department of the Treasury determine that a project would have a significant impact on the human environment, but that the level of environmental analysis planned by the MDB is insufficient, the Department of the Treasury will instruct the United States Executive Director of the concerned MDB to request that the MDB upgrade the project to an environmental category requiring additional environmental analysis. Members of the public may call the MDB Office to inquire about upgrade requests for specific projects.

(b) *Additional environmental information.* (1) If the WGMA and the Department of the Treasury determine on the basis of the first WGMA review that:

(i) A MDB project would have a significant impact on the human environment, and

(ii) The MDB appears to have made an appropriate decision that such project merits environmental analysis, but less than a full-fledged environmental impact assessment as defined by that MDB's own procedures, the Department of the Treasury will obtain, through the United States Executive Director of the concerned MDB, such environmental information from the MDB (*e.g.,* environmental chapters from project feasibility studies or environmental data sheets) which contains this environmental analysis. The MDB Office will provide this environmental information to the entities described in § 26.2(a).

(2) If such environmental information is insufficient to provide an adequate basis for analyzing the environmental impact of the proposed project and alternatives to the proposed project, the Department of the Treasury will instruct the United States Executive Director of the concerned MDB not to vote in favor of the project.

PART 27—CIVIL PENALTY ASSESSMENT FOR MISUSE OF DEPARTMENT OF THE TREASURY NAMES, SYMBOLS, ETC.

Sec.
27.1 Purpose.
27.2 Definitions.
27.3 Assessment of civil penalties.
27.4 Factors to be considered.
27.5 Initial Notice of Assessment.
27.6 Written response.
27.7 Final Notice of Assessment.
27.8 Judicial review.

AUTHORITY: 31 U.S.C. 321, 333.

SOURCE: 62 FR 42213, Aug. 6, 1997, unless otherwise noted.

§ 27.1 Purpose.

(a) The regulations in this part implement the provisions of 31 U.S.C. 333(c), which authorizes the Secretary of the Treasury to assess a civil penalty against any person who has misused the words, titles, abbreviations, initials, symbols, emblems, seals, or badges of the Department of the Treasury or any subdivision thereof in violation of 31 U.S.C. 333(a), in accordance with that section and this part.

(b) The regulations in this part do not apply to the extent that the Secretary or his/her designee has specifically authorized the person to manufacture, produce, sell, possess, or use the words, titles, abbreviations, initials, symbols, emblems, seals, or badges by written contract, agreement, or letter.

§ 27.2 Definitions.

(a) The term ''assessing official'' means:

(1) The head of a bureau or other subdivision of the Department of the Treasury who has been delegated the authority to assess civil penalties under 31 U.S.C. 333(c); or

(2) An officer or employee of a bureau or subdivision at the grade of GS-15 or above to whom such authority has been redelegated by the head of such bureau or subdivision.

(b) The term ''broadcast'' or ''telecast'' mean widespread dissemination by electronic transmission or method, whether audio and/or visual.

(c) The term ''civil penalty'' means:

(1) A civil monetary penalty; and

(2) Any other civil or equitable remedy deemed necessary to rectify the potential for a continued misuse or harm from an activity found to have been in violation of 31 U.S.C. 333 or this part.

(d) The term ''date of offense'' means the later of—

(1) The date that the misuse occurred;

(2) The date that the misuse had the effect of conveying the false impression that the activity was associated with or approved, endorsed, sponsored or authorized by the Department or any of its subdivisions or officers or employees; or

(3) If the violation is a continuing one, the date on which the misuse of the words, titles, abbreviations, initials, symbols, emblems, seals, or badges protected by this part last occurred.

(e) The term ''days'' means calendar days, unless otherwise stated.

(f) The term ''person'' means an individual, partnership, association, corporation, company, business, firm, manufacturer, or any other organization or institution.

§ 27.3 Assessment of civil penalties.

(a) *General Rule.* An assessing official may impose a civil penalty on any person—

(1) Who uses in connection with, or as a part of, any advertisement, solicitation, business activity, or product, whether alone or with other words, letters, symbols, or emblems;

(i) The words ''Department of the Treasury,'' ''United States Secret Service,'' ''United States Customs Service,'' ''Internal Revenue Service,'' ''Bureau of Alcohol, Tobacco and Firearms,'' ''Bureau of the Public Debt,'' ''Bureau of Engraving and Printing,'' ''Comptroller of the Currency,'' ''Federal Law

Enforcement Training Center,'' ''Financial Crimes Enforcement Network,'' ''United States Mint,'' or the name of any service, bureau, office, or other subdivision of the Department of the Treasury;

(ii) The titles ''Secretary of the Treasury,'' ''Treasurer of the United States,'' ''Director of the Secret Service,'' ''Commissioner of Customs,'' ''Commissioner of Internal Revenue,'' ''Director, Bureau of Alcohol, Tobacco and Firearms,'' ''Commissioner of the Public Debt,'' ''Director of the Bureau of Engraving and Printing,'' ''Comptroller of the Currency,'' ''Director of the Federal Law Enforcement Training Center,'' ''Director of the Financial Crimes Enforcement Network,'' ''Director of the United States Mint,'' or the title of any other officer or employee of the Department of the Treasury or subdivision thereof;

(iii) The abbreviations or initials of any entity or title referred to in paragraph (a)(1)(i) or (a)(1)(ii) of this section, including but not limited to ''USSS,'' ''USCS,'' ''IRS,'' ''ATF,'' or ''BATF,'' ''BPD,'' ''FLETC,'' ''FINCEN'' or ''FinCEN,''and ''SBMO'';

(iv) The words ''United States Savings Bond,'' including any variation thereof, or the name of any other security, obligation, or financial instrument issued by the Department of the Treasury or any subdivision thereof;

(v) Any symbol, emblem, seal, or badge of an entity referred to in paragraph (a)(1)(i) of this section (including the design of any envelope, stationery, or identification card used by such an entity); or

(vi) Any colorable imitation of any such words, titles, abbreviations, initials, symbol, emblem, seal, or badge; and

(2) Where such use is in a manner that could reasonably be interpreted or construed as conveying the false impression that such advertisement, solicitation, business activity, or product is in any manner approved, endorsed, sponsored, or authorized by, or associated with the Department of the Treasury or any entity referred to in paragraph (a)(1)(i) of this section, or any officer, or employee thereof.

(b) *Disclaimers.* Any determination of whether a person has violated the provisions of paragraph (a) of this section shall be made without regard to any use of a disclaimer of affiliation with the United States Government or any particular agency or instrumentality thereof.

(c) *Civil Penalty.* An assessing official may impose a civil penalty on any person who violates the provisions of paragraph (a) of this section. The amount of a civil monetary penalty shall not exceed $5,000 for each and every use of any material in violation of paragraph (a), except that such penalty shall not exceed $25,000 for each and every use if such use is in a broadcast or telecast.

(d) *Time Limitations.* (1) Civil penalties imposed under this part must be assessed before the end of the three year period beginning on the date of offense charged.

(2) An assessing official may commence a civil action to recover or enforce any civil penalty imposed in a Final Notice of Assessment issued pursuant to § 27.7 at any time before the end of the two year period beginning on the date of the Final Notice of Assessment. If judicial review of the Final Notice of Assessment is sought, the two year period begins to run from the date that a final and unappealable court order is issued.

(e) *Criminal Proceeding.* No civil penalty may be imposed under this part with respect to any violation of paragraph (a) of this section after a criminal proceeding on the same violation has been commenced by indictment or information under 31 U.S.C. 333(d).

§ 27.4 Factors to be considered.

The assessing official will consider relevant factors when determining whether to assess or impose a civil penalty under this part, and the amount of a civil monetary penalty. Those factors may include, but are not limited to, the following:

(a) The scope of the misuse;

(b) The purpose and/or nature of the misuse;

(c) The extent of the harm caused by the misuse;

(d) The circumstances of the misuse; and

(e) The benefit intended to be derived from the misuse.

§27.5 Initial Notice of Assessment.

The assessing official shall serve an Initial Notice of Assessment by United States mail or other means upon any person believed to be in violation of §27.3 and otherwise subject to a civil penalty. The notice shall provide the name and telephone number of an agency officer or employee who can provide information concerning the notice and the provisions of this part, and shall include the following:

(a) A specific reference to the provisions of §27.3 violated;

(b) A concise statement of the facts that support the conclusion that such a violation occurred;

(c) The amount of the penalty proposed, and/or any other proposed civil or equitable remedy;

(d) A notice informing the person alleged to be in violation of §27.3 that he/she:

(1) May, within 30 days of the date of the notice, pay the proposed civil monetary penalty and consent to each proposed civil or equitable remedy, thereby waiving the right to make a written response under §27.6 and to seek judicial review under §27.8:

(i) By electronic funds transfer (EFT) in accordance with instructions provided in the notice, or

(ii) By means other than EFT only with the written approval of the assessing official;

(2) May make a written response within 30 days of the date of the notice asserting, as appropriate:

(i) Why a civil monetary penalty and/or other civil or equitable remedy should not be imposed;

(ii) Why a civil monetary penalty should be in a lesser amount than proposed; and

(iii) Why the terms of a proposed civil or equitable remedy should be modified;

(3) May be represented by an attorney or other representative, provided that a designation of representative signed by the person alleged to be in violation is received by the assessing official; and

(4) May request, within 20 days of the date of the notice, a copy of or opportunity to review any documents and/or other evidence compiled and relied on by the agency in determining to issue the notice (the assessing official reserves the right to assert privileges available under law and may decline to disclose certain documents and/or other evidence); and

(e) The Initial Notice of Assessment shall also inform the person that:

(1) If no written response is received within the time allowed in §27.6(b), a Final Notice of Assessment may be issued without a presentation by the person;

(2) If a written response has been made and it is deemed necessary, the assessing official may request, orally or in writing, additional information from the respondent;

(3) A Final Notice of Assessment may be issued in accordance with §27.7 requiring that the civil monetary penalty be paid and compliance with the terms of any other civil or equitable remedy;

(4) A Final Notice of Assessment is subject to judicial review in accordance with 5 U.S.C. 701 *et seq.*; and

(5) All submissions sent in response to the Initial

Notice of Assessment must be transmitted to the address specified in the notice and include the name, address, and telephone number of the respondent.

§27.6 Written response.

(a)(1) A person served with an Initial Notice of Assessment may make a written response explaining why the civil penalty should not be imposed, explaining why a civil monetary penalty should be in a lesser amount than proposed and/or explaining why the terms of a proposed civil or equitable remedy should be modified. The written response must provide:

(i) A reference to and specifically identify the Initial Notice of Assessment involved;

(ii) The full name of the person charged;

(iii) If not a natural person, the name and title of the head of the organization charged; and

(iv) If a representative of the person charged is filing the written response, a copy of the duly executed designation as representative.

(2) The written response must admit or deny each violation of §27.3 charged

in the Initial Notice of Assessment. Any charge not specifically denied will be presumed to be admitted. Where a charge is denied, the respondent shall specifically set forth the legal or factual basis upon which the charge is denied. If the basis of the written response is that the person charged is not the person responsible for the misuse(s) charged, the written response must set forth sufficient information to allow the agency to determine the truth of such an assertion. The written response should include any and all documents and/or other information that the respondent believes should be a part of the administrative record on the matter.

(b) *Time.* (1) Except as provided in paragraph (b)(2) of this section, any written response made under this paragraph must be received not later than 30 days after the date of the Initial Notice of Assessment.

(2) If a request for documents or other evidence is made pursuant to § 27.5(d)(4), the written response must be received not later than 20 days after the date of the Department's response to the request.

(3)(i) In computing the number of days allowed for filing a written response under this paragraph, the first day counted is the day after the date of the Initial Notice of Assessment. If the last date on which the response is required to be filed by this paragraph is a Saturday, Sunday or Federal holiday, the response will be due on the next weekday after that date.

(ii) If a response is transmitted by United States mail, it will be deemed timely filed if postmarked on or before the due date.

(4) The assessing official may extend the period for making a written response under paragraphs (b)(1) and (b)(2) for good cause shown. Generally, failure to obtain representation in a timely manner will not be considered good cause.

(c) *Filing.* A written response will be considered filed on the date received at the address specified in the Initial Notice of Assessment. The response may be sent by personal delivery, United States mail or commercial delivery. At the discretion of the assessing official, filing may be accomplished by facsimile or any other method deemed appropriate.

(d) The assessing official will fully consider the facts and arguments submitted by the respondent in the written response and any other documents filed pursuant to this paragraph in determining whether to issue a Final Notice of Assessment under § 27.7, the appropriate amount of the civil monetary penalty imposed and the terms of any other appropriate civil or equitable remedy.

§ 27.7 Final Notice of Assessment.

(a) In making a final determination whether to impose a penalty, the assessing official shall take into consideration all available information in the administrative record on the matter, including all information provided in or with a written response timely filed by the respondent and any additional information provided pursuant to § 27.5(e)(2). The assessing official will determine whether:

(1) The facts warrant a conclusion that no violation has occurred; or

(2) The facts warrant a conclusion that one or more violations have occurred; and

(3) The facts and violations found justify the conclusion that a civil penalty should be imposed.

(b) If the assessing official determines that no violation has occurred, the official shall promptly send a letter indicating that determination to the person served with an Initial Notice of Assessment and to any designated representative of such person.

(c)(1) If it has been determined that a violation has occurred, the assessing official shall issue a Final Notice of Assessment to the person served with an Initial Notice of Assessment and to any designated representative of such person.

(2) The assessing official may, in his/her discretion:

(i) Impose a civil monetary penalty and/or any civil or equitable remedy deemed necessary to rectify the potential for a continued misuse or harm from the violation(s);

(ii) Not impose a civil monetary penalty and/or civil or equitable remedy; or

(iii) Impose a civil monetary penalty and/or civil or equitable remedy and condition payment of the civil monetary penalty on the violator's future compliance with 31 U.S.C. 333, this part and any civil or equitable remedy contained in the Final Notice of Assessment. If a civil monetary penalty is imposed, the assessing official shall determine the appropriate amount of the penalty in accordance with 31 U.S.C. 333(c)(2).

(3) The Final Notice of Assessment shall:

(i) Include:

(A) A specific reference to the provisions of §27.3 found to have been violated;

(B) A concise statement of the facts warranting a conclusion that a violations has occurred;

(C) An analysis of how the facts and violation(s) justify the conclusion that a civil monetary penalty and/or civil or equitable remedy should be imposed; and

(D) The amount of each civil monetary penalty imposed, a statement as to how the amount of each penalty was determined, and the terms of any civil or equitable remedy deemed necessary to rectify the potential for a continued misuse or harm from the violation(s); and

(ii) Inform the person that:

(A) Payment of a civil monetary penalty imposed by the Final Notice of Assessment must be made within 30 days of the date of the notice, and that any civil or equitable remedy imposed must be complied with as provided in the Final Notice of Assessment;

(B) Payment of a civil monetary penalty imposed by the Final Notice of Assessment shall be by EFT in accordance with instructions provided in the notice, unless the assessing official has given written approval to have payment made by other means;

(C) payment of a civil monetary penalty imposed by the Final Notice of Assessment constitutes consent by the person to comply with the terms of any civil or equitable remedy contained in the notice;

(D) If payment of a civil monetary penalty imposed by the Final Notice of Assessment has been waived on the condition that the person comply with the terms of any civil or equitable remedy contained in the notice or comply in the future with 31 U.S.C. 333 and this part, failure by the person to so comply will make the civil monetary penalty payable on demand;

(E) If a civil monetary penalty is not paid within 30 days of the date of the Final Notice of Assessment (or on demand under paragraph (C)(3)(ii)(D) of this sectiion), or if a civil or equitable remedy is not complied with in accordance with the terms of the notice, a civil action to collect the penalty or enforce compliance may be commenced at any time within two years of the date of the Final Notice of Assessment; and

(F) Any civil monetary penalty and civil or equitable remedy imposed by the Final Notice of Assessment may be subject to judicial review in accordance with 5 U.S.C. 701 et seq.

[62 FR 42213, Aug. 6, 1997; 62 FR 44036, Aug. 18, 1997]

§27.8 Judicial review.

A final Notice of Assessment issued under this party may be subject to judicial review pursuant to 5 U.S.C. 701 et seq.

PART 28—NONDISCRIMINATION ON THE BASIS OF SEX IN EDUCATION PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

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AUTHORITY: 20 U.S.C. 1681, 1682, 1683, 1685, 1686, 1687, 1688.

SOURCE: 65 FR 52865, 52881, Aug. 30, 2000, unless otherwise noted.

Subpart A—Introduction

§ 28.100 Purpose and effective date.

The purpose of these Title IX regulations is to effectuate Title IX of the Education Amendments of 1972, as amended (except sections 904 and 906 of those Amendments) (20 U.S.C. 1681, 1682, 1683, 1685, 1686, 1687, 1688), which is designed to eliminate (with certain exceptions) discrimination on the basis of sex in any education program or activity receiving Federal financial assistance, whether or not such program or activity is offered or sponsored by an educational institution as defined in these Title IX regulations. The effective date of these Title IX regulations shall be September 29, 2000.

§ 28.105 Definitions.

As used in these Title IX regulations, the term:

Administratively separate unit means a school, department, or college of an educational institution (other than a local educational agency) admission to which is independent of admission to any other component of such institution.

Admission means selection for part-time, full-time, special, associate, transfer, exchange, or any other enrollment, membership, or matriculation in or at an education program or activity operated by a recipient.

Applicant means one who submits an application, request, or plan required to be approved by an official of the Federal agency that awards Federal financial assistance, or by a recipient, as a condition to becoming a recipient.

Department means Department of the Treasury.

Designated agency official means Assistant Secretary for Management and Chief Financial Officer.

Educational institution means a local educational agency (LEA) as defined by 20 U.S.C. 8801(18), a preschool, a private elementary or secondary school, or an applicant or recipient that is an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education, or an institution of

vocational education, as defined in this section.

Federal financial assistance means any of the following, when authorized or extended under a law administered by the Federal agency that awards such assistance:

(1) A grant or loan of Federal financial assistance, including funds made available for:

(i) The acquisition, construction, renovation, restoration, or repair of a building or facility or any portion thereof; and

(ii) Scholarships, loans, grants, wages, or other funds extended to any entity for payment to or on behalf of students admitted to that entity, or extended directly to such students for payment to that entity.

(2) A grant of Federal real or personal property or any interest therein, including surplus property, and the proceeds of the sale or transfer of such property, if the Federal share of the fair market value of the property is not, upon such sale or transfer, properly accounted for to the Federal Government.

(3) Provision of the services of Federal personnel.

(4) Sale or lease of Federal property or any interest therein at nominal consideration, or at consideration reduced for the purpose of assisting the recipient or in recognition of public interest to be served thereby, or permission to use Federal property or any interest therein without consideration.

(5) Any other contract, agreement, or arrangement that has as one of its purposes the provision of assistance to any education program or activity, except a contract of insurance or guaranty.

Institution of graduate higher education means an institution that:

(1) Offers academic study beyond the bachelor of arts or bachelor of science degree, whether or not leading to a certificate of any higher degree in the liberal arts and sciences;

(2) Awards any degree in a professional field beyond the first professional degree (regardless of whether the first professional degree in such field is awarded by an institution of undergraduate higher education or professional education); or

(3) Awards no degree and offers no further academic study, but operates ordinarily for the purpose of facilitating research by persons who have received the highest graduate degree in any field of study.

Institution of professional education means an institution (except any institution of undergraduate higher education) that offers a program of academic study that leads to a first professional degree in a field for which there is a national specialized accrediting agency recognized by the Secretary of Education.

Institution of undergraduate higher education means:

(1) An institution offering at least two but less than four years of college-level study beyond the high school level, leading to a diploma or an associate degree, or wholly or principally creditable toward a baccalaureate degree; or

(2) An institution offering academic study leading to a baccalaureate degree; or

(3) An agency or body that certifies credentials or offers degrees, but that may or may not offer academic study.

Institution of vocational education means a school or institution (except an institution of professional or graduate or undergraduate higher education) that has as its primary purpose preparation of students to pursue a technical, skilled, or semiskilled occupation or trade, or to pursue study in a technical field, whether or not the school or institution offers certificates, diplomas, or degrees and whether or not it offers full-time study.

Recipient means any State or political subdivision thereof, or any instrumentality of a State or political subdivision thereof, any public or private agency, institution, or organization, or other entity, or any person, to whom Federal financial assistance is extended directly or through another recipient and that operates an education program or activity that receives such assistance, including any subunit, successor, assignee, or transferee thereof.

Reviewing authority means that component of the Department delegated authority to review the decisions of hearing officers in cases arising under these Title IX regulations.

Secretary means Secretary of the Treasury.

Student means a person who has gained admission.

Title IX means Title IX of the Education Amendments of 1972, Public Law 92–318, 86 Stat. 235, 373 (codified as amended at 20 U.S.C. 1681–1688) (except sections 904 and 906 thereof), as amended by section 3 of Public Law 93–568, 88 Stat. 1855, by section 412 of the Education Amendments of 1976, Public Law 94–482, 90 Stat. 2234, and by Section 3 of Public Law 100–259, 102 Stat. 28, 28–29 (20 U.S.C. 1681, 1682, 1683, 1685, 1686, 1687, 1688).

Title IX regulations means the provisions set forth at §§28.100 through 28.635.

Transition plan means a plan subject to the approval of the Secretary of Education pursuant to section 901(a)(2) of the Education Amendments of 1972, 20 U.S.C. 1681(a)(2), under which an educational institution operates in making the transition from being an educational institution that admits only students of one sex to being one that admits students of both sexes without discrimination.

[65 FR 52865, 52881, 52882, Aug. 30, 2000]

§ 28.110 Remedial and affirmative action and self-evaluation.

(a) *Remedial action.* If the designated agency official finds that a recipient has discriminated against persons on the basis of sex in an education program or activity, such recipient shall take such remedial action as the designated agency official deems necessary to overcome the effects of such discrimination.

(b) *Affirmative action.* In the absence of a finding of discrimination on the basis of sex in an education program or activity, a recipient may take affirmative action consistent with law to overcome the effects of conditions that resulted in limited participation therein by persons of a particular sex. Nothing in these Title IX regulations shall be interpreted to alter any affirmative action obligations that a recipient may have under Executive Order 11246, 3 CFR, 1964–1965 Comp., p. 339; as amended by Executive Order 11375, 3 CFR, 1966–1970 Comp., p. 684; as amended by Executive Order 11478, 3 CFR, 1966–1970 Comp., p. 803; as amended by Executive Order 12086, 3 CFR, 1978 Comp., p. 230; as amended by Executive Order 12107, 3 CFR, 1978 Comp., p. 264.

(c) *Self-evaluation.* Each recipient education institution shall, within one year of September 29, 2000:

(1) Evaluate, in terms of the requirements of these Title IX regulations, its current policies and practices and the effects thereof concerning admission of students, treatment of students, and employment of both academic and nonacademic personnel working in connection with the recipient's education program or activity;

(2) Modify any of these policies and practices that do not or may not meet the requirements of these Title IX regulations; and

(3) Take appropriate remedial steps to eliminate the effects of any discrimination that resulted or may have resulted from adherence to these policies and practices.

(d) *Availability of self-evaluation and related materials.* Recipients shall maintain on file for at least three years following completion of the evaluation required under paragraph (c) of this section, and shall provide to the designated agency official upon request, a description of any modifications made pursuant to paragraph (c)(2) of this section and of any remedial steps taken pursuant to paragraph (c)(3) of this section.

§ 28.115 Assurance required.

(a) *General.* Either at the application stage or the award stage, Federal agencies must ensure that applications for Federal financial assistance or awards of Federal financial assistance contain, be accompanied by, or be covered by a specifically identified assurance from the applicant or recipient, satisfactory to the designated agency official, that each education program or activity operated by the applicant or recipient and to which these Title IX regulations apply will be operated in compliance with these Title IX regulations. An assurance of compliance with these Title IX regulations shall not be satisfactory to the designated agency official if the applicant or recipient to whom such assurance applies fails to commit itself to take whatever remedial action is

necessary in accordance with § 28.110(a) to eliminate existing discrimination on the basis of sex or to eliminate the effects of past discrimination whether occurring prior to or subsequent to the submission to the designated agency official of such assurance.

(b) *Duration of obligation.* (1) In the case of Federal financial assistance extended to provide real property or structures thereon, such assurance shall obligate the recipient or, in the case of a subsequent transfer, the transferee, for the period during which the real property or structures are used to provide an education program or activity.

(2) In the case of Federal financial assistance extended to provide personal property, such assurance shall obligate the recipient for the period during which it retains ownership or possession of the property.

(3) In all other cases such assurance shall obligate the recipient for the period during which Federal financial assistance is extended.

(c) *Form.* (1) The assurances required by paragraph (a) of this section, which may be included as part of a document that addresses other assurances or obligations, shall include that the applicant or recipient will comply with all applicable Federal statutes relating to nondiscrimination. These include but are not limited to: Title IX of the Education Amendments of 1972, as amended (20 U.S.C. 1681–1683, 1685–1688).

(2) The designated agency official will specify the extent to which such assurances will be required of the applicant's or recipient's subgrantees, contractors, subcontractors, transferees, or successors in interest.

§ 28.120 Transfers of property.

If a recipient sells or otherwise transfers property financed in whole or in part with Federal financial assistance to a transferee that operates any education program or activity, and the Federal share of the fair market value of the property is not upon such sale or transfer properly accounted for to the Federal Government, both the transferor and the transferee shall be deemed to be recipients, subject to the provisions of §§ 28.205 through 28.235(a).

§ 28.125 Effect of other requirements.

(a) *Effect of other Federal provisions.* The obligations imposed by these Title IX regulations are independent of, and do not alter, obligations not to discriminate on the basis of sex imposed by Executive Order 11246, 3 CFR, 1964–1965 Comp., p. 339; as amended by Executive Order 11375, 3 CFR, 1966–1970 Comp., p. 684; as amended by Executive Order 11478, 3 CFR, 1966–1970 Comp., p. 803; as amended by Executive Order 12087, 3 CFR, 1978 Comp., p. 230; as amended by Executive Order 12107, 3 CFR, 1978 Comp., p. 264; sections 704 and 855 of the Public Health Service Act (42 U.S.C. 295m, 298b-2); Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e *et seq.*); the Equal Pay Act of 1963 (29 U.S.C. 206); and any other Act of Congress or Federal regulation.

(b) *Effect of State or local law or other requirements.* The obligation to comply with these Title IX regulations is not obviated or alleviated by any State or local law or other requirement that would render any applicant or student ineligible, or limit the eligibility of any applicant or student, on the basis of sex, to practice any occupation or profession.

(c) *Effect of rules or regulations of private organizations.* The obligation to comply with these Title IX regulations is not obviated or alleviated by any rule or regulation of any organization, club, athletic or other league, or association that would render any applicant or student ineligible to participate or limit the eligibility or participation of any applicant or student, on the basis of sex, in any education program or activity operated by a recipient and that receives Federal financial assistance.

§ 28.130 Effect of employment opportunities.

The obligation to comply with these Title IX regulations is not obviated or alleviated because employment opportunities in any occupation or profession are or may be more limited for members of one sex than for members of the other sex.

§ 28.135 Designation of responsible employee and adoption of grievance procedures.

(a) *Designation of responsible employee.* Each recipient shall designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under these Title IX regulations, including any investigation of any complaint communicated to such recipient alleging its noncompliance with these Title IX regulations or alleging any actions that would be prohibited by these Title IX regulations. The recipient shall notify all its students and employees of the name, office address, and telephone number of the employee or employees appointed pursuant to this paragraph.

(b) *Complaint procedure of recipient.* A recipient shall adopt and publish grievance procedures providing for prompt and equitable resolution of student and employee complaints alleging any action that would be prohibited by these Title IX regulations.

§ 28.140 Dissemination of policy.

(a) *Notification of policy.* (1) Each recipient shall implement specific and continuing steps to notify applicants for admission and employment, students and parents of elementary and secondary school students, employees, sources of referral of applicants for admission and employment, and all unions or professional organizations holding collective bargaining or professional agreements with the recipient, that it does not discriminate on the basis of sex in the educational programs or activities that it operates, and that it is required by Title IX and these Title IX regulations not to discriminate in such a manner. Such notification shall contain such information, and be made in such manner, as the designated agency official finds necessary to apprise such persons of the protections against discrimination assured them by Title IX and these Title IX regulations, but shall state at least that the requirement not to discriminate in education programs or activities extends to employment therein, and to admission thereto unless §§ 28.300 through 28.310 do not apply to the recipient, and that inquiries concerning the application of Title IX and these Title IX regulations to such recipient may be referred to the employee designated pursuant to § 28.135, or to the designated agency official.

(2) Each recipient shall make the initial notification required by paragraph (a)(1) of this section within 90 days of September 29, 2000 or of the date these Title IX regulations first apply to such recipient, whichever comes later, which notification shall include publication in:

(i) Newspapers and magazines operated by such recipient or by student, alumnae, or alumni groups for or in connection with such recipient; and

(ii) Memoranda or other written communications distributed to every student and employee of such recipient.

(b) *Publications.* (1) Each recipient shall prominently include a statement of the policy described in paragraph (a) of this section in each announcement, bulletin, catalog, or application form that it makes available to any person of a type, described in paragraph (a) of this section, or which is otherwise used in connection with the recruitment of students or employees.

(2) A recipient shall not use or distribute a publication of the type described in paragraph (b)(1) of this section that suggests, by text or illustration, that such recipient treats applicants, students, or employees differently on the basis of sex except as such treatment is permitted by these Title IX regulations.

(c) *Distribution.* Each recipient shall distribute without discrimination on the basis of sex each publication described in paragraph (b)(1) of this section, and shall apprise each of its admission and employment recruitment representatives of the policy of nondiscrimination described in paragraph (a) of this section, and shall require such representatives to adhere to such policy.

Subpart B—Coverage

§ 28.200 Application.

Except as provided in §§ 28.205 through 28.235(a), these Title IX regulations apply to every recipient and to each education program or activity operated by such recipient that receives Federal financial assistance.

§ 28.205 Educational institutions and other entities controlled by religious organizations.

(a) *Exemption.* These Title IX regulations do not apply to any operation of an educational institution or other entity that is controlled by a religious organization to the extent that application of these Title IX regulations would not be consistent with the religious tenets of such organization.

(b) *Exemption claims.* An educational institution or other entity that wishes to claim the exemption set forth in paragraph (a) of this section shall do so by submitting in writing to the designated agency official a statement by the highest-ranking official of the institution, identifying the provisions of these Title IX regulations that conflict with a specific tenet of the religious organization.

§ 28.210 Military and merchant marine educational institutions.

These Title IX regulations do not apply to an educational institution whose primary purpose is the training of individuals for a military service of the United States or for the merchant marine.

§ 28.215 Membership practices of certain organizations.

(a) *Social fraternities and sororities.* These Title IX regulations do not apply to the membership practices of social fraternities and sororities that are exempt from taxation under section 501(a) of the Internal Revenue Code of 1954, 26 U.S.C. 501(a), the active membership of which consists primarily of students in attendance at institutions of higher education.

(b) *YMCA, YWCA, Girl Scouts, Boy Scouts, and Camp Fire Girls.* These Title IX regulations do not apply to the membership practices of the Young Men's Christian Association (YMCA), the Young Women's Christian Association (YWCA), the Girl Scouts, the Boy Scouts, and Camp Fire Girls.

(c) *Voluntary youth service organizations.* These Title IX regulations do not apply to the membership practices of a voluntary youth service organization that is exempt from taxation under section 501(a) of the Internal Revenue Code of 1954, 26 U.S.C. 501(a), and the membership of which has been traditionally limited to members of one sex and principally to persons of less than nineteen years of age.

§ 28.220 Admissions.

(a) Admissions to educational institutions prior to June 24, 1973, are not covered by these Title IX regulations.

(b) *Administratively separate units.* For the purposes only of this section, §§ 28.225 and 28.230, and §§ 28.300 through 28.310, each administratively separate unit shall be deemed to be an educational institution.

(c) *Application of §§ 28.300 through .310.* Except as provided in paragraphs (d) and (e) of this section, §§ 28.300 through 28.310 apply to each recipient. A recipient to which §§ 28.300 through 28.310 apply shall not discriminate on the basis of sex in admission or recruitment in violation of §§ 28.300 through 28.310.

(d) *Educational institutions.* Except as provided in paragraph (e) of this section as to recipients that are educational institutions, §§ 28.300 through 28.310 apply only to institutions of vocational education, professional education, graduate higher education, and public institutions of undergraduate higher education.

(e) *Public institutions of undergraduate higher education.* §§ 28.300 through 28.310 do not apply to any public institution of undergraduate higher education that traditionally and continually from its establishment has had a policy of admitting students of only one sex.

§ 28.225 Educational institutions eligible to submit transition plans.

(a) *Application.* This section applies to each educational institution to which §§ 28.300 through 28.310 apply that:

(1) Admitted students of only one sex as regular students as of June 23, 1972; or

(2) Admitted students of only one sex as regular students as of June 23, 1965, but thereafter admitted, as regular students, students of the sex not admitted prior to June 23, 1965.

(b) *Provision for transition plans.* An educational institution to which this section applies shall not discriminate

on the basis of sex in admission or recruitment in violation of §§ 28.300 through 28.310.

§ 28.230 Transition plans.

(a) *Submission of plans.* An institution to which § 28.225 applies and that is composed of more than one administratively separate unit may submit either a single transition plan applicable to all such units, or a separate transition plan applicable to each such unit.

(b) *Content of plans.* In order to be approved by the Secretary of Education, a transition plan shall:

(1) State the name, address, and Federal Interagency Committee on Education Code of the educational institution submitting such plan, the administratively separate units to which the plan is applicable, and the name, address, and telephone number of the person to whom questions concerning the plan may be addressed. The person who submits the plan shall be the chief administrator or president of the institution, or another individual legally authorized to bind the institution to all actions set forth in the plan.

(2) State whether the educational institution or administratively separate unit admits students of both sexes as regular students and, if so, when it began to do so.

(3) Identify and describe with respect to the educational institution or administratively separate unit any obstacles to admitting students without discrimination on the basis of sex.

(4) Describe in detail the steps necessary to eliminate as soon as practicable each obstacle so identified and indicate the schedule for taking these steps and the individual directly responsible for their implementation.

(5) Include estimates of the number of students, by sex, expected to apply for, be admitted to, and enter each class during the period covered by the plan.

(c) *Nondiscrimination.* No policy or practice of a recipient to which § 28.225 applies shall result in treatment of applicants to or students of such recipient in violation of §§ 28.300 through 28.310 unless such treatment is necessitated by an obstacle identified in paragraph (b)(3) of this section and a schedule for eliminating that obstacle has been provided as required by paragraph (b)(4) of this section.

(d) *Effects of past exclusion.* To overcome the effects of past exclusion of students on the basis of sex, each educational institution to which § 28.225 applies shall include in its transition plan, and shall implement, specific steps designed to encourage individuals of the previously excluded sex to apply for admission to such institution. Such steps shall include instituting recruitment programs that emphasize the institution's commitment to enrolling students of the sex previously excluded.

§ 28.235 Statutory amendments.

(a) This section, which applies to all provisions of these Title IX regulations, addresses statutory amendments to Title IX.

(b) These Title IX regulations shall not apply to or preclude:

(1) Any program or activity of the American Legion undertaken in connection with the organization or operation of any Boys State conference, Boys Nation conference, Girls State conference, or Girls Nation conference;

(2) Any program or activity of a secondary school or educational institution specifically for:

(i) The promotion of any Boys State conference, Boys Nation conference, Girls State conference, or Girls Nation conference; or

(ii) The selection of students to attend any such conference;

(3) Father-son or mother-daughter activities at an educational institution or in an education program or activity, but if such activities are provided for students of one sex, opportunities for reasonably comparable activities shall be provided to students of the other sex;

(4) Any scholarship or other financial assistance awarded by an institution of higher education to an individual because such individual has received such award in a single-sex pageant based upon a combination of factors related to the individual's personal appearance, poise, and talent. The pageant, however, must comply with other nondiscrimination provisions of Federal law.

(c) *Program or activity* or *program* means:

(1) All of the operations of any entity described in paragraphs (c)(1)(i) through (iv) of this section, any part of which is extended Federal financial assistance:

(i)(A) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(B) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(ii)(A) A college, university, or other postsecondary institution, or a public system of higher education; or

(B) A local educational agency (as defined in section 8801 of title 20), system of vocational education, or other school system;

(iii)(A) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(*1*) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(*2*) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(B) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(iv) Any other entity that is established by two or more of the entities described in paragraphs (c)(1)(i), (ii), or (iii) of this section.

(2)(i) *Program or activity* does not include any operation of an entity that is controlled by a religious organization if the application of 20 U.S.C. 1681 to such operation would not be consistent with the religious tenets of such organization.

(ii) For example, all of the operations of a college, university, or other postsecondary institution, including but not limited to traditional educational operations, faculty and student housing, campus shuttle bus service, campus restaurants, the bookstore, and other commercial activities are part of a ''program or activity'' subject to these Title IX regulations if the college, university, or other institution receives Federal financial assistance.

(d)(1) Nothing in these Title IX regulations shall be construed to require or prohibit any person, or public or private entity, to provide or pay for any benefit or service, including the use of facilities, related to an abortion. Medical procedures, benefits, services, and the use of facilities, necessary to save the life of a pregnant woman or to address complications related to an abortion are not subject to this section.

(2) Nothing in this section shall be construed to permit a penalty to be imposed on any person or individual because such person or individual is seeking or has received any benefit or service related to a legal abortion. Accordingly, subject to paragraph (d)(1) of this section, no person shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any academic, extracurricular, research, occupational training, employment, or other educational program or activity operated by a recipient that receives Federal financial assistance because such individual has sought or received, or is seeking, a legal abortion, or any benefit or service related to a legal abortion.

Subpart C—Discrimination on the Basis of Sex in Admission and Recruitment Prohibited

§ 28.300 Admission.

(a) *General.* No person shall, on the basis of sex, be denied admission, or be subjected to discrimination in admission, by any recipient to which §§ 28.300 through §§ 28.310 apply, except as provided in §§ 28.225 and §§ 28.230.

(b) *Specific prohibitions.* (1) In determining whether a person satisfies any policy or criterion for admission, or in making any offer of admission, a recipient to which §§ 28.300 through 28.310 apply shall not:

(i) Give preference to one person over another on the basis of sex, by ranking

applicants separately on such basis, or otherwise;

(ii) Apply numerical limitations upon the number or proportion of persons of either sex who may be admitted; or

(iii) Otherwise treat one individual differently from another on the basis of sex.

(2) A recipient shall not administer or operate any test or other criterion for admission that has a disproportionately adverse effect on persons on the basis of sex unless the use of such test or criterion is shown to predict validly success in the education program or activity in question and alternative tests or criteria that do not have such a disproportionately adverse effect are shown to be unavailable.

(c) *Prohibitions relating to marital or parental status.* In determining whether a person satisfies any policy or criterion for admission, or in making any offer of admission, a recipient to which §§ 28.300 through 28.310 apply:

(1) Shall not apply any rule concerning the actual or potential parental, family, or marital status of a student or applicant that treats persons differently on the basis of sex;

(2) Shall not discriminate against or exclude any person on the basis of pregnancy, childbirth, termination of pregnancy, or recovery therefrom, or establish or follow any rule or practice that so discriminates or excludes;

(3) Subject to § 28.235(d), shall treat disabilities related to pregnancy, childbirth, termination of pregnancy, or recovery therefrom in the same manner and under the same policies as any other temporary disability or physical condition; and

(4) Shall not make pre-admission inquiry as to the marital status of an applicant for admission, including whether such applicant is ''Miss'' or ''Mrs.'' A recipient may make pre-admission inquiry as to the sex of an applicant for admission, but only if such inquiry is made equally of such applicants of both sexes and if the results of such inquiry are not used in connection with discrimination prohibited by these Title IX regulations.

§ 28.305 Preference in admission.

A recipient to which §§ 28.300 through 28.310 apply shall not give preference to applicants for admission, on the basis of attendance at any educational institution or other school or entity that admits as students only or predominantly members of one sex, if the giving of such preference has the effect of discriminating on the basis of sex in violation of §§ 28.300 through 28.310.

§ 28.310 Recruitment.

(a) *Nondiscriminatory recruitment.* A recipient to which §§ 28.300 through 28.310 apply shall not discriminate on the basis of sex in the recruitment and admission of students. A recipient may be required to undertake additional recruitment efforts for one sex as remedial action pursuant to § 28.110(a), and may choose to undertake such efforts as affirmative action pursuant to § 28.110(b).

(b) *Recruitment at certain institutions.* A recipient to which §§ 28.300 through 28.310 apply shall not recruit primarily or exclusively at educational institutions, schools, or entities that admit as students only or predominantly members of one sex, if such actions have the effect of discriminating on the basis of sex in violation of §§ 28.300 through 28.310.

Subpart D—Discrimination on the Basis of Sex in Education Programs or Activities Prohibited

§ 28.400 Education programs or activities.

(a) *General.* Except as provided elsewhere in these Title IX regulations, no person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any academic, extracurricular, research, occupational training, or other education program or activity operated by a recipient that receives Federal financial assistance. Sections 28.400 through 28.455 do not apply to actions of a recipient in connection with admission of its students to an education program or activity of a recipient to which §§ 28.300 through 28.310 do not apply, or an entity, not a recipient, to which §§ 28.300 through 28.310 would not apply if the entity were a recipient.

(b) *Specific prohibitions.* Except as provided in §§ 28.400 through 28.455, in providing any aid, benefit, or service to a student, a recipient shall not, on the basis of sex:

(1) Treat one person differently from another in determining whether such person satisfies any requirement or condition for the provision of such aid, benefit, or service;

(2) Provide different aid, benefits, or services or provide aid, benefits, or services in a different manner;

(3) Deny any person any such aid, benefit, or service;

(4) Subject any person to separate or different rules of behavior, sanctions, or other treatment;

(5) Apply any rule concerning the domicile or residence of a student or applicant, including eligibility for in-state fees and tuition;

(6) Aid or perpetuate discrimination against any person by providing significant assistance to any agency, organization, or person that discriminates on the basis of sex in providing any aid, benefit, or service to students or employees;

(7) Otherwise limit any person in the enjoyment of any right, privilege, advantage, or opportunity.

(c) *Assistance administered by a recipient educational institution to study at a foreign institution.* A recipient educational institution may administer or assist in the administration of scholarships, fellowships, or other awards established by foreign or domestic wills, trusts, or similar legal instruments, or by acts of foreign governments and restricted to members of one sex, that are designed to provide opportunities to study abroad, and that are awarded to students who are already matriculating at or who are graduates of the recipient institution; *Provided,* that a recipient educational institution that administers or assists in the administration of such scholarships, fellowships, or other awards that are restricted to members of one sex provides, or otherwise makes available, reasonable opportunities for similar studies for members of the other sex. Such opportunities may be derived from either domestic or foreign sources.

(d) *Aids, benefits or services not provided by recipient.* (1) This paragraph (d) applies to any recipient that requires participation by any applicant, student, or employee in any education program or activity not operated wholly by such recipient, or that facilitates, permits, or considers such participation as part of or equivalent to an education program or activity operated by such recipient, including participation in educational consortia and cooperative employment and student-teaching assignments.

(2) Such recipient:

(i) Shall develop and implement a procedure designed to assure itself that the operator or sponsor of such other education program or activity takes no action affecting any applicant, student, or employee of such recipient that these Title IX regulations would prohibit such recipient from taking; and

(ii) Shall not facilitate, require, permit, or consider such participation if such action occurs.

§ 28.405 Housing.

(a) *Generally.* A recipient shall not, on the basis of sex, apply different rules or regulations, impose different fees or requirements, or offer different services or benefits related to housing, except as provided in this section (including housing provided only to married students).

(b) *Housing provided by recipient.* (1) A recipient may provide separate housing on the basis of sex.

(2) Housing provided by a recipient to students of one sex, when compared to that provided to students of the other sex, shall be as a whole:

(i) Proportionate in quantity to the number of students of that sex applying for such housing; and

(ii) Comparable in quality and cost to the student.

(c) *Other housing.* (1) A recipient shall not, on the basis of sex, administer different policies or practices concerning occupancy by its students of housing other than that provided by such recipient.

(2)(i) A recipient which, through solicitation, listing, approval of housing, or otherwise, assists any agency, organization, or person in making housing available to any of its students, shall

take such reasonable action as may be necessary to assure itself that such housing as is provided to students of one sex, when compared to that provided to students of the other sex, is as a whole:

(A) Proportionate in quantity; and

(B) Comparable in quality and cost to the student.

(ii) A recipient may render such assistance to any agency, organization, or person that provides all or part of such housing to students of only one sex.

§ 28.410 Comparable facilities.

A recipient may provide separate toilet, locker room, and shower facilities on the basis of sex, but such facilities provided for students of one sex shall be comparable to such facilities provided for students of the other sex.

§ 28.415 Access to course offerings.

(a) A recipient shall not provide any course or otherwise carry out any of its education program or activity separately on the basis of sex, or require or refuse participation therein by any of its students on such basis, including health, physical education, industrial, business, vocational, technical, home economics, music, and adult education courses.

(b)(1) With respect to classes and activities in physical education at the elementary school level, the recipient shall comply fully with this section as expeditiously as possible but in no event later than one year from September 29, 2000. With respect to physical education classes and activities at the secondary and post-secondary levels, the recipient shall comply fully with this section as expeditiously as possible but in no event later than three years from September 29, 2000.

(2) This section does not prohibit grouping of students in physical education classes and activities by ability as assessed by objective standards of individual performance developed and applied without regard to sex.

(3) This section does not prohibit separation of students by sex within physical education classes or activities during participation in wrestling, boxing, rugby, ice hockey, football, basketball, and other sports the purpose or major activity of which involves bodily contact.

(4) Where use of a single standard of measuring skill or progress in a physical education class has an adverse effect on members of one sex, the recipient shall use appropriate standards that do not have such effect.

(5) Portions of classes in elementary and secondary schools, or portions of education programs or activities, that deal exclusively with human sexuality may be conducted in separate sessions for boys and girls.

(6) Recipients may make requirements based on vocal range or quality that may result in a chorus or choruses of one or predominantly one sex.

§ 28.420 Access to schools operated by LEAs.

A recipient that is a local educational agency shall not, on the basis of sex, exclude any person from admission to:

(a) Any institution of vocational education operated by such recipient; or

(b) Any other school or educational unit operated by such recipient, unless such recipient otherwise makes available to such person, pursuant to the same policies and criteria of admission, courses, services, and facilities comparable to each course, service, and facility offered in or through such schools.

§ 28.425 Counseling and use of appraisal and counseling materials.

(a) *Counseling.* A recipient shall not discriminate against any person on the basis of sex in the counseling or guidance of students or applicants for admission.

(b) *Use of appraisal and counseling materials.* A recipient that uses testing or other materials for appraising or counseling students shall not use different materials for students on the basis of their sex or use materials that permit or require different treatment of students on such basis unless such different materials cover the same occupations and interest areas and the use of such different materials is shown to be essential to eliminate sex bias. Recipients shall develop and use internal procedures for ensuring that such materials do not discriminate on the basis

of sex. Where the use of a counseling test or other instrument results in a substantially disproportionate number of members of one sex in any particular course of study or classification, the recipient shall take such action as is necessary to assure itself that such disproportion is not the result of discrimination in the instrument or its application.

(c) *Disproportion in classes.* Where a recipient finds that a particular class contains a substantially disproportionate number of individuals of one sex, the recipient shall take such action as is necessary to assure itself that such disproportion is not the result of discrimination on the basis of sex in counseling or appraisal materials or by counselors.

§ 28.430 Financial assistance.

(a) *General.* Except as provided in paragraphs (b) and (c) of this section, in providing financial assistance to any of its students, a recipient shall not:

(1) On the basis of sex, provide different amounts or types of such assistance, limit eligibility for such assistance that is of any particular type or source, apply different criteria, or otherwise discriminate;

(2) Through solicitation, listing, approval, provision of facilities, or other services, assist any foundation, trust, agency, organization, or person that provides assistance to any of such recipient's students in a manner that discriminates on the basis of sex; or

(3) Apply any rule or assist in application of any rule concerning eligibility for such assistance that treats persons of one sex differently from persons of the other sex with regard to marital or parental status.

(b) *Financial aid established by certain legal instruments.* (1) A recipient may administer or assist in the administration of scholarships, fellowships, or other forms of financial assistance established pursuant to domestic or foreign wills, trusts, bequests, or similar legal instruments or by acts of a foreign government that require that awards be made to members of a particular sex specified therein; *Provided,* that the overall effect of the award of such sex-restricted scholarships, fellowships, and other forms of financial assistance does not discriminate on the basis of sex.

(2) To ensure nondiscriminatory awards of assistance as required in paragraph (b)(1) of this section, recipients shall develop and use procedures under which:

(i) Students are selected for award of financial assistance on the basis of nondiscriminatory criteria and not on the basis of availability of funds restricted to members of a particular sex;

(ii) An appropriate sex-restricted scholarship, fellowship, or other form of financial assistance is allocated to each student selected under paragraph (b)(2)(i) of this section; and

(iii) No student is denied the award for which he or she was selected under paragraph (b)(2)(i) of this section because of the absence of a scholarship, fellowship, or other form of financial assistance designated for a member of that student's sex.

(c) *Athletic scholarships.* (1) To the extent that a recipient awards athletic scholarships or grants-in-aid, it must provide reasonable opportunities for such awards for members of each sex in proportion to the number of students of each sex participating in interscholastic or intercollegiate athletics.

(2) A recipient may provide separate athletic scholarships or grants-in-aid for members of each sex as part of separate athletic teams for members of each sex to the extent consistent with this paragraph (c) and § 28.450.

§ 28.435 Employment assistance to students.

(a) *Assistance by recipient in making available outside employment.* A recipient that assists any agency, organization, or person in making employment available to any of its students:

(1) Shall assure itself that such employment is made available without discrimination on the basis of sex; and

(2) Shall not render such services to any agency, organization, or person that discriminates on the basis of sex in its employment practices.

(b) *Employment of students by recipients.* A recipient that employs any of its students shall not do so in a manner that violates §§ 28.500 through 28.550.

§ 28.440 Health and insurance benefits and services.

Subject to § 28.235(d), in providing a medical, hospital, accident, or life insurance benefit, service, policy, or plan to any of its students, a recipient shall not discriminate on the basis of sex, or provide such benefit, service, policy, or plan in a manner that would violate §§ 28.500 through 28.550 if it were provided to employees of the recipient. This section shall not prohibit a recipient from providing any benefit or service that may be used by a different proportion of students of one sex than of the other, including family planning services. However, any recipient that provides full coverage health service shall provide gynecological care.

§ 28.445 Marital or parental status.

(a) *Status generally.* A recipient shall not apply any rule concerning a student's actual or potential parental, family, or marital status that treats students differently on the basis of sex.

(b) *Pregnancy and related conditions.* (1) A recipient shall not discriminate against any student, or exclude any student from its education program or activity, including any class or extracurricular activity, on the basis of such student's pregnancy, childbirth, false pregnancy, termination of pregnancy, or recovery therefrom, unless the student requests voluntarily to participate in a separate portion of the program or activity of the recipient.

(2) A recipient may require such a student to obtain the certification of a physician that the student is physically and emotionally able to continue participation as long as such a certification is required of all students for other physical or emotional conditions requiring the attention of a physician.

(3) A recipient that operates a portion of its education program or activity separately for pregnant students, admittance to which is completely voluntary on the part of the student as provided in paragraph (b)(1) of this section, shall ensure that the separate portion is comparable to that offered to non-pregnant students.

(4) Subject to § 28.235(d), a recipient shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy and recovery therefrom in the same manner and under the same policies as any other temporary disability with respect to any medical or hospital benefit, service, plan, or policy that such recipient administers, operates, offers, or participates in with respect to students admitted to the recipient's educational program or activity.

(5) In the case of a recipient that does not maintain a leave policy for its students, or in the case of a student who does not otherwise qualify for leave under such a policy, a recipient shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy, and recovery therefrom as a justification for a leave of absence for as long a period of time as is deemed medically necessary by the student's physician, at the conclusion of which the student shall be reinstated to the status that she held when the leave began.

§ 28.450 Athletics.

(a) *General.* No person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, be treated differently from another person, or otherwise be discriminated against in any interscholastic, intercollegiate, club, or intramural athletics offered by a recipient, and no recipient shall provide any such athletics separately on such basis.

(b) *Separate teams.* Notwithstanding the requirements of paragraph (a) of this section, a recipient may operate or sponsor separate teams for members of each sex where selection for such teams is based upon competitive skill or the activity involved is a contact sport. However, where a recipient operates or sponsors a team in a particular sport for members of one sex but operates or sponsors no such team for members of the other sex, and athletic opportunities for members of that sex have previously been limited, members of the excluded sex must be allowed to try out for the team offered unless the sport involved is a contact sport. For the purposes of these Title IX regulations, contact sports include boxing, wrestling, rugby, ice hockey, football, basketball, and other sports the purpose or major activity of which involves bodily contact.

(c) *Equal opportunity*. (1) A recipient that operates or sponsors interscholastic, intercollegiate, club, or intramural athletics shall provide equal athletic opportunity for members of both sexes. In determining whether equal opportunities are available, the designated agency official will consider, among other factors:

(i) Whether the selection of sports and levels of competition effectively accommodate the interests and abilities of members of both sexes;

(ii) The provision of equipment and supplies;

(iii) Scheduling of games and practice time;

(iv) Travel and per diem allowance;

(v) Opportunity to receive coaching and academic tutoring;

(vi) Assignment and compensation of coaches and tutors;

(vii) Provision of locker rooms, practice, and competitive facilities;

(viii) Provision of medical and training facilities and services;

(ix) Provision of housing and dining facilities and services;

(x) Publicity.

(2) For purposes of paragraph (c)(1) of this section, unequal aggregate expenditures for members of each sex or unequal expenditures for male and female teams if a recipient operates or sponsors separate teams will not constitute noncompliance with this section, but the designated agency official may consider the failure to provide necessary funds for teams for one sex in assessing equality of opportunity for members of each sex.

(d) *Adjustment period*. A recipient that operates or sponsors interscholastic, intercollegiate, club, or intramural athletics at the elementary school level shall comply fully with this section as expeditiously as possible but in no event later than one year from September 29, 2000. A recipient that operates or sponsors interscholastic, intercollegiate, club, or intramural athletics at the secondary or postsecondary school level shall comply fully with this section as expeditiously as possible but in no event later than three years from September 29, 2000.

§ 28.455 Textbooks and curricular material.

Nothing in these Title IX regulations shall be interpreted as requiring or prohibiting or abridging in any way the use of particular textbooks or curricular materials.

Subpart E—Discrimination on the Basis of Sex in Employment in Education Programs or Activities Prohibited

§ 28.500 Employment.

(a) *General*. (1) No person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination in employment, or recruitment, consideration, or selection therefor, whether full-time or part-time, under any education program or activity operated by a recipient that receives Federal financial assistance.

(2) A recipient shall make all employment decisions in any education program or activity operated by such recipient in a nondiscriminatory manner and shall not limit, segregate, or classify applicants or employees in any way that could adversely affect any applicant's or employee's employment opportunities or status because of sex.

(3) A recipient shall not enter into any contractual or other relationship which directly or indirectly has the effect of subjecting employees or students to discrimination prohibited by §§ 28.500 through 28.550, including relationships with employment and referral agencies, with labor unions, and with organizations providing or administering fringe benefits to employees of the recipient.

(4) A recipient shall not grant preferences to applicants for employment on the basis of attendance at any educational institution or entity that admits as students only or predominantly members of one sex, if the giving of such preferences has the effect of discriminating on the basis of sex in violation of these Title IX regulations.

(b) *Application*. The provisions of §§ 28.500 through 28.550 apply to:

(1) Recruitment, advertising, and the process of application for employment;

(2) Hiring, upgrading, promotion, consideration for and award of tenure, demotion, transfer, layoff, termination, application of nepotism policies, right of return from layoff, and rehiring;

(3) Rates of pay or any other form of compensation, and changes in compensation;

(4) Job assignments, classifications, and structure, including position descriptions, lines of progression, and seniority lists;

(5) The terms of any collective bargaining agreement;

(6) Granting and return from leaves of absence, leave for pregnancy, childbirth, false pregnancy, termination of pregnancy, leave for persons of either sex to care for children or dependents, or any other leave;

(7) Fringe benefits available by virtue of employment, whether or not administered by the recipient;

(8) Selection and financial support for training, including apprenticeship, professional meetings, conferences, and other related activities, selection for tuition assistance, selection for sabbaticals and leaves of absence to pursue training;

(9) Employer-sponsored activities, including social or recreational programs; and

(10) Any other term, condition, or privilege of employment.

§ 28.505 Employment criteria.

A recipient shall not administer or operate any test or other criterion for any employment opportunity that has a disproportionately adverse effect on persons on the basis of sex unless:

(a) Use of such test or other criterion is shown to predict validly successful performance in the position in question; and

(b) Alternative tests or criteria for such purpose, which do not have such disproportionately adverse effect, are shown to be unavailable.

§28.510 Recruitment.

(a) *Nondiscriminatory recruitment and hiring.* A recipient shall not discriminate on the basis of sex in the recruitment and hiring of employees. Where a recipient has been found to be presently discriminating on the basis of sex in the recruitment or hiring of employees, or has been found to have so discriminated in the past, the recipient shall recruit members of the sex so discriminated against so as to overcome the effects of such past or present discrimination.

(b) *Recruitment patterns.* A recipient shall not recruit primarily or exclusively at entities that furnish as applicants only or predominantly members of one sex if such actions have the effect of discriminating on the basis of sex in violation of §§28.500 through 28.550.

§28.515 Compensation.

A recipient shall not make or enforce any policy or practice that, on the basis of sex:

(a) Makes distinctions in rates of pay or other compensation;

(b) Results in the payment of wages to employees of one sex at a rate less than that paid to employees of the opposite sex for equal work on jobs the performance of which requires equal skill, effort, and responsibility, and that are performed under similar working conditions.

§28.520 Job classification and structure.

A recipient shall not:

(a) Classify a job as being for males or for females;

(b) Maintain or establish separate lines of progression, seniority lists, career ladders, or tenure systems based on sex; or

(c) Maintain or establish separate lines of progression, seniority systems, career ladders, or tenure systems for similar jobs, position descriptions, or job requirements that classify persons on the basis of sex, unless sex is a bona fide occupational qualification for the positions in question as set forth in §28.550.

§28.525 Fringe benefits.

(a) *''Fringe benefits'' defined.* For purposes of these Title IX regulations, *fringe benefits* means: Any medical, hospital, accident, life insurance, or retirement benefit, service, policy or plan, any profit-sharing or bonus plan, leave, and any other benefit or service

of employment not subject to the provision of §28.515.

(b) *Prohibitions.* A recipient shall not:

(1) Discriminate on the basis of sex with regard to making fringe benefits available to employees or make fringe benefits available to spouses, families, or dependents of employees differently upon the basis of the employee's sex;

(2) Administer, operate, offer, or participate in a fringe benefit plan that does not provide for equal periodic benefits for members of each sex and for equal contributions to the plan by such recipient for members of each sex; or

(3) Administer, operate, offer, or participate in a pension or retirement plan that establishes different optional or compulsory retirement ages based on sex or that otherwise discriminates in benefits on the basis of sex.

§28.530 Marital or parental status.

(a) *General.* A recipient shall not apply any policy or take any employment action:

(1) Concerning the potential marital, parental, or family status of an employee or applicant for employment that treats persons differently on the basis of sex; or

(2) Which is based upon whether an employee or applicant for employment is the head of household or principal wage earner in such employee's or applicant's family unit.

(b) *Pregnancy.* A recipient shall not discriminate against or exclude from employment any employee or applicant for employment on the basis of pregnancy, childbirth, false pregnancy, termination of pregnancy, or recovery therefrom.

(c) *Pregnancy as a temporary disability.* Subject to §28.235(d), a recipient shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy, recovery therefrom, and any temporary disability resulting therefrom as any other temporary disability for all job-related purposes, including commencement, duration, and extensions of leave, payment of disability income, accrual of seniority and any other benefit or service, and reinstatement, and under any fringe benefit offered to employees by virtue of employment.

(d) *Pregnancy leave.* In the case of a recipient that does not maintain a leave policy for its employees, or in the case of an employee with insufficient leave or accrued employment time to qualify for leave under such a policy, a recipient shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy, and recovery therefrom as a justification for a leave of absence without pay for a reasonable period of time, at the conclusion of which the employee shall be reinstated to the status that she held when the leave began or to a comparable position, without decrease in rate of compensation or loss of promotional opportunities, or any other right or privilege of employment.

§28.535 Effect of state or local law or other requirements.

(a) *Prohibitory requirements.* The obligation to comply with §§28.500 through 28.550 is not obviated or alleviated by the existence of any State or local law or other requirement that imposes prohibitions or limits upon employment of members of one sex that are not imposed upon members of the other sex.

(b) *Benefits.* A recipient that provides any compensation, service, or benefit to members of one sex pursuant to a State or local law or other requirement shall provide the same compensation, service, or benefit to members of the other sex.

§28.540 Advertising.

A recipient shall not in any advertising related to employment indicate preference, limitation, specification, or discrimination based on sex unless sex is a bona fide occupational qualification for the particular job in question.

§28.545 Pre-employment inquiries.

(a) *Marital status.* A recipient shall not make pre-employment inquiry as to the marital status of an applicant for employment, including whether such applicant is ''Miss'' or ''Mrs.''

(b) *Sex.* A recipient may make pre-employment inquiry as to the sex of an applicant for employment, but only if such inquiry is made equally of such applicants of both sexes and if the results of such inquiry are not used in connection with discrimination prohibited by these Title IX regulations.

§28.550 Sex as a bona fide occupational qualification.

A recipient may take action otherwise prohibited by §§28.500 through 28.550 provided it is shown that sex is a bona fide occupational qualification for that action, such that consideration of sex with regard to such action is essential to successful operation of the employment function concerned. A recipient shall not take action pursuant to this section that is based upon alleged comparative employment characteristics or stereotyped characterizations of one or the other sex, or upon preference based on sex of the recipient, employees, students, or other persons, but nothing contained in this section shall prevent a recipient from considering an employee's sex in relation to employment in a locker room or toilet facility used only by members of one sex.

Subpart F—Procedures

§28.600 Notice of covered programs.

Within 60 days of September 29, 2000, each Federal agency that awards Federal financial assistance shall publish in the FEDERAL REGISTER a notice of the programs covered by these Title IX regulations. Each such Federal agency shall periodically republish the notice of covered programs to reflect changes in covered programs. Copies of this notice also shall be made available upon request to the Federal agency's office that enforces Title IX.

§ 28.605 Compliance information.

(a) *Cooperation and assistance.* The designated agency official shall to the fullest extent practicable seek the cooperation of recipients in obtaining compliance with these Title IX regulations and shall provide assistance and guidance to recipients to help them comply voluntarily with these Title IX regulations.

(b) *Compliance reports.* Each recipient shall keep such records and submit to the designated agency official (or designee) timely, complete, and accurate compliance reports at such times, and in such form and containing such information, as the designated agency official (or designee) may determine to be necessary to enable the official to ascertain whether the recipient has complied or is complying with these Title IX regulations. In the case of any program under which a primary recipient extends Federal financial assistance to any other recipient, such other recipient shall also submit such compliance reports to the primary recipient as may be necessary to enable the primary recipient to carry out its obligations under these Title IX regulations.

(c) *Access to sources of information.* Each recipient shall permit access by the designated agency official (or designee) during normal business hours to such of its books, records, accounts, and other sources of information, and its facilities as may be pertinent to ascertain compliance with these Title IX regulations. Where any information required of a recipient is in the exclusive possession of any other agency, institution or person and this agency, institution or person shall fail or refuse to furnish this information the recipient shall so certify in its report and shall set forth what efforts it has made to obtain the information. Asserted considerations of privacy or confidentiality may not operate to bar the Department from evaluating or seeking to enforce compliance with these Title IX regulations. Information of a confidential nature obtained in connection with compliance evaluation or enforcement shall not be disclosed except where necessary in formal enforcement proceedings or where otherwise required by law.

(d) *Information to beneficiaries and participants.* Each recipient shall make available to participants, beneficiaries, and other interested persons such information regarding the provisions of these Title IX regulations and their applicability to the program for which the recipient receives Federal financial assistance, and make such information available to them in such manner, as the designated agency official finds necessary to apprise such persons of the protections against discrimination assured them by Title IX and these Title IX regulations.

[65 FR 52882, Aug. 30, 2000]

§ 28.610 Conduct of investigations.

(a) *Periodic compliance reviews.* The designated agency official (or designee) shall from time to time review the practices of recipients to determine whether they are complying with these Title IX regulations.

(b) *Complaints.* Any person who believes himself or herself or any specific class of individuals to be subjected to discrimination prohibited by these Title IX regulations may by himself or herself or by a representative file with the designated agency official (or designee) a written complaint. A complaint must be filed not later than 180 days from the date of the alleged discrimination, unless the time for filing is extended by the designated agency official (or designee).

(c) *Investigations.* The designated agency official (or designee) will make a prompt investigation whenever a compliance review, report, complaint, or any other information indicates a possible failure to comply with these Title IX regulations. The investigation should include, where appropriate, a review of the pertinent practices and policies of the recipient, the circumstances under which the possible noncompliance with these Title IX regulations occurred, and other factors relevant to a determination as to whether the recipient has failed to comply with these Title IX regulations.

(d) *Resolution of matters.* (1) If an investigation pursuant to paragraph (c) of this section indicates a failure to comply with these Title IX regulations, the designated agency official (or designee) will so inform the recipient and the matter will be resolved by informal means whenever possible. If it has been determined that the matter cannot be resolved by informal means, action will be taken as provided for in § 28.615.

(2) If an investigation does not warrant action pursuant to paragraph (d)(1) of this section the designated agency official (or designee) will so inform the recipient and the complainant, if any, in writing.

(e) *Intimidatory or retaliatory acts prohibited.* No recipient or other person shall intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX or these Title IX regulations, or because he or she has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding or hearing under these Title IX regulations. The identity of complainants shall be kept confidential except to the extent necessary to carry out the purposes of these Title IX regulations, including the conduct of any investigation, hearing, or judicial proceeding arising under these Title IX regulations.

[65 FR 52882, Aug. 30, 2000]

§ 28.615 Procedure for effecting compliance.

(a) *General.* If there appears to be a failure or threatened failure to comply with these Title IX regulations, and if the noncompliance or threatened noncompliance cannot be corrected by informal means, compliance with these Title IX regulations may be effected by the suspension or termination of or refusal to grant or to continue Federal financial assistance or by any other means authorized by law. Such other means may include, but are not limited to:

(1) A reference to the Department of Justice with a recommendation that appropriate proceedings be brought to enforce any rights of the United States under any law of the United States, or any assurance or other contractual undertaking; and

(2) Any applicable proceeding under State or local law.

(b) *Noncompliance with § 28.115.* If an applicant fails or refuses to furnish an assurance or otherwise fails or refuses to comply with a requirement imposed by or pursuant to § 28.115, Federal financial assistance may be refused in accordance with the procedures of paragraph (c) of this section. The Department shall not be required to provide assistance in such a case during the pendency of the administrative proceedings under paragraph (c) of this section except that the Department shall continue assistance during the pendency of such proceedings where such assistance is due and payable pursuant to an application therefor approved prior to September 29, 2000.

(c) *Termination of or refusal to grant or to continue Federal financial assistance.*

(1) No order suspending, terminating or refusing to grant or continue Federal financial assistance shall become effective until:

(i) The designated agency official has advised the applicant or recipient of its failure to comply and has determined that compliance cannot be secured by voluntary means;

(ii) There has been an express finding on the record, after opportunity for hearing, of a failure by the applicant or recipient to comply with a requirement imposed by or pursuant to these Title IX regulations; and

(iii) The expiration of 30 days after the Secretary has filed with the committee of the House, and the committee of the Senate having legislative jurisdiction over the program involved, a full written report of the circumstances and the grounds for such action.

(2) Any action to suspend or terminate or to refuse to grant or to continue Federal financial assistance shall be limited to the particular political entity, or part thereof, or other applicant or recipient as to whom such a finding has been made and shall be limited in its effect to the particular program, or part thereof, in which such noncompliance has been so found.

(d) *Other means authorized by law.* (1) No action to effect compliance by any other means authorized by law shall be taken until:

(i) The designated agency official has determined that compliance cannot be secured by voluntary means;

(ii) The recipient has been notified of its failure to comply and of the action to be taken to effect compliance; and

(iii) The expiration of at least 10 days from the mailing of such notice to the recipient.

(2) During this period of at least 10 days additional efforts shall be made to persuade the recipient to comply with these Title IX regulations and to take such corrective action as may be appropriate.

[65 FR 52883, Aug. 30, 2000]

§ 28.620 Hearings.

(a) *Opportunity for hearing.* Whenever an opportunity for a hearing is required by § 28.615(c), reasonable notice shall be given by registered or certified mail, return receipt requested, to the affected applicant or recipient. This notice shall advise the applicant or recipient of the action proposed to be taken, the specific provision under which the proposed action against it is to be taken, and the matters of fact or law asserted as the basis for this action, and either:

(1) Fix a date not less than 20 days after the date of such notice within which the applicant or recipient may request of the designated agency official that the matter be scheduled for hearing; or

(2) Advise the applicant or recipient that the matter in question has been set down for hearing at a stated place and time. The time and place so fixed shall be reasonable and shall be subject to change for cause. The complainant, if any, shall be advised of the time and place of the hearing. An applicant or recipient may waive a hearing and submit written information and argument for the record. The failure of an applicant or recipient to request a hearing for which a date has been set shall be deemed to be a waiver of the right to a hearing under 20 U.S.C. 1682 and § 28.615(c) and consent to the making of a decision on the basis of such information as may be filed as the record.

(b) *Time and place of hearing.* Hearings shall be held at the offices of the Department in Washington, DC, at a time fixed by the designated agency official unless the official determines that the convenience of the applicant or recipient or of the Department requires that another place be selected. Hearings shall be held before a hearing officer designated in accordance with 5 U.S.C. 556(b).

(c) *Right to counsel.* In all proceedings under this section, the applicant or recipient and the Department shall have the right to be represented by counsel.

(d) *Procedures, evidence, and record.* (1) The hearing, decision, and any administrative review thereof shall be conducted in conformity with 5 U.S.C. 554–557 (sections 5–8 of the Administrative Procedure Act), and in accordance with such rules of procedure as are proper (and not inconsistent with this section) relating to the conduct of the hearing, giving of notices subsequent to those provided for in paragraph (a) of this

section, taking of testimony, exhibits, arguments and briefs, requests for findings, and other related matters. Both the Department and the applicant or recipient shall be entitled to introduce all relevant evidence on the issues as stated in the notice for hearing or as determined by the hearing officer at the outset of or during the hearing. Any person (other than a Government employee considered to be on official business) who, having been invited or requested to appear and testify as a witness on the Government's behalf, attends at a time and place scheduled for a hearing provided for by these Title IX regulations, may be reimbursed for his or her travel and actual expenses of attendance in an amount not to exceed the amount payable under the standardized travel regulations to a Government employee traveling on official business.

(2) Technical rules of evidence shall not apply to hearings conducted pursuant to these Title IX regulations, but rules or principles designed to assure production of the most credible evidence available and to subject testimony to test by cross-examination shall be applied where reasonably necessary by the hearing officer. The hearing officer may exclude irrelevant, immaterial, or unduly repetitious evidence. All documents and other evidence offered or taken for the record shall be open to examination by the parties and opportunity shall be given to refute facts and arguments advanced on either side of the issues. A transcript shall be made of the oral evidence except to the extent the substance thereof is stipulated for the record. All decisions shall be based upon the hearing record and written findings shall be made.

(e) *Consolidated or Joint Hearings.* In cases in which the same or related facts are asserted to constitute noncompliance with these Title IX regulations with respect to two or more programs to which these Title IX regulations apply, or noncompliance with these Title IX regulations and the regulations of one or more other Federal departments or agencies issued under Title IX, the designated agency official may, by agreement with such other departments or agencies where applicable, provide for the conduct of consolidated or joint hearings, and for the application to such hearings of rules of procedures not inconsistent with these Title IX regulations. Final decisions in such cases, insofar as these Title IX regulations are concerned, shall be made in accordance with § 28.625.

[65 FR 52883, Aug. 30, 2000]

§ 28.625 Decisions and notices.

(a) *Decisions by hearing officers.* After a hearing is held by a hearing officer such hearing officer shall either make an initial decision, if so authorized, or certify the entire record including recommended findings and proposed decision to the reviewing authority for a final decision, and a copy of such initial decision or certification shall be mailed to the applicant or recipient and to the complainant, if any. Where the initial decision referred to in this paragraph or in paragraph (c) of this section is made by the hearing officer, the applicant or recipient or the counsel for the Department may, within the period provided for in the rules of procedure issued by the designated agency official, file with the reviewing authority exceptions to the initial decision, with the reasons therefor. Upon the filing of such exceptions the reviewing authority shall review the initial decision and issue its own decision thereof including the reasons therefor. In the absence of exceptions the initial decision shall constitute the final decision, subject to the provisions of paragraph (e) of this section.

(b) *Decisions on record or review by the reviewing authority.* Whenever a record is certified to the reviewing authority for decision or it reviews the decision of a hearing officer pursuant to paragraph (a) or (c) of this section, the applicant or recipient shall be given reasonable opportunity to file with it briefs or other written statements of its contentions, and a copy of the final decision of the reviewing authority shall be given in writing to the applicant or recipient and to the complainant, if any.

(c) *Decisions on record where a hearing is waived.* Whenever a hearing is waived pursuant to § 28.620, the reviewing authority shall make its final decision on the record or refer the matter to a

hearing officer for an initial decision to be made on the record. A copy of such decision shall be given in writing to the applicant or recipient, and to the complainant, if any.

(d) *Rulings required.* Each decision of a hearing officer or reviewing authority shall set forth a ruling on each finding, conclusion, or exception presented, and shall identify the requirement or requirements imposed by or pursuant to these Title IX regulations with which it is found that the applicant or recipient has failed to comply.

(e) *Review in certain cases by the Secretary of the Treasury.* If the Secretary has not personally made the final decision referred to in paragraph (a), (b), or (c) of this section, a recipient or applicant or the counsel for the Department may request the Secretary to review a decision of the reviewing authority in accordance with rules of procedure issued by the designated agency official. Such review is not a matter of right and shall be granted only where the Secretary determines there are special and important reasons therefor. The Secretary may grant or deny such request, in whole or in part. The Secretary also may review such a decision upon his own motion in accordance with rules of procedure issued by the designated agency official. In the absence of a review under this paragraph (e), a final decision referred to in paragraph (a), (b), or (c) of this section shall become the final decision of the Department when the Secretary transmits it as such to congressional committees with the report required under 20 U.S.C. 1682. Failure of an applicant or recipient to file an exception with the reviewing authority or to request review under this paragraph (e) shall not be deemed a failure to exhaust administrative remedies for the purpose of obtaining judicial review.

(f) *Content of orders.* The final decision may provide for suspension or termination of, or refusal to grant or continue Federal financial assistance, in whole or in part, to which these Title IX regulations apply, and may contain such terms, conditions, and other provisions as are consistent with and will effectuate the purposes of Title IX and these Title IX regulations, including provisions designed to assure that no Federal financial assistance to which these Title IX regulations apply will thereafter be extended under such law or laws to the applicant or recipient determined by such decision to be in default in its performance of an assurance given by it pursuant to these Title IX regulations, or to have otherwise failed to comply with these Title IX regulations unless and until it corrects its noncompliance and satisfies the designated agency official that it will fully comply with these Title IX regulations.

(g) *Post-termination proceedings.* (1) An applicant or recipient adversely affected by an order issued under paragraph (f) of this section shall be restored to full eligibility to receive Federal financial assistance if it satisfies the terms and conditions of that order for such eligibility or if it brings itself into compliance with these Title IX regulations and provides reasonable assurance that it will fully comply with these Title IX regulations. An elementary or secondary school or school system that is unable to file an assurance of compliance shall be restored to full eligibility to receive Federal financial assistance if it files a court order or a plan for desegregation that meets the applicable requirements and provides reasonable assurance that it will comply with the court order or plan.

(2) Any applicant or recipient adversely affected by an order entered pursuant to paragraph (f) of this section may at any time request the designated agency official to restore fully its eligibility to receive Federal financial assistance. Any such request shall be supported by information showing that the applicant or recipient has met the requirements of paragraph (g)(1) of this section. If the designated agency official determines that those requirements have been satisfied, the official shall restore such eligibility.

(3) If the designated agency official denies any such request, the applicant or recipient may submit a request for a hearing in writing, specifying why it believes such official to have been in error. It shall thereupon be given an expeditious hearing, with a decision on the record, in accordance with rules of procedure issued by the designated

agency official. The applicant or recipient will be restored to such eligibility if it proves at such hearing that it satisfied the requirements of paragraph (g)(1) of this section. While proceedings under this paragraph (g) are pending, the sanctions imposed by the order issued under paragraph (f) of this section shall remain in effect.

[65 FR 52884, Aug. 30, 2000]

§ 28.630 Judicial review.

Action taken pursuant to 20 U.S.C. 1682 is subject to judicial review as provided in 20 U.S.C. 1683.

[65 FR 52885, Aug. 30, 2000]

§ 28.635 Forms and instructions; coordination.

(a) *Forms and instructions.* The designated agency official shall issue and promptly make available to interested persons forms and detailed instructions and procedures for effectuating these Title IX regulations.

(b) *Supervision and coordination.* The designated agency official may from time to time assign to officials of the Department, or to officials of other departments or agencies of the Government with the consent of such departments or agencies, responsibilities in connection with the effectuation of the purposes of Title IX and these Title IX regulations (other than responsibility for review as provided in § 28.625(e)), including the achievements of effective coordination and maximum uniformity within the Department and within the Executive Branch of the Government in the application of Title IX and these Title IX regulations to similar programs and in similar situations. Any action taken, determination made, or requirement imposed by an official of another department or agency acting pursuant to an assignment of responsibility under this section shall have the same effect as though such action had been taken by the designated official of this Department.

[65 FR 52885, Aug. 30, 2000]

PART 29—FEDERAL BENEFIT PAYMENTS UNDER CERTAIN DISTRICT OF COLUMBIA RETIREMENT PROGRAMS

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AUTHORITY: Sections 11083 and 11251(a) of Public Law 105–33, 111 Stat. 730 and 756, as amended by Public Law 105–277, 112 Stat. 2681–530 through 538, and as further amended by Public Law 106–554, 114 Stat. 2763; subpart D also issued under section 11022 of Public Law 105–33, 111 Stat. 730 and 756, as amended by Public Law 105–277, 112 Stat. 2681–530 through 538, and as further amended by Public Law 106–554, 114 Stat. 2763.

SOURCE: 65 FR 77501, Dec. 12, 2000, unless otherwise noted.

Subpart A—General Provisions

§ 29.101 Purpose and scope.

(a) This part contains the Department's regulations implementing Title XI of the Balanced Budget Act of 1997, Public Law 105–33, 111 Stat. 251, enacted August 5, 1997, as amended.

(b) This subpart contains general information to assist in the use of this part including—

(1) Information about related regulations (§ 29.102),

(2) Definitions of terms used in more than one subpart of this part (§ 29.103), and

(3) The Department's general rules and procedures, applicable to the retirement plans for District of Columbia teachers, police and fire fighters, and judges that concern the administration of Federal Benefit Payments (§§ 29.104–29.106).

(c) This part applies to all Federal Benefit Payments made on or after October 1, 1997.

(d) This part does not apply to the program of annuities, other retirement benefits, or medical benefits for members and officers, retired members and officers, and survivors thereof, of the United States Park Police force, the United States Secret Service, or the United States Secret Service Uniformed Division.

§ 29.102 Related regulations.

(a) This part contains the following subparts:

(1) General Provisions (Subpart A);

(2) Coordination with the District Government (Subpart B);

(3) Split Benefits (Subpart C);[1]

(4) Claims and Appeals Procedures (Subpart D); and

(5) Debt Collection and Waivers of Collection (Subpart E).

(b) Part 581 of Title 5, Code of Federal Regulations, contains information about garnishment of certain Federal

[1] The effective date for section 29.102(a)(3) and Subpart C, originally scheduled for March 31, 2001, has been postponed indefinitely.

payments to enforce awards of alimony or child support.

(c) Part 831 of Title 5, Code of Federal Regulations, contains information about benefits under the Civil Service Retirement System.

(d) Part 870 of Title 5, Code of Federal Regulations, contains information about benefits under the Federal Employees Group Life Insurance Program.

(e) Part 890 of Title 5, Code of Federal Regulations, contains information about benefits under the Federal Employees Health Benefits Program.

(f) Parts 835 and 845 and subparts M, N, and R of part 831 of title 5, Code of Federal Regulations, contain information about debt collection and waiver of collection under the Civil Service Retirement System and the Federal Employees Retirement System.

[65 FR 77501, Dec. 12, 2000, as amended at 65 FR 80753, Dec. 22, 2000; 66 FR 36705, July 13, 2001]

§ 29.103 Definitions.

(a) In this part—

Act means the Balanced Budget Act of 1997, Public Law 105–33, 111 Stat. 251, 712–731, 756–759, enacted August 5, 1997, as amended by the Omnibus Consolidated and Emergency Supplemental Appropriations Act for Fiscal Year 1999, Public Law 105–277, 112 Stat. 2681, 2681–530 through 538, 2681–552, and by the Consolidated Appropriations Act of 2001, Public Law 106–554, 114 Stat. 2763.

Benefits Administrator means:

(1) During the interim administration period under section 11041(a) of the Act, the District of Columbia government; or

(2) After the end of the interim administration period,

(i) The Trustee selected by the Department under section 11035(a) of the Act;

(ii) The Department if a determination is made under section 11035(d) of the Act that, in the interest of economy and efficiency, the Trustee's functions shall be performed by the Department rather than the Trustee; or

(iii) Any other agent of the Department designated to make initial benefit determinations and to recover or recoup or waive recovery or recoupment of overpayments of Federal Benefit Payments, or to recover or recoup debts owed to the Federal Government by annuitants.

District government means the government of the District of Columbia.

Department means the United States Department of the Treasury.

Federal Benefit Payment means a payment for which the Department is responsible under Title XI of the Balanced Budget Act of 1997 (Public Law 105–33, 111 Stat. 251), as amended, to which an individual is entitled under the Judges Plan, the Police and Firefighters Plan, or the Teachers Plan, in such amount and under such terms and conditions as may apply under such plans.

Freeze date means June 30, 1997.

Judges Plan means the retirement program (under subchapter III of chapter 15 of title 11 of the D.C. Code) for judges of the District of Columbia Court of Appeals or Superior Court or with judicial service with the former Juvenile Court of the District of Columbia, District of Columbia Tax Court, police court, municipal court, Municipal Court of Appeals, or District of Columbia Court of General Sessions.

OPM means the United States Office of Personnel Management.

Police and Firefighters Plan means any of the retirement programs (under chapter 6 of title 4 of the D.C. Code) for members of the Metropolitan Police Force and Fire Department in effect on June 29, 1997.

Reconsideration means the process of reexamining an individual's entitlement to benefits or liability for a debt to determine whether—

(1) The law and regulations were properly applied; and/or

(2) The mathematical computation of the benefit or liability is correct.

Retirement Funds means the District of Columbia Federal Pension Liability Trust Fund established under section 11031 of the Act (codified at D.C. Code Ann. 1–764.1), the Federal Supplemental District of Columbia Pension Fund established under section 11051 of the Act (codified at D.C. Code Ann. 1–766.1), and the District of Columbia Judicial Retirement and Survivors Annuity Fund established under section 11252 of the Act (codified at D.C. Code Ann. 1–714).

Secretary means the Secretary of the United States Department of the Treasury or his or her designee.

Teachers Plan means any of the retirement programs for teachers (under chapter 12 of title 31 of the D.C. Code) in effect on June 29, 1997.

(b) In this subpart—

Legal process means—

(1) Any document that qualifies as legal process as defined in § 581.103 of Title 5, Code of Federal Regulations; or

(2) Any court order that Federal or District of Columbia law permits to cause all or any portion of a payment under the Judges Plan, the Police and Firefighters Plan, or the Teachers Plan to be made to a former spouse under chapter 30 of title 1 of the D.C. Code (1997).

Representative payee means a fiduciary to whom a payment under the Judges Plan, the Police and Firefighters Plan, or the Teachers Plan is made for the benefit of a plan participant or a survivor.

[65 FR 77501, Dec. 12, 2000, as amended at 66 FR 36705, July 13, 2001

§ 29.104 Schedule for Federal Benefit Payments.

Federal Benefit Payments are payable on the first business day of the month following the month in which the benefit accrues. (See § 29.105(b).)

§ 29.105 Computation of time.

(a) *For filing documents.* In computing the number of days allowed for filing a document, the first day counted is the day after the action or event from which the period begins to run. If the date that ordinarily would be the last day for filing falls on a Saturday, a Sunday, a Federal holiday, or a District holiday, the period runs until the end of the next day that is not a Saturday, a Sunday, or a Federal or a District holiday.

(b) *For benefit accrual.* (1) Annuity accrues on a daily basis; one-thirtieth of the monthly rate constitutes the daily rate.

(2) Annuity does not accrue on the 31st day of any month except that annuity accrues on the 31st day of the initial month if the employee's annuity commences on the 31st day of a 31-day month.

(3) For accrual purposes the last day of a 28-day month counts as 3 days and the last day of a 29-day month counts as 2 days.

(c) *For counting unused sick leave.* (1) For annuity computation purposes—

(i) The service of a participant under the Police and Firefighters Plan who retires on an immediate annuity is increased by the number of days of unused sick leave to the participant's credit under a formal leave system; and

(ii) The service of a participant under the Teachers Plan who retires on an immediate annuity or dies leaving a survivor entitled to an annuity is increased by the number of days of unused sick leave to the participant's credit under a formal leave system.

(2) In general, 8 hours of unused sick leave increases total service by 1 day. In cases where more or less than 8 hours of sick leave would be charged for a day's absence, total service is increased by the number of days in the period between the date of separation and the date that the unused sick leave would have expired had the employee used it (except that holidays falling within the period are treated as work days, and no additional leave credit is earned for that period).

(3) If an employee's tour of duty changes from part time to full time or full time to part time within 180 days before retirement, the credit for unused sick leave is computed as though no change had occurred.

(d) *For counting leave without pay (LWOP) that is creditable service.* (1) Under the Police and Firefighters Plan, credit is allowed for no more than 6 months of LWOP in each calendar year.

(2)(i) Under the Teachers Plan, credit is allowed for no more than 6 months of LWOP in each fiscal year.

(ii)(A) For years prior to fiscal year 1976, each fiscal year started on July 1 and ended on the following June 30.

(B) Fiscal year 1976 started on July 1, 1975, and ended on September 30, 1976.

(C) For years starting in fiscal year 1977, each fiscal year starts on October 1 and ends on the following September 30.

§ 29.106 Representative payees.

For Federal Benefit Payments, representative payees will be authorized

to the same extent and under the same circumstances as each plan permits for non-Federal Benefit Payments under the plan. (See *e.g.*, section 4–629(b) of the D.C. Code (1997) (applicable to the Police and Firefighters Plan).)

Subpart B—Coordination With the District Government

§ 29.201 Purpose and scope.

This subpart contains information concerning the relationship between the Department and the District government in the administration of Title XI of the Balanced Budget Act of 1997, as amended, and the functions of each in the administration of that Act.

§ 29.202 Definitions. [Reserved]

§ 29.203 Service of Process.

To affect Federal Benefit Payments—

(a) Service must be made upon the Department at the address provided in appendix A to this subpart for—

(1) Legal process under section 659 of title 42, United States Code, and part 581 of Title 5, Code of Federal Regulations, or

(2) Any request for or notice of appointment of a custodian, guardian, or other fiduciary to receive Federal Benefit Payments as representative payees under § 29.106;

(b) All other process regarding Federal Benefit Payments (including requests for judicial review under § 29.406) must be served upon the United States in accordance with applicable law.

(c) All other process regarding Federal Benefit Payments must be served upon the United States in accordance with applicable law.

APPENDIX A TO SUBPART B OF PART 29—ADDRESSES FOR SERVICE UNDER § 29.203

1. The mailing address for delivery of documents described in § 29.203(a) by the United States Postal Service is: Office of DC Pensions, Department of the Treasury, Metropolitan Square Building, Room 6250, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

2. The address for delivery of documents described in § 29.203(a) by process servers, express carriers, or other forms of handcarried delivery is: Office of DC Pensions, Department of the Treasury, Metropolitan Square Building, Room 6250, 655 15th Street (F Street side), NW., Washington, DC.

[65 FR 77501, Dec. 12, 2000, as amended at 65 FR 80753, Dec. 22, 2000]

Subpart C—Split Benefits

SOURCE: 65 FR 77501, Dec. 12, 2001, unless otherwise noted.

§ 29.301 Purpose and scope.

(a) The purpose of this subpart is to addresses the legal and policy issues that affect the calculation of the Federal and District of Columbia portions of benefits under subtitle A of Title XI of the Balanced Budget Act of 1977, Public Law 105–33, 111 Stat. 251, 712–731, enacted August 5, 1997, as amended.

(1) This subpart states general principles for the calculation of Federal Benefit Payments in cases in which the Department and the District government are both responsible for paying a portion of an employee's total retirement benefits under the Police and Firefighters Plan or the Teachers Plan.

(2) This subpart provides illustrative examples of sample computations to show the application of the general principles to specific problems.

(b)(1) This subpart applies only to benefits under the Police and Firefighters Plan or the Teachers Plan for individuals who have performed service creditable under these programs on or before June 30, 1997.

(2) This subpart addresses only those issues that affect the split of fiscal responsibility for retirement benefits (that is, the calculation of Federal Benefit Payments).

(3) Issues relating to determination and review of eligibility and payments, and financial management, are beyond the scope of this subpart.

(c) This subpart does not apply to benefit calculations under the Judges Plan.

§ 29.302 Definitions.

In this subpart (including appendix A of this subpart)—

Deferred retirement means retirement under section 4–623 of the D.C. Code (1997) (under the Police and Firefighters Plan) or section 31–1231(a) of the D.C. Code (1997) (under the Teachers Plan).

Deferred retirement age means the age at which a deferred annuity begins to accrue, that is, age 55 under the Police and Firefighters Plan and age 62 under the Teachers Plan.

Department service or *departmental service* means any period of employment in a position covered by the Police and Firefighters Plan or Teachers Plan. *Department service* or *departmental service* may include certain periods of military service that interrupt a period of employment under the Police and Firefighters Plan or the Teachers Plan.

Disability retirement means retirement under section 4–615 or section 4–616 of the D.C. Code (1997) (under the Police and Firefighters Plan) or section 31–1225 of the D.C. Code (1997) (under the Teachers Plan), regardless of whether the disability was incurred in the line of duty.

Enter on duty means commencement of employment in a position covered by the Police and Firefighters Plan or the Teachers Plan.

Excess leave without pay or *excess LWOP* means a period of time in a nonpay status that in any year is greater than the amount creditable as service under § 29.105(d).

Hire date means the date the employee entered on duty.

Military service means—

(1) For the Police and Firefighters Plan, military service as defined in section 4–607 of the D.C. Code (1997) that is creditable as other service under section 4–602 or section 4–610 of the D.C. Code (1997); and

(2) For the Teachers Plan, military service as described in section 31–1230(a)(4) of the D.C. Code (1997).

Optional retirement means regular longevity retirement under section 4–618 of the D.C. Code (1997) (under the Police and Firefighters Plan) or section 31–1224(a) of the D.C. Code (1997) (under the Teachers Plan).

Other service means any period of creditable service other than departmental service or unused sick leave. *Other service* includes service that becomes creditable upon payment of a deposit, such as service in another school system under the Teachers Plan (under section 31–1208 of the D.C. Code (1997)); and service that is creditable without payment of a deposit, such as military service occurring prior to employment under the Police and Firefighters Plan.

Pre-80 hire means an individual whose annuity is computed using the formula under the Police and Firefighters Plan applicable to individuals hired before February 15, 1980.

Pre-96 hire means an individual whose annuity is computed using the formula under the Teachers Plan applicable to individuals hired before November 10, 1996.

Sick leave means unused sick leave, which is creditable in a retirement computation, as calculated under § 29.105(c).

GENERAL PRINCIPLES FOR DETERMINING SERVICE CREDIT TO CALCULATE FEDERAL BENEFIT PAYMENTS

§ 29.311 Credit only for service performed on or before June 30, 1997.

Only service performed on or before June 30, 1997, is credited toward Federal Benefit Payments.

§ 29.312 All requirements for credit must be satisfied by June 30, 1997.

Service is counted toward Federal Benefit Payments only if all requirements for the service to be creditable are satisfied as of June 30, 1997.

§ 29.313 Federal Benefit Payments are computed based on retirement eligibility as of the separation date and service creditable as of June 30, 1997.

Except as otherwise provided in this subpart, the amount of Federal Benefit Payments is computed based on retirement eligibility as of the separation date and service creditable as of June 30, 1997.

SERVICE PERFORMED AFTER JUNE 30, 1997

§ 29.321 General principle.

Any service performed after June 30, 1997, may never be credited toward Federal Benefit Payments.

§ 29.322 Disability benefits.

If an employee separates for disability retirement after June 30, 1997, and, on the date of separation, the employee—

(a) Satisfies the age and service requirements for optional retirement, the Federal Benefit Payment commences immediately, that is, the Federal Benefit Payment is calculated as though the employee retired under optional retirement rules using only service through June 30, 1997 (See examples 7A and 7B of appendix A of this subpart); or

(b) Does not satisfy the age and service requirements for optional retirement, the Federal Benefit Payment begins when the disability retiree reaches deferred retirement age. (See § 29.343.)

ALL REQUIREMENTS FOR CREDIT MUST BE SATISFIED BY JUNE 30, 1997

§ 29.331 General principle.

To determine whether service is creditable for the computation of Federal Benefit Payments under this subpart, the controlling factor is whether all requirements for the service to be creditable under the Police and Firefighters Plan or the Teachers Plan were satisfied as of June 30, 1997.

§ 29.332 Unused sick leave.

(a) For employees separated for retirement as of June 30, 1997, Federal Benefit Payments include credit for any unused sick leave that is creditable under the applicable plan.

(b) For employees separated for retirement after June 30, 1997, no unused sick leave is creditable toward Federal Benefit Payments.

§ 29.333 Military service.

(a) For employees who entered on duty on or before June 30, 1997, and whose military service was performed prior to that date, credit for military service is included in Federal Benefit Payments under the terms and conditions applicable to each plan.

(b) For employees who enter on duty after June 30, 1997, military service is not creditable toward Federal Benefit Payments, even if performed as of June 30, 1997.

(c) For employees who entered on duty on or before June 30, 1997, but who perform military service after that date, the credit for military service is not included in Federal Benefit Payments.

§ 29.334 Deposit service.

(a) *Teachers Plan.* (1) Periods of civilian service that were not subject to retirement deductions at the time they were performed are creditable for Federal Benefit Payments under the Teachers Plan if the deposit for the service was paid in full to the Teachers Plan as of June 30, 1997.

(2) No credit is allowed for Federal Benefit Payments under the Teachers Plan for any period of civilian service that was not subject to retirement deductions at the time it was performed if the deposit for the service was not paid in full as of June 30, 1997.

(b) *Police and Firefighters Plan.* No credit is allowed for Federal Benefit Payments under the Police and Firefighters Plan for any period of civilian service that was not subject to retirement deductions at the time that the service was performed. (See definition of ''governmental service'' at D.C. Code section 4–607(15) (1997).)

§ 29.335 Refunded service.

(a) Periods of civilian service that were subject to retirement deductions but for which the deductions were refunded to the employee are creditable for Federal Benefit Payments if the redeposit for the service was paid in full to the District government as of June 30, 1997.

(b) No credit is allowed for Federal Benefit Payments for any period of civilian service that was subject to retirement deductions but for which the deductions were refunded to the employee if the redeposit for the service was not paid in full to the District government as of June 30, 1997.

CALCULATION OF THE AMOUNT OF FEDERAL BENEFIT PAYMENTS

§ 29.341 General principle.

Except for disability retirements after June 30, 1997, and certain death benefits based on deaths after June 30, 1997, in which the calculation is not based upon length of service (see § 29.344); for cases in which some service is creditable on or before June 30, 1997, and some service is creditable after June 30, 1997, Federal Benefit Payments are computed under the rules of the applicable plan as though—

(a) The employee were eligible to retire effective July 1, 1997, under the same conditions as the actual retirement (that is, using the annuity computation formula that applies under the plan in effect on June 29, 1997, and the actual retirement age, including any applicable age reduction, based on the age at actual retirement);

(b) The service that became creditable after June 30, 1997, did not exist; and

(c) The average salary is the average salary at separation.

NOTE TO § 29.341: See examples 7B, 9, and 13 of appendix A of this subpart.

§ 29.342 Computed annuity exceeds the statutory maximum.

(a) In cases in which the total computed annuity exceeds the statutory maximum:

(1) Federal Benefit Payments may equal total benefits even if the employee had service after June 30, 1997.

(2) If the employee had sufficient service as of June 30, 1997, to qualify for the maximum annuity under the plan, the Federal Benefit Payment is the maximum annuity under the plan. This will be the entire benefit except for any amount in excess of the normal maximum due to unused sick leave, which is the responsibility of the District. (See example 3, of appendix A of this subpart.)

(b) If the employee did not perform sufficient service as of June 30, 1997, to reach the statutory maximum benefit, but has sufficient service at actual retirement to exceed the statutory maximum, the Federal Benefit Payment is the amount earned through June 30, 1997. The non-Federal-Benefit-Payment portion of the total benefit consists of only the amount by which the total benefit payable exceeds the Federal Benefit Payment.

§ 29.343 Disability benefits.

(a) The general rule that Federal Benefit Payments are calculated under the applicable retirement plan as though the employee were eligible for optional retirement and separated on June 30, 1997, does not apply to disability benefits prior to optional retirement age.

(b) In cases involving disability benefits prior to optional retirement age, no Federal Benefit Payment is payable until the retiree reaches the age of eligibility to receive a deferred annuity (age 55 under the Police and Firefighters Plan and age 62 under the Teachers Plan). When the age for deferred annuity is reached, the Federal Benefit Payment is paid using creditable service accrued as of June 30, 1997, and average salary (computed under the rules for the applicable plan) as of the date of separation. (See examples 6 and 7 of appendix A of this subpart.)

§ 29.344 Survivor benefits.

(a) The general rule that Federal Benefit Payments are calculated under the applicable retirement plan as though the employee were eligible for optional retirement and separated on June 30, 1997, does not apply to death benefits that are not determined by length of service.

(b) In cases in which the amount of death benefits is not determined by length of service, the amount of Federal Benefit Payments is calculated by multiplying the amount of the total benefit payable by the number of full months of service through June 30, 1997, and then dividing by the number of months of total service at retirement (for elected survivor benefits) or death (for guaranteed-minimum death-in-service survivor benefits). (See example 13 of appendix A of this subpart.)

§ 29.345 Cost-of-living adjustments.

Cost-of-living increases are applied directly to Federal Benefit Payments, rather than computed on the total benefit and then prorated. (See example 14 of appendix A of this subpart.)

§ 29.346 Reduction for survivor benefits.

(a) If a retiree designates a base for a survivor annuity that is greater than or equal to the unreduced Federal Benefit Payment, the applicable plan's annuity reduction formula is applied to the unreduced Federal Benefit Payment to determine the reduced Federal Benefit Payment. (See example 10 of appendix A of this subpart.)

(b) If a retiree designates a base for a survivor annuity that is less than the amount of the Federal Benefit Payment, the entire survivor reduction applies to the Federal Benefit Payment to determine the reduced Federal Benefit Payment.

APPENDIX A TO SUBPART C OF PART 29—EXAMPLES

This appendix contains sample calculations of Federal Benefit Payments in a variety of situations.

OPTIONAL RETIREMENT EXAMPLES

EXAMPLE 1: NO UNUSED SICK LEAVE

A. In this example, an individual covered by the Police and Firefighters Plan hired before 1980 retires in October 1997. At retirement, he is age 51 with 20 years and 3 days of departmental service plus 3 years, 4 months, and 21 days of military service that preceded the departmental service. The Federal Benefit Payment begins at retirement. It is based on the 19 years, 8 months, and 22 days of departmental service and 3 years, 4 months, and 21 days of military service performed as of June 30, 1997. Thus, the Federal Benefit Payment is based on 23 years and 1 month of service, all at the 2.5 percent accrual rate. The total annuity is based on 23 years and 4 months of service, all at the 2.5 percent accrual rate.

[Pre-80 hire]

Total Annuity Computation

Birth date: 09/10/46
Hire date: 10/09/77
Separation date: 10/11/97
Department service: 20/00/03
Other service: 03/04/21
Sick leave:
.025 service: 23.333333
.03 service:
Average salary: $45,680.80
Total: $26,647.12
Total/month: $2,221.00

Federal Benefit Payment Computation

Birth date: 9/10/46
Hire date: 10/09/77
Freeze date: 06/30/97
Department service: 19/08/22
Other service: 03/04/21
Sick leave:
.025 service: 23.083333
.03 service:
Average salary: $45,680.80
Total: $26,361.61
Total/month: $2,197.00

B. In this example, the individual covered by the Police and Firefighters Plan was hired earlier than in example 1A and thus performed more service as of both June 30, 1997, and retirement in October 1997. At retirement, he is age 51 with 21 years, 11 months and 29 days of departmental service plus 3 years, 4 months, and 21 days of military service that preceded the departmental service. The Federal Benefit Payment begins at retirement. It is based on the 21 years, 8 months, and 18 days of departmental service and 3 years, 4 months, and 21 days of military service performed as of June 30, 1997. Thus, the Federal Benefit Payment is based on 25 years and 1 month of service, 1 year and 8 months at the 3.0 percent accrual rate and 23 years and 5 months at the 2.5 percent accrual rate (including 1 month consisting of 18 days of departmental service and 21 days of other service). The total annuity is based on 25 years and 4 months of service, 1 year and 11 months at the 3.0 percent accrual rate and 23 years and 5 months at the 2.5 percent accrual rate (including 1 month consisting of 29 days of departmental service and 21 days of other service).

[Pre-80 hire]

Total Annuity Computation

Birth date: 09/10/46
Hire date: 10/13/75
Separation date: 10/11/97
Department service: 21/11/29
Other service: 03/04/21
Sick leave:
.025 service: 23.416667
.03 service: 1.916667
Average salary: $45,680.80
Total: $29,368.96
Total/month $2,447.00

Federal Benefit Payment Computation

Birth date: 09/10/46
Hire date: 10/13/75
Freeze date: 06/30/97
Department service: 21/08/18
Other service: 03/04/21
Sick leave:
.025 service: 23.416667
.03 service: 1.666667
Average salary: $45,680.80
Total: $29,026.36
Total/month: $2,419.00

EXAMPLE 2: UNUSED SICK LEAVE CREDIT

In this example, an individual covered by the Police and Firefighters Plan and hired before 1980 retires in March 1998. At retirement, she is age 48 with 24 years, 8 months, and 6 days of departmental service plus 6 months and 4 days of other service (deposit paid before June 30, 1997) and 11 months and 11 days of unused sick leave. For a police officer (or a non-firefighting division firefighter) such an amount of sick leave would be 1968 hours (246 days, based on a 260-day year, times 8 hours per day). For a firefighting division firefighter, such an amount

would be 2069 hours (341 days divided by 360 days per year times 2184 hours per year). The Federal Benefit Payment begins at retirement. It is based on the 23 years, 11 months, and 23 days of departmental service performed as of June 30, 1997, and 6 months and 4 days of other service. Thus, the Federal Benefit Payment is based on 20 years departmental and 6 months of other service at the 2.5 percent accrual rate and 3 years and 11 months of service at the 3.0 percent accrual rate. The total annuity is based on 20 years and 6 months of service at the 2.5 percent accrual rate and 5 years and 7 months of service at the 3 percent accrual rate.

[Pre-80 hire]

Total Annuity Computation

Birth date: 05/01/49
Hire date: 07/08/73
Separation date: 03/13/98
Department service: 24/08/06
Other service: 00/06/04
Sick leave: 00/11/11
.025 service: 20.5
.03 service: 5.583333
Average salary: $61,264.24
Total: $41,659.68
Total/month: $3,472.00

Federal Benefit Payment Computation

Birth date: 05/01/49
Hire date: 07/08/73
Freeze date: 06/30/97
Department service: 23/11/23
Other service: 00/06/04
Sick leave:
.025 service: 20.5
.03 service: 3.916667
Average salary: $61,264.24
Total: $38,596.47
Total/month: $3,216.00

EXAMPLE 3: CALCULATED BENEFIT EXCEEDS STATUTORY MAXIMUM

A. In this example, an individual covered by the Police and Firefighters Plan hired before 1980 retires in March 1998. At retirement, he is age 55 with 32 years and 17 days of departmental service. The Federal Benefit Payment begins at retirement. It is based on the 31 years, 3 months, and 17 days of departmental service performed as of June 30, 1997. Thus, the Federal Benefit Payment is based on 20 years of service at the 2.5 percent accrual rate and 11 years and 3 months of service at the 3.0 percent accrual rate. However, the annuity is limited to 80 percent of the basic salary at time of retirement. (This limitation does not apply to the unused sick leave credit.) The annuity computed as of June 30, 1997, equals the full benefit payable; therefore, the Federal Benefit Payment is the total benefit.

[Pre-80 hire]

Total Annuity Computation

Birth date: 06/12/42
Hire date: 03/14/66
Separation date: 03/30/98
Department service: 32/00/17
Other service:
Sick leave:
.025 service: 20
.03 service: 12
Average salary: $75,328.30
Final salary: $77,180.00
Total: $64,782.34
Total/month: $5,399.00
Maximum: $61,744.00
$5,145.00

Federal Benefit Payment Computation

Birth date: 06/12/42
Hire date: 03/14/66
Freeze date: 03/30/97
Department service: 31/03/17
Other service:
Sick leave:
.025 service: 20
.03 service: 11.25
Average salary: $75,328.30
Final salary: $77,180.00
Total: $63,087.45
Total/month: $5,257.00
Maximum: $61,744.00
$5,145.00

B. In this example, the individual in example 3A also has 6 months of unused sick leave at retirement. The sick leave credit is not subject to the 80% limitation and does not become creditable service until the date of separation. For a police officer (or a non-firefighting division firefighter) such an amount of sick leave would be 1040 hours (130 days, based on a 260-day year, times 8 hours per day). For a firefighting division firefighter, such an amount would be 1092 hours (180 days divided by 360 days per year times 2184 hours per year). Six months of unused sick leave increases the annual total benefit by 1.5 percent of the average salary, or in the example by $94 per month. The District is responsible for the portion of the annuity attributable to the unused sick leave because it became creditable at retirement, that is, after June 30, 1997.

[Pre-80 hire]

Total Annuity Computation

Birth date: 06/12/42
Hire date: 03/14/66
Separation date: 03/30/98
Department service: 32/00/17
Other service:
Sick leave:
.025 service: 20
.03 service: 12

[Pre-80 hire]

Average salary: $75,328.30
Final salary: $77,180.00
Total wo/sl credit: $64,782.34
Total/month: $5,399.00
Max wo/sl credit: $61,744.00
Max w/sl credit: $62,873.92
Monthly benefit: $5,239.00

Federal Benefit Payment Computation

Birth date: 06/12/42
Hire date: 03/14/66
Freeze date: 06/30/97
Department service: 31/03/17
Other service:
Sick leave: none
.025 service: 20
.03 service: 11.25
Average salary: $75,328.30
Final salary: $77,180.00
Total: $63,087.45
Total/month: $5,257.00
Maximum: $61,744.00
Monthly benefit: $5,145.00

EXAMPLE 4: EXCESS LEAVE WITHOUT PAY

In this example, an individual covered by the Teachers Plan hired before 1996 retires in February 1998. At retirement, she is age 64 with 27 years of departmental service and 6 years, 7 months, and 28 days of other service (creditable before June 30, 1997). However, only 6 months of leave in a fiscal year without pay may be credited toward retirement under the Teachers Plan. She had 3 months and 18 days of excess leave without pay as of June 30, 1997. Since the excess leave without pay occurred before June 30, 1997, the time attributable to the excess leave without pay is subtracted from the service used in both the Federal Benefit Payment and the total benefit computations. The Federal Benefit Payment begins at retirement. It is based on the 32 years and 8 months of service (32 years, 11 months, and 28 days minus 3 months and 18 days and the partial month dropped); 5 years of service at the 1.5 percent accrual rate, 5 years of service at the 1.75 percent accrual rate, and 22 years and 8 months of service at the 2 percent accrual rate. The total annuity is based on 33 years and 4 months of service (33 years, 7 months and 28 days minus 3 months and 18 days and the partial month dropped) 5 years of service at the 1.5 percent accrual rate, 5 years of service at the 1.75 percent accrual rate and 23 years and 4 months of service at the 2 percent accrual rate.

NOTE: For the Teachers Plan, section 1230(a) of title 31 of the DC Code (1997) allows for 6 months leave without pay in any fiscal year. For the Police and Firefighters Plan, section 610(d) of title 4 of the DC Code (1997) allows for 6 months leave without pay in any calendar year.

[Pre-96 hire]

Total Annuity Computation

Birth date: 11/04/33
Hire date: 03/01/71
Separation date: 02/28/98
Department service: 27/00/00
Other service: 06/07/28
Excess LWOP: 00/03/18
.015 service: 5
.0175 service: 5
.02 service: 23.333333
Average salary: $53,121.00
Total: $33,421.98
Total/month: $2,785.00

Federal Benefit Payment Computation

Birth date: 11/04/33
Hire date: 03/01/71
Freeze date: 06/30/97
Department service: 26/04/00
Other service: 06/07/28
Excess LWOP: 00/03/18
.015 service: 5
.0175 service: 5
.02 service: 22.666667
Average salary: $53,121.00
Total: $32,713.66
Total/month: $2,726.00

EXAMPLE 5: SERVICE CREDIT DEPOSITS

A. An individual covered by the Teachers Plan hired before 1996 retires in October 1997. At retirement, he is age 61 with 30 years and 3 days of departmental service plus 3 years, 4 months, and 21 days of other service that preceded the departmental service for which the deposit was fully paid on or before June 30, 1997. The Federal Benefit Payment begins at retirement. It is based on the 29 years, 8 months, and 22 days of departmental service and 3 years, 4 months, and 21 days of service performed as of June 30, 1997. Thus, the Federal Benefit Payment is based on 33 years and 1 month of service; 5 years of service at the 1.5 percent accrual rate, 5 years of service at the 1.75 percent accrual rate, and 23 years and 1 month of service at the 2 percent accrual rate. The total annuity is based on 33 years and 4 months of service; 5 years of service at the 1.5 percent accrual rate, 5 years of service at the 1.75 percent accrual rate and 23 years and 4 months of service at the 2 percent accrual rate.

[Pre-96 hire]

Total Annuity Computation

Birth date: 09/10/36
Hire date: 10/09/67
Separation date: 10/11/97
Department Service: 30/00/03
Other service: 03/04/21
Deposit paid before freeze date:
Other service credit allowed:

[Pre-96 hire]

Sick leave:
.015 service: 5
.0175 service: 5
.02 service: 23.333333
Average salary: $45,680.80
Total: $28,740.85
Total/month: $2,395.00

Federal Benefit Payment Computation

Birth date: 09/10/36
Hire date: 10/09/67
Freeze date: 06/30/97
Department service: 29/08/22
Other service: 03/04/21
Deposit paid before freeze date:
Other service credit allowed:
Sick Leave:
.015 service: 5
.0175 service: 5
.02 service: 23.08333; 13 days dropped
Average salary: $45,680.80
Total: $28,512.45
Total/month: $2,376.00

B. In this example, the employee in example 5A did not pay any of the deposit to obtain credit for the 3 years, 4 months, and 21 days of other service as of June 30, 1997. Thus, none of the other service is used in the computation of the Federal Benefit Payment. An individual covered by the Teachers Plan hired before 1996 retires in October 1997. At retirement, he is age 61 with 30 years and 3 days of departmental service plus 3 years, 4 months, and 21 days of other service that preceded the departmental service for which the deposit was paid in full in October 1997 (at retirement). The Federal Benefit Payment begins at retirement. It is based on only the 29 years, 8 months, and 22 days of departmental service performed as of June 30, 1997; 5 years of service at the 1.5 percent accrual rate, 5 years of service at the 1.75 percent accrual rate, and 19 years and 8 months of service at the 2 percent accrual rate. The total annuity is based on 33 years and 4 months of service; 5 years of service at the 1.5 percent accrual rate, 5 years of service at the 1.75 percent accrual rate and 23 years and 4 months of service at the 2 percent accrual rate.

[Pre-96 hire]

Total Annuity Computation

Birth date: 09/10/36
Hire date: 10/09/67
Separation date: 10/11/97
$0.00
Department service: 30/00/03
Other service: 03/04/21
Total deposit paid after 6/30/97
Sick leave:
.015 service: 5

[Pre-96 hire]

.0175 service: 5
.02 service: 23.333333
Average salary: $45,680.80
Total: $28,740.85
Total/month: $2,395.00

Federal Benefit Payment Computation

Birth date: 09/10/36
Hire date: 10/09/67
Freeze date: 06/30/97
Department service: 29/08/22
Other service: none
Total deposit paid after 6/30/97:
Sick leave:
.015 service: 5
.0175 service: 5
.02 service: 19.666667; 22 days dropped
Average salary: $45,680.80
Total: $25,390.90
Total/month: $2,116.00

C. In this example, the employee in examples 5A and B began installment payments on the deposit to obtain credit for the 3 years, 4 months, and 21 days of other service as of June 30, 1997, but did not complete the deposit until October 1997 (at retirement). The other service is not used in the computation of the Federal Benefit Payment because the payment was not completed as of June 30, 1997. Thus, the result is the same as in example 5B.

[Pre-96 hire]

Total Annuity Computation

Birth date: 09/10/36
Hire date: 10/09/67
Separation date: 10/11/97
Department service: 30/00/03
Other service: 03/04/21
Partial deposit paid as of 6/30/97:
Deposit completed after 6/30/97:
Sick leave:
.015 service: 5
.0175 service: 5
.02 service: 23.333333
Average salary: $45,680.80
Total: $28,740.85
Total/month: $2,395.00

Federal Benefit Payment Computation

Birth date: 09/10/36
Hire date: 10/09/67
Freeze date: 06/30/97
Department service: 29/08/22
Other service: none
Partial deposit paid as of 6/30/97:
Deposit completed after 6/30/97:
Sick leave:
.015 service: 5
.0175 service: 5
.02 service: 19.666667; 22 days dropped
Average salary: $45,680.80
Total: $25,390.90
Total/month: $2,116.00

DISABILITY RETIREMENT EXAMPLES

EXAMPLE 6: DISABILITY OCCURS BEFORE ELIGIBILITY FOR OPTIONAL RETIREMENT

A. In this example, an individual covered by the Police and Firefighters Plan hired before 1980 retires based on a disability in the line of duty in October 1997. At retirement, he is age 45 with 18 years, 5 months, and 11 days of departmental service. Since he had performed less than 20 years of service and had not reached the age of eligibility for an optional retirement, the Federal Benefit Payment does not begin at retirement. When the disability annuitant reaches age 55, he satisfies the age and service requirements for deferred retirement. At that time (August 20, 2007), the Federal Benefit Payment begins. It is based on the 18 years, 1 month, and 17 days of departmental service performed as of June 30, 1997, all at the 2.5 percent accrual rate.

[Pre-80 hire]

Total Annuity Computation

Birth date: 08/20/52
Hire date: 05/14/79
Separation date: 10/24/97
Department service: 18/05/11
Other service:
Sick leave:
.025 service: 18.416667
.03 service:
Average salary: $47,788.64
Final salary: $50,938.00
Total: $22,002.70
Total/month: $1,834.00
⅔ of average pay: $31,859.11
Monthly: $2,655.00

Federal Benefit Payment Computation

Birth date: 08/20/52
Hire date: 05/14/79
Freeze date: 06/30/97
Department service: 18/01/17
Other service:
Sick leave:
.025 service: 18.083333
.03 service:
Average salary: $47,788.64
Final salary: $50,938.00
Total: $21,604.43
Total/month: $1,800.00; deferred

B. In this example, an individual covered by the Teachers Plan hired before 1996 retires based on a disability in December 1997. At retirement, she is age 49 with 27 years and 4 months of departmental service which includes 3 years, 3 months and 14 days of excess leave without pay (prior to June 30, 1997). Since she does not qualify for optional retirement at separation, the Federal Benefit Payment does not begin at separation. When the disability annuitant reaches age 62, she will satisfy the age and service requirements for deferred retirement. At that time (March 9, 2010), the Federal Benefit Payment begins. The time attributable to the excess leave without pay is subtracted from the service used to compute the Federal Benefit Payment. Since the excess leave without pay occurred before June 30, 1997, the deferred Federal Benefit Payment is based on the 23 years and 6 months of service; 5 years of service at the 1.5 percent accrual rate, 5 years of service at the 1.75 percent accrual rate, and 13 and 6 months of service at the 2 percent accrual rate.

[Pre-96 hire]

Total Annuity Computation

Birth date: 03/09/48
Hire date: 09/01/70
Separation date: 12/31/97
Department service: 27/04/00
Other service:
Excess LWOP: 03/03/14
.015 service: 5
.0175 service: 5
.02 service: 14
Average salary: $53,121.00
Total: $23,506.04
Total/month: $1,959.00

Federal Benefit Payment Computation

Birth date: 03/09/48
Hire date: 09/01/70
Freeze date: 06/30/97
Department service: 26/10/00
Other service:
Excess LWOP: 03/03/14
.015 service: 5
.0175 service: 5
.02 service: 13.5
Average salary: $53,121.00
Total: $22,974.83
Total/month: $1,915.00; deferred

EXAMPLE 7: DISABILITY OCCURS AFTER ELIGIBILITY FOR OPTIONAL RETIREMENT

A. In this example, an individual covered by the Police and Firefighters Plan hired before 1980 retires based on a disability in the line of duty in October 1997. At retirement, she is age 55 with 24 years, 5 months, and 11 days of departmental service. Since she was also eligible for optional retirement at the time of separation, the Federal Benefit Payment commences at retirement. It is based on the 24 years, 1 month, and 17 days of departmental service performed as of June 30, 1997. Thus, the Federal Benefit Payment is based on 20 years of service at the 2.5 percent accrual rate and 4 years and 1 month of service at the 3 percent accrual rate. The total annuity is based on the disability formula and is equal to two-thirds of average pay because that amount is higher than the 63.25 percent payable based on total service.

[Pre-80 hire]

Total Annuity Computation

Birth date: 10.01/42
Hire date: 05/14/73
Separation date: 10/24/97
Department service: 24/05/11
Other service:
Sick leave:
.025 service: 20
.03 service: 4.416667
Average salary: $47,788.64
Final salary: $50,938.00
Total: $30,226.31
Total/month: $2,519.00
2/3 of average pay: $31,859.11
Monthly: $2,655.00

Federal Benefit Payment Computation

Birth date: 10/01/42
Hire date: 05/14/73
Freeze date: 06/30/97
Department service: 24/01/17
Other service:
Sick leave:
.025 service: 20
.03 service: 4.083333
Average salary: $47,788.64
Final salary: $50,938.00
Total: $29,748.43
Total/month: $2,479.00

B. In this example, an individual covered by the Teachers Plan hired before 1996 retires based on a disability in December 1997. At retirement, he is age 60 with 27 years and 4 months of departmental service which includes 3 years, 3 months and 14 days of excess leave without pay (prior to June 30, 1997). Since he qualifies for optional retirement at separation, the Federal Benefit Payment begins at retirement. Since the excess leave without pay occurred before June 30, 1997, and the total annuity is based on actual service (that is, exceeds the guaranteed disability minimum), the time attributable to the excess leave without pay is subtracted from the service used to compute the Federal Benefit Payment and total benefit. The Federal Benefit Payment is based on 23 years and 6 months of service; 5 years of service at the 1.5 percent accrual rate, 5 years of service at the 1.75 percent accrual rate, and 13 years and 6 months of service at the 2 percent accrual rate. The total annuity payable is based on 24 years of service; 5 years of service at the 1.5 percent accrual rate, 5 years of service at the 1.75 percent accrual rate, and 14 years of service at the 2 percent accrual rate.

[Pre-96 hire]

TotaL Annuity Computation

Birth date: 03/09/37

[Pre-96 hire]

Hire date: 09/01/70
Separation date: 12/31/97
Department service: 27/04/00
Other service:
Excess LWOP: 03/03/14
.015 service: 5
.0175 service: 5
.02 service: 14
Average salary: $53,121.00
Total: $23,506.04
Total/month: $1,959.00

Federal Benefit Payment Computation

Birth date: 03/09/37
Hire date: 09/01/70
Freeze date: 06/30/97
Department service: 26/10/00
Other service:
Excess LWOP: 03/03/14
.015 service: 5
.0175 service: 5
.02 service: 13.5
Average salary: $53,121.00
Total: $22,974.83
Total/month: $1,915.00

DEFERRED RETIREMENT EXAMPLES

EXAMPLE 8: ALL SERVICE BEFORE JUNE 30, 1997

In this example, an individual covered by the Police and Firefighters Plan hired before 1980 separated in March 1986 with title to a deferred annuity. In November 1997, he reaches age 55 and becomes eligible for the deferred annuity based on his 15 years, 9 months, and 8 days of departmental service, all at the 2.5 percent accrual rate. The total annuity is based on the same 15 years, 9 months, and 8 days of service all at the 2.5 percent accrual rate. Since all the service is creditable as of June 30, 1997, the Federal Benefit Payment equals the total annuity.

[Pre-80 hire]

Total Annuity Computation

Birth date: 11/20/42
Hire date: 06/01/70
Separation date: 03/08/86
Department service: 15/09/08
Other service:
Sick leave:
.025 service: 15.75
.03 service: 0
Average salary: $30,427.14
Final salary: $45,415.00
Total: $11,980.69
Total/month: $998.00

Federal Benefit Payment Computation

Birth date: 11/20/42
Hire date: 06/01/70
Freeze date: 03/08/86

[Pre-80 hire]

Department service: 15/09/08
Other service:
Sick leave:
.025 service: 15.75
.03 service: 0
Average salary: $30,427.14
Final salary: $45,415.00
Total: $11,980.69
Total/month: $998.00

EXAMPLE 9: SERVICE STRADDLES JUNE 30, 1997

In this example, an individual covered by the Police and Firefighters Plan hired before 1980 separated in December 1997 with title to a deferred annuity. In November 2007, he will reach age 55 and becomes eligible to receive a deferred annuity. At that time, the Federal Benefit Payment begins. It is based on the 18 years and 1 month of departmental service performed as of June 30, 1997, all at the 2.5 percent accrual rate. The total annuity begins at the same time, based on his 18 years, 6 months, and 8 days of departmental service, all at the 2.5 percent accrual rate.

[Pre-80 hire]

Total Annuity Computation

Birth date: 11/20/52
Hire date: 06/01/79
Separation date: 12/08/97
Department service: 18/06/08
Other service:
Sick leave:
.025 service: 18.5
.03 service: 0
Average salary: $30,427.14
Final salary: $45,415.00
Total: $14,072.55
Total/month: $1,173.00

Federal Benefit Payment Computation

Birth date: 11/20/52
Hire date: 06/01/79
Freeze date: 06/30/97
Department service: 18/01/00
Other service:
Sick leave:
.025 service: 18.083333
.03 service: 0
Average salary: $30,427.14
Final salary: $45,415.00
Total: $13,755.60
Total/month: $1,146.00; deferred

REDUCTION TO PROVIDE A SURVIVOR ANNUITY EXAMPLES

EXAMPLE 10: SURVIVOR REDUCTION CALCULATIONS

Both of the following examples involve a former teacher who elected a reduced annuity to provide a survivor benefit:

A. In this example, the employee elected full survivor benefits. The Federal Benefit Payment is reduced by 2½ percent of the first $3600 and 10 percent of the balance. The total annuity is also reduced by 2½ percent of the first $3600 and 10 percent of the balance.

[Pre-96 hire]

Total Annuity Computation

Birth date: 11/01/42
Hire date: 11/01/68
Separation date: 12/31/97
Department service: 29/02/00
Other service: 03/09/18
Military: 00/09/11
.015 service: 5
.0175 service: 5
.02 service: 23.666667
Average salary: $66,785.00
Total unreduced: $42,464.13
Reduction: $3,976.41
Total reduced: $38,487.72
Total/month: $3,207.00

Federal Benefit Payment Computation

Birth date: 11/01/42
Hire date: 11/01/68
Freeze date: 06/30/97
Department service: 28/08/00
Other service: 03/09/18
Military: 00/09/11
.015 service: 5
.0175 service: 5
.02 service: 23.166667
Average salary: $66,785.00
Total unreducted: $41,796.28
Reduction: $3,909.63
Total reduced: $37,886.65
Total/month: $3,157.00

B. In this example, the employee elects to provide a partial survivor annuity based on $3600 per year. The Federal Benefit Payment is reduced by $90 per year. The total benefit is reduced by $90 per year.

[Pre-96 hire]

Total Annuity Computation

Birth date: 11/01/42
Hire date: 11/01/68
Separation date: 12/31/97
Department service: 29/02/00
Other service: 03/09/18
Military: 00/09/11
.015 service: 5
.0175 service: 5
.02 service: 23.666667
Average salary: $66,785.00
Total unreduced: $42,464.13
Reduction: $90.00
Total reduced: $42,374.13
Total/month: $3,531.00

Federal Benefit Payment Computation

Birth date: 11/01/42

[Pre-96 hire]

Hire Date: 11/01/68
Freeze date: 06/30/97
Department service: 28/08/00
Other service: 03/09/18
Military: 00/09/11
.015 service: 5
.0175 service: 5
.02 service: 23.166667
Average salary: $66,785.00
Total unreduced: $41,796.28
Reduction: $90.00
Total reduced: $41,706.28
Total/month: $3,476.00

EARLY OPTIONAL OR INVOLUNTARY RETIREMENT EXAMPLES

EXAMPLE 11: EARLY OPTIONAL WITH AGE REDUCTION

In this example, an individual covered by the Teachers Plan hired before 1996 retires voluntarily in February 1998, under a special program that allows early retirement with at least 20 years of service at age 50 older, or at least 25 years of service at any age. At retirement, she is 6 full months short of age 55. She has 25 years and 5 months of departmental service; 6 years, 2 months, and 19 days of other service (creditable before June 30, 1997); and 2 months and 9 days of unused sick leave. Since she is not eligible for optional retirement and she is eligible to retire voluntarily only because of the District-approved special program, the Federal Benefit Payment is calculated similar to a disability retirement. It does not begin until she becomes eligible for a deferred annuity at age 62. When it commences the Federal Benefit Payment will be based on the service creditable as of June 30, 1997: 30 years and 11 months of service; 5 years of service at the 1.5 percent accrual rate, 5 years of service at the 1.75 percent accrual rate, and 20 years and 11 months of service at the 2 percent accrual rate. The total annuity is based on 5 years of service at the 1.5 percent accrual rate, 5 years of service at the 1.75 percent accrual rate and 21 years and 9 months of service at the 2 percent accrual rate (including the unused sick leave). Because the Federal Benefit Payment is based on the deferred annuity, rather than the early voluntary retirement, it is not reduced by the age reduction factor used to compute the total benefit.

[Pre-96 hire]

Total Annuity Computation

Birth date: 09/20/43
Hire date: 10/01/72
Separation date: 02/28/98
Department service: 25/05/00

[Pre-96 hire]

Other service: 06/02/19
Sick leave: 00/02/09
.015 service: 5
.0175 service: 5
.02 service: 21.75
Average salary: $69,281.14
Total unreduced: $41,395.48
Age reduction factor: 0.990000
Total reduced: $40,981.53
Total/month: $3,415.00

Federal Benefit Payment Computation

Birth date: 09/20/43
Hire date: 10/01/72
Freeze date: 06/30/97
Department service: 24/09/00
Other service: 06/02/19
.015 service: 5
.0175 service: 5
.02 service: 20.916667
Average salary: $69,281.14
Total unreduced: $40,240.80
Reduction factor: 1.000000 no reduction
Total reduced: $40,240.80
Total/month: $3,353.00 deferred

EXAMPLE 12: INVOLUNTARY WITH AGE REDUCTION

In this example, an individual covered by the Teachers Plan hired before 1996 retires involuntarily in February 1998. At retirement, she is 6 full months short of age 55. She has 25 years and 5 months of departmental service; 6 years, 2 months, and 19 days of other service (creditable before June 30, 1997); and 2 months and 9 days of unused sick leave. The Federal Benefit Payment begins at retirement. It is based on the 30 years and 11 months of service; 5 years of service at the 1.5 percent accrual rate, 5 years of service at the 1.75 percent accrual rate, and 20 years and 11 months of service at the 2 percent accrual rate. The total annuity is based on 5 years of service at the 1.5 percent accrual rate, 5 years of service at the 1.75 percent accrual rate and 21 years and 9 months of service at the 2 percent accrual rate (including the unused sick leave). Both the Federal Benefit Payment and the total benefit are reduced by the age reduction factor.

[Pre-96 hire]

Total Annuity Computation

Birth date: 09/20/43
Hire date: 10/01/72
Separation date: 02/28/98
Department service: 25/05/00
Other service: 06/02/19
Sick leave: 00/02/09
.015 service: 5
.0175 service: 5
.02 service: 21.75

[Pre-96 hire]

Average salary: $69,281.14
Total unreduced: $41,395.48
Age reduction factor: 0.990000
Total reduced: $40,981.53
Total/month: $3,415.00

Federal Benefit Payment Computation

Birth date: 09/20/43
Hire date: 10/01/72
Freeze date: 06/30/97
Department service: 24/09/00
Other service: 06/02/19
.015 service: 5
.0175 service: 5
.02 service: 20.916667
Average salary: $69,281.14
Total unreduced: $40,240.80
Age reduction factor: 0.990000
Total reduced: $39,838.39
Total/month: $3,320.00

DEATH BENEFITS EXAMPLE

EXAMPLE 13: DEATH BENEFITS CALCULATION

Regardless of whether death occurs in service or after retirement, if the death benefit is not based on the length of service, the portion of a death benefit that is a Federal Benefit Payment is based on the ratio of the number of months of the deceased employee's service as of June 30, 1997, to the number of months of the deceased employee's total service. This proration will always apply to cases of death after retirement in which the survivor annuity is based on the reduction in the employee's annuity to provide the benefit. It also applies to lump-sum benefits and benefits computed under a guaranteed-minimum or a percentage-of-disability-at-retirement formula.

A. In this example, an individual covered by the Teachers Plan retires in April 1998 with 30 years of service and elects to provide a full survivor annuity. He dies in June 1998. The Federal Benefit Payment is 97½ percent (351 months/360 months) of the total survivor benefit.

[Pre-96 hire]

Total Annuity Computation

Birth date: 04/01/46
Hire date: 04/01/68
Separation date: 04/01/98
Death date: 06/24/98
Department service: 30/00/00
Other service:
Sick leave:
Months: 360
Annual Benefit: $12,000.00
Monthly Benefit: $1,000.00

Federal Benefit Payment Computation

Birth date: 04/01/46

[Pre-96 hire]

Hire date: 04/01/68
Freeze date: 06/30/97
Death date: 06/24/98
Department service: 29/03/00
Other service:
Months: 351
$11,700.00
$975.00

B. In this example, a teacher dies in service on June 30, 1998 after 31 years of departmental service. Since the survivor annuity is based on actual service, the Federal Benefit Payment is based on the 30 years of service as of June 30, 1997. The total benefit is based on the 31 years of total service. No proration is appropriate.

[Pre-96 hire]

Total Annuity Computation

Birth date: 07/01/39
Hire date: 07/01/67
Separation date: 06/30/98
Death date: 06/30/98
Department service: 31/00/00
Other service:
Sick leave:
Average salary: $38,787.88
Annual Benefit: $12,426.67
Monthly Benefit: $1,036.00

Federal Benefit Payment Computation

Birth date: 07/01/39
Hire date: 07/01/67
Freeze date: 06/30/97
Death date: 06/30/98
Department service: 30/00/00
Other service:
Average salary: $38,787.88
$12,000.00
$1,000.00

C. In this example, a teacher dies in service on April 1, 1998 after 15 years of departmental service. Since the survivor annuity is based on the guaranteed minimum, the Federal Benefit Payment is a prorated portion of the total benefit. Since the teacher had 171 months of service as of the freeze date and 180 months of service at death, the Federal Benefit Payment equals 171/180ths of the total benefit.

[pre-96 hire]

Total Annuity Computation

Birth date: 04/01/61
Hire date: 04/01/83
Separation date: 04/01/98
Death date: 04/01/98
Department service: 15/00/01
Average salary: $36,000.00

Example 13(b)—Pre-retirement Death Benefit Pre-, [illegible]

[pre-96 hire]

Months: 180
Annual Benefit: $7,920.00
Monthly Benefit: $660.00

Federal Benefit Payment Computation

Birth date: 04/01/61
Hire date: 04/01/83
Freeze date: 06/30/97
Death date: 04/01/98
Department Service: 14/03/00
Average salary: $36,000.00
Months: 171
Ratio (171/180): 0.950000
$7,524.00
$627.00

D. In this example, as in the prior example, a teacher dies in service on April 1, 1998 after 15 years of departmental service. However, in this example, the teacher was age 40 on the hire date. The amount of service used in the survivor annuity calculation equals the amount of service that the teacher would have had if the teacher continued covered employment until age 60. Since the survivor annuity is based on projected service, a form of the guaranteed minimum, the Federal Benefit Payment is a prorated portion of the total benefit. Since the teacher had 171 months of service as of the freeze date and 180 months of service at death, the Federal Benefit Payment equals 171/180ths of the total benefit.

Example 13(b)—Pre-retirement Death Benefit Pre-

[Pre-96 hire]

Total Annuity Computation

Birth date: 04/01/43
Hire date: 04/01/83
Separation date: 04/01/98
Death date: 04/01/98
Department service: 15/00/01
Departmental Service projected to age 60: 20/00/01
.015 service: 5
.0175 service: 5
.02 service: 10
Average salary: $36,000.00
Months: 180
Annual Benefit: $7,177.50
Monthly Benefit: $598.00

Federal Benefit Payment Computation

Birth date: 04/01/43
Hire date: 04/01/83
Freeze date: 06/30/97
Death date: 04/01/98
Department service: 14/03/00
Average salary: $36,000.00
Months: 171
Ratio (171/180): 0.950000
$6,818.63
$568.00

COST OF LIVING ADJUSTMENT EXAMPLES

EXAMPLE 14: APPLICATION OF COST OF LIVING ADJUSTMENTS

Cost of living adjustments are applied directly to the Federal Benefit Payment to determine the new rate of the Federal Benefit Payment after a cost of living adjustment.

A. In this example, the cost of living adjustment is the same for the Federal Benefit Payment and the non-Federal Benefit Payment portion of the total benefit. Effectively, the total cost of living adjustment is proportionally split between the Federal Benefit Payment and the non-Federal Benefit Payment.

Example 14(a)—Pre-retirement "Split" of Cost-of-Living Adjustment

[Pre-96 hire]

Benefit Computation (at retirement)

Total Annuity Computation

Birth date: 11/04/48
Hire date: 03/01/86
Separation date: 02/28/2013
Department service: 27/00/00
Other service paid in 1995: 06/07/28
Excess LWOP in 1990: 00/03/18
.015 service: 5
.0175 service: 5
.02 service: 23.333333
Average salary: $53,121.00
Total: $33,421.98
Total/month: $2,785.00

Benefit Computation (at retirement)

Federal Benefit Payment Computation

Birth date: 11/04/48
Hire date: 03/01/86
Freeze date: 06/30/1997
Department service: 11/04/00
Other service paid in 1995: 06/07/28
Excess LWOP in 1990: 00/03/18
.015 service: 5
.0175 service: 5
.02 service: 7.666667
Average salary: $53,121.00
Total: $16,777.38
Total/month: $1,398.00

COLA Computation

DC COLA rate 4%
Total COLA: 111
New rate: 2896
Federal COLA rate 4%
Federal COLA: 56
New rate: 1454

B. In this example, a new District plan applies a different cost of living adjustment than is provided for the Federal Benefit Payment. The Federal Benefit Payment will be unaffected by the new District plan. In such a case, the total cost of living adjustment is no longer proportionally split between the Federal Benefit Payment and the non-Federal Benefit Payment.

[Pre-96 hire]

Benefit Computation (at retirement)
Total Annuity Computation
Birth date: 11/04/48 Hire date: 03/01/86 Separation date: 02/28/2013 Department service: 27/00/00 Other service paid in 1995: 06/07/28 Excess LWOP in 1990: 00/03/18 .015 service: 5 .0175 service: 5 .02 service: 23.333333 Average salary: $53,121.00 Total: $33,421.96 Total/month: $2,785.00

Benefit Computation (at retirement)
Federal Benefit Payment Computation
Birth date: 11/04/48 Hire date: 03/01/86 Freeze date: 06/30/1997 Department service: 11/04/00 Other service paid in 1995: 06/07/28 Excess LWOP in 1990: 00/03/18 .015 service: 5 .0175 service: 5 .02 service: 7.666667 Average salary: $53,121.00 Total: $16,777.38 Total/month: $1,398.00

COLA Computation Variations
Variation 1
DC COLA rate 5% of total benefit: Total COLA: $139.00 New rate: $2,924.00 Federal COLA rate 4% of Federal Benefit Payment: Federal COLA: $56.00 New rate: $1,454.00
Variation 2
DC COLA rate 5% of DC Payment: Total COLA: $125.00 New rate: $2,910.00 Federal COLA rate 4% of Federal Benefit Payment: Federal COLA: $56.00 New rate: $1,454.00

RETROACTIVE PAYMENT OF ACCRUED ANNUITY EXAMPLE

EXAMPLE 15: ACCRUAL OF FEDERAL BENEFIT PAYMENT

The Federal Benefit Payment begins to accrue on the annuity commencing date, regardless of whether the employee is added to the annuity roll in time for the regular payment cycle. If the employee is due a retroactive payment of accrued annuity, the portion of the retroactive payment that would have been Federal Benefit Payment (if it were made in the regular payment cycle) is still Federal Benefit Payment. In this example, a teacher retired effective September 11, 1998. She was added to the retirement rolls on the pay date November 1, 1998 (October 1 to October 31 accrual cycle). Her Federal Benefit Payment is $3000 per month and her total benefit payment is $3120 per month. Her initial check is $5200 because it includes a prorated payment for 20 days (September 11 to September 30). The Federal Benefit Payment is $5000 of the initial check ($3000 for the October cycle and $2000 for the September cycle).

[Pre-96 hire]

Total Annuity Computation
Birth date: 11/01/42 Hire date: 09/01/66 Separation date: 09/10/98 Department service: 32/00/10 .015 service: 5 .0175 service: 5 .02 service: 22 Average salary: $62,150.00 Total: $37,445.38 Total/month: $3,120.00 Sept 11–30: $2,080.00 Oct 1–31: $3,120.00 Nov 1–30: $3,120.00

Federal Benefit Payment Computation
Birth date: 11/01/42 Hire date: 09/01/66 Freeze date: 06/30/97 Department service: 30/10/00 .15 service: 5 .0175 service: 5 .02 service: 20.833333 Average salary: $62,150.00 Total: $35,995.21 Total/month: $3,000.00 Sept 11–30: $2,000.00 Oct 1–31: $3,000.00 Nov 1–30: $3,000.00

Subpart D—Claims and Appeals Procedures

SOURCE: 65 FR 80753, Dec. 22, 2000, unless otherwise noted.

§ 29.401 Purpose.

(a) This subpart explains—

(1) The procedures that participants and beneficiaries in the Judges Plan, Police and Firefighters Plan, and the Teachers Plan must follow in applying for Federal Benefit Payments;

(2) The procedures for determining an individual's eligibility for a Federal Benefit Payment and the amount and form of an individual's Federal Benefit Payment as required by section 11021 of

the Act and section 11–1570 of the D.C. Code;

(3) The appeal rights available under section 11022(a) of the Act to claimants whose claim for Federal Benefit Payments is denied in whole or in part; and

(4) The special rules for processing competing claimant cases.

(b) This subpart does not apply to processing collection of debts due to the United States.

§ 29.402 Definitions.

In this subpart—

Act means the Balanced Budget Act of 1997, Public Law 105–33, 111 Stat. 251, 712–731, 756–759, enacted August 5, 1997, as amended by the Omnibus Consolidated and Emergency Supplemental Appropriations Act for Fiscal Year 1999, Public Law 105–277, 112 Stat. 2681, 2681–530 through 538, 2681–552.

Beneficiary means an individual designated by a participant, or by the terms of the Judges Plan, Police and Firefighters Plan, or Teachers Plan, who is or may become entitled to a benefit under those plans.

Benefits Administrator means:

(1) During the interim administration period under section 11041 of the Act, the District of Columbia government, or

(2) After the Secretary notifies the District that the Trustee has been directed to carry out the duties and responsibilities required under the contract or determines that the Department shall carry out those functions, the Department, the Trustee selected by the Department under section 11035 of the Act, or any other agent of the Department designated to make initial benefit determinations under the Act.

Claimant means any person seeking a benefit for themselves or another under the Judges Plan, Police and Firefighters Plan, or Teachers Plan.

Department means the Secretary of the Treasury or a designee authorized to exercise the Secretary's authority with respect to Federal Benefit Payments under the Act.

Participant means an individual who is or may become eligible to receive a benefit under the Police and Firefighters Plan or the Teachers Plan based on credit for service accrued as of June 30, 1997, or under the Judges Plan, or whose beneficiaries may be eligible to receive any such benefit.

§ 29.403 Applications filed with the Benefits Administrator.

All claimants for Federal Benefit Payments must file applications for benefits (including applications for retirement, refunds of contributions, and death benefits) with the Benefits Administrator.

§ 29.404 Initial benefit determinations and reconsideration by the Benefits Administrator.

(a) *Initial benefit determinations.* The Benefits Administrator will process applications for Federal Benefit Payments and determine the eligibility for and the amount and form of Federal Benefit Payments. All initial benefit determination decisions which may reasonably be construed as a denial (in whole or part) of a claim for Federal Benefit Payments must be in writing, must advise claimants of their right to request reconsideration under paragraph (b), of this section and must state the time limits applicable to such a request.

(b) *Claimant's right to reconsideration of benefit denials.* (1) Except as provided in paragraph (b)(2) of this section, claimants who disagree with the amount or form of a Federal Benefit Payment determination and wish to contest the determination must first request the Benefits Administrator to reconsider its determination.

(2) A decision to collect a debt is not a denial of a benefit claim under this section.

(c) *Form and timing of requests for reconsideration.* (1) A request for reconsideration must be in writing, must include the claimant's name, address, date of birth and claim number, if applicable, and must state the basis for the request.

(2) A request for reconsideration must be received by the Benefits Administrator within 30 calendar days from the date of the written notice of the initial benefit determination.

(d) *Reconsideration decisions.* A reconsideration decision by the Benefits Administrator denying (in whole or part) a claim for a Federal Benefit Payment must—

(1) Be in writing;

(2) Provide adequate notice of such denial, setting forth the specific reason for the denial in a manner calculated to be understood by the average participant; and

(3) Provide notice of the right to appeal the Benefit Administrator's decision to the Department, the address to which such an appeal must be submitted, and the time limits applicable to such an appeal.

(e) *Appeal of reconsideration decisions.* The Department will review an appeal of a reconsideration decision under § 29.405.

§ 29.405 Appeals to the Department.

(a) *Who may file.* Any claimant whose claim for a Federal Benefit Payment has been denied (in whole or part) by the Benefits Administrator in a reconsideration decision under § 29.404(d) may appeal that decision to the Department.

(b) *Form of appeal.* An appeal must be in writing, must include the claimant's name, address, date of birth and claim number, if applicable, and must state the basis for the appeal.

(c) *Time limits on Appeals.* (1) An appeal must be received by the Department within 30 calendar days from the date of the reconsideration decision under § 29.404(d).

(2) The Department may extend the time limit for filing when the claimant shows that he or she was not notified of the time limit and was not otherwise aware of it, or that he or she was prevented by circumstances beyond his or her control from making the request within the time limit, or for other good and sufficient reason.

(d) *Final decision.* After consideration of the appeal, the Department will issue a final decision. The Department's decision must be in writing, must fully set forth the Department's findings and conclusions on the appeal, and must contain notice of the right to judicial review provided in § 29.406. Copies of the final decision must be sent to the claimant seeking appeal, to any competing claimants (*see* § 29.407) and to the Benefits Administrator.

§ 29.406 Judicial review.

An individual whose claim for a Federal Benefit Payment has been denied (in whole or part) in a final decision by the Department under § 29.405 may, within 180 days of the date of the final decision, file a civil action in the United States District Court for the District of Columbia. Any such civil action must be filed in accordance with the rules of that court.

§ 29.407 Competing claimants.

(a) *Competing claimants* are applicants for survivor benefits based on the service of a participant when—

(1) A benefit is payable based on the service of the participant;

(2) Two or more claimants have applied for benefits based on the service of the participant; and

(3) A decision in favor of one claimant will adversely affect another claimant(s).

(b)(1) When a competing claimant files a request for reconsideration under this section, the other competing claimants shall be notified of the request and given an opportunity to submit written substantiation of their claim.

(2) When the Benefits Administrator receives an application from a competing claimant(s) before any payments are made based upon the service of the participant, and an initial determination of benefits in favor of one claimant adversely affects another claimant, all known claimants concerned will be notified in writing of that decision and those adversely affected will be given an opportunity to request reconsideration under the procedures and time limitations set forth in § 29.404(c). The Benefits Administrator must not execute its decision until the time limit for filing a request for reconsideration has expired, or, if a reconsideration decision is made, until the time limit for filing an appeal to the Department has expired or the Department has issued a final decision on a timely appeal, whichever is later.

(3) When the Benefits Administrator does not receive an application from a competing claimant(s) until after another person has begun to receive payments based upon the service of the

participant, the payments will continue until the time limit for filing a request for reconsideration has expired, or, if a reconsideration decision is made, until the time limit for filing an appeal to the Department has expired or the Department has issued a final decision on a timely appeal, whichever is later.

Subpart E—Debt Collection and Waivers of Collection

SOURCE: 66 FR 36705, July 13, 2001, unless otherwise noted.

§ 29.501 Purpose; incorporation by reference; scope.

(a) This subpart regulates—

(1) The recovery of overpayments of Federal Benefit Payments;

(2) The standards for waiver of recovery of overpayments of Federal Benefit Payments; and

(3) The use of Federal Benefit Payments to recover certain other debts due the United States.

(b) The regulations of this subpart incorporate by this reference all provisions of the Federal Claims Collection Standards (FCCS) (parts 900–904 of Title 31, Code of Federal Regulations), and supplement those regulations by the prescription of procedures and directives necessary and appropriate for the operation and administration of the Retirement Funds. To the extent they are not inconsistent with the regulations contained in this subpart, the regulations in part 5 of title 31, Code of Federal Regulations, also apply to the collection of debts under this subpart.

(c)(1) *Debts based on fraud, misrepresentation, or the presentation of a false claim.* This subpart does not apply to any overpayments of Federal Benefit Payments which arose, in whole or in part, due to fraud, misrepresentation, or the presentation of a false claim by the debtor or any party having an interest in the claim. Such debts should be referred by the Benefits Administrator immediately to the U.S. Justice Department for action pursuant to 31 CFR 900.3.

(2) *Tax debts.* This subpart does not apply to tax debts.

(d)(1) Sections 29.501 through 29.506 state the rules of general applicability to this subpart.

(2) Sections 29.511 through 29.520 prescribe procedures to be followed by the Benefits Administrator which are consistent with the FCCS in the collection of debts owed to the Retirement Funds.

(3) Sections 29.521 through 29.526 prescribe the standards that the Department will apply in decisions to waive recoupment or recovery of overpayments from the Retirement Funds under sections 11021(3) and 11251(c)(2)(B) of the Act.

§ 29.502 Definitions.

For purposes of this subpart—

Additional charges means interest, penalties, and/or administrative costs owed on a debt.

Administrative offset, as defined in 31 U.S.C. 3701(a)(1), means withholding funds payable by the United States to, or held by the United States for, a person to satisfy a debt the person owes the United States.

Agency means:

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

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

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

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

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

Annuitant means a retired participant, former spouse, spouse, widow(er), child or other beneficiary receiving recurring Federal Benefit Payments.

Annuity means the monthly benefit (including a retirement salary under the Judges Plan) of indefinite duration payable to an annuitant.

Anticipated expenses means expenditures which are expected to occur and for which the debtor can provide documentation of the estimated cost.

Beneficiary means an individual designated by a participant, or by the terms of the Judges Plan, Police Officers and Firefighters Plan, or Teachers Plan, who is or may become entitled to a benefit under those plans.

Change of position for the worse means an individual would be left in a worse financial position after recovery of the overpayment than prior to the receipt of the overpayment because the individual reasonably relied on the amount of the overpayment to his or her detriment. For example, an individual has ''changed position for the worse'' if he or she made expenditures or assumed new liabilities that he or she would not have otherwise done, and he or she is unable to withdraw from the commitment without incurring significant financial loss.

Compromise means accepting less than payment in full in satisfaction of a debt.

Consent means the debtor has agreed in writing to administrative offset of one or more Federal Benefit Payments after receiving notice of the available rights under 31 U.S.C. 3716 and this subpart; to Federal salary offset after receiving notice of the available rights under 5 U.S.C. 5514 and 31 CFR part 5; and to judgment offset under section 124 of Public Law 97–276, 96 Stat. 1195–1196.

Credit bureau has the same meaning as the definition of ''consumer reporting agency'' provided in 31 U.S.C. 3701(a)(3).

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

Debt has the same meaning as the definition of ''debt'' provided in 31 U.S.C. 3701(b)(1), and includes an overpayment of Federal Benefit Payments.

Debtor means a person who owes a debt or from whom a debt is to be recovered, including an annuitant.

Delinquent means delinquent as defined in 31 CFR 900.2(b).

Department means the Secretary of the Treasury or a designee authorized to exercise the Secretary's authority with respect to Federal Benefit Payments under the Act.

FCCS means the Federal Claims Collection Standards (parts 900–904 of Title 31, Code of Federal Regulations).

Liquid asset means cash or other property readily convertible into cash with little or no loss of value.

Lump-sum credit means:

(1) Under the Judges Plan, the Police Officers and Firefighters Plan, and the Teachers Plan, the unrefunded amount consisting of—

(i) Retirement contributions from the basic salary of a participant;

(ii) Amounts deposited covering earlier creditable service; and

(iii) Such interest as authorized by statute to be included in the payment of refunds of retirement contributions; and

(2) Under the Judges Plan, ''lump-sum credit for survivor annuity'' is defined in section 11–1561(10) of the D.C. Code.

Offset means to withhold the amount of a debt, or a portion of that amount, from one or more payments due the debtor. Offset also means the amount withheld in this manner.

Ordinary and necessary living expenses means such expenses as rent, mortgage payments, utilities, maintenance, food (including expenses for dining out), clothing, insurance (life, health, and accident), taxes, installment payments, medical expenses, reasonable expenses for recreation and vacations, expenses for support of a dependent when the debtor holds primary or joint legal responsibility for such support, and other miscellaneous expenses that the debtor can establish as being ordinary and necessary.

Overpayment or *overpayment debt* means a payment of one or more Federal Benefit Payments to an individual in the absence of entitlement or in excess of the amount to which an individual is properly entitled.

Participant means an individual who is or may become eligible to receive a benefit under the Police Officers and Firefighters Plan or Teachers Plan based on credit for service accrued as of June 30, 1997, or under the Judges Plan, or whose beneficiaries may be eligible to receive any such benefit.

Refund means the payment of a lump-sum credit to an individual who meets all requirements for payment and files an application for it.

Relinquish a valuable right means the individual has relinquished a valuable

privilege, claim, entitlement, or benefit having monetary worth because of the overpayment or because of notice that such a payment would be made.

Repayment schedule means the amount of each payment and the number of payments to be made to liquidate the debt as determined by the Department or the Benefits Administrator.

Salary offset means any offset authorized by 5 U.S.C. 5514 and 31 U.S.C. 3716.

Substantially all, as used in § 29.524, means that a debtor's income is less than or equal to his or her ordinary and necessary expenses plus a reasonable monthly allowance for unexpected or emergency expenses and does not allow for the deduction of a reasonable monthly installment payment to recover the debt.

Voluntary repayment agreement means an agreement wherein the debtor makes installment payments to repay an overpayment debt in accordance with a repayment schedule agreed to by the Benefits Administrator or the Department.

Waiver means a decision not to recover all or part of an overpayment debt owed to the Retirement Funds under authority of sections 11021(3) or 11251(c)(2)(B) of the Act.

§ 29.503 Prohibition against collection of debts.

(a) Debts may be collected from Federal Benefit Payments only to the extent expressly authorized by Federal debt collection statutes and any other applicable Federal law.

(b) When collection of a debt from Federal Benefit Payments is authorized under paragraph (a) of this section, the collection will be made in accordance with this subpart and other applicable federal law.

§ 29.504 Status of debts.

A payment of a Federal Benefit Payment to a debtor because of an error on the part of the Department or Benefits Administrator, or the failure of the creditor agency to properly and/or timely submit a debt claim, does not erase the debt or affect the validity of the claim by the creditor agency.

§ 29.505 Compromise of debts; termination and suspension of collection actions.

The procedures for compromise of a claim for an overpayment or the termination or suspension of a collection action seeking to recover an overpayment, other than waiver of an overpayment under §§ 29.521 through 29.526, are controlled exclusively by the FCCS and 31 CFR part 5.

§ 29.506 Recovery of other debts owed to the United States.

(a) *Procedures for Creditor Agencies.* Agencies seeking to recover a debt by offset of Federal Benefit Payments payable to the debtor must comply with the offset procedures set forth in 31 U.S.C. 3716 and the FCCS. A creditor agency may seek to collect a debt through offset of Federal Benefit Payments pursuant to the Department's procedures for administrative offset set forth in 31 CFR part 5.

(b) *Offset by the Benefits Administrator.* As required by 31 U.S.C. 3716(c), the Benefits Administrator must compare payment records of the Retirement Funds with records of debts submitted to the Financial Management Service for collection by administrative offset, and must offset payments to satisfy, in whole or in part, debts owed by any annuitant.

COLLECTION OF OVERPAYMENTS

§ 29.511 Demand letters.

Except as provided in § 29.516(e), before starting collection action to recover an overpayment, the Benefits Administrator must send a demand letter that informs the debtor in writing—

(a) That an overpayment has occurred, the amount of the overpayment, and the facts giving rise to the overpayment;

(b) The date by which payment of the debt should be made to avoid additional charges (i.e., interest, penalties and administrative costs) permitted by the FCCS and enforced collection;

(c) The requirement that any overpayment debt delinquent for more than 180 days be transferred to the Department of the Treasury's Financial Management Service for collection;

(d) The name, address, and phone number of the appropriate person or office the debtor may contact about the debt;

(e) The remedies which may be used to enforce payment of the debt, including assessment of interest, administrative costs and penalties; administrative wage garnishment; the use of collection agencies; Federal salary offset; tax refund offset; administrative offset; and litigation.

(f) Whether offset is available and, if so, the types of payment(s) to be offset or eligible for offset, the repayment schedule (if any), the right to request an adjustment in the repayment schedule, and the right to request a voluntary repayment agreement in lieu of offset;

(g) An explanation of the Department's policy on interest, penalties, and administrative costs as set forth in 31 CFR part 5, the FCCS, and 31 U.S.C. 3717, including a statement that such assessments must be made unless excused in accordance with the FCCS;

(h) The debtor's opportunity to request repayment in installments if the debtor can show an inability to repay the debt in one lump sum;

(i) The debtor's opportunity to inspect and/or receive a copy of the records relating to the overpayment;

(j) The method and time period (60 calendar days) for requesting reconsideration, waiver, and/or compromise of the overpayment;

(k) That all requests for waiver or compromise must be accompanied by a disclosure of the debtor's financial condition and ability to pay the debt;

(l) The standards used by the Department in deciding requests for waiver (set forth in §§ 29.521 through 29.526) and compromise (set forth in 31 CFR 902.2); and

(m) The fact that a timely filing of a request for reconsideration, waiver and/or compromise, or a subsequent timely appeal of a reconsideration decision, will stop collection proceedings, unless—

(1) Failure to take the offset would substantially prejudice the Federal Government's ability to collect the debt; and

(2) The time before the payment is to be made does not reasonably permit the completion of these procedures.

§ 29.512 Reconsideration by the Benefits Administrator.

(a) *Right to reconsideration of overpayment determinations.* Individuals who receive a demand letter and who wish to contest the existence or amount of the overpayment may ask the Benefits Administrator to reconsider the determination.

(b) *Requests for waiver or compromise.* Individuals who wish to seek waiver or compromise of the overpayment may file such requests with the Department under § 29.514. An individual may file a request for reconsideration in addition to a request for waiver or compromise.

(c) *Form and timing of requests for reconsideration.* (1) A request for reconsideration must be in writing and must state the basis for the request. Individuals requesting reconsideration will be given a full opportunity to present any pertinent information and documentation supporting their position and should, to the extent possible, include such information and documentation in their request.

(2) A request for reconsideration must be received by the Benefits Administrator within 60 calendar days of the date of the demand letter. The Department may extend the time limit for filing when the individual shows that he or she was not notified of the time limit and was not otherwise aware of it, or that he or she was prevented by circumstances beyond his or her control from making the request within the time limit, or for other good and sufficient reason.

(3) When a request for reconsideration covered by this subpart is properly filed before the death of the debtor, it will be processed to completion unless the relief sought is nullified by the debtor's death.

(d) *Reconsideration decisions.* (1) The Benefits Administrator's decision on a request for reconsideration will be based upon the individual's written submissions, evidence of record, and other pertinent available information.

(2) A reconsideration decision by the Benefits Administrator must—

(i) Be in writing;

(ii) Provide notice of the extent of the individual's liability for the overpayment, if any;

(iii) If the individual is determined to be liable for all or a portion of the overpayment, reaffirm or modify the conditions for the collection of the overpayment previously proposed in the demand letter;

(iv) Provide notice of the right to appeal the Benefits Administrator's decision to the Department, the address to which such an appeal must be submitted, and the time limits applicable to such an appeal; and

(v) State that a timely appeal of the Benefits Administrator's decision to the Department will suspend action to collect the debt.

(e) *Appeal of reconsideration decisions.* The Department will review an appeal of a reconsideration decision under § 29.513.

§ 29.513 Appeals to the Department.

(a) *Form of appeal.* An appeal of a reconsideration decision under § 29.512 must be in writing and must state the basis for the appeal.

(b) *Time limits on appeals.* (1) An appeal must be received by the Department within 60 calendar days from the date of the reconsideration decision.

(2) The Department may extend the time limit for filing when the individual shows that he or she was not notified of the time limit and was not otherwise aware of it, or that he or she was prevented by circumstances beyond his or her control from making the request within the time limit, or for other good and sufficient reason.

(c) *Final decision.* After consideration of the appeal, the Department will issue a final decision. The Department's decision will be in writing, will fully set forth the Department's findings and conclusions on the appeal, and will contain notice of the right to judicial review provided in § 29.515. If the Department determines that the individual is liable for all or a portion of the overpayment, the decision also will contain the conditions for the collection of the overpayment. Copies of the final decision will be sent to the individual seeking appeal and to the Benefits Administrator.

§ 29.514 Requests for waiver and/or compromise.

(a) *Right to request waiver and/or compromise.* Individuals who receive a demand letter regarding an overpayment may ask the Department to waive and/or compromise, in whole or part, the amount of the overpayment.

(b) *Requests for reconsideration.* Individuals who have filed a request for reconsideration under § 29.512 may also request a waiver and/or compromise under this section.

(c) *Form and timing of requests for waiver and/or compromise.* (1) A request for waiver and/or compromise must be in writing and must state the basis for the request. Individuals making such requests will be given a full opportunity to present any pertinent information and documentation supporting their position and should, to the extent possible, include such information and documentation in their request. Individuals seeking waiver or compromise of an overpayment must also submit required financial information identified in the demand letter.

(2) A request for waiver or compromise must be filed with the Department. If the request is sent by mail, it must be postmarked within 60 calendar days of the date of the demand letter. If the request is hand delivered or delivered electronically, it must be received within 60 calendar days of the date of the demand letter. The Department may extend the time limit for filing when the individual shows that he or she was not notified of the time limit and was not otherwise aware of it, or that he or she was prevented by circumstances beyond his or her control from making the request within the time limit, or for other good and sufficient reason.

(3) When a request for waiver and/or compromise under this section is properly filed before the death of the debtor, it will be processed to completion unless the relief sought is nullified by the debtor's death.

(d) *Waiver and/or compromise decisions.* (1) The Department's decision on a request for waiver and/or compromise will be based upon the individual's written submissions, evidence of record, and other pertinent available information. An individual's request

for waiver will be evaluated by the standards set forth in § 29.521 through § 29.526. An individual's request for compromise will be evaluated by the standards set forth in the FCCS in 31 CFR part 902.

(2) A waiver or compromise decision by the Department will—

(i) Be in writing;

(ii) Provide notice of whether the overpayment will be waived or compromised, and the extent to which the individual is still liable for the overpayment, if at all;

(iii) If the individual is determined to be liable for all or a portion of the overpayment, reaffirm or modify the conditions for the collection of the overpayment previously proposed in the demand letter; and

(iv) Be issued within 120 calendar days from the Department's receipt of a timely request for waiver and/or compromise. This time limit does not apply to requests for compromise that are referred to the Department of Justice for consideration pursuant to 31 CFR 902.1(b).

§ 29.515 Judicial review.

An individual whose request for reconsideration has been denied (in whole or part) in a final decision by the Department under § 29.513 may, within 180 days of the date of the final decision, file a civil action in the United States District Court for the District of Columbia. Any such civil action must be filed in accordance with the rules of that court.

§ 29.516 Collection of overpayments.

(a) *Means of collection.* Collection of an overpayment may be made by means of offset under § 29.517, or under any statutory provision providing for offset of money due the debtor from the Federal Government including, but not limited to, Federal Benefit Payments. Collection may also be effected by referral to the Justice Department for litigation, as provided in § 29.520, or referral to a collection agency as provided in § 29.519, or by other means authorized by federal law.

(b) *Additional charges.* Interest, penalties, and administrative costs will be assessed on the overpayment in accordance with standards established in 31 U.S.C. 3717 and 31 CFR 901.9. Additional charges will be waived when required by the FCCS. The Department will waive the collection of interest on the overpayment pending the Benefits Administrator's consideration of a request for reconsideration and the Department's consideration of a request for waiver and/or compromise or the appeal of a reconsideration decision. In addition, such charges may be waived when the Department determines—

(1) Collection of those charges would be against equity and good conscience under the standards prescribed in §§ 29.523 through 29.525; or

(2) Waiver of those charges would be in the best interest of the United States.

(c) *Collection in installments.* (1) Whenever feasible, overpayments will be collected in one lump sum.

(2) However, installment payments may be effected when—

(i) The debtor establishes that he or she is financially unable to pay in one lump sum; or

(ii)(A) The benefit payable is insufficient to make collection in one lump sum;

(B) The debtor fails to respond to a demand for full payment; and

(C) Offset is available.

(d) *Offset Amount.* (1) The amount offset from a monthly Federal Benefit Payment will be the lesser of:

(i) The amount of the debt, including any interest, penalties and administrative costs;

(ii) An amount equal to 15 percent of the monthly Federal Benefit Payment; or

(iii) The amount, if any, by which the monthly Federal Benefit Payment exceeds $750.

(2) For purposes of this subsection, the ''monthly Federal Benefit Payment'' is the amount of the gross monthly benefit after any reductions or deductions required under law, including reductions made to recover overpayments of Federal Benefit Payments.

(e) *Commencement of collection.* (1) Except as provided in paragraph (e)(2) of this section, collection will begin after the time limits for requesting further rights stated in § 29.512 through § 29.514 expire and no such requests have been

made, or after the Benefits Administrator and/or the Department have issued decisions on all timely requests for or appeals of those rights, unless failure to make an offset would substantially prejudice the Department's ability to collect the overpayment and the time before the payment is to be made does not reasonably permit the completion of the proceedings in § 29.511 through § 29.514 or litigation. When offset begins without completion of the administrative review process, these procedures will be completed promptly, and amounts recovered by offset but later found not owed will be refunded promptly.

(2) The procedures identified in § 29.511 through § 29.514 will not be applied when the overpayment is caused by—

(i) A retroactive adjustment in the periodic rate of annuity or any deduction taken from annuity when the adjustment is a result of the annuitant's election of different entitlements under law, if the adjustment is made within 120 days of the effective date of the election; or

(ii) interim estimated payments made before the formal determination of entitlement to annuity, if the amount is recouped from the total annuity payable on the first day of the month following the later of—

(A) The last interim payment or

(B) The date the formal determination is made.

(f) *Collection of delinquent debts.* (1) *Debts delinquent over 180 days.* The Benefits Administrator must refer all overpayment debts that are over 180 days delinquent to the Secretary for collection pursuant to 31 U.S.C. 3711(g) and 3716, and 31 CFR part 901.

(2) *Debts delinquent less than 180 days.* Once an overpayment debt becomes delinquent, the Benefits Administrator should refer it to the Secretary for collection by centralized administrative offset pursuant to 31 CFR 901.3, unless collection of the debt by some other means is likely to occur in a more timely and efficient manner.

(3) Once a debt is referred under this subsection, the Benefits Administrator has no further obligation to collect the debt.

§ 29.517 Collection by offset.

(a) *Offset from retirement payments.* An overpayment may be collected in whole or in part from any refund payment or recurring Federal Benefit Payments.

(b) *Offset from other payments*—(1) *Administrative offset.* When offset under subsection (a) is not available, an overpayment may be offset from other Federal payments due the debtor from other agencies under the procedures set forth in 31 CFR part 5 and 31 CFR 901.3(c).

(2) *Salary offset.* When the debtor is an employee of the Federal Government, the Department may effect collection of an overpayment by offset of the debtor's pay in accordance with regulations published to implement such offsets under 5 U.S.C. 5514 (see 5 CFR part 550, subpart K; 31 CFR 285.7; and 31 CFR Part 5). Due process described in the federal salary offset regulations of 31 CFR part 5 will apply. When the debtor did not receive a hearing under those regulations and requests such a hearing, one will be conducted in accordance with 5 CFR part 550, subpart K and 31 CFR part 5.

(3) *Tax refund offset.* The Department may effect collection of an overpayment by offset of the debtor's tax refund in accordance with the Department's tax refund offset regulations found at 31 CFR part 5.

§ 29.518 Reporting delinquent debts to credit bureaus.

(a) *Notice.* If a debtor's response to the demand letter does not result in payment in full, payment by offset, or payment in accordance with a voluntary repayment agreement or other repayment schedule acceptable to the Benefits Administrator, and the debtor's rights under § 29.512 through § 29.514 have been exhausted, the Benefits Administrator must report the debtor to a credit bureau. In addition, a debtor's failure to make subsequent payments in accordance with a repayment schedule must result in a report to a credit bureau. Before making a report to a credit bureau, the Benefits Administrator must notify the debtor in writing that—

(1) The payment is overdue;

(2) The Benefits Administrator intends, after 60 days, to make a report

as described in paragraph (b) of this section to a credit bureau;

(3) The debtor's right to dispute the liability has been exhausted under § 29.512 through § 29.514; and

(4) The debtor may avoid having the Benefits Administrator report the debtor to a credit bureau by paying the debt in one lump sum or making payments current under a repayment schedule.

(b) *Report.* If, after being sent the notice described in paragraph (a) of this section, the debtor does not pay the overpayment debt or make payments current under a repayment schedule or fails to respond to the notice, and 60 days have elapsed since the notice was mailed, the Benefits Administrator will report to a credit bureau that the debtor is responsible for an unpaid debt and provide the following information:

(1) The debtor's name, address, taxpayer identification number, and any other information necessary to establish the identity of the individual;

(2) The amount, status, and history of the debt; and

(3) The fact that the debt arose in connection with the administration of Federal Benefit Payments under a District Retirement Fund.

(c) *Subsequent reports.* The Benefits Administrator must update its report to the credit bureau whenever it has knowledge of events that substantially change the status or the amount of the liability.

(d) *Other reporting of delinquent debts.* Pursuant to 31 CFR 901.4, delinquent overpayment debts should be reported to the Department of Housing and Urban Development's Credit Alert Interactive Voice Response System (CAIVRS).

(e) *Privacy Act considerations.* A delinquent debt may not be reported under this section unless a notice issued pursuant to the Privacy Act, 5 U.S.C. 552a(e)(4), authorizes the disclosure of information about the debtor to a credit bureau or CAIVRS.

§ 29.519 Referral to a collection agency.

(a) The Department retains the responsibility for resolving disputes, compromising debts, referring overpayment debts for litigation, and suspending or terminating collection action.

(b) The Department may not refer overpayment debts to commercial collection agencies until all procedures required by or requested under § 29.511 through § 29.514 have been completed.

§ 29.520 Referral for litigation.

The Department may refer to the Justice Department for litigation overpayment debts which cannot be compromised or waived, or on which collection activity cannot be suspended or terminated, and which the Department has been unable to recover pursuant to the collection activity described in § 29.511 through § 29.519. (See 31 CFR part 904.) Such debts should be referred to the Justice Department as early as possible, but at least within 1 year of the date such debts last became delinquent. In the case of overpayments arising from fraud, misrepresentation, or the presentation of a false claim, referral should be made to the Justice Department immediately. (See 31 CFR 900.3(a).) Referral of a debt to the Justice Department will suspend processing under § 29.511 through § 29.519 of this subpart.

STANDARDS FOR WAIVER OF OVERPAYMENTS

§ 29.521 Conditions for waiver and other adjustments.

(a) *General.* Overpayments made from the Retirement Funds will be recovered unless there is substantial evidence that the individual from whom recovery is to be made is eligible for waiver.

(b) *Waiver.* The Department may waive an overpayment from the Retirement Funds (provided there is no indication of fraud, misrepresentation, or lack of good faith on the part of the debtor) under sections 11021(3) or 11251(c)(2)(B) of the Act when it is established by substantial evidence that the individual from whom recovery is to be made—

(1) Is not at fault in causing or contributing to the overpayment, and

(2) Recovery would be against equity and good conscience.

(c) *Adjustment in the installment schedule.* (1)(i) An overpayment will not be waived because of financial hardship if

a reasonable installment schedule can be established for repayment of the debt by adjusting the installment schedule originally established.

(ii) For example, if the Department finds that the original installment schedule—24 installments at $125 each—causes the debtor financial hardship, but that repayment in 60 installments at $50 each does not, it may adjust the installments and recover the debt in full.

(2) Where it has been determined that an individual is ineligible for a waiver, but the individual has shown that collection action pursuant to the original installment schedule would cause him or her financial hardship, the Department may—

(i) Adjust the installment schedule if the individual shows that it would cause him or her financial hardship to make payments at the rate initially scheduled by the Department; or

(ii) Terminate the collection action under 31 CFR 903.3 if the costs of collecting the debt are anticipated to exceed the amount recoverable.

§ 29.522 Fault.

(a) *General rule.* A debtor is considered to be at fault if he or she, or any other person having an interest in obtaining a waiver of the claim, caused or contributed to the accrual of the overpayment. The Department considers a debtor or any other person having an interest in obtaining a waiver of the claim to have caused or contributed to the accrual of an overpayment if—

(1) Payment resulted from the individual's incorrect but not fraudulent statement, which the individual knew or should have known to be incorrect; or

(2) Payment resulted from the individual's failure to disclose facts in his or her possession which the individual knew or should have known were material, when the Department has identified that the individual has a duty to report and has clearly notified the individual of this reporting requirement.

(3) The following factors may affect the decision as to whether the debtor is or is not at fault where the debtor submitted an incorrect statement, or the debtor failed to disclose material facts in his or her possession—

(i) The debtor's age;

(ii) The debtor's physical and/or mental condition; and

(iii) The availability and nature of the information provided to the debtor by the Department.

(b) *Knowledge of an overpayment.* (1) Individuals who are aware that they are not entitled to a payment or are aware that a payment is higher than the payment to which they are entitled are not considered to have contributed to the overpayment if they promptly contact the Benefits Administrator and question the correctness of the payment and take no further action in reliance of the overpayment.

(2) Any contact made with the Benefits Administrator concerning the overpayment within 60 days of receipt (if the overpayment is a recurring payment, contact must be made within 60 days of the initial payment) will satisfy the prompt notification requirement.

(c) *Reasonable person standard.* The Department will use a reasonable person standard to determine whether an individual should have known that a statement was incorrect or that material facts in the individual's possession should have been disclosed. The reasonable person standard will take into account the objective factors set forth is paragraph (a)(3) of this section.

§ 29.523 Equity and good conscience.

Recovery is against equity and good conscience when there is substantial evidence that—

(a) It would cause financial hardship to the person from whom it is sought no matter what the amount and length of the proposed installment;

(b) The recipient of the overpayment can show (regardless of his or her financial circumstances) that due to the notice that such payment would be made or because of the incorrect payment he or she either has relinquished a valuable right or has changed positions for the worse; or

(c) Recovery would be unconscionable under the circumstances.

§ 29.524 Financial hardship.

Financial hardship may be deemed to exist when the debtor needs substantially all of his or her current and anticipated income and liquid assets to meet current and anticipated ordinary and necessary living expenses during the projected period of collection. Financial hardship will not be found to exist when the debtor merely establishes that the repayment causes a financial burden, i.e., when it is inconvenient to repay the debt. If there are anticipated changes in income or expenses that would allow for the recovery of the overpayment at a later date, the Department may suspend collection action until a future date.

(a) *Considerations.* Pertinent considerations in determining whether recovery would cause financial hardship include the following:

(1) The debtor's financial ability to pay at the time collection is scheduled to be made, and

(2) Income to other family member(s), if such member's ordinary and necessary living expenses are included in expenses reported by the debtor.

§ 29.525 Ordinary and necessary living expenses.

An individual's ordinary and necessary living expenses include rent, mortgage payments, utilities, maintenance, transportation, food, clothing, insurance (life, health, and accident), taxes, installment payments for which the individual is already liable, medical expenses, support expenses for which the individual is legally responsible, and other miscellaneous expenses that the individual can establish as being ordinary and necessary.

§ 29.526 Waiver precluded.

Waivers will not be offered or granted when—

(1) The overpayment was obtained by fraud, misrepresentation, or by improper negotiation of checks or withdrawal of electronic fund transfer payments after the death of the payee; or

(2) The overpayment was made to an estate and a timely demand for repayment is made prior to the final disbursement by the administrator or executor of the estate.

PART 50—TERRORISM RISK INSURANCE PROGRAM

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SOURCE: 68 FR 9811, Feb. 28, 2003, unless otherwise noted.

Subpart A—General Provisions

§ 50.1 Authority, purpose and scope.

(a) *Authority.* This Part is issued pursuant to authority in Title I of the Terrorism Risk Insurance Act of 2002, Pub. L. 107–297, 116 Stat. 2322.

(b) *Purpose.* This Part contains rules prescribed by the Department of the Treasury to implement and administer the Terrorism Risk Insurance Program.

(c) *Scope.* This Part applies to insurers subject to the Act and their policyholders.

§ 50.2 Responsible office.

The office responsible for the administration of the Terrorism Risk Insurance Act in the Department of the Treasury is the Terrorism Risk Insurance Program Office. The Treasury Assistant Secretary for Financial Institutions prescribes the regulations under the Act.

[68 FR 41264, July 11, 2003.]

§ 50.4 Mandatory participation in Program.

Any entity that meets the definition of an insurer under the Act is required to participate in the Program.

§ 50.5 Definitions.

For purposes of this Part:

(a) *Act* means the Terrorism Risk Insurance Act of 2002.

(b) *Act of terrorism*—(1) *In general.* The term *act of terrorism* means any act that is certified by the Secretary, in concurrence with the Secretary of State and the Attorney General of the United States:

(i) To be an act of terrorism;

(ii) To be a violent act or an act that is dangerous to human life, property, or infrastructure;

(iii) To have resulted in damage within the United States, or outside of the United States in the case of:

(A) An air carrier (as defined in 49 U.S.C. 40102) or a United States flag vessel (or a vessel based principally in the United States, on which United States income tax is paid and whose insurance coverage is subject to regulation in the United States); or

(B) The premises of a United States mission; and

(iv) To have been committed by an individual or individuals acting on behalf of any foreign person or foreign interest, as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion.

(2) *Limitations.* The Secretary is not authorized to certify an act as an act of terrorism if:

(i) The act is committed as part of the course of a war declared by the Congress (except with respect to any coverage for workers' compensation); or

(ii) property and casualty losses resulting from the act, in the aggregate, do not exceed $5,000,000.

(3) *Judicial review precluded.* The Secretary's certification of an act of terrorism, or determination not to certify an act as an act of terrorism, is final and is not subject to judicial review.

(c)(1) *Affiliate* means, with respect to an insurer, any entity that controls, is controlled by, or is under common control with the insurer. An affiliate must itself meet the definition of insurer to participate in the Program.

(2) For purposes of paragraph (c)(1) of this section, an insurer has control

over another insurer for purposes of the Program if:

(i) The insurer directly or indirectly or acting through one or more other persons owns, controls, or has power to vote 25 percent or more of any class of voting securities of the other insurer;

(ii) The insurer controls in any manner the election of a majority of the directors or trustees of the other insurer; or

(iii) The Secretary determines, after notice and opportunity for hearing, that an insurer directly or indirectly exercises a controlling influence over the management or policies of the other insurer, even if there is no control as defined in paragraph (c)(2)(i) or (c)(2)(ii) of this section.

(3) An insurer described in paragraph (c)(2)(i) or (c)(2)(ii) of this section is conclusively deemed to have control.

(4) For purposes of a determination of controlling influence under paragraph (c)(2)(iii) of this section, if an insurer is not described in paragraph (c)(2)(i) or (c)(2)(ii) of this section, the following rebuttable presumptions will apply:

(i) If an insurer controls another insurer under any State law, and at least one of the factors listed in paragraph (c) (4)(iv) of this section applies, there is a rebuttable presumption that the insurer that has control under State law exercises a controlling influence over the management or policies of the other insurer for purposes of paragraph (c)(2)(iii) of this section.

(ii) If an insurer provides 25 percent or more of another insurer's capital (in the case of a stock insurer), policyholder surplus (in the case of a mutual insurer), or corporate capital (in the case of other entities that qualify as insurers), and at least one of the factors listed in paragraph (c)(4)(iv) of this section applies, there is a rebuttable presumption that the insurer providing such capital, policyholder surplus, or corporate capital exercises a controlling influence over the management or policies of the receiving insurer for purposes of paragraph (c)(2)(iii) of this section.

(iii) If an insurer, at any time during a Program Year, supplies 25 percent or more of the underwriting capacity for that year to an insurer that is a syndicate consisting of a group including incorporated and individual unincorporated underwriters, and at least one of the factors in paragraph (c)(4)(iv) of this section applies, there is a rebuttable presumption that the insurer exercises a controlling influence over the syndicate for purposes of paragraph (c)(2)(iii) of this section.

(iv) If paragraphs (c)(4)(i) through (c)(4)(iii) of this section are not applicable, but two or more of the following factors apply to an insurer, with respect to another insurer, there is a rebuttable presumption that the insurer exercises a controlling influence over the management or policies of the other insurer for purposes of paragraph (c)(2)(iii) of this section:

(A) The insurer is one of the two largest shareholders of any class of voting stock;

(B) The insurer holds more than 35 percent of the combined debt securities and equity of the other insurer;

(C) The insurer is party to an agreement pursuant to which the insurer possesses a material economic stake in the other insurer resulting from a profit-sharing arrangement, use of common names, facilities or personnel, or the provision of essential services to the other insurer;

(D) The insurer is party to an agreement that enables the insurer to influence a material aspect of the management or policies of the other insurer;

(E) The insurer would have the ability, other than through the holding of revocable proxies, to direct the votes of more than 25 percent of the other insurer's voting stock in the future upon the occurrence of an event;

(F) The insurer has the power to direct the disposition of more than 25 percent of a class of voting stock of the other insurer in a manner other than a widely dispersed or public offering;

(G) The insurer and/or the insurer's representative or nominee constitute more than one member of the other insurer's board of directors; or

(H) The insurer or its nominee or an officer of the insurer serves as the chairman of the board, chairman of the executive committee, chief executive officer, chief operating officer, chief financial officer or in any position with similar policymaking authority in the other insurer.

(5) An insurer that is not described in paragraph (c)(2)(i) or (c)(2)(ii) of this section may request a hearing in which the insurer may rebut a presumption of controlling influence under paragraph (c)(4)(i) through (c)(4)(iv) of this section or otherwise request a determination of controlling influence by presenting and supporting its position through written submissions to Treasury, and in Treasury's discretion, through informal oral presentations, in accordance with the procedure in § 50.8.

(d) *Direct earned premium* means a direct earned premium for all commercial property and casualty insurance issued by any insurer for insurance against all losses, including losses from an act of terrorism, occurring at the locations described in section 102(5)(A) and (B) of the Act.

(1) *State licensed or admitted insurers.* For a State licensed or admitted insurer that reports to the NAIC, direct earned premium is the premium information for commercial property and casualty insurance coverage reported by the insurer on column 2 of the NAIC Exhibit of Premiums and Losses of the NAIC Annual Statement (commonly known as Statutory Page 14). (See definition of property and casualty insurance.)

(i) Premium information as reported to the NAIC should be included in the calculation of direct earned premiums for purposes of the Program only to the extent of commercial property and casualty coverage issued by the insurer against losses occurring at the locations described in section 102(5)(A) and (B) of the Act.

(ii) Premiums for personal property and casualty insurance coverage (coverage primarily designed to cover personal, family or household risk exposures, with the exception of coverage written to insure 1 to 4 family rental dwellings owned for the business purpose of generating income for the property owner), or premiums for any other insurance coverage that does not meet the definition of commercial property and casualty insurance, should be excluded in the calculation of direct earned premiums for purposes of the Program.

(iii) Personal property and casualty insurance coverage that includes incidental coverage for commercial purposes is primarily personal coverage, and therefore premiums may be fully excluded by an insurer from the calculation of direct earned premium. For purposes of the Program, commercial coverage is incidental if less than 25 percent of the total direct earned premium is attributable to commercial coverage. Commercial property and casualty insurance coverage insuring against losses occurring at locations other than the locations described in section 102(5)(A) and (B) of the Act, or other insurance coverage that does not meet the definition of commercial property and casualty insurance, but that includes incidental coverage for commercial property and casualty insurance insuring against losses occurring at such locations, is primarily non-Program coverage, and therefore premiums also may be fully excluded by an insurer from the calculation of direct earned premium. For purposes of the Program, commercial property and casualty insurance coverage insuring against losses at the locations described in section 102(5)(A) and (B) of the Act is incidental if less than 25 percent of the total direct earned premium is attributable to such coverage. For purposes of the Program, commercial coverage combined with coverages that otherwise do not meet the definition of commercial property and casualty insurance is incidental if less than 25 percent of the total direct earned premium is for such coverage.

(iv) If a property and casualty insurance policy covers both commercial and personal risk exposures, insurers may allocate the premiums in accordance with the proportion of risk between commercial and personal components in order to ascertain direct earned premium. If a policy includes insurance coverage that meets the definition of commercial property and casualty insurance for losses occurring at the locations described in section 102(5)(A) and (B) of the Act, but also includes other coverage, insurers may allocate the premiums in accordance with the proportion of risk attributable to the components, in order to ascertain direct earned premium.

(2) *Insurers that do not report to NAIC.* An insurer that does not report to the

NAIC, but that is licensed or admitted by any State (such as certain farm or county mutual insurers), should use the guidance provided in paragraph (d)(1) of this section to assist in ascertaining its direct earned premium.

(i) Direct earned premium may be ascertained by adjusting data maintained by such insurer or reported by such insurer to its State regulator to reflect a breakdown of premiums for commercial and personal property and casualty exposure risk as described in paragraph (d)(1) of this section and, if necessary, re-stated to reflect the accrual method of determining direct earned premium versus direct premium.

(ii) Such an insurer should consider other types of payments that compensate the insurer for risk of loss (contributions, assessments, etc.) as part of its direct earned premium.

(3) *Certain eligible surplus line carrier insurers.* An eligible surplus line carrier insurer listed on the NAIC Quarterly Listing of Alien Insurers must ascertain its direct earned premium as follows:

(i) For policies that were in-force as of November 26, 2002, or entered into prior to January 1, 2003, direct earned premiums are to be determined with reference to the definition of property and casualty insurance and the locations described in section 102(5)(A) and (B) of the Act by allocating the appropriate portion of premium income for losses for property and casualty insurance at such locations. The same allocation methodologies contained within the NAIC's ''Allocation of Surplus Lines and Independently Procured Insurance Premium Tax on Multi-State Risks Model Regulation'' for allocating premium between coverage for property and casualty insurance for losses occurring at the locations described in section 102(5)(A) and (B) of the Act and all other coverage, to ascertain the appropriate percentage of premium income to be included in direct earned premium, may be used.

(ii) For policies issued after January 1, 2003, premium for insurance that meets the definition of property and casualty insurance for losses occurring at the locations described in section 102(5)(A) and (B) of the Act, must be priced separately by such eligible surplus line carriers.

(4) *Federally approved insurers.* A federally approved insurer under section 102(6)(A)(iii) of the Act should use a methodology similar to that specified for eligible surplus line carrier insurers in paragraph (d)(3) of this section to calculate its direct earned premium. Such calculation should be adjusted to reflect the limitations on scope of insurance coverage under the Program (*i.e.* to the extent of federal approval of commercial property and casualty insurance in connection with maritime, energy or aviation activities).

(e) *Insured loss.* (1) The term insured loss means any loss resulting from an act of terrorism (including an act of war, in the case of workers' compensation) that is covered by primary or excess property and casualty insurance issued by an insurer if the loss:

(i) Occurs within the United States;

(ii) Occurs to an air carrier (as defined in 49 U.S.C. 40102), to a United States flag vessel (or a vessel based principally in the United States, on which United States income tax is paid and whose insurance coverage is subject to regulation in the United States), regardless of where the loss occurs; or

(iii) Occurs at the premises of any United States mission.

(2)(i) A loss that occurs to an air carrier (as defined in 49 U.S.C. 40102), to a United States flag vessel, or a vessel based principally in the United States, on which United States income tax is paid and whose insurance coverage is subject to regulation in the United States, is not an insured loss under section 102(5)(B) of the Act unless it is incurred by the air carrier or vessel outside the United States.

(ii) An insured loss to an air carrier or vessel outside the United States under section 102(5)(B) of the Act does not include losses covered by third party insurance contracts that are separate from the insurance coverage provided to the air carrier or vessel.

(3) The term insured loss includes reasonable loss adjustment expenses, incurred by an insurer in connection with insured losses, that are allocated and identified by claim file in insurer

records, including expenses incurred in the investigation, adjustment and defense of claims, but excluding staff salaries, overhead, and other insurer expenses that would have been incurred notwithstanding the insured loss.

(4) The term insured loss does not include:

(i) Punitive or exemplary damages awarded or paid in connection with the Federal cause of action specified in section 107(a)(1) of the Act. The term ''punitive or exemplary damages'' means damages that are not compensatory but are an award of money made to a claimant solely to punish or deter; or

(ii) Extra contractual damages awarded against, or paid by, an insurer; or

(iii) Payments by an insurer in excess of policy limits.

(f) *Insurer* means any entity, including any affiliate of the entity, that meets the following requirements:

(1)(i) The entity must fall within at least one of the following categories:

(A) It is licensed or admitted to engage in the business of providing primary or excess insurance in any State, (including, but not limited to, State licensed captive insurance companies, State licensed or admitted risk retention groups, and State licensed or admitted farm and county mutuals), and, if a joint underwriting association, pooling arrangement, or other similar entity, then the entity must:

(*1*) Have gone through a process of being licensed or admitted to engage in the business of providing primary or excess insurance that is administered by the State's insurance regulator, which process generally applies to insurance companies or is similar in scope and content to the process applicable to insurance companies;

(*2*) Be generally subject to State insurance regulation, including financial reporting requirements, applicable to insurance companies within the State; and

(*3*) Be managed independently from other insurers participating in the Program;

(B) It is not licensed or admitted to engage in the business of providing primary or excess insurance in any State, but is an eligible surplus line carrier listed on the Quarterly Listing of Alien Insurers of the NAIC, or any successor to the NAIC;

(C) It is approved or accepted for the purpose of offering property and casualty insurance by a Federal agency in connection with maritime, energy, or aviation activity, but only to the extent of such federal approval of commercial property and casualty insurance coverage offered by the insurer in connection with maritime, energy, or aviation activity;

(D) It is a State residual market insurance entity or State workers' compensation fund; or

(E) As determined by the Secretary, it falls within any other class or type of captive insurer or other self-insurance arrangement by a municipality or other entity, to the extent provided in Treasury regulations issued under section 103(f) of the Act.

(ii) If an entity falls within more than one category described in paragraph (f)(1)(i) of this section, the entity is considered to fall within the first category within which it falls for purposes of the Program.

(2) The entity must receive direct earned premiums for any type of commercial property and casualty insurance coverage, except in the case of:

(i) State residual market insurance entities and State workers' compensation funds, to the extent provided in Treasury regulations; and

(ii) Other classes or types of captive insurers and other self-insurance arrangements by municipalities and other entities, if such entities are included in the Program by Treasury under regulations in this Part.

(3) The entity must meet any other criteria as prescribed by Treasury.

(g) *Insurer deductible* means:

(1) For an insurer that was in existence on November 26, 2002 and has had a full year of operations during the calendar year immediately preceding the applicable Program Year:

(i) For the Transition Period (November 26, 2002 through December 31, 2002), the value of an insurer's direct earned premiums over calendar 2001, multiplied by 1 percent;

(ii) For Program Year 1 (January 1, 2003 through December 31, 2003), the

value of an insurer's direct earned premiums over calendar year 2002, multiplied by 7 percent;

(iii) For Program Year 2 (January 1, 2004 through December 31, 2004), the value of an insurer's direct earned premiums over calendar year 2003, multiplied by 10 percent;

(iv) For Program Year 3 (January 1, 2005 through December 31, 2005), the value of an insurer's direct earned premiums over calendar year 2004, multiplied by 15 percent; and

(2) For an insurer that came into existence after November 26, 2002, the insurer deductible will be based on data for direct earned premiums for the current Program Year. If the insurer has not had a full year of operations during the applicable Program Year, the direct earned premiums for the current Program Year will be annualized to determine the insurer deductible.

(3) Notwithstanding paragraph (g)(2) of this section, the insurer deductible for Program Year 3 (January 1, 2005 through December 31, 2005) for an insurer that has not had a full year of operations during calendar year 2004 will be based on annualized data for the insurer's direct earned premiums for Program Year 3, multiplied by 15 percent. For an insurer that came into existence after November 26, 2002 and has had a full year of operations during calendar year 2004, the insurer deductible for Program Year 3 is the value of an insurer's direct earned premiums over calendar year 2004, multiplied by 15 percent.

(h) *NAIC* means the National Association of Insurance Commissioners.

(i) *Person* means any individual, business or nonprofit entity (including those organized in the form of a partnership, limited liability company, corporation, or association), trust or estate, or a State or political subdivision of a State or other governmental unit.

(j) *Program* means the Terrorism Risk Insurance Program established by the Act.

(k) *Program Years* means the Transition Period (November 26, 2002 through December 31, 2002), Program Year 1 (January 1, 2003 through December 31, 2003), Program Year 2 (January 1, 2004 through December 31, 2004), and Program Year 3 (January 1, 2005 through December 31, 2005).

(l) *Property and casualty insurance* means commercial lines of property and casualty insurance, including excess insurance, workers' compensation insurance, and surety insurance, and

(1) Means commercial lines within only the following lines of insurance from the NAIC's Exhibit of Premiums and Losses (commonly known as Statutory Page 14): Line 1—Fire; Line 2.1—Allied Lines; Line 3—Farmowners Multiple Peril; Line 5.1—Commercial Multiple Peril (non-liability portion); Line 5.2—Commercial Multiple Peril (liability portion); Line 8—Ocean Marine; Line 9—Inland Marine; Line 16—Workers' Compensation; Line 17—Other Liability; Line 18—Products Liability; Line 19.3—Commercial Auto No-Fault (personal injury protection); Line 19.4—Other Commercial Auto Liability; Line 21.2—Commercial Auto Physical Damage; Line 22—Aircraft (all perils); Line 24—Surety; Line 26—Burglary and Theft; and Line 27—Boiler and Machinery; and

(2) Does not include:

(i) Federal crop insurance issued or reinsured under the Federal Crop Insurance Act (7 U.S.C. 1501 *et seq.*), or any other type of crop or livestock insurance that is privately issued or reinsured (including crop insurance reported under either Line 2.1—Allied Lines or Line 2.2—Multiple Peril (Crop) of the NAIC's Exhibit of Premiums and Losses (commonly known as Statutory Page 14);

(ii) Private mortgage insurance (as defined in section 2 of the Homeowners Protection Act of 1988 (12 U.S.C. 4901) or title insurance;

(iii) Financial guaranty insurance issued by monoline financial guaranty insurance corporations;

(iv) Insurance for medical malpractice;

(v) Health or life insurance, including group life insurance;

(vi) Flood insurance provided under the National Flood Insurance Act of 1968 (42 U.S.C. 4001 *et seq.*) or earthquake insurance reported under Line 12 of the NAIC's Exhibit of Premiums and Losses (commonly known as Statutory Page 14); or

(vii) Reinsurance or retrocessional reinsurance.

(m) *Secretary* means the Secretary of the Treasury.

(n) *State* means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, each of the United States Virgin Islands, and any territory or possession of the United States.

(o) *Treasury* means the United States Department of the Treasury.

(p) *United States* means the several States, and includes the territorial sea and the continental shelf of the United States, as those terms are defined in the Violent Crime Control and Law Enforcement Act of 1994 (18 U.S.C. 2280 and 2281).

[68 FR 9811, Feb. 28, 2003, as amended at 68 FR 41264, July 11, 2003; 68 FR 48281, Aug. 13, 2003; 69 FR 39306, June 29, 2004; 70 FR 7404, Feb. 14, 2005]

EFFECTIVE DATE NOTE: At 70 FR 34351, June 14, 2005, § 50.5 was amended by adding paragraph (c)(6), effective July 14, 2005. For the convenience of the user, the added text is set forth as follows:

§ 50.5 Definitions.

* * * * *

(c) * * *

(6) See § 50.55 of this part for determination of an insurer's affiliates for purposes of subpart F.

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§ 50.6 Rule of construction for dates.

Unless otherwise expressly provided in the regulation, any date in these regulations is intended to be applied so that the day begins at 12:01 a.m. and ends at midnight on that date.

§ 50.7 Special rules for Interim Guidance safe harbors.

(a) An insurer will be deemed to be in compliance with the requirements of the Act to the extent the insurer reasonably relied on Interim Guidance prior to the effective date of applicable regulations.

(b) For purposes of this section, Interim Guidance means the following documents, which are also available from the Department of the Treasury at *http://www.treasury.gov/trip:*

(1) Interim Guidance I issued by Treasury on December 3, 2002, and published at 67 FR 76206 (December 11, 2002);

(2) Interim Guidance II issued by Treasury on December 18, 2002, and published at 67 FR 78864 (December 26, 2002); and

(3) Interim Guidance III issued by Treasury on January 22, 2003, and published at 68 FR 4544 (January 29, 2003).

§ 50.8 Procedure for requesting determinations of controlling influence.

(a) An insurer or insurers not having control over another insurer under § 50.5(c)(2)(i) or (c)(2)(ii) may make a written submission to Treasury to rebut a presumption of controlling influence under § 50.5(c)(4)(i) through (iv) or otherwise to request a determination of controlling influence. Such submissions shall be made to the Terrorism Risk Insurance Program Office, Department of the Treasury, Suite 2110, 1425 New York Ave NW, Washington, D.C. 20220. The submission should be entitled, ''Controlling Influence Submission,'' and should provide the full name and address of the submitting insurer(s) and the name, title, address and telephone number of the designated contact person(s) for such insurer(s).

(b) Treasury will review submissions and determine whether Treasury needs additional written or orally presented information. In its discretion, Treasury may schedule a date, time and place for an oral presentation by the insurer(s).

(c) An insurer or insurers must provide all relevant facts and circumstances concerning the relationship(s) between or among the affected insurers and the control factors in § 50.5(c)(4)(i) through (iv); and must explain in detail any basis for why the insurer believes that no controlling influence exists (if a presumption is being rebutted) in light of the particular facts and circumstances, as well as the Act's language, structure and purpose. Any confidential business or trade secret information submitted to Treasury should be clearly marked. Treasury will handle any subsequent request for information designated by an insurer

as confidential business or trade secret information in accordance with Treasury's Freedom of Information Act regulations at 31 C.F.R. Part 1.

(d) Treasury will review and consider the insurer submission and other relevant facts and circumstances. Unless otherwise extended by Treasury, within 60 days after receipt of a complete submission, including any additional information requested by Treasury, and including any oral presentation, Treasury will issue a final determination of whether one insurer has a controlling influence over another insurer for purposes of the Program. The determination shall set forth Treasury's basis for its determination.

(e) This §50.8 supersedes the Interim Guidance issued by Treasury in a notice published on March 27, 2003 (68 FR 15039).

(Approved by the Office of Management & Budget under control number 1505–0190)

[68 FR 41266, July 11, 2003]

§50.9 Procedure for requesting general interpretations of statute.

Persons actually or potentially affected by the Act or regulations in this Part may request an interpretation of the Act or regulations by writing to the Terrorism Risk Insurance Program Office, Suite 2110, Department of the Treasury, 1425 New York Ave NW, Washington, DC 20220, giving a detailed explanation of the facts and circumstances and the reason why an interpretation is needed. A requester should segregate and mark any confidential business or trade secret information clearly. Treasury in its discretion will provide written responses to requests for interpretation. Treasury reserves the right to decline to provide a response in any case. Except in the case of any confidential business or trade secret information, Treasury will make written requests for interpretations and responses publicly available at the Treasury Department Library, on the Treasury Web site, or through other means as soon as practicable after the response has been provided. Treasury will handle any subsequent request for information that had been designated by a requester as confidential business or trade secret information in accordance with Treasury's Freedom of Information Act regulations at 31 CFR Part 1.

[68 FR 41266, July 11, 2003]

Subpart B—Disclosures as Conditions for Federal Payment

SOURCE: 68 FR 19306, Apr. 18, 2003, unless otherwise noted.

§50.10 General disclosure requirements.

(a) *All policies.* As a condition for federal payments under section 103(b) of the Act, the Act requires that an insurer provide clear and conspicuous disclosure to the policyholder of:

(1) The premium charged for insured losses covered by the Program; and

(2) The federal share of compensation for insured losses under the Program.

(b) *Policies in force on the date of enactment.* For policies issued before November 26, 2002, the disclosure required by the Act must be provided within 90 days of November 26, 2002 (no later than February 24, 2003).

(c) *Policies issued within 90 days of the date of enactment.* For policies issued within the 90-day period beginning on November 26, 2002 through February 24, 2003, the disclosure required by the Act must be provided at the time of offer, purchase, and renewal of the policy.

(d) *Policies issued more than 90 days after the date of enactment.* For policies issued on or after February 25, 2003, the disclosure required by the Act must be made on a separate line item in the policy, at the time of offer, purchase, and renewal of the policy.

§50.11 Definition.

Except as provided in §50.18, for purposes of this subpart the term ''disclosure'' or ''disclosures'' refers to the disclosures described in section 103(b)(2) of the Act and §50.10.

§50.12 Clear and conspicuous disclosure.

(a) *General.* Whether a disclosure is clear and conspicuous depends on the totality of the facts and circumstances of the disclosure. See §50.17 for model forms.

(b) *Description of premium.* An insurer may describe the premium charged for

insured losses covered by the Program as a portion or percentage of an annual premium, if consistent with standard business practice. An insurer may not describe the premium in a manner that is misleading in the context of the Program, such as by characterizing the premium as a ''surcharge.''

(c) *Method of disclosure.* An insurer may provide disclosures using normal business practices, including forms and methods of communication used to communicate similar policyholder information to policyholders.

(d) *Use of producer.* If an insurer normally communicates with a policyholder through an insurance producer or other intermediary, an insurer may provide disclosures through such producer or other intermediary. If an insurer elects to make the disclosures through an insurance producer or other intermediary, the insurer remains responsible for ensuring that the disclosures are provided by the insurance producer or other intermediary to policyholders in accordance with the Act.

(e) *Demonstration of compliance.* An insurer may demonstrate that it has satisfied the requirement to provide clear and conspicuous disclosure as described in § 50.10 through use of appropriate systems and normal business practices that demonstrate a practice of compliance.

(f) *Certification of compliance.* An insurer must certify that it has complied with the requirement to provide disclosure to the policyholder on all policies that form the basis for any claim that is submitted by an insurer for federal payment under the Program.

[68 FR 19306, Apr. 18, 2003, as amended at 68 FR 59727, Oct. 17, 2003]

§ 50.13 Offer, purchase, and renewal.

An insurer is deemed to be in compliance with the requirement of providing disclosure ''at the time of offer, purchase, and renewal of the policy'' under § 50.10(c) and (d) if the insurer:

(a) Makes the disclosure no later than the time the insurer first formally offers to provide insurance coverage or renew a policy for a current policyholder; and

(b) Makes clear and conspicuous reference back to that disclosure, as well as the final terms of terrorism insurance coverage, at the time the transaction is completed.

§ 50.14 Separate line item.

An insurer is deemed to be in compliance with the requirement of providing disclosure on a ''separate line item in the policy'' under § 50.10(d) if the insurer makes the disclosure:

(a) On the declarations page of the policy;

(b) Elsewhere within the policy itself; or

(c) In any rider or endorsement, or other document that is made a part of the policy.

[68 FR 59727, Oct. 17, 2003]

§ 50.17 Use of model forms.

(a) *Policies in force on the date of enactment.* (1) An insurer that is required to make the disclosure under § 50.10(b) and that makes no change in the existing premium, is deemed to be in compliance with the disclosure requirement if it uses NAIC Model Disclosure Form No. 2.

(2) An insurer that is required to make the disclosure under § 50.10(b) and that makes a change in the existing premium, is deemed to be in compliance with the disclosure requirement if it uses NAIC Model Disclosure Form No. 1. Such an insurer may also use the same NAIC Model Disclosure Form No. 1 to comply with the disclosure requirement of section 105(c) of the Act. *See* § 50.18.

(b) *Policies issued within 90 days of the date of enactment.* An insurer that is required to make the disclosure under § 50.10(c) is deemed to be in compliance with the disclosure requirement if it uses either NAIC Model Disclosure Form No. 1 or NAIC Model Disclosure Form No. 2, as long as the form used is modified as appropriate for the particular policy.

(c) *Policies issued more than 90 days after the date of enactment.* An insurer that is required to make the disclosure under § 50.10(d) may continue to use NAIC Model Disclosure Form No. 1 or NAIC Model Disclosure Form No. 2 if appropriate, or other disclosures that meet the requirements of §§ 50.10(a) and 50.14 may be developed.

(d) *Not exclusive means of compliance.* An insurer is not required to use NAIC

Model Disclosure Form No. 1 or NAIC Model Disclosure Form No. 2 to satisfy the disclosure requirement. An insurer may use other means to comply with the disclosure requirement, as long as the disclosure comports with the requirements of the Act.

(e) *Definitions.* For purposes of this section, references to NAIC Model Disclosure Form No. 1 and NAIC Model Disclosure Form No. 2 refer to such forms as were in existence on April 18, 2003. These forms may be found on the Treasury Web site at *http://www.treasury.gov/trip.*

§ 50.18 Disclosure required by reinstatement provision.

(a) *Nullification of terrorism exclusion.* Any terrorism exclusion in a contract for property and casualty insurance that was in force on November 26, 2002, is void to the extent it excludes losses that would otherwise be insured losses.

(b) *Reinstatement of terrorism exclusion.* Notwithstanding paragraph (a) of this section, an insurer may reinstate a preexisting provision in a contract for property and casualty insurance that was in force on November 26, 2002, and that excludes coverage for an act of terrorism only if:

(1) The insurer has received a written statement from the insured that affirmatively authorizes such reinstatement; or

(2) The insurer provided notice at least 30 days before any such reinstatement of the increased premium for such terrorism coverage and the rights of the insured with respect to such coverage, including the date upon which the exclusion would be reinstated if no payment is received, and the insured fails to pay any increased premium charged by the insurer for providing such terrorism coverage.

[68 FR 19306, Apr. 18, 2003, as amended at 68 FR 59727, Oct. 17, 2003]

§ 50.19 General disclosure requirements for State residual market insurance entities and State worker's compensation funds.

(a) *Policies in force on October 17, 2003, or renewed or issued on or before January 15, 2004.* For policies in force on October 17, 2003, or renewed or issued on or before January 15, 2004, the disclosure required by section 103(b) of the Act as a condition for Federal payment is waived for those State residual market insurance entities and State workers' compensation funds that since November 26, 2002, have not provided disclosures to policyholders, until January 15, 2004, after which disclosures are to be made to policyholders for policies then in force and subsequently issued.

(b) *Residual Market Mechanism Disclosure.* A State residual market insurance entity or State workers' compensation fund may provide the disclosures required by this subpart B to policyholders using normal business practices, including forms and methods of communication used to communicate similar policyholder information to policyholders. The disclosures may be made by the State residual market insurance entity or State workers' compensation fund itself, the individual insurers that participate in the State residual market insurance entity or a State workers' compensation fund, or its servicing carriers. The ultimate responsibility for ensuring that the disclosure requirements have been met rests with the insurer filing a claim under the Program.

(c) *Other requirements.* Except as provided in this section, all other disclosure requirements set out in this subpart B apply to State residual insurance market entities and State workers' compensation funds.

(d) *Prior safe harbor superseded.* This section supersedes the disclosure safe harbor provisions found at paragraph C.4 of the Interim Guidance issued by Treasury in a notice published on December 18, 2002, and published at 67 FR 78864 (December 26, 2002).

[68 FR 59719, Oct. 17, 2003]

Subpart C—Mandatory Availability

SOURCE: 68 FR 19307, Apr. 18, 2003, unless otherwise noted.

§ 50.20 General mandatory availability requirements.

(a) *Transition Period and Program Years 1 and 2—period ending December 31, 2004.* Under section 103(c) of the Act (unless the time is extended by the

Secretary as provided in that section) during the period beginning on November 26, 2002 and ending on December 31, 2004 (the last day of Program Year 2), an insurer must:

(1) Make available, in all of its property and casualty insurance policies, coverage for insured losses; and

(2) Make available property and casualty insurance coverage for insured losses that does not differ materially from the terms, amounts, and other coverage limitations applicable to losses arising from events other than acts of terrorism.

(b) *Program Year 3—calendar year 2005.* In accordance with the determination of the Secretary announced June 18, 2004, an insurer must comply with paragraphs (a)(1) and (a)(2) of this section during Program Year 3. Notwithstanding paragraph (a)(2) of this section and § 50.23(a), property and casualty insurance coverage for insured losses does not have to be made available beyond December 31, 2005 (the last day of Program Year 3) even if the policy period of insurance coverage for losses from events other than acts of terrorism extends beyond that date.

[68 FR 19307, Apr. 18, 2003, as amended at 70 FR 7405, Feb. 14, 2005]

§ 50.21 Make available.

(a) *General.* The requirement to make available coverage as provided in § 50.20 applies to policies in existence on November 26, 2002, new policies issued and renewals of existing policies during the period beginning on November 26, 2002 and ending on December 31, 2004 (the last day of Program Year 2), and to new policies issued and renewals of existing policies in Program Year 3 (calendar year 2005). The requirement applies at the time an insurer makes the initial offer of coverage as well as at the time an insurer makes an initial offer of renewal of an existing policy.

(b) *Changes negotiated subsequent to initial offer.* If an insurer satisfies the requirement to ''make available'' coverage as described in § 50.20 by first making an offer with coverage for insured losses that does not differ materially from the terms, amounts, and other coverage limitations applicable to losses arising from events other than acts of terrorism, which the policyholder declines, the insurer may negotiate with the policyholder an option of partial coverage for insured losses at a lower amount of coverage if permitted by any applicable State law. An insurer is not required by the Act to offer partial coverage if the policyholder declines full coverage. See § 50.24.

(c) *Demonstration of compliance.* If an insurer makes an offer of insurance but no contract of insurance is concluded, the insurer may demonstrate that it has satisfied the requirement to make available coverage as described in § 50.20 through use of appropriate systems and normal business practices that demonstrate a practice of compliance.

[68 FR 19307, Apr. 18, 2003, as amended at 68 FR 59727, Oct. 17, 2003; 70 FR 7405, Feb. 14, 2005]

§ 50.23 No material difference from other coverage.

(a) *Terms, amounts, and other coverage limitations.* As provided in § 50.20(a)(2), an insurer must offer coverage for insured losses resulting from an act of terrorism that does not differ materially from the terms, amounts, and other coverage limitations (including deductibles) applicable to losses from other perils. For purposes of this requirement, ''terms'' excludes price.

(b) *Limitations on types of risk.* If an insurer does not cover all types of risks, then it is not required to cover the excluded risks in satisfying the requirement to make available coverage for losses resulting from an act of terrorism that does not differ materially from the terms, amounts, and other coverage limitations applicable to losses arising from events other than acts of terrorism. For example, if an insurer does not cover all types of risks, either because the insurer is outside of direct State regulatory oversight, or because a State permits certain exclusions for certain types of losses, such as nuclear, biological, or chemical events, then the insurer is not required to make such coverage available.

§50.24 Applicability of State law requirements.

(a) *General.* After satisfying the requirement to make available coverage for insured losses that does not differ materially from the terms, amounts, and other coverage limitations applicable to losses arising from events other than acts of terrorism, if coverage is rejected an insurer may then offer coverage that is on different terms, amounts, or coverage limitations, as long as such an offer does not violate any applicable State law requirements.

(b) *Examples.* (1) If an insurer subject to State regulation first makes available coverage in accordance with §50.20 and the State has a requirement that an insurer offer full coverage without any exclusion, then the requirement would continue to apply and the insurer may not subsequently offer less than full coverage or coverage with exclusions.

(2) If an insurer subject to State regulation first makes available coverage in accordance with §50.20 and the State permits certain exclusions or allows for other limitations, or an insurance policy is not governed by State law requirements, then the insurer may subsequently offer limited coverage or coverage with exclusions.

Subpart D—State Residual Market Insurance Entities; Workers' Compensation Funds

§50.30 General participation requirements.

(a) *Insurers.* As defined in §50.5(f), all State residual market insurance entities and State workers' compensation funds are insurers under the Program even if such entities do not receive direct earned premiums.

(b) *Mandatory Participation.* State residual market insurance entities and State workers' compensation funds that meet the requirements of §50.5(f) are mandatory participants in the Program subject to the rules issued in this Subpart.

(c) *Identification.* Treasury will release and maintain a list of State residual market insurance entities and State workers' compensation funds at *www.treasury.gov/trip*. Procedures for providing comments and updates to that list will be posted with the list.

[68 FR 59720, Oct. 17, 2003]

§50.33 Entities that do not share profits and losses with private sector insurers.

(a) *Treatment.* A State residual market insurance entity or a State workers' compensation fund that does not share profits and losses with a private sector insurer is deemed to be a separate insurer under the Program.

(b) *Premium calculation.* A State residual market insurance entity or a State workers' compensation fund that is deemed to be a separate insurer should follow the guidelines specified in §50.5(d)(1) or 50.5(d)(2) for the purposes of calculating the appropriate measure of direct earned premium.

[68 FR 59720, Oct. 17, 2003]

§50.35 Entities that share profits and losses with private sector insurers.

(a) *Treatment.* A State residual market insurance entity or a State workers' compensation fund that shares profits and losses with a private sector insurer is not deemed to be a separate insurer under the Program.

(b) *Premium and loss calculation.* A State residual market insurance entity or a State workers' compensation fund that is not deemed to be a separate insurer should continue to report, in accordance with normal business practices, to each participant insurer its share of premium income and insured losses, which shall then be included respectively in the participant insurer's direct earned premium or insured loss calculations.

[68 FR 59720, Oct. 17, 2003]

§50.36 Allocation of premium income associated with entities that do share profits and losses with private sector insurers.

(a) *Servicing Carriers.* For purposes of this Subpart, a servicing carrier is an insurer that enters into an agreement to place and service insurance contracts for a State residual market insurance entity or a State workers' compensation fund and to cede premiums associated with such insurance contracts to the State residual market

insurance entity or State workers' compensation fund. Premiums written by a servicing carrier on behalf of a State residual market insurance entity or State workers' compensation fund that are ceded to such an entity or fund shall not be included as direct earned premium (as described in § 50.5(d)(1) or 50.5(d)(2)) of the servicing carrier.

(b) *Participant Insurers.* For purposes of this Subpart, a participant insurer is an insurer that shares in the profits and losses of a State residual market insurance entity or a State workers' compensation fund. Premium income that is distributed to or assumed by participant insurers in a State residual market insurance entity or State workers' compensation fund (whether directly or as quota share insurers of risks written by servicing carriers), shall be included in direct earned premium (as described in § 50.5(d)(1) or 50.5(d)(2)) of the participant insurer.

Subpart E—Self-Insurance Arrangements; Captives [Reserved]

Subpart F—Claims Procedures

§ 50.50 Federal share of compensation.

(a) *General.* The Treasury will pay the Federal share of compensation for insured losses as provided in section 103 of the Act once a Certification of Loss required by § 50.53 is deemed sufficient. Subject to paragraph (b) of this section, Treasury shall pay the appropriate amount of the Federal share of compensation upon a determination that:

(1) The insurer is an entity, including an affiliate thereof, that meets the requirements of § 50.5(f);

(2) The insurer's insured losses as defined in § 50.5(e), including the allocated dollar value of the insurer's proportionate share of insured losses from a State residual market insurance entity or State workers' compensation fund as described in § 50.35, have exceeded its insurer deductible as defined in § 50.5(g);

(3) The insurer has paid or is prepared to pay an underlying insured loss, based on a filed claim for the insured loss;

(4) Neither the insurer's claim for Federal payment nor any underlying claim for an insured loss is fraudulent, collusive, made in bad faith, dishonest or otherwise designed to circumvent the purposes of the Act and regulations;

(5) The insurer had provided a clear and conspicuous disclosure as required by §§ 50.10 through 50.19;

(6) The insurer took all steps reasonably necessary to properly and carefully investigate the underlying insured loss and otherwise processed the underlying insured loss using appropriate insurance business practices;

(7) The insured losses submitted for payment are within the scope of coverage issued by the insurer under the terms and conditions of the policies for commercial property and casualty insurance as defined in § 50.5(l); and

(8) The procedures specified in this Subpart have been followed and all conditions to payment have been met.

(b) *Adjustments.* Treasury may subsequently adjust, including requiring repayment of, any payment made under paragraph (a) of this section in accordance with its authority under the Act.

(c) *Suspension of payment for other insured losses.* Upon a determination by Treasury that an insurer has failed to meet any of the requirements for payment specified in paragraph (a) of this section for a particular insured loss, Treasury may suspend payment of the Federal share of compensation for all other insured losses of the insurer pending investigation and audit of the insurer's insured losses.

(d) *Amount payable.* The Federal share of compensation under the Program shall be 90 percent of that portion of the insurer's aggregate insured losses that exceed its insurer deductible during a Program Year, subject to any adjustments in § 50.51 and the cap of $100 billion as provided in section 103(e)(2) of the Act.

§ 50.51 Adjustments to the Federal share of compensation.

(a) *Aggregate amount of insured losses.* The aggregate amount of insured losses of an insurer in a Program Year used

to calculate the Federal share of compensation shall be reduced by any amounts recovered by the insurer as salvage or subrogation for its insured losses in the Program Year.

(b) *Amount of Federal share of compensation.* The Federal share of compensation shall be adjusted as follows:

(1) *No excess recoveries.* For any Program Year, the sum of the Federal share of compensation paid by Treasury to an insurer and the insurer's recoveries for insured losses from other sources shall not be greater than the insurer's aggregate amount of insured losses for acts of terrorism in that Program Year. Amounts recovered for insured losses in excess of an insurer's aggregate amount of insured losses in a Program Year shall be repaid to Treasury within 45 days after the end of the month in which total recoveries of the insurer, from all sources, become excess. For purposes of this paragraph, amounts recovered from a reinsurer pursuant to an agreement whereby the reinsurer's right to any excess recovery has priority over the rights of Treasury shall not be considered a recovery subject to repayment to Treasury.

(2) *Reduction of amount payable.* The Federal share of compensation for insured losses under the Program shall be reduced by the amount of other compensation provided by other Federal programs to an insured or a third party to the extent such other compensation duplicates the insurance indemnification for those insured losses.

(i) *Other Federal program compensation.* For purposes of this section, compensation provided by other Federal programs for insured losses means compensation that is provided by Federal programs established for the purpose of compensating persons for losses in the event of emergencies, disasters, acts of terrorism, or similar events. Compensation provided by Federal programs for insured losses excludes benefit or entitlement payments, such as those made under the Social Security Act, under laws administered by the Secretary of Veteran Affairs, railroad retirement benefit payments, and other similar types of benefit payments.

(ii) *Insurer due diligence.* Each insurer shall inquire of each of its policyholders, insureds, and claimants whether the person receiving insurance proceeds for an insured loss has received, expects to receive, or is entitled to receive compensation from another Federal program for the insured loss, and if so, the source and the amount of the compensation received or expected. The response, source, and such amounts shall be reported with each underlying claim on the bordereau specified in §50.53(b)(1).

§50.52 Initial Notice of Insured Loss.

Each insurer shall submit to Treasury an Initial Notice of Insured Loss, on a form prescribed by Treasury, whenever the insurer's aggregate insured losses (including reserves for ''incurred but not reported'' losses) within a Program Year exceed an amount equal to 50 percent of the insurer's deductible as specified in §50.5(g). Insurers are advised the form for the Initial Notice of Insured Loss will include an initial estimate of aggregate losses for the Program Year, the amount of the insurer deductible and an estimate of the Federal share of compensation for the insurer's aggregate insured losses. In the case of an affiliated group of insurers, the form for the Initial Notice of Insured Loss will include the name and address of a single designated insurer within the affiliated group that will serve as the single point of contact for the purpose of providing loss and compliance certifications as required in §50.53 and for receiving, disbursing, and distributing payments of the Federal share of compensation in accordance with §50.54. An insurer, at its option, may elect to include with its Initial Notice of Insured Loss the certification of direct earned premium required by §50.53(b)(3).

§50.53 Loss certifications.

(a) *General.* When an insurer has paid aggregate insured losses that exceed its insurer deductible, the insurer may make claim upon Treasury for the payment of the Federal share of compensation for its insured losses. The insurer shall file an Initial Certification of Loss, on a form prescribed by Treasury, and thereafter such Supplementary

Certifications of Loss, on a form prescribed by Treasury, as may be necessary to receive payment for the Federal share of compensation for its insured losses.

(b) *Initial Certification of Loss.* An insurer shall use its best efforts to file with the Program the Initial Certification of Loss within 45 days following the last calendar day of the month when an insurer has paid aggregate insured losses that exceed its insurer deductible. The Initial Certification of Loss will include the following:

(1) A bordereau, on a form prescribed by Treasury, that includes basic information about each underlying insured loss. For purposes of this section, a ''bordereau'' is a report of basic information about an insurer's underlying claims that, in the aggregate, constitute the insured losses of the insurer. The bordereau will include, but may not be limited to:

(i) A listing of each underlying insured loss by catastrophe code and line of business;

(ii) The total amount of reinsurance recovered from other sources;

(iii) A calculation of the aggregate insured losses sustained by the insurer above its insurer deductible for the Program Year; and

(iv) The amount the insurer claims as the Federal share of compensation for its aggregate insured losses.

(2) A certification that the insurer is in compliance with the provisions of section 103(b) of the Act and this part, including certifications that:

(i) The underlying insured losses listed on the bordereau filed pursuant to § 50.53(b)(1) either: Have been paid by the insurer; or will be paid by the insurer upon receipt of an advance payment of the Federal share of compensation as soon as possible, consistent with the insurer's normal business practices, but not longer than five business days after receipt of the Federal share of compensation;

(ii) The underlying claims for insured losses were filed by persons who suffered an insured loss, or by persons acting on behalf of such persons;

(iii) The underlying claims for insured losses were processed in accordance with appropriate business practices and the procedures specified in this subpart;

(iv) The insurer has complied with the disclosure requirements of §§ 50.10 through 50.19 for each underlying insured loss that is included in the amount of the insurer's aggregate insured losses; and

(v) The insurer has complied with the mandatory availability requirements of §§ 50.20 through 50.24.

(3) A certification of the amount of the insurer's ''direct earned premium'' as defined in § 50.5(d), together with the calculation of its ''insurer deductible'' as defined in § 50.5(g) (provided this certification was not submitted previously with the Initial Notice of Insured Loss specified in § 50.52).

(4) A certification that the insurer will disburse payment of the Federal share of compensation in accordance with this subpart.

(c) *Supplementary Certification of Loss.* If the total amount of the Federal share of compensation due an insurer for insured losses under the Act has not been determined at the time an Initial Certification of Loss has been filed, the insurer shall file monthly, or on a schedule otherwise determined by Treasury, Supplementary Certifications of Loss updating the amount of the Federal share of compensation owed for the insurer's insured losses. Supplementary Certifications of Loss will include the following:

(1) A bordereau described in § 50.53(b)(1); and

(2) A certification as described in § 50.53(b)(2).

(d) *Supplementary information.* In addition to the information required in paragraphs (b) and (c) of this section, Treasury may require such additional supporting documentation as required to ascertain the Federal share of compensation for the insured losses of any insurer.

(e) *State Residual Market Insurance Entities and State Workers' Compensation Funds.* A State residual market insurance entity or State workers' compensation fund described in § 50.35 shall provide the Certifications of Loss described in §§ 50.53(b) and 50.53(c) for all its insured losses to each participating insurer at the time it provides the allocated dollar value of the participating

insurer's proportionate share of insured losses. In addition, at such time the State residual market insurance entity or State workers' compensation fund shall provide the certification described in §50.53(b)(2) to Treasury. Participating insurers shall treat the allocated dollar value of their proportionate share of insured losses from a State residual market insurance entity or State workers' compensation fund as an insured loss for the purpose of their own reporting to Treasury in seeking the Federal share of compensation.

§50.54 Payment of Federal share of compensation.

(a) *Timing.* Treasury will promptly pay to an insurer the Federal share of compensation due the insurer for its insured losses. Payment shall be made in such installments and on such conditions as determined by the Treasury to be appropriate. Any overpayments by Treasury of the Federal share of compensation will be offset from future payments to the insurer or returned to Treasury within 45 days.

(b) *Payment process.* Payment of the Federal share of compensation for insured losses will be made to the insurer designated on the Initial Notice of Loss required by §50.52. An insurer that requests payment of the Federal share of compensation for insured losses must receive payment through electronic funds transfer. The insurer must establish either an account for reimbursement as described in paragraph (c) of this section (if the insurer only seeks reimbursement) or a segregated account as described in paragraph (d) of this section (if the insurer seeks advance payments or a combination of advance payments and reimbursement). Applicable procedures will be posted at *www.treasury.gov/trip* or otherwise will be made publicly available.

(c) *Account for reimbursement.* An insurer shall designate an account for the receipt of reimbursement of the Federal share of compensation at an institution eligible to receive payments through the Automated Clearing House (ACH) network.

(d) *Segregated account for advance payments.* An insurer that seeks advance payments of the Federal share of compensation as certified according to §50.53(b)(2)(i)(B) shall establish an interest-bearing segregated account into which Treasury will make advance payments as well as reimbursements to the insurer.

(1) *Definition of segregated account.* For purposes of this section, a segregated account is an interest-bearing separate account established by an insurer at a financial institution eligible to receive payments through the ACH network. Such an account is limited to the purposes of:

(i) Receiving payments of the Federal share of compensation;

(ii) Disbursing payments to insureds and claimants; and

(iii) Transferring payments to the insurer or affiliated insurers for insured losses reported on the bordereau as already paid.

(2) *Remittance of interest.* All interest earned on advance payments in the segregated account must be remitted at least quarterly to Treasury's Office of Financial Management or as otherwise prescribed in applicable procedures.

(e) *Denial or withholding of advance payment.* Treasury may deny or withhold advance payments of the Federal share of compensation to an insurer if Treasury determines that the insurer has not properly disbursed previous advances of the Federal share of compensation or otherwise has not complied with the requirements for advance payment as provided in this subpart.

(f) *Affiliated group.* In the case of an affiliated group of insurers, Treasury will make payment of the Federal share of compensation for the insured losses of the affiliated group to the insurer designated in the Initial Notice of Insured Loss to receive payment on behalf of the affiliated group. The designated insurer receiving payment from Treasury must distribute payment to affiliated insurers in a manner that ensures that each insurer in the affiliated group is compensated for its share of insured losses, taking into account a reasonable and fair allocation of the group deductible among affiliated insurers. Upon payment of the Federal share of compensation to the

designated insurer, Treasury's payment obligation to the insurers in the affiliated group with respect to any insured losses covered on the applicable bordereau is discharged to the extent of the payment.

§ 50.55 Determination of Affiliations.

For the purposes of subpart F, an insurer's affiliates for any Program Year shall be determined by the circumstances existing on the date of occurrence of the act of terrorism that is the first act of terrorism in a Program Year to be certified by the Secretary for that Program Year.

[70 FR 34351, June 14, 2005]

EFFECTIVE DATE NOTE: At 70 FR 34351, June 14, 2005,§ 50.55 was added to subpart F, effective July 14, 2005.

Subpart G—Audit and Investigative Procedures

§ 50.60 Audit authority.

The Secretary of the Treasury, or an authorized representative, shall have, upon reasonable notice, access to all books, documents, papers and records of an insurer that are pertinent to amounts paid to the insurer as the Federal share of compensation for insured losses for the purpose of investigation, confirmation, audit and examination.

§ 50.61 Recordkeeping.

Each insurer that seeks payment of a Federal share of compensation under subpart F of this part shall retain such records as are necessary to fully disclose all material matters pertinent to insured losses and the Federal share of compensation sought under the Program, including, but not limited to, records regarding premiums and insured losses for all commercial property and casualty insurance issued by the insurer and information relating to any adjustment in the amount of the Federal share of compensation payable. Insurers shall maintain detailed records for not less than 5 years from the termination dates of all reinsurance agreements involving commercial property and casualty insurance subject to the Act. Records relating to premiums shall be retained and available for review for not less than 3 years following the conclusion of the policy year. Records relating to underlying claims shall be retained for not less than 5 years following the final adjustment of the claim.

[68 FR 59720, Oct. 17, 2003, as amended at 69 FR 39307, June 29, 2004]

Subpart H—Recoupment and Surcharge Procedures [Reserved]

Subpart I—Federal Cause of Action; Approval of Settlements

SOURCE: 69 FR 44941, July 28, 2004, unless otherwise noted.

§ 50.80 Federal cause of action and remedy.

(a) *General.* If the Secretary certifies an act as an act of terrorism pursuant to section 102 of the Act, there shall exist a Federal cause of action for property damage, personal injury, or death arising out of or resulting from such act of terrorism, pursuant to section 107 of the Act, which shall be the exclusive cause of action and remedy for claims for property damage, personal injury, or death arising out of or relating to such act of terrorism, except as provided in paragraph (c) of this section.

(b) *Effective period.* The exclusive Federal cause of action and remedy described in paragraph (a) of this section shall exist only for causes of action for property damage, personal injury, or death that arise out of or result from acts of terrorism that occur or occurred during the effective period of the Program.

(c) *Rights not affected.* Nothing in section 107 of the Act or this Subpart shall in any way:

(1) Limit the liability of any government, organization, or person who knowingly participates in, conspires to commit, aids and abets, or commits any act of terrorism;

(2) Affect any party's contractual right to arbitrate a dispute; or

(3) Affect any provision of the Air Transportation Safety and System Stabilization Act (Pub. L. 107–42; 49 U.S.C. 40101 note).

§ 50.81 State causes of action preempted.

All State causes of action of any kind for property damage, personal injury, or death arising out of or resulting from an act of terrorism that are otherwise available under State law are preempted, except that, pursuant to section 107(b) of the Act, nothing in this section shall limit in any way the liability of any government, organization, or person who knowingly participates in, conspires to commit, aids and abets, or commits the act of terrorism certified by the Secretary.

§ 50.82 Advance approval of settlements.

(a) *Mandatory submission of settlements for advance approval.* An insurer shall submit to Treasury for advance approval any proposed agreement to settle or compromise any Federal cause of action for property damage, personal injury, or death, asserted by a third-party or parties against an insured, involving an insured loss, all or part of the payment of which the insurer intends to submit as part of its claim for Federal payment under the Program, when:

(1) Any portion of the proposed settlement amount that is attributable to an insured loss or losses involving personal injury or death in the aggregate is $2 million or more per third-party claimant, regardless of the number of causes of action or insured losses being settled; or

(2) Any portion of the proposed settlement amount that is attributable to an insured loss or losses involving property damage (including loss of use) in the aggregate is $10 million or more per third-party claimant, regardless of the number of causes of action or insured losses being settled.

(b) *Discretionary review of other settlements.* Notwithstanding paragraph (a), Treasury may require that an insurer submit for review and advance approval any proposed agreement to settle or compromise any Federal cause of action for property damage, personal injury, or death, asserted by a third-party or parties against an insured, involving an insured loss, all or part of the payment of which the insurer intends to submit as part of its claim for Federal payment under the Program where the settlement amounts are below the applicable monetary thresholds identified in paragraphs (a)(1) and (2) of this section.

(c) *Factors.* In determining whether to approve a proposed settlement, Treasury will consider the nature of the loss, the facts and circumstances surrounding the loss, and other factors such as whether:

(1) The proposed settlement compensates for a third-party's loss, the liability for which is an insured loss under the terms and conditions of the underlying commercial property and casualty insurance policy, as certified by the insurer pursuant to § 50.83(d)(2);

(2) Any amount of the proposed settlement is attributable to punitive or exemplary damages intended to punish or deter (whether or not specifically so described as such damages);

(3) The settlement amount offsets amounts received from the United States pursuant to any other Federal program;

(4) The settlement amount does not include any items such as fees and expenses of attorneys, experts, and other professionals that have caused the insured losses under the underlying commercial property and casualty insurance policy to be overstated; and

(5) Any other criteria that Treasury may consider appropriate, depending on the facts and circumstances surrounding the settlement, including the information contained in § 50.83.

(d) *Settlement without seeking advance approval or despite disapproval.* If an insurer settles a cause of action or agrees to the settlement of a cause of action without submitting the proposed settlement for Treasury's advance approval in accordance with paragraph (a) or (b) of this section, and in accordance with § 50.83 or despite Treasury's disapproval of the proposed settlement, the insurer will not be entitled to include the paid settlement amount (or portion of the settlement amount, to the extent partially disapproved) in its aggregate insured losses for purposes of calculating the Federal share of compensation of its insured losses, unless the insurer can demonstrate, to the satisfaction of Treasury, extenuating circumstances.

§ 50.83 Procedure for requesting approval of proposed settlements.

(a) *Submission of notice.* Insurers must request advance approval of a proposed settlement by submitting a notice of the proposed settlement and other required information in writing to the Terrorism Risk Insurance Program Office or its designated representative. The address where notices are to be submitted will be available at *http://www.treasury.gov/trip* following any certification of an act of terrorism pursuant to section 102(1) of the Act.

(b) *Complete notice.* Treasury will review requests for advance approval and determine whether additional information is needed to complete the notice.

(c) *Treasury response or deemed approval.* Within 30 days after Treasury's receipt of a complete notice, or as extended in writing by Treasury, Treasury may issue a written response and indicate its partial or full approval or rejection of the proposed settlement. If Treasury does not issue a response within 30 days after Treasury's receipt of a complete notice, unless extended in writing by Treasury, the request for advance approval is deemed approved by Treasury. Any settlement is still subject to review under the claim procedures pursuant to § 50.50.

(d) *Notice format.* A notice of a proposed settlement should be entitled, ''Notice of Proposed Settlement—Request for Approval,'' and should provide the full name and address of the submitting insurer and the name, title, address, and telephone number of the designated contact person. An insurer must provide all relevant information, including the following, as applicable:

(1) A brief description of the insured's underlying claim, the insured's loss, the amount of the claim, the operative policy terms, defenses to coverage, and all damages sustained;

(2) A certification by the insurer that the settlement is for a third-party's loss the liability for which is an insured loss under the terms and conditions of the underlying commercial property and casualty insurance policy;

(3) An itemized statement of all damages by category (*i.e.*, actual, economic and non-economic loss, punitive damages, etc.);

(4) A statement from the insurer or its attorney in support of the settlement.;

(5) The total dollar amount of the proposed settlement;

(6) Indication as to whether the settlement was negotiated by counsel;

(7) The amount to be paid that will compensate for any items such as fees and expenses of attorneys, experts, and other professionals for their services and expenses related to the insured loss and/or settlement and the net amount to be received by the third-party after such payment;

(8) The amount received from the United States pursuant to any other Federal program for compensation of insured losses related to an act of terrorism;

(9) The proposed terms of the written settlement agreement, including release language and subrogation terms;

(10) If requested by Treasury, other relevant agreements, including:

(i) Admissions of liability or insurance coverage;

(ii) Determinations of the number of occurrences under a commercial property and casualty insurance policy;

(iii) The allocation of paid amounts or amounts to be paid to certain policies, or to specific policy, coverage and/or aggregate limits; and

(iv) Any other agreement that may affect the payment or amount of the Federal share of compensation to be paid to the insurer;

(11) A statement indicating whether the proposed settlement has been approved by the Federal court or is subject to such approval and whether such approval is expected or likely; and

(12) Such other information that is related to the insured loss as may be requested by Treasury that it deems necessary to evaluate the proposed settlement.

§ 50.84 Subrogation.

An insurer shall not waive its rights of subrogation under its property and casualty insurance policy and preserve the subrogation right of the United States as provided by section 107(c) of the Act by not taking any action that would prejudice the United States' right of subrogation.

Subtitle B—Regulations Relating to Money and Finance

CHAPTER I—MONETARY OFFICES, DEPARTMENT OF THE TREASURY

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PART 56—DOMESTIC GOLD AND SILVER OPERATIONS SALE OF SILVER

Sec.
56.1 Conditions upon which silver will be sold.
56.2 Sales price.

AUTHORITY: Sec. 209, 79 Stat. 257; 31 U.S.C. 405a–1.

§ 56.1 Conditions upon which silver will be sold.

The General Services Administration, as agent for the Treasury Department, will conduct periodic sales of silver as agreed upon between GSA and the Treasury Department. Sales will be under competitive bidding procedures established by agreement between GSA and the Treasury Department. Details of the bidding and selling procedures are obtainable by telephone or by writing to General Services Administration, Property Management and Disposal Service, Industry Materials Division, Metals Project, Washington, DC 20405.

[32 FR 13380, Sept. 22, 1967]

§ 56.2 Sales price.

Sales of silver will be at prices offered through the competitive bidding procedures referred to in § 56.1, and accepted by the GSA.

[32 FR 13380, Sept. 22, 1967]

PART 91—REGULATIONS GOVERNING CONDUCT IN OR ON THE BUREAU OF THE MINT BUILDINGS AND GROUNDS

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91.1 Authority.
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91.14 Penalties and other law.

AUTHORITY: 5 U.S.C. 301, by delegation from the Administrator of General Services, 35 FR 14426, and Treasury Department Order 177–25 (Revision 2), 38 FR 21947.

SOURCE: 34 FR 503, Jan. 14, 1969, unless otherwise noted.

§ 91.1 Authority.

The regulations in this part governing conduct in and on the Bureau of the Mint buildings and grounds located as follows: U.S. Mint, Colfax, and Delaware Streets, Denver, Colorado; U.S. Bullion Depository, Fort Knox, Kentucky; U.S. Assay Office, 32 Old Slip New York, New York; U.S. Mint, 5th and Arch Streets, Philadelphia, Pennsylvania; U.S. Assay Office, 155 Hermann Street, and the Old U.S. Mint Building, 88 Fifth Street, San Francisco, California; and U.S. Bullion Depository, West Point, New York; are promulgated pursuant to the authority vested in the Secretary of the Treasury, including 5 U.S.C. 301, and that vested in him by delegation from the Administrator of General Services, 38 FR 20650 (1973), and in accordance with the authority vested in the Director of the Mint by Treasury Department Order No. 177–25 Revision 2), dated August 8, 1973, 38 FR 21947 (1973).

[38 FR 24897, Sept. 11, 1973]

§ 91.2 Applicability.

The regulations in this part apply to the buildings and grounds of the Bureau of the Mint located as follows: U.S. Mint, Colfax and Delaware Streets, Denver, Colorado; U.S. Bullion Depository, Fort Knox, Kentucky; U.S. Assay Office, 32 Old Slip, New York, New York; U.S. Mint, Fifth and Arch Streets, Philadelphia, Pennsylvania; U.S. Assay Office, 155 Hermann Street, and the Old U.S. Mint Building, 88 Fifth Street, San Francisco, California; and U.S. Bullion Depository, West Point, New York; and to all persons entering in or on such property. Unless otherwise stated herein, the Bureau of the Mint buildings and grounds shall be referred to in these regulations as the ‘‘property’’.

[38 FR 24897, Sept. 11, 1973]

§ 91.3 Recording presence.

Except as otherwise ordered, the property shall be closed to the public during other than normal working hours. The property shall also be closed to the public when, in the opinion of the senior supervising official of any Bureau of the Mint establishment covered by these regulations, or his delegate, an emergency situation exists, and at such other times as may be necessary for the orderly conduct of the Government's business. Admission to the property during periods when such property is closed to the public will be limited to authorized individuals who will be required to sign the register and/or display identification documents when requested by the guard.

§ 91.4 Preservation of property.

It shall be unlawful for any person without proper authority to wilfully destroy, damage, deface, or remove property or any part thereof or any furnishings therein.

§ 91.5 Compliance with signs and directions.

Persons in and on the property shall comply with the instructions of uniformed Bureau of the Mint guards (U.S. Special Policemen), other authorized officials, and official signs of a prohibitory or directory nature.

§ 91.6 Nuisances.

The use of loud, abusive, or profane language, unwarranted loitering, unauthorized assembly, the creation of any hazard to persons or things, improper disposal of rubbish, spitting, prurient prying, the commission of any obscene or indecent act, or any other disorderly conduct on the property is prohibited. The throwing of any articles of any kind in, upon, or from the property and climbing upon any part thereof, is prohibited. The entry, without specific permission, upon any part of the property to which the public does not customarily have access, is prohibited.

§ 91.7 Gambling.

(a) Participating in games for money or other property, the operation of gambling devices, the conduct of a lottery or pool, the selling or purchasing of numbers tickets, or any other gambling in or on the property, is prohibited.

(b) Possession in or on the property of any numbers slip or ticket, record, notation, receipt, or other writing of a type ordinarily used in any illegal form of gambling such as a tip sheet or dream book, unless explained to the satisfaction of the head of the bureau or his delegate, shall be prima facie evidence that there is participation in an illegal form of gambling in or on such property.

[34 FR 503, Jan. 14, 1969, as amended at 36 FR 3523, Feb. 26, 1971]

§ 91.8 Alcoholic beverages, narcotics, hallucinogenic and dangerous drugs.

Entering or being on the property, or operating a motor vehicle thereon by a person under the influence of alcoholic beverages, narcotics, hallucinogenic or dangerous drugs is prohibited. The use of any narcotic, hallucinogenic or dangerous drug in or on the property is prohibited. The use of alcoholic beverages in or on the property is prohibited except on occasions and on property upon which the Director of the Mint has for appropriate official uses granted and exemption permit in writing.

[38 FR 24898, Sept. 11, 1973]

§ 91.9 Soliciting, vending, debt collection, and distribution of handbills.

The unauthorized soliciting of alms and contributions, the commercial soliciting and vending of all kinds, the display or distribution of commercial advertising, or the collecting of private debts, in or on the property, is prohibited. This rule does not apply to Bureau of the Mint concessions or notices posted by authorized employees on the bulletin boards. Distribution of material such as pamphlets, handbills, and flyers is prohibited without prior approval from the Director of the Mint, or the delegate of the Director.

§ 91.10 Photographs.

The taking of photographs on the property is prohibited, without the written permission of the Director of the Mint.

§91.11 Dogs and other animals.

Dogs and other animals, except seeing-eye dogs, shall not be brought upon the property for other than official purposes.

§91.12 Vehicular and pedestrian traffic.

(a) Drivers of all vehicles in or on the property shall drive in a careful and safe manner at all times and shall comply with the signals and directions of guards and all posted traffic signs.

(b) The blocking of entrances, driveways, walks, loading platforms, or fire hydrants in or on the property is prohibited.

(c) Parking in or on the property is not allowed without a permit or specific authority. Parking without authority, parking in unauthorized locations or in locations reserved for other persons or continuously in excess of 8 hours without permission, or contrary to the direction of a uniformed Bureau of the Mint guard, or of posted signs, is prohibited.

(d) This paragraph may be supplemented from time to time with the approval of the Director of the Mint, or the delegate of the Director, by the issuance and posting of such specific traffic directives as may be required and when so issued and posted such directives shall have the same force and effect as if made a part hereof.

§91.13 Weapons and explosives.

No person while on the property shall carry firearms, other dangerous or deadly weapons, or explosives, either openly or concealed, except for official purposes.

§91.14 Penalties and other law.

Whoever shall be found guilty of violating any of the regulations in this part while on the property is subject to a fine of not more than $50, or imprisonment of not more than 30 days, or both (40 U.S.C. 318c). Nothing contained in the regulations in this part shall be construed to abrogate any other Federal laws or regulations or those of any State or municipality applicable to the property referred to in §91.2 and governed by the regulations in this part.

PART 92—BUREAU OF THE MINT OPERATIONS AND PROCEDURES

Sec.
92.1 Manufacture of medals.
92.2 Sale of ''list'' medals.
92.3 Manufacture and sale of ''proof'' coins.
92.4 Uncirculated Mint Sets.
92.5 Procedure governing availability of Bureau of the Mint records.
92.6 Appeal.

AUTHORITY: 5 U.S.C. 301.

SOURCE: 47 FR 56353, Dec. 16, 1982, unless otherwise noted.

§92.1 Manufacture of medals.

With the approval of the Director of the Mint, dies for medals of a national character designated by Congress may be executed at the Philadelphia Mint, and struck in such field office of the Mints and Assay Offices as the Director shall designate.

§92.2 Sale of "list" medals.

Medals on the regular Mint list, when available, are sold to the public at a charge sufficient to cover their cost, and to include mailing cost when mailed. Copies of the list of medals available for sale and their selling prices may be obtained from the Director of the Mint, Washington, DC.

§92.3 Manufacture and sale of "proof" coins.

''Proof'' coins, i.e., coins prepared from blanks specially polished and struck, are made as authorized by the Director of the Mint and are sold at a price sufficient to cover their face value plus the additional expense of their manufacture and sale. Their manufacture and issuance are contingent upon the demands of regular operations. Information concerning availability and price may be obtained from the Director of the Mint, Treasury Department, Washington, DC 20220.

§92.4 Uncirculated Mint Sets.

Uncirculated Mint Sets, i.e., specially packaged coin sets containing one coin of each denomination struck at the Mints at Philadelphia and Denver, and the Assay Office at San Francisco, will be made as authorized by the Director of the Mint and will be sold at a price sufficient to cover their

face value plus the additional expense of their processing and sale. Their manufacture and issuance are contingent upon demands of regular operations. Information concerning availability and price may be obtained from the Director of the Mint, Treasury Department, Washington, DC 20220.

§ 92.5 Procedure governing availability of Bureau of the Mint records.

(a) *Regulations of the Office of the Secretary adopted.* The regulations on the Disclosure of Records of the Office of the Secretary and other bureaus and offices of the Department issued under 5 U.S.C. 301 and 552 and published as part 1 of this title, 32 FR No. 127, July 1, 1967, except for § 1.7 of this title entitled ''Appeal,'' shall govern the availability of Bureau of the Mint records.

(b) *Determination of availability.* The Director of the Mint delegates authority to the following Mint officials to determine, in accordance with part 1 of this title, which of the records or information requested is available, subject to the appeal provided in § 92.6: The Deputy Director of the Mint, Division Heads in the Office of the Director, and the Superintendent or Officer in Charge of the field office where the record is located.

(c) *Requests for identifiable records.* A written request for an identifiable record shall be addressed to the Director of the Mint, Washington, DC 20220. A request presented in person shall be made in the public reading room of the Treasury Department, 15th Street and Pennsylvania Avenue, NW, Washington, DC, or in such other office designated by the Director of the Mint.

§ 92.6 Appeal.

Any person denied access to records requested under § 92.5 may file an appeal to the Director of the Mint within 30 days after notification of such denial. The appeal shall provide the name and address of the appellant, the identification of the record denied, and the date of the original request and its denial.

PART 100—EXCHANGE OF PAPER CURRENCY AND COIN

Sec.
100.2 Scope of regulations; transactions effected through Federal Reserve banks and branches; distribution of coin and currencies.

Subpart A—In General

100.3 Lawfully held coins and currencies in general.
100.4 Gold coin and gold certificates in general.

Subpart B—Exchange of Mutilated Paper Currency

100.5 Mutilated paper currency.
100.6 Destroyed paper currency.
100.7 Treasury's liability.
100.8 Packaging of mutilated currency.
100.9 Where mutilated currency should be transmitted.

Subpart C—Exchange of Coin

100.10 Exchange of uncurrent coins.
100.11 Exchange of bent and partial coins.
100.12 Exchange of fused and mixed coins.
100.13 Criminal penalties.

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100.16 Exchange of paper and coin to be handled through Federal Reserve banks and branches.
100.17 Location of Federal Reserve banks and branches.
100.18 Counterfeit notes to be marked; ''redemption'' of notes wrongfully so marked.
100.19 Disposition of counterfeit notes and coins.

AUTHORITY: 31 U.S.C. 321.

SOURCE: 47 FR 32044, July 23, 1982, unless otherwise noted.

§ 100.2 Scope of regulations; transactions effected through Federal Reserve banks and branches; distribution of coin and currencies.

The regulations in this part govern the exchange of the coin and paper currency of the United States (including national bank notes and Federal Reserve bank notes in process of retirement and Federal Reserve notes). Under authorization in the Act approved May 29, 1920, 41 Stat. 655 (31 U.S.C. 476), the Secretary of the Treasury transferred to the Federal Reserve banks and branches the duties and

functions performed by the former Assistant Treasurers of the United States in connection with the exchange of paper currency and coin of the United States. Except for the duties in this respect to be performed by the Treasurer of the United States and the Director of the Mint, as may be indicated from time to time by the Secretary of the Treasury, exchanges of the paper currency and coin of the United States and the distribution and replacement thereof will, so far as practicable, be effected through the Federal Reserve banks and branches. The Federal Reserve banks and branches are authorized to distribute available supplies of coin and currency to depository institutions, as that term is defined in section 103 of the Monetary Control Act of 1980 (Pub. L. 96–221). As authorized by section 107 of the Act, transportation of coin and currency and coin wrapping services will be provided according to a schedule of fees established by the Board of Governors of the Federal Reserve System. Inquiries by depository institutions regarding distribution and related services should be addressed to the Federal Reserve bank of the district where the institution is located.

Subpart A—In General

§ 100.3 Lawfully held coin and currencies in general.

The official agencies of the Department of the Treasury will continue to exchange lawfully held coins and currencies of the United States, dollar for dollar, for other coins and currencies which may be lawfully acquired and are legal tender for public and private debts. Paper currency of the United States which has been falsely altered and coins altered to render them for use as other denominations will not be redeemed since such currency and coins are subject to forfeiture under Title 18, United States Code, section 492. Persons receiving such currency and coins should notify immediately the nearest local office of the U.S. Secret Service of the Department of the Treasury, and hold the same pending advice from the Service.

§ 100.4 Gold coin and gold certificates in general.

Gold coins, and gold certificates of the type issued before January 30, 1934, are exchangeable, as provided in this part, into other currency or coin which may be lawfully issued.

Subpart B—Exchange of Mutilated Paper Currency

§ 100.5 Mutilated paper currency.

(a) Lawfully held paper currency of the United States which has been mutilated will be exchanged at face amount if clearly more than one-half of the original whole note remains. Fragments of such mutilated currency which are not clearly more than one-half of the original whole note will be exchanged at face value only if the Director, Bureau of Engraving and Printing, Department of the Treasury, is satisfied that the missing portions have been totally destroyed. The Director's judgment shall be based on such evidence of total destruction as is necessary and shall be final.

DEFINITIONS

(1) Mutilated currency is currency which has been damaged to the extent that (i) one-half or less of the original note remains or (ii) its condition is such that its value is questionable and the currency must be forwarded to the Treasury Department for examination by trained experts before any exchange is made.

(2) Unfit currency is currency which is unfit for further circulation because of its physical condition such as torn, dirty, limp, worn or defaced. Unfit currency should not be forwarded to the Treasury, but may be exchanged at commercial banks.

[47 FR 32044, July 23, 1982, as amended at 56 FR 10170, Mar. 11, 1991]

§ 100.6 Destroyed paper currency.

No relief will be granted on account of lawfully held paper currency of the United States which has been totally destroyed.

§ 100.7 Treasury's liability.

(a) Payment will be made to lawful holders of mutilated currency at full value when:

(1) Clearly more than 50% of a note identifiable as United States currency is present; or

(2) Fifty percent or less of a note identifiable as United States currency is present and the method of mutilation and supporting evidence demonstrate to the satisfaction of the Treasury that the missing portions have been totally destroyed.

(b) No payments will be made when:

(1) Fragments and remnants presented are not identifiable as United States currency; or

(2) Fragments and remnants presented which represent 50% or less of a note are identifiable as United States currency but the method of destruction and supporting evidence do not satisfy the Treasury that the missing portion has been totally destroyed.

(c) All cases will be handled under proper procedures to safeguard the funds and interests of the claimant. In some cases, the amount repaid will be less than the amount claimed. In other cases, the amount repaid may be greater. The amount paid will be determined by an examination made by trained mutilated currency examiners and governed by the above criteria.

(d) The Director of the Bureau of Engraving and Printing shall have final authority with respect to settlements for mutilated currency claims.

[47 FR 32044, July 23, 1982, as amended at 56 FR 10170, Mar. 11, 1991]

§ 100.8 Packaging of mutilated currency.

Mutilated currency examiners are normally able to determine the value of mutilated currency when it has been carefully packed and boxed as described below:

(a) Regardless of the condition of the currency, do not disturb the fragments more than is absolutely necessary.

(b) If the currency is brittle or inclined to fall apart, pack it carefully in cotton and box it as found, without disturbing the fragments, if possible.

(c) If the money was in a purse, box, or other container when mutilated, it should be left therein, if possible, in order to prevent further deterioration of the fragments or from their being lost.

(d) If it is absolutely necessary to remove the fragments from the container, send the container with the currency and any other contents found, except as noted in paragraph (h) of this section.

(e) If the money was flat when mutilated, do not roll or fold.

(f) If the money was in a roll when mutilated, do not attempt to unroll or straighten.

(g) If coin or any other metal is mixed with the currency, remove carefully. Do not send coin or other metal in the same package with mutilated paper currency, as the metal will break up the currency. Coin should be forwarded as provided in § 100.12 (c) and (d).

(h) Any fused or melted coin should be sent to: Superintendent, United States Mint, P.O. Box 400, Philadelphia, PA 19105.

§ 100.9 Where mutilated currency should be transmitted.

Mutilated currency shipments must be addressed as follows: Department of the Treasury, Bureau of Engraving and Printing, OCS, Room 344A, Post Office Box 37048, Washington, DC 20013.

[47 FR 32044, July 23, 1982, as amended at 56 FR 10170, Mar. 11, 1991]

Subpart C—Exchange of Coin

§ 100.10 Exchange of uncurrent coins.

(a) *Definition.* Uncurrent coins are whole U.S. coins which are merely worn or reduced in weight by natural abrasion yet are readily and clearly recognizable as to genuineness and denomination and which are machine countable.

(b) *Redemption basis.* Uncurrent coins will be redeemed at face value.

(c) *Criteria for acceptance.* Uncurrent coins, forwarded for redemption at face value, must be shipped at the expense and risk of the owner. Shipments of subsidiary or minor coins for redemption at face value should be sorted by denomination into packages in sums of multiples of $20. Not more than $1,000 in any silver or clad coin, $200 in 5-cent

pieces, or $50 in 1-cent pieces should be shipped in one bag or package.

(d) *Redemption sites.* Uncurrent coins will be redeemed only at the Federal Reserve banks and branches listed in § 100.17.

§ 100.11 Exchange of bent and partial coins.

(a) *Definitions.* (1) Bent coins are U.S. coins which are bent or deformed so as to preclude normal machine counting but which are readily and clearly identifiable as to genuineness and denomination.

(2) Partial coins are U.S. coins which are not whole; partial coins must be readily and clearly identifiable as to genuineness and denomination.

(b) *Redemption basis.* Bent and partial coins shall be presented separately by denomination category in lots of at least one pound for each category. Bent and partial coins shall be redeemed on the basis of their weight and denomination category rates (which is the weight equivalent of face value). If not presented separately by denomination category, bent and partial coins will not be accepted for redemption. Denomination categories and rates are Cents, @ $1.4585 per pound; Nickels, @ $4.5359 per pound; Dimes, Quarters, Halves, and Eisenhower Dollars @ $20.00 per pound; and Anthony Dollars @ $56.00 per pound. Copper plated zinc cents shall be redeemed at the face value equivalent of copper one cent coins.

(c) *Redemption site.* Bent and partial coins will be redeemed only at the United States Mint, P.O. Box 400, Philadelphia, PA 19105. Coins are shipped at sender's risk and expense.

[47 FR 32044, July 23, 1982, as amended at 64 FR 39920, July 23, 1999]

§ 100.12 Exchange of fused and mixed coins.

(a) *Definitions.* (1) Fused coins are U.S. coins which are melted to the extent that they are bonded together and the majority of which are readily and clearly identifiable as U.S. coins.

(2) Mixed coins are U.S. coins of several alloy categories which are presented together, but are readily and clearly identifiable as U.S. coins.

(b) The United States Mint will not accept fused or mixed coins for redemption.

(c) *Criteria for acceptance.* (1) A minimum of two pounds of fused and mixed coins is required for redemption.

(2) Fused and mixed coins containing lead, solder, or other substance which will render them unsuitable for coinage metal will not be accepted.

(d) *Redemption site.* Fused and mixed coins will be redeemed only at the United States Mint, P.O. Box 400, Philadelphia, PA 19105. Coins are shipped at sender's risk and expense.

[47 FR 32044, July 23, 1982, as amended at 64 FR 39920, July 23, 1999]

§ 100.13 Criminal penalties.

Criminal penalties connected with the defacement or mutilation of U.S. coins are provided in the United States Code, Title 18, section 331.

Subpart D—Other Information

§ 100.16 Exchange of paper and coin to be handled through Federal Reserve banks and branches.

Other than as provided in this document all transactions including the exchange of paper currency and coin shall be handled through the Federal Reserve banks and branches.

§ 100.17 Location of Federal Reserve banks and branches.

Federal Reserve Bank and Address

Boston—600 Atlantic Avenue, Boston, MA 02106
New York—33 Liberty Street (Federal Reserve P.O. Station), New York, NY 10045
Buffalo Branch—160 Delaware Avenue (P.O. Box 961), Buffalo, NY 14240
Philadelphia—Ten Independence Mall (P.O. Box 66), Philadelphia, PA 19105
Cleveland—1455 East Sixth Street (P.O. Box 6387), Cleveland, OH 44101
Cincinnati Branch—150 East Fourth Street (P.O. Box 999), Cincinnati, OH 45201
Pittsburgh Branch—717 Grant Street (P.O. Box 867), Pittsburgh, PA 15230
Richmond—701 East Byrd Avenue (P.O. Box 27622), Richmond, VA 23261
Baltimore Branch—114–120 East Lexington Street (P.O. Box 1378), Baltimore, MD 21203
Charlotte Branch—530 East Trade Street (P.O. Box 30248), Charlotte, NC 28230
Atlanta—104 Marietta Street, NW., Atlanta, GA 30303

Birmingham Branch—1801 Fifth Avenue, North (P.O. Box 830447), Birmingham, AL 35283–0447
Jacksonville Branch—800 Water Street (P.O. Box 929) Jacksonville, FL 32231–0044
Miami Branch—9100 NW., 36th Street (P.O. Box 520847), Miami, FL 33152
Nashville Branch—301 Eighth Avenue, North, Nashville, TN 37203
New Orleans Branch—525 St. Charles Avenue (P.O. Box 61630), New Orleans, LA 70161
Chicago—230 South LaSalle Street (P.O. Box 834), Chicago, IL 60690
Detroit Branch—160 Fort Street, West (P.O. Box 1059), Detroit, MI 48231
St. Louis—411 Locust Street (P.O. Box 442), St. Louis, MO 63166
Little Rock Branch—325 West Capitol Avenue (P.O. Box 1261), Little Rock, AR 72203
Louisville Branch—410 South Fifth Street (P.O. Box 32710), Louisville, KY 40232
Memphis Branch—200 North Main Street (P.O. Box 407), Memphis, TN 38101
Minneapolis—250 Marquette Avenue, Minneapolis, MN 55480
Helena Branch—400 North Park Avenue, Helena, MT 59601
Kansas City—925 Grand Avenue (Federal Reserve Station), Kansas City, MO 64198
Denver Branch—1020 16th Street (P.O. Box 5228, Terminal Annex), Denver, CO 80217
Oklahoma City Branch—226 Dean A. McGee Street (P.O. Box 25129), Oklahoma City, OK 73125
Omaha Branch—2201 Farnam Street (P.O. Box 3958), Omaha, NB 68103
Dallas—400 South Akard Street (Station K), Dallas, TX 75222
El Paso Branch—301 East Main Street (P.O. Box 100), El Paso, TX 79999
Houston Branch—1701 San Jacinto Street (P.O. Box 2578), Houston, TX 77001
San Antonio Branch—126 East Nueva Street (P.O. Box 1471), San Antonio, TX 78295
San Francisco—400 Sansome Street (P.O. Box 7702), San Francisco, CA 94120
Los Angeles Branch—950 South Grand Avenue (Terminal Annex, P.O. Box 2077), Los Angeles CA 90051
Portland Branch—915 SW Stark Street (P.O. Box 3436), Portland, OR 97208
Salt Lake City Branch—120 South State Street (P.O. Box 30780), Salt Lake City, UT 84125
Seattle Branch—1015 Second Avenue (P.O. Box 3567), Seattle, WA 98124

[47 FR 32044, July 23, 1982, as amended at 56 FR 10170, Mar. 11, 1991]

§ 100.18 Counterfeit notes to be marked; "redemption" of notes wrongfully so marked.

The Act of June 30, 1876 (19 Stat. 4; 31 U.S.C. 424), provides that all U.S. Officers charged with the receipt or disbursement of public moneys, and all officers of national banks, shall stamp or write in plain letters the word ''counterfeit,'' ''altered,'' or ''worthless'' upon all fraudulent notes issued in the form of, and intended to circulate as money, which shall be presented at their places of business; and if such officers shall wrongfully stamp any genuine note of the United States, or of the national bank, they shall, upon presentation, ''redeem'' such notes at the face amount thereof.

§ 100.19 Disposition of counterfeit notes and coins.

All counterfeit notes and coin found in remittances are cancelled and delivered to the U.S. Secret Service of the Department of the Treasury or to the nearest local office of that Service, a receipt for the same being forwarded to the sender. Communications with respect thereto should be addressed to the Director, U.S. Secret Service, Department of the Treasury, Washington, DC 20223.

PART 101—MITIGATION OF FORFEITURE OF COUNTERFEIT GOLD COINS

Sec.
101.1 Purpose and scope.
101.2 Petitions for mitigation.
101.3 Petitions reviewed by Assistant Secretary, Enforcement, Operations, Tariff Affairs.
101.4 Extraction of gold bullion from the counterfeit coins.
101.5 Payment of smelting costs.
101.6 Return of the bullion.
101.7 Exceptions.
101.8 Discretion of the Secretary.

AUTHORITY: 18 U.S.C. 492.

SOURCE: 42 FR 1472, Jan. 7, 1977, unless otherwise noted.

§ 101.1 Purpose and scope.

The purpose of this part is to establish a policy whereby certain purchasers or holders of gold coins who have forfeited them to the United States because they were counterfeit may, in the discretion of the Secretary of the Treasury, recover the gold bullion from the coins. This part sets forth the procedures to be followed in implementing this policy.

§ 101.2 Petitions for mitigation.

(a) *Who may file.* Any person may petition the Secretary of the Treasury for return of the gold bullion of counterfeit gold coins forfeited to the United States, if:

(1) The petitioner innocently purchased or received the coins and held them without the knowledge that they were counterfeit; and,

(2) The petitioner voluntarily submitted the coins to the Treasury Department for a determination of whether they were legitimate or counterfeit; and,

(3) The coins were determined to be counterfeit and were seized by the Treasury Department and forfeited to the United States.

(b) *To whom addressed.* Petitions for mitigation of the forfeiture of counterfeit gold coins should be addressed to the Assistant Secretary, Enforcement, Operations, Tariff Affairs, Department of Treasury, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

(c) *Form.* The petition need not be in any particular form, but must be under oath, and set forth at least the following:

(1) The full name and address of the petitioner;

(2) A description of the coin or coins involved;

(3) The name and address of the person from whom the coins were received or purchased by the petitioner;

(4) The date and place where they were voluntarily submitted for examination;

(5) Any other circumstances relied upon by the petitioner to justify the mitigation;

(6) A statement that the petitioner purchased or received and held the coins without the knowledge that they were counterfeit.

§ 101.3 Petitions reviewed by Assistant Secretary, Enforcement, Operations, Tariff Affairs.

(a) The Assistant Secretary will receive and review all petitions for mitigation of the forfeiture of counterfeit gold coins. He shall conduct such further investigation, and may request such further information from the petitioner as he deems necessary. Petitions will be approved if the Assistant Secretary determines that:

(1) The gold coins have not been previously disposed of by normal procedures;

(2) The petitioner was an innocent purchaser or holder of the gold coins and is not under investigation in connection with the coins at the time of submission or thereafter;

(3) The coins are not needed and will not be needed in the future in any investigation or as evidence in legal proceedings; and

(4) Mitigation of the forfeiture is in the best interest of the Government.

§ 101.4 Extraction of gold bullion from the counterfeit coins.

If the petition is approved, the Assistant Secretary shall then forward the gold coins to the Bureau of the Mint where, if economically feasible, the gold bullion will be extracted from the counterfeit coins. The Bureau of the Mint will then return the bullion to the Assistant Secretary.

§ 101.5 Payment of smelting costs.

The petitioner shall be required to pay all reasonable costs incurred in extracting the bullion from the counterfeit coins, as shall be determined by the Assistant Secretary. Payment must be made prior to the return of the gold bullion to the petitioner.

§ 101.6 Return of the bullion.

After receiving the gold bullion from the Bureau of the Mint, the Assistant Secretary shall notify the petitioner that his petition has been approved and that payment of the smelting costs in an amount set forth in such notice must be made prior to the return of the bullion.

§ 101.7 Exceptions.

The provisions of this part shall not apply where the cost of smelting the gold coins exceeds the value of the gold bullion to be returned.

§ 101.8 Discretion of the Secretary.

The Secretary of the Treasury retains complete discretion to deny any claim of any petitioner when the Secretary believes it is not in the best interest of the Government to return the

bullion to the petitioner or when the Secretary is not convinced that the petitoner was an innocent purchaser or holder without knowledge that the gold coins were counterfeit.

PART 103—FINANCIAL RECORD-KEEPING AND REPORTING OF CURRENCY AND FOREIGN TRANSACTIONS

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AUTHORITY: 12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–5314, 5316–5332; title III, sec. 311, 312, 313, 314, 319, 326, 352, Pub. L. 107–56, 115 Stat. 307; 12 U.S.C. 1818; 12 U.S.C. 1786(q).

SOURCE: 37 FR 6912, Apr. 5, 1972, unless otherwise noted.

Subpart A—Definitions

§ 103.11 Meaning of terms.

When used in this part and in forms prescribed under this part, where not otherwise distinctly expressed or manifestly incompatible with the intent thereof, terms shall have the meanings ascribed in this section.

(a) *Accept.* A receiving financial institution, other than the recipient's financial institution, accepts a transmittal order by executing the transmittal order. A recipient's financial institution accepts a transmittal order by paying the recipient, by notifying the recipient of the receipt of the order or by otherwise becoming obligated to carry out the order.

(b) *At one time.* For purposes of § 103.23 of this part, a person who transports, mails, ships or receives; is about to or attempts to transport, mail or ship; or causes the transportation, mailing, shipment or receipt of monetary instruments, is deemed to do so ''at one time'' if:

(1) That person either alone, in conjunction with or on behalf of others;

(2) Transports, mails, ships or receives in any manner; is about to transport, mail or ship in any manner; or causes the transportation, mailing, shipment or receipt in any manner of;

(3) Monetary instruments;

(4) Into the United States or out of the United States;

(5) Totaling more than $10,000;

(6)(i) On one calendar day or (ii) if for the purpose of evading the reporting requirements of § 103.23, on one or more days.

(c) *Bank.* Each agent, agency, branch or office within the United States of any person doing business in one or more of the capacities listed below:

(1) A commercial bank or trust company organized under the laws of any State or of the United States;

(2) A private bank;

(3) A savings and loan association or a building and loan association organized under the laws of any State or of the United States;

(4) An insured institution as defined in section 401 of the National Housing Act;

(5) A savings bank, industrial bank or other thrift institution;

(6) A credit union organized under the law of any State or of the United States;

(7) Any other organization (except a money services business) chartered under the banking laws of any state and subject to the supervision of the bank supervisory authorities of a State;

(8) A bank organized under foreign law;

(9) Any national banking association or corporation acting under the provisions of section 25(a) of the Act of Dec. 23, 1913, as added by the Act of Dec. 24, 1919, ch. 18, 41 Stat. 378, as amended (12 U.S.C. 611–32).

(d) *Beneficiary*. The person to be paid by the beneficiary's bank.

(e) *Beneficiary's bank*. The bank or foreign bank identified in a payment order in which an account of the beneficiary is to be credited pursuant to the order or which otherwise is to make payment to the beneficiary if the order does not provide for payment to an account.

(f) *Broker or dealer in securities*. A broker or dealer in securities, registered or required to be registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934, except persons who register pursuant to section 15(b)(11) of the Securities Exchange Act of 1934.

(g) *Common carrier*. Any person engaged in the business of transporting individuals or goods for a fee who holds himself out as ready to engage in such transportation for hire and who undertakes to do so indiscriminately for all persons who are prepared to pay the fee for the particular service offered.

(h) *Currency*. The coin and paper money of the United States or of any other country that is designated as legal tender and that circulates and is customarily used and accepted as a medium of exchange in the country of issuance. Currency includes U.S. silver certificates, U.S. notes and Federal Reserve notes. Currency also includes official foreign bank notes that are customarily used and accepted as a medium of exchange in a foreign country.

(i) [Reserved]

(j) *Deposit account*. Deposit accounts include transaction accounts described in paragraph (hh) of this section, savings accounts, and other time deposits.

(k) *Domestic*. When used herein, refers to the doing of business within the United States, and limits the applicability of the provision where it appears to the performance by such institutions or agencies of functions within the United States.

(l) *Established customer*. A person with an account with the financial institution, including a loan account or deposit or other asset account, or a person with respect to which the financial institution has obtained and maintains on file the person's name and address, as well as taxpayer identification number (*e.g.*, social security or employer identification number) or, if none, alien identification number or passport number and country of issuance, and to which the financial institution provides financial services relying on that information.

(m) *Execution date*. The day on which the receiving financial institution may properly issue a transmittal order in execution of the sender's order. The execution date may be determined by instruction of the sender but cannot be earlier than the day the order is received, and, unless otherwise determined, is the day the order is received. If the sender's instruction states a payment date, the execution date is the payment date or an earlier date on which execution is reasonably necessary to allow payment to the recipient on the payment date.

(n) *Financial institution*. Each agent, agency, branch, or office within the United States of any person doing business, whether or not on a regular basis or as an organized business concern, in one or more of the capacities listed below:

(1) A bank (except bank credit card systems);

(2) A broker or dealer in securities;

(3) A money services business as defined in paragraph (uu) of this section;

(4) A telegraph company;

(5)(i) *Casino.* A casino or gambling casino that: Is duly licensed or authorized to do business as such in the United States, whether under the laws of a State or of a Territory or Insular Possession of the United States, or under the Indian Gaming Regulatory Act or other federal, state, or tribal law or arrangement affecting Indian lands (including, without limitation, a casino operating on the assumption or under the view that no such authorization is required for casino operation on Indian lands); and has gross annual gaming revenue in excess of $1 million. The term includes the principal headquarters and every domestic branch or place of business of the casino.

(ii) For purposes of this paragraph (n)(5), ''gross annual gaming revenue'' means the gross gaming revenue received by a casino, during either the previous business year or the current business year of the casino. A casino or gambling casino which is a casino for purposes of this part solely because its gross annual gaming revenue exceeds $1,000,000 during its current business year, shall not be considered a casino for purposes of this part prior to the time in its current business year that its gross annual gaming revenue exceeds $1,000,000.

(iii) Any reference in this part, other than in this paragraph (n)(5) and in paragraph (n)(6) of this section, to a casino shall also include a reference to a card club, unless the provision in question contains specific language varying its application to card clubs or excluding card clubs from its application;

(6)(i) *Card club.* A card club, gaming club, card room, gaming room, or similar gaming establishment that is duly licensed or authorized to do business as such in the United States, whether under the laws of a State, of a Territory or Insular Possession of the United States, or of a political subdivision of any of the foregoing, or under the Indian Gaming Regulatory Act or other federal, state, or tribal law or arrangement affecting Indian lands (including, without limitation, an establishment operating on the assumption or under the view that no such authorization is required for operation on Indian lands for an establishment of such type), and that has gross annual gaming revenue in excess of $1,000,000. The term includes the principal headquarters and every domestic branch or place of business of the establishment. The term ''casino,'' as used in this Part shall include a reference to ''card club'' to the extent provided in paragraph (n)(5)(iii) of this section.

(ii) For purposes of this paragraph (n)(6), *gross annual gaming revenue* means the gross revenue derived from or generated by customer gaming activity (whether in the form of per-game or per-table fees, however computed, rentals, or otherwise) and received by an establishment, during either the establishment's previous business year or its current business year. A card club that is a financial institution for purposes of this Part solely because its gross annual revenue exceeds $1,000,000 during its current business year, shall not be considered a financial institution for purposes of this Part prior to the time in its current business year when its gross annual revenue exceeds $1,000,000;

(7) A person subject to supervision by any state or federal bank supervisory authority.

(8) A futures commission merchant;

(9) An introducing broker in commodities.

(o) *Foreign bank.* A bank organized under foreign law, or an agency, branch or office located outside the United States of a bank. The term does not include an agent, agency, branch or office within the United States of a bank organized under foreign law.

(p) *Foreign financial agency.* A person acting outside the United States for a person (except for a country, a monetary or financial authority acting as a monetary or financial authority, or an international financial institution of which the United States Government is a member) as a financial institution, bailee, depository trustee, or agent, or acting in a similar way related to money, credit, securities, gold, or a transaction in money, credit, securities, or gold.

(q) *Funds transfer.* The series of transactions, beginning with the originator's payment order, made for the purpose of making payment to the beneficiary of the order. The term includes any payment order issued by the originator's bank or an intermediary bank intended to carry out the originator's payment order. A funds transfer is completed by acceptance by the beneficiary's bank of a payment order for the benefit of the beneficiary of the originator's payment order. Funds transfers governed by the Electronic Fund Transfer Act of 1978 (Title XX, Pub. L. 95–630, 92 Stat. 3728, 15 U.S.C. 1693, *et seq.*), as well as any other funds transfers that are made through an automated clearinghouse, an automated teller machine, or a point-of-sale system, are excluded from this definition.

(r) *Intermediary bank.* A receiving bank other than the originator's bank or the beneficiary's bank.

(s) *Intermediary financial institution.* A receiving financial institution, other than the transmittor's financial institution or the recipient's financial institution. The term intermediary financial institution includes an intermediary bank.

(t) *Investment security.* An instrument which:

(1) Is issued in bearer or registered form;

(2) Is of a type commonly dealt in upon securities exchanges or markets or commonly recognized in any area in which it is issued or dealt in as a medium for investment;

(3) Is either one of a class or series or by its terms is divisible into a class or series of instruments; and

(4) Evidences a share, participation or other interest in property or in an enterprise or evidences an obligation of the issuer.

(u) *Monetary instruments.* (1) Monetary instruments include:

(i) Currency;

(ii) Traveler's checks in any form;

(iii) All negotiable instruments (including personal checks, business checks, official bank checks, cashier's checks, third-party checks, promissory notes (as that term is defined in the Uniform Commercial Code), and money orders) that are either in bearer form, endorsed without restriction, made out to a fictitious payee (for the purposes of § 103.23), or otherwise in such form that title thereto passes upon delivery;

(iv) Incomplete instruments (including personal checks, business checks, official bank checks, cashier's checks, third-party checks, promissory notes (as that term is defined in the Uniform Commercial Code), and money orders) signed but with the payee's name omitted; and

(v) Securities or stock in bearer form or otherwise in such form that title thereto passes upon delivery.

(2) Monetary instruments do not include warehouse receipts or bills of lading.

(v) *Originator.* The sender of the first payment order in a funds transfer.

(w) *Originator's bank.* The receiving bank to which the payment order of the originator is issued if the originator is not a bank or foreign bank, or the originator if the originator is a bank or foreign bank.

(x) *Payment date.* The day on which the amount of the transmittal order is payable to the recipient by the recipient's financial institution. The payment date may be determined by instruction of the sender, but cannot be earlier than the day the order is received by the recipient's financial institution and, unless otherwise prescribed by instruction, is the date the order is received by the recipient's financial institution.

(y) *Payment order.* An instruction of a sender to a receiving bank, transmitted orally, electronically, or in writing, to pay, or to cause another bank or foreign bank to pay, a fixed or determinable amount of money to a beneficiary if:

(1) The instruction does not state a condition to payment to the beneficiary other than time of payment;

(2) The receiving bank is to be reimbursed by debiting an account of, or otherwise receiving payment from, the sender; and

(3) The instruction is transmitted by the sender directly to the receiving bank or to an agent, funds transfer system, or communication system for transmittal to the receiving bank.

(z) *Person.* An individual, a corporation, a partnership, a trust or estate, a

joint stock company, an association, a syndicate, joint venture, or other unincorporated organization or group, an Indian Tribe (as that term is defined in the Indian Gaming Regulatory Act), and all entities cognizable as legal personalities.

(aa) *Receiving bank.* The bank or foreign bank to which the sender's instruction is addressed.

(bb) *Receiving financial institution.* The financial institution or foreign financial agency to which the sender's instruction is addressed. The term receiving financial institution includes a receiving bank.

(cc) *Recipient.* The person to be paid by the recipient's financial institution. The term recipient includes a beneficiary, except where the recipient's financial institution is a financial institution other than a bank.

(dd) *Recipient's financial institution.* The financial institution or foreign financial agency identified in a transmittal order in which an account of the recipient is to be credited pursuant to the transmittal order or which otherwise is to make payment to the recipient if the order does not provide for payment to an account. The term recipient's financial institution includes a beneficiary's bank, except where the beneficiary is a recipient's financial institution.

(ee) *Secretary.* The Secretary of the Treasury or any person duly authorized by the Secretary to perform the function mentioned.

(ff) *Sender.* The person giving the instruction to the receiving financial institution.

(gg) *Structure (structuring).* For purposes of section 103.53, a person structures a transaction if that person, acting alone, or in conjunction with, or on behalf of, other persons, conducts or attempts to conduct one or more transactions in currency, in any amount, at one or more financial institutions, on one or more days, in any manner, for the purpose of evading the reporting requirements under section 103.22 of this part. ''In any manner'' includes, but is not limited to, the breaking down of a single sum of currency exceeding $10,000 into smaller sums, including sums at or below $10,000, or the conduct of a transaction, or series of currency transactions, including transactions at or below $10,000. The transaction or transactions need not exceed the $10,000 reporting threshold at any single financial institution on any single day in order to constitute structuring within the meaning of this definition.

(hh) *Transaction account.* Transaction accounts include those accounts described in 12 U.S.C. 461(b)(1)(C), money market accounts and similar accounts that take deposits and are subject to withdrawal by check or other negotiable order.

(ii) *Transaction.* (1) Except as provided in paragraph (ii)(2) of this section, transaction means a purchase, sale, loan, pledge, gift, transfer, delivery, or other disposition, and with respect to a financial institution includes a deposit, withdrawal, transfer between accounts, exchange of currency, loan, extension of credit, purchase or sale of any stock, bond, certificate of deposit, or other monetary instrument, security, contract of sale of a commodity for future delivery, option on any contract of sale of a commodity for future delivery, option on a commodity, purchase or redemption of any money order, payment or order for any money remittance or transfer, purchase or redemption of casino chips or tokens, or other gaming instruments or any other payment, transfer, or delivery by, through, or to a financial institution, by whatever means effected.

(2) For purposes of § 103.22, and other provisions of this part relating solely to the report required by that section, the term ''transaction in currency'' shall mean a transaction involving the physical transfer of currency from one person to another. A transaction which is a transfer of funds by means of bank check, bank draft, wire transfer, or other written order, and which does not include the physical transfer of currency, is not a transaction in currency for this purpose.

(jj) *Transmittal of funds.* A series of transactions beginning with the transmittor's transmittal order, made for the purpose of making payment to the recipient of the order. The term includes any transmittal order issued by the transmittor's financial institution

or an intermediary financial institution intended to carry out the transmittor's transmittal order. The term transmittal of funds includes a funds transfer. A transmittal of funds is completed by acceptance by the recipient's financial institution of a transmittal order for the benefit of the recipient of the transmittor's transmittal order. Funds transfers governed by the Electronic Fund Transfer Act of 1978 (Title XX, Pub. L. 95–630, 92 Stat. 3728, 15 U.S.C. 1693, *et seq.*), as well as any other funds transfers that are made through an automated clearinghouse, an automated teller machine, or a point-of-sale system, are excluded from this definition.

(kk) *Transmittal order.* The term transmittal order includes a payment order and is an instruction of a sender to a receiving financial institution, transmitted orally, electronically, or in writing, to pay, or cause another financial institution or foreign financial agency to pay, a fixed or determinable amount of money to a recipient if:

(1) The instruction does not state a condition to payment to the recipient other than time of payment;

(2) The receiving financial institution is to be reimbursed by debiting an account of, or otherwise receiving payment from, the sender; and

(3) The instruction is transmitted by the sender directly to the receiving financial institution or to an agent or communication system for transmittal to the receiving financial institution.

(ll) *Transmittor.* The sender of the first transmittal order in a transmittal of funds. The term transmittor includes an originator, except where the transmittor's financial institution is a financial institution or foreign financial agency other than a bank or foreign bank.

(mm) *Transmittor's financial institution.* The receiving financial institution to which the transmittal order of the transmittor is issued if the transmittor is not a financial institution or foreign financial agency, or the transmittor if the transmittor is a financial institution or foreign financial agency. The term transmittor's financial institution includes an originator's bank, except where the originator is a transmittor's financial institution other than a bank or foreign bank.

(nn) *United States.* The States of the United States, the District of Columbia, the Indian lands (as that term is defined in the Indian Gaming Regulatory Act), and the Territories and Insular Possessions of the United States.

(oo) *Business day.* Business day, as used in this part with respect to banks, means that day, as normally communicated to its depository customers, on which a bank routinely posts a particular transaction to its customer's account.

(pp) *Postal Service.* The United States Postal Service.

(qq) *FinCEN.* FinCEN means the Financial Crimes Enforcement Network, an office within the Office of the Under Secretary (Enforcement) of the Department of the Treasury.

(rr) *Indian Gaming Regulatory Act.* The Indian Gaming Regulatory Act of 1988, codified at 25 U.S.C. 2701–2721 and 18 U.S.C. 1166–68.

(ss) *State.* The States of the United States and, wherever necessary to carry out the provisions of this part, the District of Columbia.

(tt) *Territories and Insular Possessions.* The Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, and all other territories and possessions of the United States other than the Indian lands and the District of Columbia.

(uu) *Money services business.* Each agent, agency, branch, or office within the United States of any person doing business, whether or not on a regular basis or as an organized business concern, in one or more of the capacities listed in paragraphs (uu)(1) through (uu)(6) of this section. Notwithstanding the preceding sentence, the term ''money services business'' shall not include a bank, nor shall it include a person registered with, and regulated or examined by, the Securities and Exchange Commission or the Commodity Futures Trading Commission.

(1) *Currency dealer or exchanger.* A currency dealer or exchanger (other than a person who does not exchange currency in an amount greater than $1,000 in currency or monetary or other

instruments for any person on any day in one or more transactions).

(2) *Check casher.* A person engaged in the business of a check casher (other than a person who does not cash checks in an amount greater than $1,000 in currency or monetary or other instruments for any person on any day in one or more transactions).

(3) *Issuer of traveler's checks, money orders, or stored value.* An issuer of traveler's checks, money orders, or, stored value (other than a person who does not issue such checks or money orders or stored value in an amount greater than $1,000 in currency or monetary or other instruments to any person on any day in one or more transactions).

(4) *Seller or redeemer of traveler's checks, money orders, or stored value.* A seller or redeemer of traveler's checks, money orders, or stored value (other than a person who does not sell such checks or money orders or stored value in an amount greater than $1,000 in currency or monetary or other instruments to or redeem such instruments for an amount greater than $1,000 in currency or monetary or other instruments from, any person on any day in one or more transactions).

(5) *Money transmitter*—(i) *In general.* Money transmitter:

(A) Any person, whether or not licensed or required to be licensed, who engages as a business in accepting currency, or funds denominated in currency, and transmits the currency or funds, or the value of the currency or funds, by any means through a financial agency or institution, a Federal Reserve Bank or other facility of one or more Federal Reserve Banks, the Board of Governors of the Federal Reserve System, or both, or an electronic funds transfer network; or

(B) Any other person engaged as a business in the transfer of funds.

(ii) *Facts and circumstances; Limitation.* Whether a person ''engages as a business'' in the activities described in paragraph (uu)(5)(i) of this section is a matter of facts and circumstances. Generally, the acceptance and transmission of funds as an integral part of the execution and settlement of a transaction other than the funds transmission itself (for example, in connection with a bona fide sale of securities or other property), will not cause a person to be a money transmitter within the meaning of paragraph (uu)(5)(i) of this section.

(6) *United States Postal Service.* The United States Postal Service, except with respect to the sale of postage or philatelic products.

(vv) *Stored value.* Funds or monetary value represented in digital electronics format (whether or not specially encrypted) and stored or capable of storage on electronic media in such a way as to be retrievable and transferable electronically.

(ww) *Security.* Security means any instrument or interest described in section 3(a)(10) of the Securities Exchange Act of 1934, 15 U.S.C. 78c(a)(10).

(xx) *Commodity.* Any good, article, service, right, or interest described in section 1a(4) of the Commodity Exchange Act (''CEA''), 7 U.S.C. 1a(4).

(yy) *Contract of sale.* Any sale, agreement of sale, or agreement to sell as described in section 1a(7) of the CEA, 7 U.S.C. 1a(7).

(zz) *Futures commission merchant.* Any person registered or required to be registered as a futures commission merchant with the Commodity Futures Trading Commission (''CFTC'') under the CEA, except persons who register pursuant to section 4f(a)(2) of the CEA, 7 U.S.C. 6f(a)(2).

(aaa) *Introducing broker-commodities.* Any person registered or required to be registered as an introducing broker with the CFTC under the CEA, except persons who register pursuant to section 4f(a)(2) of the CEA, 7 U.S.C. 6f(a)(2).

(bbb) *Option on a commodity.* Any agreement, contract, or transaction described in section 1a(26) of the CEA, 7 U.S.C. 1a(26).

[52 FR 11441, Apr. 8, 1987; 52 FR 12641, Apr. 17, 1987, as amended at 53 FR 777, Jan. 13, 1988; 53 FR 4138, Feb. 12, 1988; 54 FR 3027, Jan. 23, 1989; 54 FR 28418, July 6, 1989; 55 FR 20143, May 15, 1990; 58 FR 13546, Mar. 12, 1993; 60 FR 228, Jan. 3, 1995; 61 FR 4331, Feb. 5, 1996; 61 FR 7055, Feb. 23, 1996; 61 FR 14249, 14385, Apr. 1, 1996; 63 FR 1923, Jan. 13, 1998; 64 FR 45450, Aug. 20, 1999; 65 FR 13692, Mar. 14, 2000; 67 FR 44055, July 1, 2002; 67 FR 60729, Sept. 28, 2002; 68 FR 25109, May 9, 2003; 68 FR 65398, Nov. 20, 2003; 69 FR 4237, Jan. 29, 2004]

Subpart B—Reports Required To Be Made

§ 103.15 Determination by the Secretary.

The Secretary hereby determines that the reports required by this subpart have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings.

[37 FR 6912, Apr. 5, 1972. Redesignated at 61 FR 4331, Feb. 5, 1996 and further redesignated at 65 FR 13692, Mar. 14, 2000]

§ 103.17 Reports by futures commission merchants and introducing brokers in commodities of suspicious transactions.

(a) *General*—(1) Every futures commission merchant (''FCM'') and introducing broker in commodities (''IB-C'') within the United States shall file with FinCEN, to the extent and in the manner required by this section, a report of any suspicious transaction relevant to a possible violation of law or regulation. An FCM or IB-C may also file with FinCEN a report of any suspicious transaction that it believes is relevant to the possible violation of any law or regulation but whose reporting is not required by this section. Filing a report of a suspicious transaction does not relieve an FCM or IB-C from the responsibility of complying with any other reporting requirements imposed by the Commodity Futures Trading Commission (''CFTC'') or any registered futures association or registered entity as those terms are defined in the Commodity Exchange Act (''CEA''), 7 U.S.C. 21 and 7 U.S.C. 1a(29).

(2) A transaction requires reporting under the terms of this section if it is conducted or attempted by, at, or through an FCM or IB-C, it involves or aggregates funds or other assets of at least $5,000, and the FCM or IB-C knows, suspects, or has reason to suspect that the transaction (or a pattern of transactions of which the transaction is a part):

(i) Involves funds derived from illegal activity or is intended or conducted in order to hide or disguise funds or assets derived from illegal activity (including, without limitation, the ownership, nature, source, location, or control of such funds or assets) as part of a plan to violate or evade any federal law or regulation or to avoid any transaction reporting requirement under federal law or regulation;

(ii) Is designed, whether through structuring or other means, to evade any requirements of this part or of any other regulations promulgated under the Bank Secrecy Act (''BSA''), Public Law 91–508, as amended, codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–1959, and 31 U.S.C. 5311–5314, 5316–5332;

(iii) Has no business or apparent lawful purpose or is not the sort in which the particular customer would normally be expected to engage, and the FCM or IB-C knows of no reasonable explanation for the transaction after examining the available facts, including the background and possible purpose of the transaction; or

(iv) Involves use of the FCM or IB-C to facilitate criminal activity.

(3) The obligation to identify and properly and timely to report a suspicious transaction rests with each FCM and IB-C involved in the transaction, provided that no more than one report is required to be filed by any of the FCMs or IB-Cs involved in a particular transaction, so long as the report filed contains all relevant facts.

(b) *Filing procedures*—(1) *What to file.* A suspicious transaction shall be reported by completing a Suspicious Activity Report-Securities and Futures Industry (''SAR-SF''), and collecting and maintaining supporting documentation as required by paragraph (d) of this section.

(2) *Where to file.* The SAR-SF shall be filed with FinCEN in a central location, to be determined by FinCEN, as indicated in the instructions to the SAR-SF.

(3) *When to file.* A SAR-SF shall be filed no later than 30 calendar days after the date of the initial detection by the reporting FCM or IB-C of facts that may constitute a basis for filing a SAR-SF under this section. If no suspect is identified on the date of such initial detection, an FCM or IB-C may delay filing a SAR-SF for an additional 30 calendar days to identify a suspect, but in no case shall reporting be delayed more than 60 calendar days after the date of such initial detection. In

situations involving violations that require immediate attention, such as terrorist financing or ongoing money laundering schemes, the FCM or IB-C shall immediately notify by telephone an appropriate law enforcement authority in addition to filing timely a SAR-SF. FCMs and IB-Cs wishing voluntarily to report suspicious transactions that may relate to terrorist activity may call FinCEN's Financial Institutions Hotline at 1–866–556–3974 in addition to filing timely a SAR-SF if required by this section. The FCM or IB-C may also, but is not required to, contact the CFTC to report in such situations.

(c) *Exceptions*—(1) An FCM or IB-C is not required to file a SAR-SF to report—

(i) A robbery or burglary committed or attempted of the FCM or IB-C that is reported to appropriate law enforcement authorities;

(ii) A violation otherwise required to be reported under the CEA (7 U.S.C. 1 *et seq.*), the regulations of the CFTC (17 CFR chapter I), or the rules of any registered futures association or registered entity as those terms are defined in the CEA, 7 U.S.C. 21 and 7 U.S.C. 1a(29), by the FCM or IB-C or any of its officers, directors, employees, or associated persons, other than a violation of 17 CFR 42.2, as long as such violation is appropriately reported to the CFTC or a registered futures association or registered entity.

(2) An FCM or IB-C may be required to demonstrate that it has relied on an exception in paragraph (c)(1) of this section, and must maintain records of its determinations to do so for the period specified in paragraph (d) of this section. To the extent that a Form 8–R, 8–T, U–5, or any other similar form concerning the transaction is filed consistent with CFTC, registered futures association, or registered entity rules, a copy of that form will be a sufficient record for the purposes of this paragraph (c)(2).

(d) *Retention of records.* An FCM or IB-C shall maintain a copy of any SAR-SF filed and the original or business record equivalent of any supporting documentation for a period of five years from the date of filing the SAR-SF. Supporting documentation shall be identified as such and maintained by the FCM or IB-C, and shall be deemed to have been filed with the SAR-SF. An FCM or IB-C shall make all supporting documentation available to FinCEN, the CFTC, or any other appropriate law enforcement agency or regulatory agency, and, for purposes of paragraph (g) of this section, to any registered futures association, registered entity, or self-regulatory organization (''SRO'') (as defined in section 3(a)(26) of the Securities Exchange Act of 1934, 15 U.S.C. 78c(a)(26)), upon request.

(e) *Confidentiality of reports.* No financial institution, and no director, officer, employee, or agent of any financial institution, who reports a suspicious transaction under this part, may notify any person involved in the transaction that the transaction has been reported, except to the extent permitted by paragraph (a)(3) of this section. Thus, any person subpoenaed or otherwise requested to disclose a SAR-SF or the information contained in a SAR-SF, except where such disclosure is requested by FinCEN, the CFTC, another appropriate law enforcement or regulatory agency, or for purposes of paragraph (g) of this section, a registered futures association, registered entity, or SRO shall decline to produce the SAR-SF or to provide any information that would disclose that a SAR-SF has been prepared or filed, citing this paragraph and 31 U.S.C. 5318(g)(2), and shall notify FinCEN of any such request and its response thereto.

(f) *Limitation of liability.* An FCM or IB-C, and any director, officer, employee, or agent of such FCM or IB-C, that makes a report of any possible violation of law or regulation pursuant to this section or any other authority (or voluntarily) shall not be liable to any person under any law or regulation of the United States (or otherwise to the extent also provided in 31 U.S.C. 5318(g)(3), including in any arbitration or reparations proceeding) for any disclosure contained in, or for failure to disclose the fact of, such report.

(g) *Examination and enforcement.* Compliance with this section shall be examined by the Department of the Treasury, through FinCEN or its delegates, under the terms of the BSA. Reports filed under this section or § 103.19

(including any supporting documentation), and documentation demonstrating reliance on an exception under paragraph (c) of this section or § 103.19, shall be made available, upon request, to the CFTC, Securities and Exchange Commission, and any registered futures association, registered entity, or SRO, examining an FCM, IB-C, or broker or dealer in securities for compliance with the requirements of this section or § 103.19. Failure to satisfy the requirements of this section may constitute a violation of the reporting rules of the BSA or of this part.

(h) *Effective date.* This section applies to transactions occurring after May 18, 2004.

[68 FR 65398, Nov. 20, 2003]

§ 103.18 Reports by banks of suspicious transactions.

(a) *General.* (1) Every bank shall file with the Treasury Department, to the extent and in the manner required by this section, a report of any suspicious transaction relevant to a possible violation of law or regulation. A bank may also file with the Treasury Department by using the Suspicious Activity Report specified in paragraph (b)(1) of this section or otherwise, a report of any suspicious transaction that it believes is relevant to the possible violation of any law or regulation but whose reporting is not required by this section.

(2) A transaction requires reporting under the terms of this section if it is conducted or attempted by, at, or through the bank, it involves or aggregates at least $5,000 in funds or other assets, and the bank knows, suspects, or has reason to suspect that:

(i) The transaction involves funds derived from illegal activities or is intended or conducted in order to hide or disguise funds or assets derived from illegal activities (including, without limitation, the ownership, nature, source, location, or control of such funds or assets) as part of a plan to violate or evade any federal law or regulation or to avoid any transaction reporting requirement under federal law or regulation;

(ii) The transaction is designed to evade any requirements of this part or of any other regulations promulgated under the Bank Secrecy Act, Pub. L. 91–508, as amended, codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–1959, and 31 U.S.C. 5311–5330; or

(iii) The transaction has no business or apparent lawful purpose or is not the sort in which the particular customer would normally be expected to engage, and the bank knows of no reasonable explanation for the transaction after examining the available facts, including the background and possible purpose of the transaction.

(b) *Filing procedures*—(1) *What to file.* A suspicious transaction shall be reported by completing a Suspicious Activity Report (''SAR''), and collecting and maintaining supporting documentation as required by paragraph (d) of this section.

(2) *Where to file.* The SAR shall be filed with FinCEN in a central location, to be determined by FinCEN, as indicated in the instructions to the SAR.

(3) *When to file.* A bank is required to file a SAR no later than 30 calendar days after the date of initial detection by the bank of facts that may constitute a basis for filing a SAR. If no suspect was identified on the date of the detection of the incident requiring the filing, a bank may delay filing a SAR for an additional 30 calendar days to identify a suspect. In no case shall reporting be delayed more than 60 calendar days after the date of initial detection of a reportable transaction. In situations involving violations that require immediate attention, such as, for example, ongoing money laundering schemes, the bank shall immediately notify, by telephone, an appropriate law enforcement authority in addition to filing timely a SAR.

(c) *Exceptions.* A bank is not required to file a SAR for a robbery or burglary committed or attempted that is reported to appropriate law enforcement authorities, or for lost, missing, counterfeit, or stolen securities with respect to which the bank files a report pursuant to the reporting requirements of 17 CFR 240.17f–1.

(d) *Retention of records.* A bank shall maintain a copy of any SAR filed and the original or business record equivalent of any supporting documentation

for a period of five years from the date of filing the SAR. Supporting documentation shall be identified, and maintained by the bank as such, and shall be deemed to have been filed with the SAR. A bank shall make all supporting documentation available to FinCEN and any appropriate law enforcement agencies or bank supervisory agencies upon request.

(e) *Confidentiality of reports; limitation of liability*. No bank or other financial institution, and no director, officer, employee, or agent of any bank or other financial institution, who reports a suspicious transaction under this part, may notify any person involved in the transaction that the transaction has been reported. Thus, any person subpoenaed or otherwise requested to disclose a SAR or the information contained in a SAR, except where such disclosure is requested by FinCEN or an appropriate law enforcement or bank supervisory agency, shall decline to produce the SAR or to provide any information that would disclose that a SAR has been prepared or filed, citing this paragraph (e) and 31 U.S.C. 5318(g)(2), and shall notify FinCEN of any such request and its response thereto. A bank, and any director, officer, employee, or agent of such bank, that makes a report pursuant to this section (whether such report is required by this section or is made voluntarily) shall be protected from liability for any disclosure contained in, or for failure to disclose the fact of such report, or both, to the full extent provided by 31 U.S.C. 5318(g)(3).

(f) *Compliance*. Compliance with this section shall be audited by the Department of the Treasury, through FinCEN or its delegees under the terms of the Bank Secrecy Act. Failure to satisfy the requirements of this section may be a violation of the reporting rules of the Bank Secrecy Act and of this part. Such failure may also violate provisions of Title 12 of the Code of Federal Regulations.

[61 FR 4331, Feb. 5, 1996, as amended at 61 FR 14249, Apr. 1, 1996; 61 FR 18250, Apr. 25, 1996. Redesignated at 65 FR 13692, Mar. 14, 2000]

§ 103.19 Reports by brokers or dealers in securities of suspicious transactions.

(a) *General*. (1) Every broker or dealer in securities within the United States (for purposes of this section, a ''broker-dealer'') shall file with FinCEN, to the extent and in the manner required by this section, a report of any suspicious transaction relevant to a possible violation of law or regulation. A broker-dealer may also file with FinCEN a report of any suspicious transaction that it believes is relevant to the possible violation of any law or regulation but whose reporting is not required by this section. Filing a report of a suspicious transaction does not relieve a broker-dealer from the responsibility of complying with any other reporting requirements imposed by the Securities and Exchange Commission or a self-regulatory organization (''SRO'') (as defined in section 3(a)(26) of the Securities Exchange Act of 1934, 15 U.S.C. 78c(a)(26)).

(2) A transaction requires reporting under the terms of this section if it is conducted or attempted by, at, or through a broker-dealer, it involves or aggregates funds or other assets of at least $5,000, and the broker-dealer knows, suspects, or has reason to suspect that the transaction (or a pattern of transactions of which the transaction is a part):

(i) Involves funds derived from illegal activity or is intended or conducted in order to hide or disguise funds or assets derived from illegal activity (including, without limitation, the ownership, nature, source, location, or control of such funds or assets) as part of a plan to violate or evade any federal law or regulation or to avoid any transaction reporting requirement under federal law or regulation;

(ii) Is designed, whether through structuring or other means, to evade any requirements of this part or of any other regulations promulgated under the Bank Secrecy Act, Public Law 91–508, as amended, codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–1959, and 31 U.S.C. 5311–5332;

(iii) Has no business or apparent lawful purpose or is not the sort in which the particular customer would normally be expected to engage, and the

broker-dealer knows of no reasonable explanation for the transaction after examining the available facts, including the background and possible purpose of the transaction; or

(iv) Involves use of the broker-dealer to facilitate criminal activity.

(3) The obligation to identify and properly and timely to report a suspicious transaction rests with each broker-dealer involved in the transaction, provided that no more than one report is required to be filed by the broker-dealers involved in a particular transaction (so long as the report filed contains all relevant facts).

(b) *Filing procedures*—(1) *What to file.* A suspicious transaction shall be reported by completing a Suspicious Activity Report—Brokers or Dealers in Securities (''SAR-S-F''), and collecting and maintaining supporting documentation as required by paragraph (d) of this section.

(2) *Where to file.* The SAR-BD shall be filed with FinCEN in a central location, to be determined by FinCEN, as indicated in the instructions to the SAR-S-F.

(3) *When to file.* A SAR-S-F shall be filed no later than 30 calendar days after the date of the initial detection by the reporting broker-dealer of facts that may constitute a basis for filing a SAR-S-F under this section. If no suspect is identified on the date of such initial detection, a broker-dealer may delay filing a SAR-S-F for an additional 30 calendar days to identify a suspect, but in no case shall reporting be delayed more than 60 calendar days after the date of such initial detection. In situations involving violations that require immediate attention, such as terrorist financing or ongoing money laundering schemes, the broker-dealer shall immediately notify by telephone an appropriate law enforcement authority in addition to filing timely a SAR-S-F. Broker-dealers wishing voluntarily to report suspicious transactions that may relate to terrorist activity may call FinCEN's Financial Institutions Hotline at 1–866–556–3974 in addition to filing timely a SAR-S-F if required by this section. The broker-dealer may also, but is not required to, contact the Securities and Exchange Commission to report in such situations.

(c) *Exceptions.* (1) A broker-dealer is not required to file a SAR-S-F to report:

(i) A robbery or burglary committed or attempted of the broker-dealer that is reported to appropriate law enforcement authorities, or for lost, missing, counterfeit, or stolen securities with respect to which the broker-dealer files a report pursuant to the reporting requirements of 17 CFR 240.17f–1;

(ii) A violation otherwise required to be reported under this section of any of the federal securities laws or rules of an SRO by the broker-dealer or any of its officers, directors, employees, or other registered representatives, other than a violation of 17 CFR 240.17a–8 or 17 CFR 405.4, so long as such violation is appropriately reported to the SEC or an SRO.

(2) A broker-dealer may be required to demonstrate that it has relied on an exception in paragraph (c)(1) of this section, and must maintain records of its determinations to do so for the period specified in paragraph (d) of this section. To the extent that a Form RE–3, Form U–4, or Form U–5 concerning the transaction is filed consistent with the SRO rules, a copy of that form will be a sufficient record for purposes of this paragraph (c)(2).

(3) For the purposes of this paragraph (c) the term ''federal securities laws'' means the ''securities laws,'' as that term is defined in section 3(a)(47) of the Securities Exchange Act of 1934, 15 U.S.C. 78c(a)(47), and the rules and regulations promulgated by the Securities and Exchange Commission under such laws.

(d) *Retention of records.* A broker-dealer shall maintain a copy of any SAR-S-F filed and the original or business record equivalent of any supporting documentation for a period of five years from the date of filing the SAR-S-F. Supporting documentation shall be identified as such and maintained by the broker-dealer, and shall be deemed to have been filed with the SAR-S-F. A broker-dealer shall make all supporting documentation available to FinCEN, any other appropriate law enforcement agencies or federal or

state securities regulators, and for purposes of paragraph (g) of this section, to an SRO registered with the Securities and Exchange Commission, upon request.

(e) *Confidentiality of reports.* No financial institution, and no director, officer, employee, or agent of any financial institution, who reports a suspicious transaction under this part, may notify any person involved in the transaction that the transaction has been reported, except to the extent permitted by paragraph (a)(3) of this section. Thus, any person subpoenaed or otherwise requested to disclose a SAR-S-F or the information contained in a SAR-S-F, except where such disclosure is requested by FinCEN, the Securities and Exchange Commission, or another appropriate law enforcement or regulatory agency, or for purposes of paragraph (g) of this section, an SRO registered with the Securities and Exchange Commission, shall decline to produce the SAR-S-F or to provide any information that would disclose that a SAR-S-F has been prepared or filed, citing this paragraph (e) and 31 U.S.C. 5318(g)(2), and shall notify FinCEN of any such request and its response thereto.

(f) *Limitation of liability.* A broker-dealer, and any director, officer, employee, or agent of such broker-dealer, that makes a report of any possible violation of law or regulation pursuant to this section or any other authority (or voluntarily) shall not be liable to any person under any law or regulation of the United States (or otherwise to the extent also provided in 31 U.S.C. 5318(g)(3), including in any arbitration proceeding) for any disclosure contained in, or for failure to disclose the fact of, such report.

(g) *Examination and enforcement.* Compliance with this section shall be examined by the Department of the Treasury, through FinCEN or its delegees, under the terms of the Bank Secrecy Act. Reports filed under this section shall be made available to an SRO registered with the Securities and Exchange Commission examining a broker-dealer for compliance with the requirements of this section. Failure to satisfy the requirements of this section may constitute a violation of the reporting rules of the Bank Secrecy Act and of this part.

(h) *Effective date.* This section applies to transactions occurring after December 30, 2002.

[67 FR 44056, July 1, 2002, as amended at 68 FR 6617, Feb. 10, 2003]

§ 103.20 Reports by money services businesses of suspicious transactions.

(a) *General.* (1) Every money services business, described in § 103.11(uu) (1), (3), (4), (5), or (6), shall file with the Treasury Department, to the extent and in the manner required by this section, a report of any suspicious transaction relevant to a possible violation of law or regulation. Any money services business may also file with the Treasury Department, by using the form specified in paragraph (b)(1) of this section, or otherwise, a report of any suspicious transaction that it believes is relevant to the possible violation of any law or regulation but whose reporting is not required by this section.

(2) A transaction requires reporting under the terms of this section if it is conducted or attempted by, at, or through a money services business, involves or aggregates funds or other assets of at least $2,000 (except as provided in paragraph (a)(3) of this section), and the money services business knows, suspects, or has reason to suspect that the transaction (or a pattern of transactions of which the transaction is a part):

(i) Involves funds derived from illegal activity or is intended or conducted in order to hide or disguise funds or assets derived from illegal activity (including, without limitation, the ownership, nature, source, location, or control of such funds or assets) as part of a plan to violate or evade any federal law or regulation or to avoid any transaction reporting requirement under federal law or regulation;

(ii) Is designed, whether through structuring or other means, to evade any requirements of this part or of any other regulations promulgated under the Bank Secrecy Act, Public Law 91–508, as amended, codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–1959, and 31 U.S.C. 5311–5330; or

(iii) Serves no business or apparent lawful purpose, and the reporting money services business knows of no reasonable explanation for the transaction after examining the available facts, including the background and possible purpose of the transaction.

(iv) Involves use of the money services business to facilitate criminal activity.

(3) To the extent that the identification of transactions required to be reported is derived from a review of clearance records or other similar records of money orders or traveler's checks that have been sold or processed, an issuer of money orders or traveler's checks shall only be required to report a transaction or pattern of transactions that involves or aggregates funds or other assets of at least $5,000.

(4) The obligation to identify and properly and timely to report a suspicious transaction rests with each money services business involved in the transaction, provided that no more than one report is required to be filed by the money services businesses involved in a particular transaction (so long as the report filed contains all relevant facts). Whether, in addition to any liability on its own for failure to report, a money services business that issues the instrument or provides the funds transfer service involved in the transaction may be liable for the failure of another money services business involved in the transaction to report that transaction depends upon the nature of the contractual or other relationship between the businesses, and the legal effect of the facts and circumstances of the relationship and transaction involved, under general principles of the law of agency.

(5) Notwithstanding the provisions of this section, a transaction that involves solely the issuance, or facilitation of the transfer of stored value, or the issuance, sale, or redemption of stored value, shall not be subject to reporting under this paragraph (a), until the promulgation of rules specifically relating to such reporting.

(b) *Filing procedures*—(1) *What to file.* A suspicious transaction shall be reported by completing a Suspicious Activity Report-MSB (''SAR-MSB''), and collecting and maintaining supporting documentation as required by paragraph (c) of this section.

(2) *Where to file.* The SAR-MSB shall be filed in a central location to be determined by FinCEN, as indicated in the instructions to the SAR-MSB.

(3) *When to file.* A money services business subject to this section is required to file each SAR-MSB no later than 30 calendar days after the date of the initial detection by the money services business of facts that may constitute a basis for filing a SAR-MSB under this section. In situations involving violations that require immediate attention, such as ongoing money laundering schemes, the money services business shall immediately notify by telephone an appropriate law enforcement authority in addition to filing a SAR-MSB. Money services businesses wishing voluntarily to report suspicious transactions that may relate to terrorist activity may call FinCEN's Financial Institutions Hotline at 1–866–556–3974 in addition to filing timely a SAR-MSB if required by this section.

(c) *Retention of records.* A money services business shall maintain a copy of any SAR-MSB filed and the original or business record equivalent of any supporting documentation for a period of five years from the date of filing the SAR-MSB. Supporting documentation shall be identified as such and maintained by the money services business, and shall be deemed to have been filed with the SAR-MSB. A money services business shall make all supporting documentation available to FinCEN and any other appropriate law enforcement agencies or supervisory agencies upon request.

(d) *Confidentiality of reports; limitation of liability.* No financial institution, and no director, officer, employee, or agent of any financial institution, who reports a suspicious transaction under this part, may notify any person involved in the transaction that the transaction has been reported. Thus, any person subpoenaed or otherwise requested to disclose a SAR-MSB or the information contained in a SAR-MSB, except where such disclosure is requested by FinCEN or an appropriate

law enforcement or supervisory agency, shall decline to produce the SAR-MSB or to provide any information that would disclose that a SAR-MSB has been prepared or filed, citing this paragraph (d) and 31 U.S.C. 5318(g)(2), and shall notify FinCEN of any such request and its response thereto. A reporting money services business, and any director, officer, employee, or agent of such reporting money services business, that makes a report pursuant to this section (whether such report is required by this section or made voluntarily) shall be protected from liability for any disclosure contained in, or for failure to disclose the fact of, such report, or both, to the extent provided by 31 U.S.C. 5318(g)(3).

(e) *Compliance.* Compliance with this section shall be audited by the Department of the Treasury, through FinCEN or its delegees under the terms of the Bank Secrecy Act. Failure to satisfy the requirements of this section may constitute a violation of the reporting rules of the Bank Secrecy Act and of this part.

(f) *Effective date.* This section applies to transactions occurring after December 31, 2001.

[65 FR 13692, Mar. 14, 2000, as amended at 68 FR 6617, Feb. 10, 2003]

§ 103.21 Reports by casinos of suspicious transactions.

(a) *General.* (1) Every casino shall file with FinCEN, to the extent and in the manner required by this section, a report of any suspicious transaction relevant to a possible violation of law or regulation. A casino may also file with FinCEN, by using the form specified in paragraph (b)(1) of this section, or otherwise, a report of any suspicious transaction that it believes is relevant to the possible violation of any law or regulation but whose reporting is not required by this section.

(2) A transaction requires reporting under the terms of this section if it is conducted or attempted by, at, or through a casino, and involves or aggregates at least $5,000 in funds or other assets, and the casino knows, suspects, or has reason to suspect that the transaction (or a pattern of transactions of which the transaction is a part):

(i) Involves funds derived from illegal activity or is intended or conducted in order to hide or disguise funds or assets derived from illegal activity (including, without limitation, the ownership, nature, source, location, or control of such funds or assets) as part of a plan to violate or evade any federal law or regulation or to avoid any transaction reporting requirement under federal law or regulation;

(ii) Is designed, whether through structuring or other means, to evade any requirements of this part or of any other regulations promulgated under the Bank Secrecy Act, Public Law 91–508, as amended, codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–1959, and 31 U.S.C. 5311–5332;

(iii) Has no business or apparent lawful purpose or is not the sort in which the particular customer would normally be expected to engage, and the casino knows of no reasonable explanation for the transaction after examining the available facts, including the background and possible purpose of the transaction; or

(iv) Involves use of the casino to facilitate criminal activity.

(b) *Filing procedures*—(1) *What to file.* A suspicious transaction shall be reported by completing a Suspicious Activity Report by Casinos (''SARC''), and collecting and maintaining supporting documentation as required by paragraph (d) of this section.

(2) *Where to file.* The SARC shall be filed with FinCEN in a central location, to be determined by FinCEN, as indicated in the instructions to the SARC.

(3) *When to file.* A SARC shall be filed no later than 30 calendar days after the date of the initial detection by the casino of facts that may constitute a basis for filing a SARC under this section. If no suspect is identified on the date of such initial detection, a casino may delay filing a SARC for an additional 30 calendar days to identify a suspect, but in no case shall reporting be delayed more than 60 calendar days after the date of such initial detection. In situations involving violations that require immediate attention, such as ongoing money laundering schemes, the casino shall immediately notify by

telephone an appropriate law enforcement authority in addition to filing timely a SARC. Casinos wishing voluntarily to report suspicious transactions that may relate to terrorist activity may call FinCEN's Financial Institutions Hotline at 1–866–556–3974 in addition to filing timely a SARC if required by this section.

(c) *Exceptions.* A casino is not required to file a SARC for a robbery or burglary committed or attempted that is reported to appropriate law enforcement authorities.

(d) *Retention of records.* A casino shall maintain a copy of any SARC filed and the original or business record equivalent of any supporting documentation for a period of five years from the date of filing the SARC. Supporting documentation shall be identified as such and maintained by the casino, and shall be deemed to have been filed with the SARC. A casino shall make all supporting documentation available to FinCEN, any other appropriate law enforcement agencies or federal, state, local, or tribal gaming regulators upon request.

(e) *Confidentiality of reports; limitation of liability*. No casino, and no director, officer, employee, or agent of any casino, who reports a suspicious transaction under this part, may notify any person involved in the transaction that the transaction has been reported. Thus, any person subpoenaed or otherwise requested to disclose a SARC or the information contained in a SARC, except where such disclosure is requested by FinCEN or another appropriate law enforcement or regulatory agency, shall decline to produce the SARC or to provide any information that would disclose that a SARC has been prepared or filed, citing this paragraph (e) and 31 U.S.C. 5318(g)(2), and shall notify FinCEN of any such request and its response thereto. A casino, and any director, officer, employee, or agent of such casino, that makes a report pursuant to this section (whether such report is required by this section or made voluntarily) shall be protected from liability for any disclosure contained in, or for failure to disclose the fact of, such report, or both, to the extent provided by 31 U.S.C. 5318(g)(3).

(f) *Compliance.* Compliance with this section shall be audited by the Department of the Treasury, through FinCEN or its delegees, under the terms of the Bank Secrecy Act. Failure to satisfy the requirements of this section may constitute a violation of the reporting rules of the Bank Secrecy Act and of this part.

(g) *Effective date.* This section applies to transactions occurring after March 25, 2003.

[67 FR 60729, Sept. 26, 2002]

§ 103.22 Reports of transactions in currency.

(a) *General.* This section sets forth the rules for the reporting by financial institutions of transactions in currency. The reporting obligations themselves are stated in paragraph (b) of this section. The reporting rules relating to aggregation are stated in paragraph (c) of this section. Rules permitting banks to exempt certain transactions from the reporting obligations appear in paragraph (d) of this section.

(b) *Filing obligations*—(1) *Financial institutions other than casinos.* Each financial institution other than a casino shall file a report of each deposit, withdrawal, exchange of currency or other payment or transfer, by, through, or to such financial institution which involves a transaction in currency of more than $10,000, except as otherwise provided in this section. In the case of the Postal Service, the obligation contained in the preceding sentence shall not apply to payments or transfers made solely in connection with the purchase of postage or philatelic products.

(2) *Casinos.* Each casino shall file a report of each transaction in currency, involving either cash in or cash out, of more than $10,000.

(i) Transactions in currency involving cash in include, but are not limited to:

(A) Purchases of chips, tokens, and plaques;

(B) Front money deposits;

(C) Safekeeping deposits;

(D) Payments on any form of credit, including markers and counter checks;

(E) Bets of currency;

(F) Currency received by a casino for transmittal of funds through wire transfer for a customer;

(G) Purchases of a casino's check; and

(H) Exchanges of currency for currency, including foreign currency.

(ii) Transactions in currency involving cash out include, but are not limited to:

(A) Redemptions of chips, tokens, and plaques;

(B) Front money withdrawals;

(C) Safekeeping withdrawals;

(D) Advances on any form of credit, including markers and counter checks;

(E) Payments on bets, including slot jackpots;

(F) Payments by a casino to a customer based on receipt of funds through wire transfer for credit to a customer;

(G) Cashing of checks or other negotiable instruments;

(H) Exchanges of currency for currency, including foreign currency; and

(I) Reimbursements for customers' travel and entertainment expenses by the casino.

(c) *Aggregation*—(1) *Multiple branches.* A financial institution includes all of its domestic branch offices, and any recordkeeping facility, wherever located, that contains records relating to the transactions of the institution's domestic offices, for purposes of this section's reporting requirements.

(2) *Multiple transactions—general.* In the case of financial institutions other than casinos, for purposes of this section, multiple currency transactions shall be treated as a single transaction if the financial institution has knowledge that they are by or on behalf of any person and result in either cash in or cash out totaling more than $10,000 during any one business day (or in the case of the Postal Service, any one day). Deposits made at night or over a weekend or holiday shall be treated as if received on the next business day following the deposit.

(3) *Multiple transactions—casinos.* In the case of a casino, multiple currency transactions shall be treated as a single transaction if the casino has knowledge that they are by or on behalf of any person and result in either cash in or cash out totaling more than $10,000 during any gaming day. For purposes of this paragraph (c)(3), a casino shall be deemed to have the knowledge described in the preceding sentence, if: any sole proprietor, partner, officer, director, or employee of the casino, acting within the scope of his or her employment, has knowledge that such multiple currency transactions have occurred, including knowledge from examining the books, records, logs, information retained on magnetic disk, tape or other machine-readable media, or in any manual system, and similar documents and information, which the casino maintains pursuant to any law or regulation or within the ordinary course of its business, and which contain information that such multiple currency transactions have occurred.

(d) *Transactions of exempt persons*—(1) *General.* No bank is required to file a report otherwise required by paragraph (b) of this section with respect to any transaction in currency between an exempt person and such bank, or, to the extent provided in paragraph (d)(6)(vi) of this section, between such exempt person and other banks affiliated with such bank. In addition, a non-bank financial institution is not required to file a report otherwise required by paragraph (b) of this section with respect to a transaction in currency between the institution and a commercial bank. (A limitation on the exemption described in this paragraph (d)(1) is set forth in paragraph (d)(7) of this section.)

(2) *Exempt person.* For purposes of this section, an exempt person is:

(i) A bank, to the extent of such bank's domestic operations;

(ii) A department or agency of the United States, of any State, or of any political subdivision of any State;

(iii) Any entity established under the laws of the United States, of any State, or of any political subdivision of any State, or under an interstate compact between two or more States, that exercises governmental authority on behalf of the United States or any such State or political subdivision;

(iv) Any entity, other than a bank, whose common stock or analogous equity interests are listed on the New York Stock Exchange or the American Stock Exchange or whose common

stock or analogous equity interests have been designated as a Nasdaq National Market Security listed on the Nasdaq Stock Market (except stock or interests listed under the separate ''Nasdaq Small-Cap Issues'' heading), provided that, for purposes of this paragraph (d)(2)(iv), a person that is a financial institution, other than a bank, is an exempt person only to the extent of its domestic operations;

(v) Any subsidiary, other than a bank, of any entity described in paragraph (d)(2)(iv) of this section (a ''listed entity'') that is organized under the laws of the United States or of any State and at least 51 percent of whose common stock or analogous equity interest is owned by the listed entity, provided that, for purposes of this paragraph (d)(2)(v), a person that is a financial institution, other than a bank, is an exempt person only to the extent of its domestic operations;

(vi) To the extent of its domestic operations and only with respect to transactions conducted through its exemptible accounts, any other commercial enterprise (for purposes of this paragraph (d), a ''non-listed business''), other than an enterprise specified in paragraph (d)(6)(viii) of this section, that:

(A) Has maintained a transaction account, as defined in paragraph (d)(6)(ix) of this section, at the bank for at least 12 months;

(B) Frequently engages in transactions in currency with the bank in excess of $10,000; and

(C) Is incorporated or organized under the laws of the United States or a State, or is registered as and eligible to do business within the United States or a State; or

(vii) With respect solely to withdrawals for payroll purposes from existing exemptible accounts, any other person (for purposes of this paragraph (d), a ''payroll customer'') that:

(A) Has maintained a transaction account, as defined in paragraph (d)(6)(ix) of this section, at the bank for at least 12 months;

(B) Operates a firm that regularly withdraws more than $10,000 in order to pay its United States employees in currency; and

(C) Is incorporated or organized under the laws of the United States or a State, or is registered as and eligible to do business within the United States or a State.

(3) *Initial designation of exempt persons*—(i) *General.* A bank must designate each exempt person with which it engages in transactions in currency by the close of the 30-day period beginning after the day of the first reportable transaction in currency with that person sought to be exempted from reporting under the terms of this paragraph (d). Except as provided in paragraph (d)(3)(ii) of this section, designation by a bank of an exempt person shall be made by a single filing of Treasury Form TD F 90–22.53. (A bank is not required to file a Treasury Form TD F 90–22.53 with respect to the transfer of currency to or from any of the twelve Federal Reserve Banks.) The designation must be made separately by each bank that treats the person in question as an exempt person, except as provided in paragraph (d)(6)(vi) of this section. The designation requirements of this paragraph (d)(3) apply whether or not the particular exempt person to be designated has previously been treated as exempt from the reporting requirements of prior § 103.22(a) under the rules contained in 31 CFR 103.22(a) through (g), as in effect on October 20, 1998 (see 31 CFR Parts 0 to 199 revised as of July 1, 1998). A special transitional rule, which extends the time for initial designation for customers that have been previously treated as exempt under such prior rules, is contained in paragraph (d)(11) of this section.

(ii) *Special rules for banks.* When designating another bank as an exempt person, a bank must either make the filing required by paragraph (d)(3)(i) of this section or file, in such a format and manner as FinCEN may specify, a current list of its domestic bank customers. In the event that a bank files its current list of domestic bank customers, the bank must make the filing as described in paragraph (d)(3)(i) of this section for each bank that is a new customer and for which an exemption is sought under this paragraph (d).

(4) *Annual review.* The information supporting each designation of an exempt person, and the application to each account of an exempt person described in paragraphs (d)(2)(vi) or (d)(2)(vii) of this section of the monitoring system required to be maintained by paragraph (d)(9)(ii) of this section, must be reviewed and verified at least once each year.

(5) *Biennial filing with respect to certain exempt persons*—(i) *General.* A biennial filing, as described in paragraph (d)(5)(ii) of this section, is required for continuation of the treatment as an exempt person of a customer described in paragraph (d)(2)(vi) or (vii) of this section. No biennial filing is required for continuation of the treatment as an exempt person of a customer described in paragraphs (d)(2)(i) through (v) of this section.

(ii) *Non-listed businesses and payroll customers.* The designation of a non-listed business or a payroll customer as an exempt person must be renewed biennially, beginning on March 15 of the second calendar year following the year in which the first designation of such customer as an exempt person is made, and every other March 15 thereafter, on Treasury Form TD F 90–22.53. Biennial renewals must include a statement certifying that the bank's system of monitoring the transactions in currency of an exempt person for suspicious activity, required to be maintained by paragraph (d)(9)(ii) of this section, has been applied as necessary, but at least annually, to the account of the exempt person to whom the biennial renewal applies. Biennial renewals also must include information about any change in control of the exempt person involved of which the bank knows (or should know on the basis of its records).

(6) *Operating rules*—(i) *General rule.* Subject to the specific rules of this paragraph (d), a bank must take such steps to assure itself that a person is an exempt person (within the meaning of the applicable provision of paragraph (d)(2) of this section), to document the basis for its conclusions, and document its compliance, with the terms of this paragraph (d), that a reasonable and prudent bank would take and document to protect itself from loan or other fraud or loss based on misidentification of a person's status, and in the case of the monitoring system requirement set forth in paragraph (d)(9)(ii) of this section, such steps that a reasonable and prudent bank would take and document to identify suspicious transactions as required by paragraph (d)(9)(ii) of this section.

(ii) *Governmental departments and agencies.* A bank may treat a person as a governmental department, agency, or entity if the name of such person reasonably indicates that it is described in paragraph (d)(2)(ii) or (d)(2)(iii) of this section, or if such person is known generally in the community to be a State, the District of Columbia, a tribal government, a Territory or Insular Possession of the United States, or a political subdivision or a wholly-owned agency or instrumentality of any of the foregoing. An entity generally exercises governmental authority on behalf of the United States, a State, or a political subdivision, for purposes of paragraph (d)(2)(iii) of this section, only if its authorities include one or more of the powers to tax, to exercise the authority of eminent domain, or to exercise police powers with respect to matters within its jurisdiction. Examples of entities that exercise governmental authority include, but are not limited to, the New Jersey Turnpike Authority and the Port Authority of New York and New Jersey.

(iii) *Stock exchange listings.* In determining whether a person is described in paragraph (d)(2)(iv) of this section, a bank may rely on any New York, American or Nasdaq Stock Market listing published in a newspaper of general circulation, on any commonly accepted or published stock symbol guide, on any information contained in the Securities and Exchange Commission ''Edgar'' System, or on any information contained on an Internet World-Wide Web site or sites maintained by the New York Stock Exchange, the American Stock Exchange, or the National Association of Securities Dealers.

(iv) *Listed company subsidiaries.* In determining whether a person is described in paragraph (d)(2)(v) of this section, a bank may rely upon:

(A) Any reasonably authenticated corporate officer's certificate;

(B) Any reasonably authenticated photocopy of Internal Revenue Service Form 851 (Affiliation Schedule) or the equivalent thereof for the appropriate tax year; or

(C) A person's Annual Report or Form 10-K, as filed in each case with the Securities and Exchange Commission.

(v) *Aggregated accounts.* In determining the qualification of a customer as a non-listed business or a payroll customer, a bank may treat all exemptible accounts of the customer as a single account. If a bank elects to treat all exemptible accounts of a customer as a single account, the bank must continue to treat such accounts consistently as a single account for purposes of determining the qualification of the customer as a non-listed business or payroll customer.

(vi) *Affiliated banks.* The designation required by paragraph (d)(3) of this section may be made by a parent bank holding company or one of its bank subsidiaries on behalf of all bank subsidiaries of the holding company, so long as the designation lists each bank subsidiary to which the designation shall apply.

(vii) *Sole proprietorships.* A sole proprietorship may be treated as a non-listed business if it otherwise meets the requirements of paragraph (d)(2)(vi) of this section, as applicable. In addition, a sole proprietorship may be treated as a payroll customer if it otherwise meets the requirements of paragraph (d)(2)(vii) of this section, as applicable.

(viii) *Ineligible businesses.* A business engaged primarily in one or more of the following activities may not be treated as a non-listed business for purposes of this paragraph (d): serving as financial institutions or agents of financial institutions of any type; purchase or sale to customers of motor vehicles of any kind, vessels, aircraft, farm equipment or mobile homes; the practice of law, accountancy, or medicine; auctioning of goods; chartering or operation of ships, buses, or aircraft; gaming of any kind (other than licensed parimutuel betting at race tracks); investment advisory services or investment banking services; real estate brokerage; pawn brokerage; title insurance and real estate closing; trade union activities; and any other activities that may be specified by FinCEN. A business that engages in multiple business activities may be treated as a non-listed business so long as no more than 50% of its gross revenues is derived from one or more of the ineligible business activities listed in this paragraph (d)(6)(viii).

(ix) *Exemptible accounts of a non-listed business or payroll customer.* The exemptible accounts of a non-listed business or payroll customer include transaction accounts and money market deposit accounts. However, money market deposit accounts maintained other than in connection with a commercial enterprise are not exemptible accounts. A transaction account, for purposes of this paragraph (d), is any account described in section 19(b)(1)(C) of the Federal Reserve Act, 12 U.S.C. 461(b)(1)(C), and its implementing regulations (12 CFR part 204). A money market deposit account, for purposes of this paragraph (d), is any interest-bearing account that is described as a money market deposit account in 12 CFR 204.2(d)(2).

(x) *Documentation.* The records maintained by a bank to document its compliance with and administration of the rules of this paragraph (d) shall be maintained in accordance with the provisions of § 103.38.

(7) *Limitation on exemption.* A transaction carried out by an exempt person as an agent for another person who is the beneficial owner of the funds that are the subject of a transaction in currency is not subject to the exemption from reporting contained in paragraph (d)(1) of this section.

(8) *Limitation on liability.* (i) No bank shall be subject to penalty under this part for failure to file a report required by paragraph (b) of this section with respect to a transaction in currency by an exempt person with respect to which the requirements of this paragraph (d) have been satisfied, unless the bank:

(A) Knowingly files false or incomplete information with respect to the transaction or the customer engaging in the transaction; or

(B) Has reason to believe that the customer does not meet the criteria established by this paragraph (d) for treatment of the transactor as an exempt person or that the transaction is not a transaction of the exempt person.

(ii) Subject to the specific terms of this paragraph (d), and absent any specific knowledge of information indicating that a customer no longer meets the requirements of an exempt person, a bank satisfies the requirements of this paragraph (d) to the extent it continues to treat that customer as an exempt person until the date of that customer's next periodic review, which, as required by paragraph (d)(4) of this section, shall occur no less than once each year.

(iii) A bank that files a report with respect to a currency transaction by an exempt person rather than treating such person as exempt shall remain subject, with respect to each such report, to the rules for filing reports, and the penalties for filing false or incomplete reports that are applicable to reporting of transactions in currency by persons other than exempt persons.

(9) *Obligations to file suspicious activity reports and maintain system for monitoring transactions in currency.* (i) Nothing in this paragraph (d) relieves a bank of the obligation, or reduces in any way such bank's obligation, to file a report required by § 103.21 with respect to any transaction, including any transaction in currency that a bank knows, suspects, or has reason to suspect is a transaction or attempted transaction that is described in § 103.21(a)(2)(i), (ii), or (iii), or relieves a bank of any reporting or recordkeeping obligation imposed by this part (except the obligation to report transactions in currency pursuant to this section to the extent provided in this paragraph (d)). Thus, for example, a sharp increase from one year to the next in the gross total of currency transactions made by an exempt customer, or similarly anomalous transaction trends or patterns, may trigger the obligations of a bank under § 103.21.

(ii) Consistent with its annual review obligations under paragraph (d)(4)of this section, a bank shall establish and maintain a monitoring system that is reasonably designed to detect, for each account of a non-listed business or payroll customer, those transactions in currency involving such account that would require a bank to file a suspicious transaction report. The statement in the preceding sentence with respect to accounts of non-listed and payroll customers does not limit the obligation of banks generally to take the steps necessary to satisfy the terms of paragraph (d)(9)(i) of this section and § 103.21 with respect to all exempt persons.

(10) *Revocation.* The status of any person as an exempt person under this paragraph (d) may be revoked by FinCEN by written notice, which may be provided by publication in the FEDERAL REGISTER in appropriate situations, on such terms as are specified in such notice. Without any action on the part of the Treasury Department and subject to the limitation on liability contained in paragraph (d)(8)(ii) of this section:

(i) The status of an entity as an exempt person under paragraph (d)(2)(iv) of this section ceases once such entity ceases to be listed on the applicable stock exchange; and

(ii) The status of a subsidiary as an exempt person under paragraph (d)(2)(v) of this section ceases once such subsidiary ceases to have at least 51 per cent of its common stock or analogous equity interest owned by a listed entity.

(11) *Transitional rule.* (i) No accounts may be newly granted an exemption or placed on an exempt list on or after October 21, 1998, under the rules contained in 31 CFR 103.22(b) through (g), as in effect on October 20, 1998 (see 31 CFR Parts 0 to 199 revised as of July 1, 1998).

(ii) If a bank properly treated an account (a ''previously exempted account'') as exempt on October 20, 1998 under the rules contained in 31 CFR 103.22(b) through (g), as in effect on October 20, 1998 (see 31 CFR Parts 0 to 199 revised as of July 1, 1998), it may continue to treat such account as exempt under such prior rules with respect to transactions in currency occurring on or before June 30, 2000, provided that it does so consistently until the earlier of June 30, 2000, and the date on which the

bank makes the designation or the determination described in paragraph (d)(11)(iii) of this section. A bank that continues to treat a previously exempted account as exempt under the prior rules, and for the period, specified in the preceding sentence, shall remain subject to such prior rules, and to the penalties for failing to comply therewith, with respect to transactions in currency occurring during such period.

(iii) A bank must, on or before July 1, 2000, either designate the holder of a previously exempted account as an exempt person under paragraph (d)(2) of this section or determine that it may not or will not treat such holder as an exempt person under paragraph (d)(2) of this section (so that it will be required to make reports under paragraph (a) of this section with respect to transactions in currency by such person occurring on or after the date of determination, but no later than July 1, 2000). A bank that initially does not designate the holder of a previously exempted account as an exempt person for periods beginning after June 30, 2000, may later make such a designation, to the extent otherwise permitted to do so by this paragraph (d), for periods after the effective date of such designation.

(Approved by the Office of Management and Budget under control number 1506–0009)

[63 FR 50156, Sept. 21, 1998, as amended at 65 FR 46360, July 28, 2000]

§ 103.23 Reports of transportation of currency or monetary instruments.

(a) Each person who physically transports, mails, or ships, or causes to be physically transported, mailed, or shipped, or attempts to physically transport, mail or ship, or attempts to cause to be physically transported, mailed or shipped, currency or other monetary instruments in an aggregate amount exceeding $10,000 at one time from the United States to any place outside the United States, or into the United States from any place outside the United States, shall make a report thereof. A person is deemed to have caused such transportation, mailing or shipping when he aids, abets, counsels, commands, procures, or requests it to be done by a financial institution or any other person.

(b) Each person who receives in the U.S. currency or other monetary instruments in an aggregate amount exceeding $10,000 at one time which have been transported, mailed, or shipped to such person from any place outside the United States with respect to which a report has not been filed under paragraph (a) of this section, whether or not required to be filed thereunder, shall make a report thereof, stating the amount, the date of receipt, the form of monetary instruments, and the person from whom received.

(c) This section shall not require reports by:

(1) A Federal Reserve;

(2) A bank, a foreign bank, or a broker or dealer in securities, in respect to currency or other monetary instruments mailed or shipped through the postal service or by common carrier;

(3) A commercial bank or trust company organized under the laws of any State or of the United States with respect to overland shipments of currency or monetary instruments shipped to or received from an established customer maintaining a deposit relationship with the bank, in amounts which the bank may reasonably conclude do not exceed amounts commensurate with the customary conduct of the business, industry or profession of the customer concerned;

(4) A person who is not a citizen or resident of the United States in respect to currency or other monetary instruments mailed or shipped from abroad to a bank or broker or dealer in securities through the postal service or by common carrier;

(5) A common carrier of passengers in respect to currency or other monetary instruments in the possession of its passengers;

(6) A common carrier of goods in respect to shipments of currency or monetary instruments not declared to be such by the shipper;

(7) A travelers' check issuer or its agent in respect to the transportation of travelers' checks prior to their delivery to selling agents for eventual sale to the public;

(8) By a person with respect to a restrictively endorsed traveler's check

that is in the collection and reconciliation process after the traveler's check has been negotiated,

(9) Nor by a person engaged as a business in the transportation of currency, monetary instruments and other commercial papers with respect to the transportation of currency or other monetary instruments overland between established offices of banks or brokers or dealers in securities and foreign persons.

(d) A transfer of funds through normal banking procedures which does not involve the physical transportation of currency or monetary instruments is not required to be reported by this section. This section does not require that more than one report be filed covering a particular transportation, mailing or shipping of currency or other monetary instruments with respect to which a complete and truthful report has been filed by a person. However, no person required by paragraph (a) or (b) of this section to file a report shall be excused from liability for failure to do so if, in fact, a complete and truthful report has not been filed.

(Approved by the Office of Management and Budget under control number 1505–0063)

[37 FR 26517, Dec. 13, 1972, as amended at 50 FR 18479, May 1, 1985; 50 FR 42693, Oct. 22, 1985; 53 FR 4138, Feb. 12, 1988; 54 FR 28418, July 6, 1989]

§ 103.24 Reports of foreign financial accounts.

(a) Each person subject to the jurisdiction of the United States (except a foreign subsidiary of a U.S. person) having a financial interest in, or signature or other authority over, a bank, securities or other financial account in a foreign country shall report such relationship to the Commissioner of the Internal Revenue for each year in which such relationship exists, and shall provide such information as shall be specified in a reporting form prescribed by the Secretary to be filed by such persons. Persons having a financial interest in 25 or more foreign financial accounts need only note that fact on the form. Such persons will be required to provide detailed information concerning each account when so requested by the Secretary or his delegate.

[42 FR 63774, Dec. 20, 1977, as amended at 52 FR 11443, Apr. 8, 1987; 52 FR 12641, Apr. 17, 1987]

§ 103.25 Reports of transactions with foreign financial agencies.

(a) *Promulgation of reporting requirements.* The Secretary, when he deems appropriate, may promulgate regulations requiring specified financial institutions to file reports of certain transactions with designated foreign financial agencies. If any such regulation is issued as a final rule without notice and opportunity for public comment, then a finding of good cause for dispensing with notice and comment in accordance with 5 U.S.C. 553(b) will be included in the regulation. If any such regulation is not published in the FEDERAL REGISTER, then any financial institution subject to the regulation will be named and personally served or otherwise given actual notice in accordance with 5 U.S.C. 553(b). If a financial institution is given notice of a reporting requirement under this section by means other than publication in the FEDERAL REGISTER, the Secretary may prohibit disclosure of the existence or provisions of that reporting requirement to the designated foreign financial agency or agencies and to any other party.

(b) *Information subject to reporting requirements.* A regulation promulgated pursuant to paragraph (a) of this section shall designate one or more of the following categories of information to be reported:

(1) Checks or drafts, including traveler's checks, received by respondent financial institution for collection or credit to the account of a foreign financial agency, sent by respondent financial institution to a foreign country for collection or payment, drawn by respondent financial institution on a foreign financial agency, drawn by a foreign financial agency on respondent financial institution—including the following information.

(i) Name of maker or drawer;

(ii) Name of drawee or drawee financial institution;

(iii) Name of payee;

(iv) Date and amount of instrument;

(v) Names of all endorsers.

(2) Transmittal orders received by a respondent financial institution from a foreign financial agency or sent by respondent financial institution to a foreign financial agency, including all information maintained by that institution pursuant to § 103.33.

(3) Loans made by respondent financial institution to or through a foreign financial agency—including the following information:

(i) Name of borrower;

(ii) Name of person acting for borrower;

(iii) Date and amount of loan;

(iv) Terms of repayment;

(v) Name of guarantor;

(vi) Rate of interest;

(vii) Method of disbursing proceeds;

(viii) Collateral for loan.

(4) Commercial paper received or shipped by the respondent financial institution—including the following information:

(i) Name of maker;

(ii) Date and amount of paper;

(iii) Due date;

(iv) Certificate number;

(v) Amount of transaction.

(5) Stocks received or shipped by respondent financial institution—including the following information:

(i) Name of corporation;

(ii) Type of stock;

(iii) Certificate number;

(iv) Number of shares;

(v) Date of certificate;

(vi) Name of registered holder;

(vii) Amount of transaction.

(6) Bonds received or shipped by respondent financial institution—including the following information:

(i) Name of issuer;

(ii) Bond number;

(iii) Type of bond series;

(iv) Date issued;

(v) Due date;

(vi) Rate of interest;

(vii) Amount of transaction;

(viii) Name of registered holder.

(7) Certificates of deposit received or shipped by respondent financial institution—including the following information:

(i) Name and address of issuer;

(ii) Date issued;

(iii) Dollar amount;

(iv) Name of registered holder;

(v) Due date;

(vi) Rate of interest;

(vii) Certificate number;

(viii) Name and address of issuing agent.

(c) *Scope of reports.* In issuing regulations as provided in paragraph (a) of this section, the Secretary will prescribe:

(1) A reasonable classification of financial institutions subject to or exempt from a reporting requirement;

(2) A foreign country to which a reporting requirement applies if the Secretary decides that applying the requirement to all foreign countries is unnecessary or undesirable;

(3) The magnitude of transactions subject to a reporting requirement; and

(4) The kind of transaction subject to or exempt from a reporting requirement.

(d) *Form of reports.* Regulations issued pursuant to paragraph (a) of this section may prescribe the manner in which the information is to be reported. However, the Secretary may authorize a designated financial institution to report in a different manner if the institution demonstrates to the Secretary that the form of the required report is unnecessarily burdensome on the institution as prescribed; that a report in a different form will provide all the information the Secretary deems necessary; and that submission of the information in a different manner will not unduly hinder the effective administration of this part.

(e) *Limitations.* (1) In issuing regulations under paragraph (a) of this section, the Secretary shall consider the need to avoid impeding or controlling the export or import of monetary instruments and the need to avoid burdening unreasonably a person making a transaction with a foreign financial agency.

(2) The Secretary shall not issue a regulation under paragraph (a) of this section for the purpose of obtaining individually identifiable account information concerning a customer, as defined by the Right to Financial Privacy Act (12 U.S.C. 3401 *et seq.*), where that customer is already the subject of an ongoing investigation for possible violation of the Currency and Foreign Transactions Reporting Act, or is

known by the Secretary to be the subject of an investigation for possible violation of any other Federal law.

(3) The Secretary may issue a regulation pursuant to paragraph (a) of this section requiring a financial institution to report transactions completed prior to the date it received notice of the reporting requirement. However, with respect to completed transactions, a financial institution may be required to provide information only from records required to be maintained pursuant to Subpart C of this part, or any other provision of state or Federal law, or otherwise maintained in the regular course of business.

(Approved by the Office of Management and Budget under control number 1505–0063)

[50 FR 27824, July 8, 1985, as amended at 53 FR 10073, Mar. 29, 1988; 60 FR 229, Jan. 3, 1995]

§ 103.26 Reports of certain domestic coin and currency transactions.

(a) If the Secretary of the Treasury finds, upon the Secretary's own initiative or at the request of an appropriate Federal or State law enforcement official, that reasonable grounds exist for concluding that additional recordkeeping and/or reporting requirements are necessary to carry out the purposes of this part and to prevent persons from evading the reporting/recordkeeping requirements of this part, the Secretary may issue an order requiring any domestic financial institution or group of domestic financial institutions in a geographic area and any other person participating in the type of transaction to file a report in the manner and to the extent specified in such order. The order shall contain such information as the Secretary may describe concerning any transaction in which such financial institution is involved for the payment, receipt, or transfer of United States coins or currency (or such other monetary instruments as the Secretary may describe in such order) the total amounts or denominations of which are equal to or greater than an amount which the Secretary may prescribe.

(b) An order issued under paragraph (a) of this section shall be directed to the Chief Executive Officer of the financial institution and shall designate one or more of the following categories of information to be reported: Each deposit, withdrawal, exchange of currency or other payment or transfer, by, through or to such financial institution specified in the order, which involves all or any class of transactions in currency and/or monetary instruments equal to or exceeding an amount to be specified in the order.

(c) In issuing an order under paragraph (a) of this section, the Secretary will prescribe:

(1) The dollar amount of transactions subject to the reporting requirement in the order;

(2) The type of transaction or transactions subject to or exempt from a reporting requirement in the order;

(3) The appropriate form for reporting the transactions required in the order;

(4) The address to which reports required in the order are to be sent or from which they will be picked up;

(5) The starting and ending dates by which such transactions specified in the order are to be reported;

(6) The name of a Treasury official to be contacted for any additional information or questions;

(7) The amount of time the reports and records of reports generated in response to the order will have to be retained by the financial institution; and

(8) Any other information deemed necessary to carry out the purposes of the order.

(d)(1) No order issued pursuant to paragraph (a) of this section shall prescribe a reporting period of more than 60 days unless renewed pursuant to the requirements of paragraph (a).

(2) Any revisions to an order issued under this section will not be effective until made in writing by the Secretary.

(3) Unless otherwise specified in the order, a bank receiving an order under this section may continue to use the exemptions granted under § 103.22 of this part prior to the receipt of the order, but may not grant additional exemptions.

(4) For purposes of this section, the term *geographic area* means any area in one or more States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, the Commonwealth of the Northern

Mariana Islands, American Samoa, the Trust Territory of the Pacific Islands, the territories and possessions of the United States, and/or political subdivision or subdivisions thereof, as specified in an order issued pursuant to paragraph (a) of this section.

(Approved by the Office of Management and Budget under control number 1505–0063)

[54 FR 33679, Aug. 16, 1989]

§ 103.27 Filing of reports.

(a)(1) A report required by § 103.22(a) shall be filed by the financial institution within 15 days following the day on which the reportable transaction occurred.

(2) A report required by § 103.22(g) shall be filed by the bank within 15 days after receiving a request for the report.

(3) A copy of each report filed pursuant to §103.22 shall be retained by the financial institution for a period of five years from the date of the report.

(4) All reports required to be filed by § 103.22 shall be filed with the Commissioner of Internal Revenue, unless otherwise specified.

(b)(1) A report required by § 103.23(a) shall be filed at the time of entry into the United States or at the time of departure, mailing or shipping from the United States, unless otherwise specified by the Commissioner of Customs.

(2) A report required by § 103.23(b) shall be filed within 15 days after receipt of the currency or other monetary instruments.

(3) All reports required by § 103.23 shall be filed with the Customs officer in charge at any port of entry or departure, or as otherwise specified by the Commissioner of Customs. Reports required by § 103.23(a) for currency or other monetary instruments not physically accompanying a person entering or departing from the United States, may be filed by mail on or before the date of entry, departure, mailing or shipping. All reports required by § 103.23(b) may also be filed by mail. Reports filed by mail shall be addressed to the Commissioner of Customs, Attention: Currency Transportation Reports, Washington, DC 20229.

(c) Reports required to be filed by § 103.24 shall be filed with the Commissioner of Internal Revenue on or before June 30 of each calendar year with respect to foreign financial accounts exceeding $10,000 maintained during the previous calendar year.

(d) Reports required by § 103.22, § 103.23 or § 103.24 shall be filed on forms prescribed by the Secretary. All information called for in such forms shall be furnished.

(e) Forms to be used in making the reports required by §§ 103.22 and 103.24 may be obtained from the Internal Revenue Service. Forms to be used in making the reports required by § 103.23 may be obtained from the U.S. Customs Service.

(Approved by the Office of Management and Budget under control number 1505–0063)

[52 FR 11443, Apr. 8, 1987; 52 FR 12641, Apr. 17, 1987, as amended at 53 FR 4138, Feb. 12, 1988. Redesignated at 54 FR 33678, Aug. 16, 1989]

§ 103.28 Identification required.

Before concluding any transaction with respect to which a report is required under § 103.22, a financial institution shall verify and record the name and address of the individual presenting a transaction, as well as record the identity, account number, and the social security or taxpayer identification number, if any, of any person or entity on whose behalf such transaction is to be effected. Verification of the identity of an individual who indicates that he or she is an alien or is not a resident of the United States must be made by passport, alien identification card, or other official document evidencing nationality or residence (*e.g.,* a Provincial driver's license with indication of home address). Verification of identity in any other case shall be made by examination of a document, other than a bank signature card, that is normally acceptable within the banking community as a means of identification when cashing checks for nondepositors (*e.g.,* a drivers license or credit card). A bank signature card may be relied upon only if it was issued after documents establishing the identity of the individual were examined and notation of the specific information was made on the signature card. In each instance, the specific identifying information (*i.e.,* the account number of the credit card, the driver's

license number, etc.) used in verifying the identity of the customer shall be recorded on the report, and the mere notation of ''known customer'' or ''bank signature card on file'' on the report is prohibited.

(Approved by the Office of Management and Budget under control number 1505–0063)

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§ 103.29 Purchases of bank checks and drafts, cashier's checks, money orders and traveler's checks.

(a) No financial institution may issue or sell a bank check or draft, cashier's check, money order or traveler's check for $3,000 or more in currency unless it maintains records of the following information, which must be obtained for each issuance or sale of one or more of these instruments to any individual purchaser which involves currency in amounts of $3,000–$10,000 inclusive:

(1) If the purchaser has a deposit account with the financial institution:

(i)(A) The name of the purchaser;

(B) The date of purchase;

(C) The type(s) of instrument(s) purchased;

(D) The serial number(s) of each of the instrument(s) purchased; and

(E) The amount in dollars of each of the instrument(s) purchased.

(ii) In addition, the financial institution must verify that the individual is a deposit accountholder or must verify the individual's identity. Verification may be either through a signature card or other file or record at the financial institution provided the deposit accountholder's name and address were verified previously and that information was recorded on the signature card or other file or record; or by examination of a document which is normally acceptable within the banking community as a means of identification when cashing checks for nondepositors and which contains the name and address of the purchaser. If the deposit accountholder's identity has not been verified previously, the financial institution shall verify the deposit accountholder's identity by examination of a document which is normally acceptable within the banking community as a means of identification when cashing checks for nondepositors and which contains the name and address of the purchaser, and shall record the specific identifying information (*e.g.*, State of issuance and number of driver's license).

(2) If the purchaser does not have a deposit account with the financial institution:

(i)(A) The name and address of the purchaser;

(B) The social security number of the purchaser, or if the purchaser is an alien and does not have a social security number, the alien identification number;

(C) The date of birth of the purchaser;

(D) The date of purchase;

(E) The type(s) of instrument(s) purchased;

(F) The serial number(s) of the instrument(s) purchased; and

(G) The amount in dollars of each of the instrument(s) purchased.

(ii) In addition, the financial institution shall verify the purchaser's name and address by examination of a document which is normally acceptable within the banking community as a means of identification when cashing checks for nondepositors and which contains the name and address of the purchaser, and shall record the specific identifying information (*e.g.*, State of issuance and number of driver's license).

(b) Contemporaneous purchases of the same or different types of instruments totaling $3,000 or more shall be treated as one purchase. Multiple purchases during one business day totaling $3,000 or more shall be treated as one purchase if an individual employee, director, officer, or partner of the financial institution has knowledge that these purchases have occurred.

(c) Records required to be kept shall be retained by the financial institution for a period of five years and shall be made available to the Secretary upon request at any time.

[59 FR 52252, Oct. 17, 1994]

§ 103.30 Reports relating to currency in excess of $10,000 received in a trade or business.

(a) *Reporting requirement*—(1) *Reportable transactions*—(i) *In general.* Any person (solely for purposes of section 5331 of title 31, United States Code and this section, ''person'' shall have the same meaning as under 26 U.S.C. 7701 (a)(1)) who, in the course of a trade or business in which such person is engaged, receives currency in excess of $10,000 in 1 transaction (or 2 or more related transactions) shall, except as otherwise provided, make a report of information with respect to the receipt of currency. This section does not apply to amounts received in a transaction reported under 31 U.S.C. 5313 and § 103.22.

(ii) *Certain financial transactions.* Section 6050I of title 26 of the United States Code requires persons to report information about financial transactions to the IRS, and 31 U.S.C. 5331 requires persons to report similar information about certain transactions to the Financial Crimes Enforcement Network. This information shall be reported on the same form as prescribed by the Secretary.

(2) *Currency received for the account of another.* Currency in excess of $10,000 received by a person for the account of another must be reported under this section. Thus, for example, a person who collects delinquent accounts receivable for an automobile dealer must report with respect to the receipt of currency in excess of $10,000 from the collection of a particular account even though the proceeds of the collection are credited to the account of the automobile dealer (*i.e.,* where the rights to the proceeds from the account are retained by the automobile dealer and the collection is made on a fee-for-service basis).

(3) *Currency received by agents*—(i) *General rule.* Except as provided in paragraph (a)(3)(ii) of this section, a person who in the course of a trade or business acts as an agent (or in some other similar capacity) and receives currency in excess of $10,000 from a principal must report the receipt of currency under this section.

(ii) *Exception.* An agent who receives currency from a principal and uses all of the currency within 15 days in a currency transaction (the ''second currency transaction'') which is reportable under section 5312 of title 31, or 31 U.S.C. 5331 and this section, and who discloses the name, address, and taxpayer identification number of the principal to the recipient in the second currency transaction need not report the initial receipt of currency under this section. An agent will be deemed to have met the disclosure requirements of this paragraph (a)(3)(ii) if the agent discloses only the name of the principal and the agent knows that the recipient has the principal's address and taxpayer identification number.

(iii) *Example.* The following example illustrates the application of the rules in paragraphs (a)(3)(i) and (ii) of this section:

Example. B, the principal, gives D, an attorney, $75,000 in currency to purchase real property on behalf of B. Within 15 days D purchases real property for currency from E, a real estate developer, and discloses to E, B's name, address, and taxpayer identification number. Because the transaction qualifies for the exception provided in paragraph (a)(3)(ii) of this section, D need not report with respect to the initial receipt of currency under this section. The exception does not apply, however, if D pays E by means other than currency, or effects the purchase more than 15 days following receipt of the currency from B, or fails to disclose B's name, address, and taxpayer identification number (assuming D does not know that E already has B's address and taxpayer identification number), or purchases the property from a person whose sale of the property is not in the course of that person's trade or business. In any such case, D is required to report the receipt of currency from B under this section.

(b) *Multiple payments.* The receipt of multiple currency deposits or currency installment payments (or other similar payments or prepayments) relating to a single transaction (or two or more related transactions), is reported as set forth in paragraphs (b)(1) through (b)(3) of this section.

(1) *Initial payment in excess of $10,000.* If the initial payment exceeds $10,000, the recipient must report the initial payment within 15 days of its receipt.

(2) *Initial payment of $10,000 or less.* If the initial payment does not exceed $10,000, the recipient must aggregate the initial payment and subsequent

payments made within one year of the initial payment until the aggregate amount exceeds $10,000, and report with respect to the aggregate amount within 15 days after receiving the payment that causes the aggregate amount to exceed $10,000.

(3) *Subsequent payments.* In addition to any other required report, a report must be made each time that previously unreportable payments made within a 12-month period with respect to a single transaction (or two or more related transactions), individually or in the aggregate, exceed $10,000. The report must be made within 15 days after receiving the payment in excess of $10,000 or the payment that causes the aggregate amount received in the 12-month period to exceed $10,000. (If more than one report would otherwise be required for multiple currency payments within a 15-day period that relate to a single transaction (or two or more related transactions), the recipient may make a single combined report with respect to the payments. The combined report must be made no later than the date by which the first of the separate reports would otherwise be required to be made.)

(4) *Example.* The following example illustrates the application of the rules in paragraphs (b)(1) through (b)(3) of this section:

Example. On January 10, Year 1, M receives an initial payment in currency of $11,000 with respect to a transaction. M receives subsequent payments in currency with respect to the same transaction of $4,000 on February 15, Year 1, $6,000 on March 20, Year 1, and $12,000 on May 15, Year 1. M must make a report with respect to the payment received on January 10, Year 1, by January 25, Year 1. M must also make a report with respect to the payments totaling $22,000 received from February 15, Year 1, through May 15, Year 1. This report must be made by May 30, Year 1, that is, within 15 days of the date that the subsequent payments, all of which were received within a 12-month period, exceeded $10,000.

(c) *Meaning of terms.* The following definitions apply for purposes of this section—

(1) *Currency.* Solely for purposes of 31 U.S.C. 5331 and this section, *currency* means—

(i) The coin and currency of the United States or of any other country, which circulate in and are customarily used and accepted as money in the country in which issued; and

(ii) A cashier's check (by whatever name called, including ''treasurer's check'' and ''bank check''), bank draft, traveler's check, or money order having a face amount of not more than $10,000—

(A) Received in a designated reporting transaction as defined in paragraph (c)(2) of this section (except as provided in paragraphs (c)(3), (4), and (5) of this section), or

(B) Received in any transaction in which the recipient knows that such instrument is being used in an attempt to avoid the reporting of the transaction under section 5331 and this section.

(2) *Designated reporting transaction.* A designated reporting transaction is a retail sale (or the receipt of funds by a broker or other intermediary in connection with a retail sale) of—

(i) A consumer durable, (ii) A collectible, or

(iii) A travel or entertainment activity.

(3) *Exception for certain loans.* A cashier's check, bank draft, traveler's check, or money order received in a designated reporting transaction is not treated as currency pursuant to paragraph (c)(1)(ii)(A) of this section if the instrument constitutes the proceeds of a loan from a bank. The recipient may rely on a copy of the loan document, a written statement from the bank, or similar documentation (such as a written lien instruction from the issuer of the instrument) to substantiate that the instrument constitutes loan proceeds.

(4) *Exception for certain installment sales.* A cashier's check, bank draft, traveler's check, or money order received in a designated reporting transaction is not treated as currency pursuant to paragraph (c)(1)(ii)(A) of this section if the instrument is received in payment on a promissory note or an installment sales contract (including a lease that is considered to be a sale for Federal income tax purposes). However, the preceding sentence applies only if—

(i) Promissory notes or installment sales contracts with the same or substantially similar terms are used in the ordinary course of the recipient's trade or business in connection with sales to ultimate consumers; and

(ii) The total amount of payments with respect to the sale that are received on or before the 60th day after the date of the sale does not exceed 50 percent of the purchase price of the sale.

(5) *Exception for certain down payment plans.* A cashier's check, bank draft, traveler's check, or money order received in a designated reporting transaction is not treated as currency pursuant to paragraph (c)(1)(ii)(A) of this section if the instrument is received pursuant to a payment plan requiring one or more down payments and the payment of the balance of the purchase price by a date no later than the date of the sale (in the case of an item of travel or entertainment, a date no later than the earliest date that any item of travel or entertainment pertaining to the same trip or event is furnished). However, the preceding sentence applies only if—

(i) The recipient uses payment plans with the same or substantially similar terms in the ordinary course of its trade or business in connection with sales to ultimate consumers; and

(ii) The instrument is received more than 60 days prior to the date of the sale (in the case of an item of travel or entertainment, the date on which the final payment is due).

(6) *Examples.* The following examples illustrate the definition of ''currency'' set forth in paragraphs (c)(1) through (c)(5) of this section:

Example 1. D, an individual, purchases gold coins from M, a coin dealer, for $13,200. D tenders to M in payment United States currency in the amount of $6,200 and a cashier's check in the face amount of $7,000 which D had purchased. Because the sale is a designated reporting transaction, the cashier's check is treated as currency for purposes of 31 U.S.C. 5331 and this section. Therefore, because M has received more than $10,000 in currency with respect to the transaction, M must make the report required by 31 U.S.C. 5331 and this section.

Example 2. E, an individual, purchases an automobile from Q, an automobile dealer, for $11,500. E tenders to Q in payment United States currency in the amount of $2,000 and a cashier's check payable to E and Q in the amount of $9,500. The cashier's check constitutes the proceeds of a loan from the bank issuing the check. The origin of the proceeds is evident from provisions inserted by the bank on the check that instruct the dealer to cause a lien to be placed on the vehicle as security for the loan. The sale of the automobile is a designated reporting transaction. However, under paragraph (c)(3) of this section, because E has furnished Q documentary information establishing that the cashier's check constitutes the proceeds of a loan from the bank issuing the check, the cashier's check is not treated as currency pursuant to paragraph (c)(1)(ii)(A) of this section.

Example 3. F, an individual, purchases an item of jewelry from S, a retail jeweler, for $12,000. F gives S traveler's checks totaling $2,400 and pays the balance with a personal check payable to S in the amount of $9,600. Because the sale is a designated reporting transaction, the traveler's checks are treated as currency for purposes of section 5331 and this section. However, because the personal check is not treated as currency for purposes of section 5331 and this section, S has not received more than $10,000 in currency in the transaction and no report is required to be filed under section 5331 and this section.

Example 4. G, an individual, purchases a boat from T, a boat dealer, for $16,500. G pays T with a cashier's check payable to T in the amount of $16,500. The cashier's check is not treated as currency because the face amount of the check is more than $10,000. Thus, no report is required to be made by T under section 5331 and this section.

Example 5. H, an individual, arranges with W, a travel agent, for the chartering of a passenger aircraft to transport a group of individuals to a sports event in another city. H also arranges with W for hotel accommodations for the group and for admission tickets to the sports event. In payment, H tenders to W money orders which H had previously purchased. The total amount of the money orders, none of which individually exceeds $10,000 in face amount, exceeds $10,000. Because the transaction is a designated reporting transaction, the money orders are treated as currency for purposes of section 5331 and this section. Therefore, because W has received more than $10,000 in currency with respect to the transaction, W must make the report required by section 5331 and this section.

(7) *Consumer durable.* The term *consumer* durable means an item of tangible personal property of a type that is suitable under ordinary usage for personal consumption or use, that can reasonably be expected to be useful for at least 1 year under ordinary usage,

and that has a sales price of more than $10,000. Thus, for example, a $20,000 automobile is a consumer durable (whether or not it is sold for business use), but a $20,000 dump truck or a $20,000 factory machine is not.

(8) *Collectible.* The term collectible means an item described in paragraphs (A) through (D) of section 408 (m)(2) of title 26 of the United States Code (determined without regard to section 408 (m)(3) of title 26 of the United States Code).

(9) *Travel or entertainment activity.* The term *travel or entertainment activity* means an item of travel or entertainment (within the meaning of 26 CFR 1.274–2(b)(1)) pertaining to a single trip or event where the aggregate sales price of the item and all other items pertaining to the same trip or event that are sold in the same transaction (or related transactions) exceeds $10,000.

(10) *Retail sale.* The term *retail sale* means any sale (whether for resale or for any other purpose) made in the course of a trade or business if that trade or business principally consists of making sales to ultimate consumers.

(11) *Trade or business.* The term trade or business has the same meaning as under section 162 of title 26, United States Code.

(12) *Transaction.* (i) Solely for purposes of 31 U.S.C. 5331 and this section, the term *transaction* means the underlying event precipitating the payer's transfer of currency to the recipient. In this context, transactions include (but are not limited to) a sale of goods or services; a sale of real property; a sale of intangible property; a rental of real or personal property; an exchange of currency for other currency; the establishment or maintenance of or contribution to a custodial, trust, or escrow arrangement; a payment of a preexisting debt; a conversion of currency to a negotiable instrument; a reimbursement for expenses paid; or the making or repayment of a loan. A transaction may not be divided into multiple transactions in order to avoid reporting under this section.

(ii) The term *related transactions* means any transaction conducted between a payer (or its agent) and a recipient of currency in a 24-hour period. Additionally, transactions conducted between a payer (or its agent) and a currency recipient during a period of more than 24 hours are related if the recipient knows or has reason to know that each transaction is one of a series of connected transactions.

(iii) The following examples illustrate the definition of paragraphs (c)(12) (i) and (ii) of this section:

Example 1. A person has a tacit agreement with a gold dealer to purchase $36,000 in gold bullion. The $36,000 purchase represents a single transaction under paragraph (c)(12)(i) of this section and the reporting requirements of this section cannot be avoided by recasting the single sales transaction into 4 separate $9,000 sales transactions.

Example 2. An attorney agrees to represent a client in a criminal case with the attorney's fee to be determined on an hourly basis. In the first month in which the attorney represents the client, the bill for the attorney's services comes to $8,000 which the client pays in currency. In the second month in which the attorney represents the client, the bill for the attorney's services comes to $4,000, which the client again pays in currency. The aggregate amount of currency paid ($12,000) relates to a single transaction as defined in paragraph (c)(12)(i) of this section, the sale of legal services relating to the criminal case, and the receipt of currency must be reported under this section.

Example 3. A person intends to contribute a total of $45,000 to a trust fund, and the trustee of the fund knows or has reason to know of that intention. The $45,000 contribution is a single transaction under paragraph (c)(12)(i) of this section and the reporting requirement of this section cannot be avoided by the grantor's making five separate $9,000 contributions of currency to a single fund or by making five $9,000 contributions of currency to five separate funds administered by a common trustee.

Example 4. K, an individual, attends a one day auction and purchases for currency two items, at a cost of $9,240 and $1,732.50 respectively (tax and buyer's premium included). Because the transactions are related transactions as defined in paragraph (c)(12)(ii) of this section, the auction house is required to report the aggregate amount of currency received from the related sales ($10,972.50), even though the auction house accounts separately on its books for each item sold and presents the purchaser with separate bills for each item purchased.

Example 5. F, a coin dealer, sells for currency $9,000 worth of gold coins to an individual on three successive days. Under paragraph (c)(12)(ii) of this section the three $9,000 transactions are related transactions aggregating $27,000 if F knows, or has reason

to know, that each transaction is one of a series of connected transactions.

(13) *Recipient.* (i) The term *recipient* means the person receiving the currency. Except as provided in paragraph (c)(13)(ii) of this section, each store, division, branch, department, headquarters, or office (''branch'') (regardless of physical location) comprising a portion of a person's trade or business shall for purposes of this section be deemed a separate recipient.

(ii) A branch that receives currency payments will not be deemed a separate recipient if the branch (or a central unit linking such branch with other branches) would in the ordinary course of business have reason to know the identity of payers making currency payments to other branches of such person.

(iii) *Examples.* The following examples illustrate the application of the rules in paragraphs (c)(13)(i) and (ii) of this section:

Example 1. N, an individual, purchases regulated futures contracts at a cost of $7,500 and $5,000, respectively, through two different branches of Commodities Broker X on the same day. N pays for each purchase with currency. Each branch of Commodities Broker X transmits the sales information regarding each of N's purchases to a central unit of Commodities Broker X (which settles the transactions against N's account). Under paragraph (c)(13)(ii) of this section the separate branches of Commodities Broker X are not deemed to be separate recipients; therefore, Commodities Broker X must report with respect to the two related regulated futures contracts sales in accordance with this section.

Example 2. P, a corporation, owns and operates a racetrack. P's racetrack contains 100 betting windows at which pari-mutuel wagers may be made. R, an individual, places currency wagers of $3,000 each at five separate betting windows. Assuming that in the ordinary course of business each betting window (or a central unit linking windows) does not have reason to know the identity of persons making wagers at other betting windows, each betting window would be deemed to be a separate currency recipient under paragraph (c)(13)(i) of this section. As no individual recipient received currency in excess of $10,000, no report need be made by P under this section.

(d) *Exceptions to the reporting requirements of 31 U.S.C. 5331—(1) Receipt of currency by certain casinos having gross annual gaming revenue in excess of $1,000,000*—(i) *In general.* If a casino receives currency in excess of $10,000 and is required to report the receipt of such currency directly to the Treasury Department under §§ 103.22 (a)(2) and 103.25 and is subject to the recordkeeping requirements of § 103.36, then the casino is not required to make a report with respect to the receipt of such currency under 31 U.S.C. 5331 and this section.

(ii) *Casinos exempt under § 103.55(c).* Pursuant to § 103.55, the Secretary may exempt from the reporting and recordkeeping requirements under §§ 103.22, 103.25 and 103.36 casinos in any state whose regulatory system substantially meets the reporting and recordkeeping requirements of this part. Such casinos shall not be required to report receipt of currency under 31 U.S.C. 5331 and this section.

(iii) *Reporting of currency received in a nongaming business.* Nongaming businesses (such as shops, restaurants, entertainment, and hotels) at casino hotels and resorts are separate trades or businesses in which the receipt of currency in excess of $10,000 is reportable under section 5331 and these regulations. Thus, a casino exempt under paragraph (d)(1)(i) or (ii) of this section must report with respect to currency in excess of $10,000 received in its nongaming businesses.

(iv) *Example.* The following example illustrates the application of the rules in paragraphs (d)(2) (i) and (iii) of this section:

Example. A and B are casinos having gross annual gaming revenue in excess of $1,000,000. C is a casino with gross annual gaming revenue of less than $1,000,000. Casino A receives $15,000 in currency from a customer with respect to a gaming transaction which the casino reports to the Treasury Department under §§ 103.22(a)(2) and 103.25. Casino B receives $15,000 in currency from a customer in payment for accommodations provided to that customer at Casino B's hotel. Casino C receives $15,000 in currency from a customer with respect to a gaming transaction. Casino A is not required to report the transaction under 31 U.S.C. 5331 or this section because the exception for certain casinos provided in paragraph (d)(1)(i) of this section (''the casino exception'') applies. Casino B is required to report under 31 U.S.C. 5331 and this section because the casino exception does not apply to the receipt of currency from a nongaming activity. Casino C is required to report under 31 U.S.C. 5331 and

this section because the casino exception does not apply to casinos having gross annual gaming revenue of $1,000,000 or less which do not have to report to the Treasury Department under §§ 103.22(a)(2) and 103.25.

(2) *Receipt of currency not in the course of the recipient's trade or business.* The receipt of currency in excess of $10,000 by a person other than in the course of the person's trade or business is not reportable under 31 U.S.C. 5331. Thus, for example, F, an individual in the trade or business of selling real estate, sells a motorboat for $12,000, the purchase price of which is paid in currency. F did not use the motorboat in any trade or business in which F was engaged. F is not required to report under 31 U.S.C. 5331 or this section because the exception provided in this paragraph (d)(2) applies.

(3) *Receipt is made with respect to a foreign currency transaction*—(i) *In general.* Generally, there is no requirement to report with respect to a currency transaction if the entire transaction occurs outside the United States (the fifty states and the District of Columbia). An entire transaction consists of both the transaction as defined in paragraph (c)(12)(i) of this section and the receipt of currency by the recipient. If, however, any part of an entire transaction occurs in the Commonwealth of Puerto Rico or a possession or territory of the United States and the recipient of currency in that transaction is subject to the general jurisdiction of the Internal Revenue Service under title 26 of the United States Code, the recipient is required to report the transaction under this section.

(ii) *Example.* The following example illustrates the application of the rules in paragraph (d)(3)(i) of this section:

Example. W, an individual engaged in the trade or business of selling aircraft, reaches an agreement to sell an airplane to a U.S. citizen living in Mexico. The agreement, no portion of which is formulated in the United States, calls for a purchase price of $125,000 and requires delivery of and payment for the airplane to be made in Mexico. Upon delivery of the airplane in Mexico, W receives $125,000 in currency. W is not required to report under 31 U.S.C. 5331 or this section because the exception provided in paragraph (d)(3)(i) of this section (''foreign transaction exception'') applies. If, however, any part of the agreement to sell had been formulated in the United States, the foreign transaction exception would not apply and W would be required to report the receipt of currency under 31 U.S.C. 5331 and this section.

(e) *Time, manner, and form of reporting*—(1) *In general.* The reports required by paragraph (a) of this section must be made by filing a Form 8300, as specified in 26 CFR 1.6050I–1(e)(2). The reports must be filed at the time and in the manner specified in 26 CFR 1.6050I–1(e)(1) and (3) respectively.

(2) *Verification.* A person making a report of information under this section must verify the identity of the person from whom the reportable currency is received. Verification of the identity of a person who purports to be an alien must be made by examination of such person's passport, alien identification card, or other official document evidencing nationality or residence. Verification of the identity of any other person may be made by examination of a document normally acceptable as a means of identification when cashing or accepting checks (for example, a driver's license or a credit card). In addition, a report will be considered incomplete if the person required to make a report knows (or has reason to know) that an agent is conducting the transaction for a principal, and the return does not identify both the principal and the agent.

(3) *Retention of reports.* A person required to make a report under this section must keep a copy of each report filed for five years from the date of filing.

[66 FR 67681, Dec. 31, 2001]

Subpart C—Records Required To Be Maintained

§ 103.31 Determination by the Secretary.

The Secretary hereby determines that the records required to be kept by this subpart have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings.

§ 103.32 Records to be made and retained by persons having financial interests in foreign financial accounts.

Records of accounts required by § 103.24 to be reported to the Commissioner of Internal Revenue shall be retained by each person having a financial interest in or signature or other authority over any such account. Such records shall contain the name in which each such account is maintained, the number or other designation of such account, the name and address of the foreign bank or other person with whom such account is maintained, the type of such account, and the maximum value of each such account during the reporting period. Such records shall be retained for a period of 5 years and shall be kept at all times available for inspection as authorized by law. In the computation of the period of 5 years, there shall be disregarded any period beginning with a date on which the taxpayer is indicted or information instituted on account of the filing of a false or fraudulent Federal income tax return or failing to file a Federal income tax return, and ending with the date on which final disposition is made of the criminal proceeding.

[37 FR 6912, Apr. 5, 1972, as amended at 52 FR 11444, Apr. 8, 1987]

§ 103.33 Records to be made and retained by financial institutions.

Each financial institution shall retain either the original or a microfilm or other copy or reproduction of each of the following:

(a) A record of each extension of credit in an amount in excess of $10,000, except an extension of credit secured by an interest in real property, which record shall contain the name and address of the person to whom the extension of credit is made, the amount thereof, the nature or purpose thereof, and the date thereof;

(b) A record of each advice, request, or instruction received or given regarding any transaction resulting (or intended to result and later canceled if such a record is normally made) in the transfer of currency or other monetary instruments, funds, checks, investment securities, or credit, of more than $10,000 to or from any person, account, or place outside the United States.

(c) A record of each advice, request, or instruction given to another financial institution or other person located within or without the United States, regarding a transaction intended to result in the transfer of funds, or of currency, other monetary instruments, checks, investment securities, or credit, of more than $10,000 to a person, account or place outside the United States.

(d) A record of such information for such period of time as the Secretary may require in an order issued under § 103.26(a), not to exceed five years.

(e) *Banks.* Each agent, agency, branch, or office located within the United States of a bank is subject to the requirements of this paragraph (e) with respect to a funds transfer in the amount of $3,000 or more:

(1) *Recordkeeping requirements.* (i) For each payment order that it accepts as an originator's bank, a bank shall obtain and retain either the original or a microfilm, other copy, or electronic record of the following information relating to the payment order:

(A) The name and address of the originator;

(B) The amount of the payment order;

(C) The execution date of the payment order;

(D) Any payment instructions received from the originator with the payment order;

(E) The identity of the beneficiary's bank; and

(F) As many of the following items as are received with the payment order:[1]

(*1*) The name and address of the beneficiary;

(*2*) The account number of the beneficiary; and

(*3*) Any other specific identifier of the beneficiary.

(ii) For each payment order that it accepts as an intermediary bank, a

[1] For funds transfers effected through the Federal Reserve's Fedwire funds transfer system, only one of the items is required to be retained, if received with the payment order, until such time as the bank that sends the order to the Federal Reserve Bank completes its conversion to the expanded Fedwire message format.

bank shall retain either the original or a microfilm, other copy, or electronic record of the payment order.

(iii) For each payment order that it accepts as a beneficiary's bank, a bank shall retain either the original or a microfilm, other copy, or electronic record of the payment order.

(2) *Originators other than established customers.* In the case of a payment order from an originator that is not an established customer, in addition to obtaining and retaining the information required in paragraph (e)(1)(i) of this section:

(i) If the payment order is made in person, prior to acceptance the originator's bank shall verify the identity of the person placing the payment order. If it accepts the payment order, the originator's bank shall obtain and retain a record of the name and address, the type of identification reviewed, the number of the identification document (*e.g.,* driver's license), as well as a record of the person's taxpayer identification number (*e.g.,* social security or employer identification number) or, if none, alien identification number or passport number and country of issuance, or a notation in the record of the lack thereof. If the originator's bank has knowledge that the person placing the payment order is not the originator, the originator's bank shall obtain and retain a record of the originator's taxpayer identification number (*e.g.,* social security or employer identification number) or, if none, alien identification number or passport number and country of issuance, if known by the person placing the order, or a notation in the record of the lack thereof.

(ii) If the payment order accepted by the originator's bank is not made in person, the originator's bank shall obtain and retain a record of name and address of the person placing the payment order, as well as the person's taxpayer identification number (*e.g.,* social security or employer identification number) or, if none, alien identification number or passport number and country of issuance, or a notation in the record of the lack thereof, and a copy or record of the method of payment (*e.g.,* check or credit card transaction) for the funds transfer. If the originator's bank has knowledge that the person placing the payment order is not the originator, the originator's bank shall obtain and retain a record of the originator's taxpayer identification number (*e.g.,* social security or employer identification number) or, if none, alien identification number or passport number and country of issuance, if known by the person placing the order, or a notation in the record of the lack thereof.

(3) *Beneficiaries other than established customers.* For each payment order that it accepts as a beneficiary's bank for a beneficiary that is not an established customer, in addition to obtaining and retaining the information required in paragraph (e)(1)(iii) of this section:

(i) if the proceeds are delivered in person to the beneficiary or its representative or agent, the beneficiary's bank shall verify the identity of the person receiving the proceeds and shall obtain and retain a record of the name and address, the type of identification reviewed, and the number of the identification document (*e.g.,* driver's license), as well as a record of the person's taxpayer identification number (*e.g.,* social security or employer identification number) or, if none, alien identification number or passport number and country of issuance, or a notation in the record of the lack thereof. If the beneficiary's bank has knowledge that the person receiving the proceeds is not the beneficiary, the beneficiary's bank shall obtain and retain a record of the beneficiary's name and address, as well as the beneficiary's taxpayer identification number (*e.g.,* social security or employer identification number) or, if none, alien identification number or passport number and country of issuance, if known by the person receiving the proceeds, or a notation in the record of the lack thereof.

(ii) if the proceeds are delivered other than in person, the beneficiary's bank shall retain a copy of the check or other instrument used to effect payment, or the information contained thereon, as well as the name and address of the person to which it was sent.

(4) *Retrievability.* The information that an originator's bank must retain under paragraphs (e)(1)(i) and (e)(2) of

this section shall be retrievable by the originator's bank by reference to the name of the originator. If the originator is an established customer of the originator's bank and has an account used for funds transfers, then the information also shall be retrievable by account number. The information that a beneficiary's bank must retain under paragraphs (e)(1)(iii) and (e)(3) of this section shall be retrievable by the beneficiary's bank by reference to the name of the beneficiary. If the beneficiary is an established customer of the beneficiary's bank and has an account used for funds transfers, then the information also shall be retrievable by account number. This information need not be retained in any particular manner, so long as the bank is able to retrieve the information required by this paragraph, either by accessing funds transfer records directly or through reference to some other record maintained by the bank.

(5) *Verification*. Where verification is required under paragraphs (e)(2) and (e)(3) of this section, a bank shall verify a person's identity by examination of a document (other than a bank signature card), preferably one that contains the person's name, address, and photograph, that is normally acceptable by financial institutions as a means of identification when cashing checks for persons other than established customers. Verification of the identity of an individual who indicates that he or she is an alien or is not a resident of the United States may be made by passport, alien identification card, or other official document evidencing nationality or residence (*e.g.*, a foreign driver's license with indication of home address).

(6) *Exceptions.* The following funds transfers are not subject to the requirements of this section:

(i) Funds transfers where the originator and beneficiary are any of the following:

(A) A bank;

(B) A wholly-owned domestic subsidiary of a bank chartered in the United States;

(C) A broker or dealer in securities;

(D) A wholly-owned domestic subsidiary of a broker or dealer in securities;

(E) A futures commission merchant or an introducing broker in commodities;

(F) A wholly-owned domestic subsidiary of a futures commission merchant or an introducing broker in commodities;

(G) The United States;

(H) A state or local government; or

(I) A federal, state or local government agency or instrumentality; and

(ii) Funds transfers where both the originator and the beneficiary are the same person and the originator's bank and the beneficiary's bank are the same bank.

(f) *Nonbank financial institutions.* Each agent, agency, branch, or office located within the United States of a financial institution other than a bank is subject to the requirements of this paragraph (f) with respect to a transmittal of funds in the amount of $3,000 or more:

(1) *Recordkeeping requirements.* (i) For each transmittal order that it accepts as a transmittor's financial institution, a financial institution shall obtain and retain either the original or a microfilm, other copy, or electronic record of the following information relating to the transmittal order:

(A) The name and address of the transmittor;

(B) The amount of the transmittal order;

(C) The execution date of the transmittal order;

(D) Any payment instructions received from the transmittor with the transmittal order;

(E) The identity of the recipient's financial institution;

(F) As many of the following items as are received with the transmittal order:[2]

(*1*) The name and address of the recipient;

(*2*) The account number of the recipient; and

[2] For transmittals of funds effected through the Federal Reserve's Fedwire funds transfer system by a domestic broker or dealers in securities, only one of the items is required to be retained, if received with the transmittal order, until such time as the bank that sends the order to the Federal Reserve Bank completes its conversion to the expanded Fedwire message format.

(*3*) Any other specific identifier of the recipient; and

(G) Any form relating to the transmittal of funds that is completed or signed by the person placing the transmittal order.

(ii) For each transmittal order that it accepts as an intermediary financial institution, a financial institution shall retain either the original or a microfilm, other copy, or electronic record of the transmittal order.

(iii) for each transmittal order that it accepts as a recipient's financial institution, a financial institution shall retain either the original or a microfilm, other copy, or electronic record of the transmittal order.

(2) *Transmittors other than established customers.* In the case of a transmittal order from a transmittor that is not an established customer, in addition to obtaining and retaining the information required in paragraph (f)(1)(i) of this section:

(i) If the transmittal order is made in person, prior to acceptance the transmittor's financial institution shall verify the identity of the person placing the transmittal order. If it accepts the transmittal order, the transmittor's financial institution shall obtain and retain a record of the name and address, the type of identification reviewed, and the number of the identification document (*e.g.,* driver's license), as well as a record of the person's taxpayer identification number (*e.g.,* social security or employer identification number) or, if none, alien identification number or passport number and country of issuance, or a notation in the record the lack thereof. If the transmittor's financial institution has knowledge that the person placing the transmittal order is not the transmittor, the transmittor's financial institution shall obtain and retain a record of the transmittor's taxpayer identification number (*e.g.,* social security or employer identification number) or, if none, alien identification number or passport number and country of issuance, if known by the person placing the order, or a notation in the record the lack thereof.

(ii) If the transmittal order accepted by the transmittor's financial institution is not made in person, the transmittor's financial institution shall obtain and retain a record of the name and address of the person placing the transmittal order, as well as the person's taxpayer identification number (*e.g.,* social security or employer identification number) or, if none, alien identification number or passport number and country of issuance, or a notation in the record of the lack thereof, and a copy or record of the method of payment (*e.g.,* check or credit card transaction) for the transmittal of funds. If the transmittor's financial institution has knowledge that the person placing the transmittal order is not the transmittor, the transmittor's financial institution shall obtain and retain a record of the transmittor's taxpayer identification number (*e.g.,* social security or employer identification number) or, if none, alien identification number or passport number and country of issuance, if known by the person placing the order, or a notation in the record the lack thereof.

(3) *Recipients other than established customers.* For each transmittal order that it accepts as a recipient's financial institution for a recipient that is not an established customer, in addition to obtaining and retaining the information required in paragraph (f)(1)(iii) of this section:

(i) If the proceeds are delivered in person to the recipient or its representative or agent, the recipient's financial institution shall verify the identity of the person receiving the proceeds and shall obtain and retain a record of the name and address, the type of identification reviewed, and the number of the identification document (*e.g.,* driver's license), as well as a record of the person's taxpayer identification number (*e.g.,* social security or employer identification number) or, if none, alien identification number or passport number and country of issuance, or a notation in the record of the lack thereof. If the recipient's financial institution has knowledge that the person receiving the proceeds is not the recipient, the recipient's financial institution shall obtain and retain a record of the recipient's name and address, as well as the recipient's taxpayer identification number (*e.g.,* social security or employer identification

number) or, if none, alien identification number or passport number and country of issuance, if known by the person receiving the proceeds, or a notation in the record of the lack thereof.

(ii) If the proceeds are delivered other than in person, the recipient's financial institution shall retain a copy of the check or other instrument used to effect payment, or the information contained thereon, as well as the name and address of the person to which it was sent.

(4) *Retrievability*. The information that a transmittor's financial institution must retain under paragraphs (f)(1)(i) and (f)(2) of this section shall be retrievable by the transmittor's financial institution by reference to the name of the transmittor. If the transmittor is an established customer of the transmittor's financial institution and has an account used for transmittals of funds, then the information also shall be retrievable by account number. The information that a recipient's financial institution must retain under paragraphs (f)(1)(iii) and (f)(3) of this section shall be retrievable by the recipient's financial institution by reference to the name of the recipient. If the recipient is an established customer of the recipient's financial institution and has an account used for transmittals of funds, then the information also shall be retrievable by account number. This information need not be retained in any particular manner, so long as the financial institution is able to retrieve the information required by this paragraph, either by accessing transmittal of funds records directly or through reference to some other record maintained by the financial institution.

(5) *Verification*. Where verification is required under paragraphs (f)(2) and (f)(3) of this section, a financial institution shall verify a person's identity by examination of a document (other than a customer signature card), preferably one that contains the person's name, address, and photograph, that is normally acceptable by financial institutions as a means of identification when cashing checks for persons other than established customers. Verification of the identity of an individual who indicates that he or she is an alien or is not a resident of the United States may be made by passport, alien identification card, or other official document evidencing nationality or residence (*e.g.*, a foreign driver's license with indication of home address).

(6) *Exceptions*. The following transmittals of funds are not subject to the requirements of this section:

(i) Transmittals of funds where the transmittor and the recipient are any of the following:

(A) A bank;

(B) A wholly-owned domestic subsidiary of a bank chartered in the United States;

(C) A broker or dealer in securities;

(D) A wholly-owned domestic subsidiary of a broker or dealer in securities;

(E) A futures commission merchant or an introducing broker in commodities;

(F) A wholly-owned domestic subsidiary of a futures commission merchant or an introducing broker in commodities;

(G) The United States;

(H) A state or local government; or

(I) A federal, state or local government agency or instrumentality; and

(ii) Transmittals of funds where both the transmittor and the recipient are the same person and the transmittor's financial institution and the recipient's financial institution are the same broker or dealer in securities.

(g) Any transmittor's financial institution or intermediary financial institution located within the United States shall include in any transmittal order for a transmittal of funds in the amount of $3,000 or more, information as required in this paragraph (g):

(1) A transmittor's financial institution shall include in a transmittal order, at the time it is sent to a receiving financial institution, the following information:

(i) The name and, if the payment is ordered from an account, the account number of the transmittor;

(ii) The address of the transmittor, except for a transmittal order through Fedwire until such time as the bank that sends the order to the Federal Reserve Bank completes its conversion to the expanded Fedwire format;

(iii) The amount of the transmittal order;

(iv) The execution date of the transmittal order;

(v) The identity of the recipient's financial institution;

(vi) As many of the following items as are received with the transmittal order:[3]

(A) The name and address of the recipient;

(B) The account number of the recipient;

(C) Any other specific identifier of the recipient; and

(vii) Either the name and address or numerical identifier of the transmittor's financial institution.

(2) A receiving financial institution that acts as an intermediary financial institution, if it accepts a transmittal order, shall include in a corresponding transmittal order at the time it is sent to the next receiving financial institution, the following information, if received from the sender:

(i) The name and the account number of the transmittor;

(ii) The address of the transmittor, except for a transmittal order through Fedwire until such time as the bank that sends the order to the Federal Reserve Bank completes its conversion to the expanded Fedwire format;

(iii) The amount of the transmittal order;

(iv) The execution date of the transmittal order;

(v) The identity of the recipient's financial institution;

(vi) As many of the following items as are received with the transmittal order:[4]

(A) The name and address of the recipient;

(B) The account number of the recipient;

(C) Any other specific identifier of the recipient; and

(vii) Either the name and address or numerical identifier of the transmittor's financial institution.

(3) *Safe harbor for transmittals of funds prior to conversion to the expanded Fedwire message format.* The following provisions apply to transmittals of funds effected through the Federal Reserve's Fedwire funds transfer system or otherwise by a financial institution before the bank that sends the order to the Federal Reserve Bank or otherwise completes its conversion to the expanded Fedwire message format.

(i) *Transmittor's financial institution.* A transmittor's financial institution will be deemed to be in compliance with the provisions of paragraph (g)(1) of this section if it:

(A) Includes in the transmittal order, at the time it is sent to the receiving financial institution, the information specified in paragraphs (g)(1)(iii) through (v), and the information specified in paragraph (g)(1)(vi) of this section to the extent that such information has been received by the financial institution, and

(B) Provides the information specified in paragraphs (g)(1)(i), (ii) and (vii) of this section to a financial institution that acted as an intermediary financial institution or recipient's financial institution in connection with the transmittal order, within a reasonable time after any such financial institution makes a request therefor in connection with the requesting financial institution's receipt of a lawful request for such information from a federal, state, or local law enforcement or financial regulatory agency, or in connection with the requesting financial institution's own Bank Secrecy Act compliance program.

(ii) *Intermediary financial institution.* An intermediary financial institution will be deemed to be in compliance

[3] For transmittals of funds effected through the Federal Reserve's Fedwire funds transfer system by a financial institution, only one of the items is required to be included in the transmittal order, if received with the sender's transmittal order, until such time as the bank that sends the order to the Federal Reserve Bank completes its conversion to the expanded Fedwire message format.

[4] For transmittals of funds effected through the Federal Reserve's Fedwire funds transfer system by a financial institution, only one of the items is required to be included in the transmittal order, if received with the sender's transmittal order, until such time as the bank that sends the order to the Federal Reserve Bank completes its conversion to the expanded Fedwire message format.

with the provisions of paragraph (g)(2) of this section if it:

(A) Includes in the transmittal order, at the time it is sent to the receiving financial institution, the information specified in paragraphs (g)(2)(iii) through (g)(2)(vi) of this section, to the extent that such information has been received by the intermediary financial institution; and

(B) Provides the information specified in paragraphs (g)(2)(i), (ii) and (vii) of this section, to the extent that such information has been received by the intermediary financial institution, to a financial institution that acted as an intermediary financial institution or recipient's financial institution in connection with the transmittal order, within a reasonable time after any such financial institution makes a request therefor in connection with the requesting financial institution's receipt of a lawful request for such information from a federal, state, or local law enforcement or regulatory agency, or in connection with the requesting financial institution's own Bank Secrecy Act compliance program.

(iii) *Obligation of requesting financial institution.* Any information requested under paragraph (g)(3)(i)(B) or (g)(3)(ii)(B) of this section shall be treated by the requesting institution, once received, as if it had been included in the transmittal order to which such information relates.

(4) *Exceptions.* The requirements of this paragraph (g) shall not apply to transmittals of funds that are listed in paragraph (e)(6) or (f)(6) of this section.

(Approved by the Office of Management and Budget under control number 1505–0063)

[37 FR 6912, Apr. 5, 1972, as amended at 52 FR 11444, Apr. 8, 1987; 54 FR 33679, Aug. 16, 1989; 60 FR 229, 238, Jan. 3, 1995; 61 FR 14385, 14388, Apr. 1, 1996; 61 FR 18250, Apr. 25, 1996; 68 FR 65399, Nov. 20, 2003]

§ 103.34 Additional records to be made and retained by banks.

(a)(1) With respect to each certificate of deposit sold or redeemed after May 31, 1978, and before October 1, 2003, or each deposit or share account opened with a bank after June 30, 1972, and before October 1, 2003, a bank shall, within 30 days from the date such a transaction occurs or an account is opened, secure and maintain a record of the taxpayer identification number of the customer involved; or where the account or certificate is in the names of two or more persons, the bank shall secure the taxpayer identification number of a person having a financial interest in the certificate or account. In the event that a bank has been unable to secure, within the 30-day period specified, the required identification, it shall nevertheless not be deemed to be in violation of this section if (i) it has made a reasonable effort to secure such identification, and (ii) it maintains a list containing the names, addresses, and account numbers of those persons from whom it has been unable to secure such identification, and makes the names, addresses, and account numbers of those persons available to the Secretary as directed by him. A bank acting as an agent for another person in the purchase or redemption of a certificate of deposit issued by another bank is responsible for obtaining and recording the required taxpayer identification, as well as for maintaining the records referred to in paragraphs (b)(11) and (12) of this section. The issuing bank can satisfy the recordkeeping requirement by recording the name and address of the agent together with a description of the instrument and the date of the transaction. Where a person is a non-resident alien, the bank shall also record the person's passport number or a description of some other government document used to verify his identity.

(2) The 30-day period provided for in paragraph (a)(1) of this section shall be extended where the person opening the account has applied for a taxpayer identification or social security number on Form SS-4 or SS-5, until such time as the person maintaining the account has had a reasonable opportunity to secure such number and furnish it to the bank.

(3) A taxpayer identification number required under paragraph (a)(1) of this section need not be secured for accounts or transactions with the following: (i) Agencies and instrumentalities of Federal, state, local or foreign governments; (ii) judges, public officials, or clerks of courts of record as custodians of funds in controversy or

under the control of the court; (iii) aliens who are (A) ambassadors, ministers, career diplomatic or consular officers, or (B) naval, military or other attaches of foreign embassies and legations, and for the members of their immediate families; (iv) aliens who are accredited representatives of international organizations which are entitled to enjoy privileges, exemptions and immunities as an international organization under the International Organization Immunities Act of December 29, 1945 (22 U.S.C. 288), and the members of their immediate families; (v) aliens temporarily residing in the United States for a period not to exceed 180 days; (vi) aliens not engaged in a trade or business in the United States who are attending a recognized college or university or any training program, supervised or conducted by any agency of the Federal Government; (vii) unincorporated subordinate units of a tax exempt central organization which are covered by a group exemption letter, (viii) a person under 18 years of age with respect to an account opened as a part of a school thrift savings program, provided the annual interest is less than $10; (ix) a person opening a Christmas club, vacation club and similar installment savings programs provided the annual interest is less than $10; and (x) non-resident aliens who are not engaged in a trade or business in the United States. In instances described in paragraphs (a)(3), (viii) and (ix) of this section, the bank shall, within 15 days following the end of any calendar year in which the interest accrued in that year is $10 or more use its best effort to secure and maintain the appropriate taxpayer identification number or application form therefor.

(4) The rules and regulations issued by the Internal Revenue Service under section 6109 of the Internal Revenue Code of 1954 shall determine what constitutes a taxpayer identification number and whose number shall be obtained in the case of an account maintained by one or more persons.

(b) Each bank shall, in addition, retain either the original or a microfilm or other copy or reproduction of each of the following:

(1) Each document granting signature authority over each deposit or share account, including any notations, if such are normally made, of specific identifying information verifying the identity of the signer (such as a driver's license number or credit card number);

(2) Each statement, ledger card or other record on each deposit or share account, showing each transaction in, or with respect to, that account;

(3) Each check, clean draft, or money order drawn on the bank or issued and payable by it, except those drawn for $100 or less or those drawn on accounts which can be expected to have drawn on them an average of at least 100 checks per month over the calendar year or on each occasion on which such checks are issued, and which are (i) dividend checks, (ii) payroll checks, (iii) employee benefit checks, (iv) insurance claim checks, (v) medical benefit checks, (vi) checks drawn on government agency accounts, (vii) checks drawn by brokers or dealers in securities, (viii) checks drawn on fiduciary accounts, (ix) checks drawn on other financial institutions, or (x) pension or annuity checks;

(4) Each item in excess of $100 (other than bank charges or periodic charges made pursuant to agreement with the customer), comprising a debit to a customer's deposit or share account, not required to be kept, and not specifically exempted, under paragraph (b)(3) of this section;

(5) Each item, including checks, drafts, or transfers of credit, of more than $10,000 remitted or transferred to a person, account or place outside the United States;

(6) A record of each remittance or transfer of funds, or of currency, other monetary instruments, checks, investment securities, or credit, of more than $10,000 to a person, account or place outside the United States;

(7) Each check or draft in an amount in excess of $10,000 drawn on or issued by a foreign bank which the domestic bank has paid or presented to a nonbank drawee for payment;

(8) Each item, including checks, drafts or transfers of credit, of more than $10,000 received directly and not

through a domestic financial institution, by letter, cable or any other means, from a bank, broker or dealer in foreign exchange outside the United States;

(9) A record of each receipt of currency, other monetary instruments, investment securities or checks, and of each transfer of funds or credit, of more than $10,000 received on any one occasion directly and not through a domestic financial institution, from a bank, broker or dealer in foreign exchange outside the United States; and

(10) Records prepared or received by a bank in the ordinary course of business, which would be needed to reconstruct a transaction account and to trace a check in excess of $100 deposited in such account through its domestic processing system or to supply a description of a deposited check in excess of $100. This subparagraph shall be applicable only with respect to demand deposits.

(11) A record containing the name, address, and taxpayer identification number as determined under section 6109 of the Internal Revenue Code of 1986, if available, of the purchaser of each certificate of deposit, as well as a description of the instrument, a notation of the method of payment, and the date of the transaction.

(12) A record containing the name, address and taxpayer identification number as determined under section 6109 of the Internal Revenue Code of 1986, if available, of any person presenting a certificate of deposit for payment, as well as a description of the instrument and the date of the transaction.

(13) Each deposit slip or credit ticket reflecting a transaction in excess of $100 or the equivalent record for direct deposit or other wire transfer deposit transactions. The slip or ticket shall record the amount of any currency involved.

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[38 FR 2175, Jan. 22, 1973, as amended at 38 FR 3509, Feb. 7, 1973; 43 FR 21672, May 19, 1978; 52 FR 11444, Apr. 8, 1987; 68 FR 25109, May 9, 2003]

§ 103.35 Additional records to be made and retained by brokers or dealers in securities.

(a)(1) With respect to each brokerage account opened with a broker or dealer in securities after June 30, 1972, and before October 1, 2003, by a person residing or doing business in the United States or a citizen of the United States, such broker or dealer shall within 30 days from the date such account is opened, secure and maintain a record of the taxpayer identification number of the person maintaining the account; or in the case of an account of one or more individuals, such broker or dealer shall secure and maintain a record of the social security number of an individual having a financial interest in that account. In the event that a broker or dealer has been unable to secure the identification required within the 30-day period specified, it shall nevertheless not be deemed to be in violation of this section if: (i) It has made a reasonable effort to secure such identification, and (ii) it maintains a list containing the names, addresses, and account numbers of those persons from whom it has been unable to secure such identification, and makes the names, addresses, and account numbers of those persons available to the Secretary as directed by him. Where a person is a non-resident alien, the broker or dealer in securities shall also record the person's passport number or a description of some other government document used to verify his identity.

(2) The 30-day period provided for in paragraph (a)(1) of this section shall be extended where the person opening the account has applied for a taxpayer identification or social security number on Form SS-4 or SS-5, until such time as the person maintaining the account has had a reasonable opportunity to secure such number and furnish it to the broker or dealer.

(3) A taxpayer identification number for a deposit or share account required under paragraph (a)(1) of this section need not be secured in the following instances: (i) Accounts for public funds opened by agencies and instrumentalities of Federal, state, local, or foreign governments, (ii) accounts for aliens who are (*a*) ambassadors, ministers, career diplomatic or consular officers, or

(*b*) naval, military or other attaches of foreign embassies, and legations, and for the members of their immediate families, (iii) accounts for aliens who are accredited representatives to international organizations which are entitled to enjoy privileges, exemptions, and immunities as an international organization under the International Organizations Immunities Act of December 29, 1945 (22 U.S.C. 288), and for the members of their immediate families, (iv) aliens temporarily residing in the United States for a period not to exceed 180 days, (v) aliens not engaged in a trade or business in the United States who are attending a recognized college or university or any training program, supervised or conducted by any agency of the Federal Government, and (vi) unincorporated subordinate units of a tax exempt central organization which are covered by a group exemption letter.

(b) Every broker or dealer in securities shall, in addition, retain either the original or a microfilm or other copy or reproduction of each of the following:

(1) Each document granting signature or trading authority over each customer's account;

(2) Each record described in § 240.17a–3(a) (1), (2), (3), (5), (6), (7), (8), and (9) of Title 17, *Code of Federal Regulations*;

(3) A record of each remittance or transfer of funds, or of currency, checks, other monetary instruments, investment securities, or credit, of more than $10,000 to a person, account, or place, outside the United States;

(4) A record of each receipt of currency, other monetary instruments, checks, or investment securities and of each transfer of funds or credit, of more than $10,000 received on any one occasion directly and not through a domestic financial institution, from any person, account or place outside the United States.

(Approved by the Office of Management and Budget under control number 1505–0063)

[37 FR 26518, Dec. 13, 1972, as amended at 38 FR 2176, Jan. 22, 1973; 52 FR 11444, Apr. 8, 1987; 68 FR 25129, May 9, 2003]

§ 103.36 Additional records to be made and retained by casinos.

(a) With respect to each deposit of funds, account opened or line of credit extended after the effective date of these regulations, a casino shall, at the time the funds are deposited, the account is opened or credit is extended, secure and maintain a record of the name, permanent address, and social security number of the person involved. Where the deposit, account or credit is in the names of two or more persons, the casino shall secure the name, permanent address, and social security number of each person having a financial interest in the deposit, account or line of credit. The name and address of such person shall be verified by the casino at the time the deposit is made, account opened, or credit extended. The verification shall be made by examination of a document of the type described in § 103.28, and the specific identifying information shall be recorded in the manner described in § 103.28. In the event that a casino has been unable to secure the required social security number, it shall not be deemed to be in violation of this section if (1) it has made a reasonable effort to secure such number and (2) it maintains a list containing the names and permanent addresses of those persons from who it has been unable to obtain social security numbers and makes the names and addresses of those persons available to the Secretary upon request. Where a person is a nonresident alien, the casino shall also record the person's passport number or a description of some other government document used to verify his identity.

(b) In addition, each casino shall retain either the original or a microfilm or other copy or reproduction of each of the following:

(1) A record of each receipt (including but not limited to funds for safekeeping or front money) of funds by the casino for the account (credit or deposit) of any person. The record shall include the name, permanent address and social security number of the person from whom the funds were received, as well as the date and amount of the funds received. If the person from whom the funds were received is a

non-resident alien, the person's passport number or a description of some other government document used to verify the person's identity shall be obtained and recorded;

(2) A record of each bookkeeping entry comprising a debit or credit to a customer's deposit account or credit account with the casino;

(3) Each statement, ledger card or other record of each deposit account or credit account with the casino, showing each transaction (including deposits, receipts, withdrawals, disbursements or transfers) in or with respect to, a customer's deposit account or credit account with the casino;

(4) A record of each extension of credit in excess of $2,500, the terms and conditions of such extension of credit, and repayments. The record shall include the customer's name, permanent address, social security number, and the date and amount of the transaction (including repayments). If the customer or person for whom the credit extended is a non-resident alien, his passport number or description of some other government document used to verify his identity shall be obtained and recorded;

(5) A record of each advice, request or instruction received or given by the casino for itself or another person with respect to a transaction involving a person, account or place outside the United States (including but not limited to communications by wire, letter, or telephone). If the transfer outside the United States is on behalf of a third party, the record shall include the third party's name, permanent address, social security number, signature, and the date and amount of the transaction. If the transfer is received from outside the United States on behalf of a third party, the record shall include the third party's name, permanent address, social security number, signature, and the date and amount of the transaction. If the person for whom the transaction is being made is a non-resident alien the record shall also include the person's name, his passport number or a description of some other government document used to verify his identity;

(6) Records prepared or received by the casino in the ordinary course of business which would be needed to reconstruct a person's deposit account or credit account with the casino or to trace a check deposited with the casino through the casino's records to the bank of deposit;

(7) All records, documents or manuals required to be maintained by a casino under state and local laws or regulations, regulations of any governing Indian tribe or tribal government, or terms of (or any regulations issued under) any Tribal-State compacts entered into pursuant to the Indian Gaming Regulatory Act, with respect to the casino in question.

(8) All records which are prepared or used by a casino to monitor a customer's gaming activity.

(9)(i) A separate record containing a list of each transaction between the casino and its customers involving the following types of instruments having a face value of $3,000 or more:

(A) Personal checks (excluding instruments which evidence credit granted by a casino strictly for gaming, such as markers);

(B) Business checks (including casino checks);

(C) Official bank checks;

(D) Cashier's checks;

(E) Third-party checks;

(F) Promissory notes;

(G) Traveler's checks; and

(H) Money orders.

(ii) The list will contain the time, date, and amount of the transaction; the name and permanent address of the customer; the type of instrument; the name of the drawee or issuer of the instrument; all reference numbers (*e.g.*, casino account number, personal check number, etc.); and the name or casino license number of the casino employee who conducted the transaction. Applicable transactions will be placed on the list in the chronological order in which they occur.

(10) A copy of the compliance program described in § 103.64(a).

(11) In the case of card clubs only, records of all currency transactions by customers, including without limitation, records in the form of currency transaction logs and multiple currency

transaction logs, and records of all activity at cages or similar facilities, including, without limitation, cage control logs.

(c)(1) Casinos which input, store, or retain, in whole or in part, for any period of time, any record required to be maintained by § 103.33 or this section on computer disk, tape, or other machine-readable media shall retain the same on computer disk, tape, or machine-readable media.

(2) All indexes, books, programs, record layouts, manuals, formats, instructions, file descriptions, and similar materials which would enable a person readily to access and review the records that are described in § 103.33 and this section and that are input, stored, or retained on computer disk, tape, or other machine-readable media shall be retained for the period of time such records are required to be retained.

(Approved by the Office of Management and Budget under control numbers 1505–0087 and 1505–0063)

[50 FR 5068, Feb. 6, 1985, as amended at 52 FR 11444, Apr. 8, 1987; 54 FR 1167, Jan. 12, 1989; 58 FR 13547, Mar. 12, 1993; 59 FR 61662, Dec. 1, 1994; 61 FR 7056, Feb. 23, 1996; 63 FR 1924, Jan. 13, 1998; 64 FR 45453, Aug. 20, 1999]

§ 103.37 Additional records to be made and retained by currency dealers or exchangers.

(a)(1) After July 7, 1987, each currency dealer or exchanger shall secure and maintain a record of the taxpayer identification number of each person for whom a transaction account is opened or a line of credit is extended within 30 days after such account is opened or credit line extended. Where a person is a non-resident alien, the currency dealer or exchanger shall also record the person's passport number or a description of some other government document used to verify his identity. Where the account or credit line is in the names of two or more persons, the currency dealer or exchanger shall secure the taxpayer identification number of a person having a financial interest in the account or credit line. In the event that a currency dealer or exchanger has been unable to secure the identification required within the 30-day period specified, it shall nevertheless not be deemed to be in violation of this section if:

(i) It has made a reasonable effort to secure such identification, and

(ii) It maintains a list containing the names, addresses, and account or credit line numbers of those persons from whom it has been unable to secure such identification, and makes the names, addresses, and account or credit line numbers of those persons available to the Secretary as directed by him.

(2) The 30-day period provided for in paragraph (a)(1) of this section shall be extended where the person opening the account or credit line has applied for a taxpayer identification or social security number on Form SS-4 or SS-5, until such time as the person maintaining the account or credit line has had a reasonable opportunity to secure such number and furnish it to the currency dealer or exchanger.

(3) A taxpayer identification number for an account or credit line required under paragraph (a)(1) of this section need not be secured in the following instances:

(i) Accounts for public funds opened by agencies and instrumentalities of Federal, state, local or foreign governments,

(ii) Accounts for aliens who are—

(A) Ambassadors, ministers, career diplomatic or consular officers, or

(B) Naval, military or other attaches of foreign embassies, and legations, and for members of their immediate families,

(iii) Accounts for aliens who are accredited representatives to international organizations which are entitled to enjoy privileges, exemptions, and immunities as an international organization under the International Organizations Immunities Act of December 29, 1945 (22 U.S.C. 288), and for the members of their immediate families,

(iv) Aliens temporarily residing in the United States for a period not to exceed 180 days,

(v) Aliens not engaged in a trade or business in the United States who are attending a recognized college or any training program, supervised or conducted by any agency of the Federal Government, and

(vi) Unincorporated subordinate units of a tax exempt central organization which are covered by a group exemption letter.

(b) Each currency dealer or exchanger shall retain either the original or a microfilm or other copy or reproduction of each of the following:

(1) Statements of accounts from banks, including paid checks, charges or other debit entry memoranda, deposit slips and other credit memoranda representing the entries reflected on such statements;

(2) Daily work records, including purchase and sales slips or other memoranda needed to identify and reconstruct currency transactions with customers and foreign banks;

(3) A record of each exchange of currency involving transactions in excess of $1000, including the name and address of the customer (and passport number or taxpayer identification number unless received by mail or common carrier) date and amount of the transaction and currency name, country, and total amount of each foreign currency;

(4) Signature cards or other documents evidencing signature authority over each deposit or security account, containing the name of the depositor, street address, taxpayer identification number (TIN) or employer identification number (EIN) and the signature of the depositor or of a person authorized to sign on the account (if customer accounts are maintained in a code name, a record of the actual owner of the account);

(5) Each item, including checks, drafts, or transfers of credit, of more than $10,000 remitted or transferred to a person, account or place outside the United States;

(6) A record of each receipt of currency, other monetary instruments, investment securities and checks, and of each transfer of funds or credit, or more than $10,000 received on any one occasion directly and not through a domestic financial institution, from any person, account or place outside the United States;

(7) Records prepared or received by a dealer in the ordinary course of business, that would be needed to reconstruct an account and trace a check in excess of $100 deposited in such account through its internal recordkeeping system to its depository institution, or to supply a description of a deposited check in excess of $100;

(8) A record maintaining the name, address and taxpayer identification number, if available, of any person presenting a certificate of deposit for payment, as well as a description of the instrument and date of transaction;

(9) A system of books and records that will enable the currency dealer or exchanger to prepare an accurate balance sheet and income statement.

(c) This section does not apply to banks that offer services in dealing or changing currency to their customers as an adjunct to their regular service.

(Approved by the Office of Management and Budget under control number 1505–0063)

[52 FR 11444, Apr. 8, 1987, as amended at 64 FR 45453, Aug. 20, 1999]

§ 103.38 Nature of records and retention period.

(a) Wherever it is required that there be retained either the original or a microfilm or other copy or reproduction of a check, draft, monetary instrument, investment security, or other similar instrument, there shall be retained a copy of both front and back of each such instrument or document, except that no copy need be retained of the back of any instrument or document which is entirely blank or which contains only standardized printed information, a copy of which is on file.

(b) Records required by this subpart to be retained by financial institutions may be those made in the ordinary course of business by a financial institution. If no record is made in the ordinary course of business of any transaction with respect to which records are required to be retained by this subpart, then such a record shall be prepared in writing by the financial institution.

(c) The rules and regulations issued by the Internal Revenue Service under 26 U.S.C. 6109 determine what constitutes a taxpayer identification number and whose number shall be obtained in the case of an account maintained by one or more persons.

(d) All records that are required to be retained by this part shall be retained

for a period of five years. Records or reports required to be kept pursuant to an order issued under § 103.26 of this part shall be retained for the period of time specified in such order, not to exceed five years. All such records shall be filed or stored in such a way as to be accessible within a reasonable period of time, taking into consideration the nature of the record, and the amount of time expired since the record was made.

(Approved by the Office of Management and Budget under control number 1505–0063)

[37 FR 6912, Apr. 5, 1972. Redesignated at 50 FR 5068, Feb. 6, 1985, and further redesignated and amended at 52 FR 11444, 11445, Apr. 8, 1987; 54 FR 33679, Aug. 16, 1989]

§ 103.39 Person outside the United States.

For the purposes of this subpart, a remittance or transfer of funds, or of currency, other monetary instruments, checks, investment securities, or credit to the domestic account of a person whose address is known by the person making the remittance or transfer, to be outside the United States, shall be deemed to be a remittance or transfer to a person outside the United States, except that, unless otherwise directed by the Secretary, this section shall not apply to a transaction on the books of a domestic financial institution involving the account of a customer of such institution whose address is within approximately 50 miles of the location of the institution, or who is known to be temporarily outside the United States.

[37 FR 6912, Apr. 5, 1972. Redesignated at 50 FR 5068, Feb. 6, 1985 and 52 FR 11444, Apr. 8, 1987]

Subpart D—Special Rules for Money Services Businesses

SOURCE: 64 FR 45451, Aug. 20, 1999, unless otherwise noted.

§ 103.41 Registration of money services businesses.

(a) *Registration requirement*—(1) *In general.* Except as provided in paragraph (a)(2) of this section, relating to agents, each money services business (whether or not licensed as a money services business by any State) must register with the Department of the Treasury and, as part of that registration, maintain a list of its agents as required by 31 U.S.C. 5330 and this section. This section does not apply to the United States Postal Service, to agencies of the United States, of any State, or of any political subdivision of a State, or to a person to the extent that the person is an issuer, seller, or redeemer of stored value.

(2) *Agents.* A person that is a money services business solely because that person serves as an agent of another money services business, see § 103.11(uu), is not required to register under this section, but a money services business that engages in activities described in § 103.11(uu) both on its own behalf and as an agent for others must register under this section. For example, a supermarket corporation that acts as an agent for an issuer of money orders and performs no other services of a nature and value that would cause the corporation to be a money services business, is not required to register; the answer would be the same if the supermarket corporation served as an agent both of a money order issuer and of a money transmitter. However, registration would be required if the supermarket corporation, in addition to acting as an agent of an issuer of money orders, cashed checks or exchanged currencies (other than as an agent for another business) in an amount greater than $1,000 in currency or monetary or other instruments for any person on any day, in one or more transactions.

(3) *Agency status.* The determination whether a person is an agent depends on all the facts and circumstances.

(b) *Registration procedures*—(1) *In general.* (i) A money services business must be registered by filing such form as FinCEN may specify with the Detroit Computing Center of the Internal Revenue Service (or such other location as the form may specify). The information required by 31 U.S.C. 5330(b) and any other information required by the form must be reported in the manner and to the extent required by the form.

(ii) A branch office of a money services business is not required to file its

own registration form. A money services business must, however, report information about its branch locations or offices as provided by the instructions to the registration form.

(iii) A money services business must retain a copy of any registration form filed under this section and any registration number that may be assigned to the business at a location in the United States and for the period specified in § 103.38(d).

(2) *Registration period.* A money services business must be registered for the initial registration period and each renewal period. The initial registration period is the two-calendar-year period beginning with the calendar year in which the money services business is first required to be registered. However, the initial registration period for a money services business required to register by December 31, 2001 (see paragraph (b)(3) of this section) is the two-calendar year period beginning 2002. Each two-calendar-year period following the initial registration period is a renewal period.

(3) *Due date.* The registration form for the initial registration period must be filed on or before the later of December 31, 2001, and the end of the 180-day period beginning on the day following the date the business is established. The registration form for a renewal period must be filed on or before the last day of the calendar year preceding the renewal period.

(4) *Events requiring re-registration.* If a money services business registered as such under the laws of any State experiences a change in ownership or control that requires the business to be re-registered under State law, the money services business must also be re-registered under this section. In addition, if there is a transfer of more than 10 percent of the voting power or equity interests of a money services business (other than a money services business that must report such transfer to the Securities and Exchange Commission), the money services business must be re-registered under this section. Finally, if a money services business experiences a more than 50-per cent increase in the number of its agents during any registration period, the money services business must be re-registered under this section. The registration form must be filed not later than 180 days after such change in ownership, transfer of voting power or equity interests, or increase in agents. The calendar year in which the change, transfer, or increase occurs is treated as the first year of a new two-year registration period.

(c) *Persons required to file the registration form.* Under 31 U.S.C. 5330(a), any person who owns or controls a money services business is responsible for registering the business; however, only one registration form is required to be filed for each registration period. A person is treated as owning or controlling a money services business for purposes of filing the registration form only to the extent provided by the form. If more than one person owns or controls a money services business, the owning or controlling persons may enter into an agreement designating one of them to register the business. The failure of the designated person to register the money services business does not, however, relieve any of the other persons who own or control the business of liability for the failure to register the business. See paragraph (e) of this section, relating to consequences of the failure to comply with 31 U.S.C. 5330 or this section.

(d) *List of agents*—(1) *In general.* A money services business must prepare and maintain a list of its agents. The initial list of agents must be prepared by January 1, 2002, and must be revised each January 1, for the immediately preceding 12 month period; for money services businesses established after December 31, 2001, the initial agent list must be prepared by the due date of the initial registration form and must be revised each January 1 for the immediately preceding 12-month period. The list is not filed with the registration form but must be maintained at the location in the United States reported on the registration form under paragraph (b)(1) of this section. Upon request, a money services business must make its list of agents available to FinCEN and any other appropriate law enforcement agency (including, without limitation, the examination function of the Internal Revenue Service in its capacity as

delegee of Bank Secrecy Act examination authority). Requests for information made pursuant to the preceding sentence shall be coordinated through FinCEN in the manner and to the extent determined by FinCEN. The original list of agents and any revised list must be retained for the period specified in § 103.38(d).

(2) *Information included on the list of agents*—(i) *In general.* Except as provided in paragraph (d)(2)(ii) of this section, a money services business must include the following information with respect to each agent on the list (including any revised list) of its agents—

(A) The name of the agent, including any trade names or doing-business-as names;

(B) The address of the agent, including street address, city, state, and ZIP code;

(C) The telephone number of the agent;

(D) The type of service or services (money orders, traveler's checks, check sales, check cashing, currency exchange, and money transmitting) the agent provides;

(E) A listing of the months in the 12 months immediately preceding the date of the most recent agent list in which the gross transaction amount of the agent with respect to financial products or services issued by the money services business maintaining the agent list exceeded $100,000. For this purpose, the money services gross transaction amount is the agent's gross amount (excluding fees and commissions) received from transactions of one or more businesses described in § 103.11(uu);

(F) The name and address of any depository institution at which the agent maintains a transaction account (as defined in 12 U.S.C. 461(b)(1)(C)) for all or part of the funds received in or for the financial products or services issued by the money services business maintaining the list, whether in the agent's or the business principal's name;

(G) The year in which the agent first became an agent of the money services business; and

(H) The number of branches or subagents the agent has.

(ii) *Special rules.* Information about agent volume must be current within 45 days of the due date of the agent list. The information described by paragraphs (d)(2)(i)(G) and (d)(2)(i)(H) of this section is not required to be included in an agent list with respect to any person that is an agent of the money services business maintaining the list before the first day of the month beginning after February 16, 2000 so long as the information described by paragraphs (d)(2)(i)(G) and (d)(2)(i)(H) of this section is made available upon the request of FinCEN and any other appropriate law enforcement agency (including, without limitation, the examination function of the Internal Revenue Service in its capacity as delegee of Bank Secrecy Act examination authority).

(e) *Consequences of failing to comply with 31 U.S.C. 5330 or the regulations thereunder.* It is unlawful to do business without complying with 31 U.S.C. 5330 and this section. A failure to comply with the requirements of 31 U.S.C 5330 or this section includes the filing of false or materially incomplete information in connection with the registration of a money services business. Any person who fails to comply with any requirement of 31 U.S.C. 5330 or this section shall be liable for a civil penalty of $5,000 for each violation. Each day a violation of 31 U.S.C. 5330 or this section continues constitutes a separate violation. In addition, under 31 U.S.C. 5320, the Secretary of the Treasury may bring a civil action to enjoin the violation. See 18 U.S.C. 1960 for a criminal penalty for failure to comply with the registration requirements of 31 U.S.C. 5330 or this section.

(f) *Effective date.* This section is effective September 20, 1999. Registration of money services businesses under this section will not be required prior to December 31, 2001.

Subpart E—General Provisions

SOURCE: 37 FR 6912, Apr. 5, 1972, unless otherwise noted. Redesignated at 64 FR 45451, Aug. 20, 1999.

§ 103.51 Dollars as including foreign currency.

Wherever in this part an amount is stated in dollars, it shall be deemed to mean also the equivalent amount in any foreign currency.

§ 103.52 Photographic or other reproductions of Government obligations.

Nothing herein contained shall require or authorize the microfilming or other reproduction of

(a) Currency or other obligation or security of the United States as defined in 18 U.S.C. 8, or

(b) Any obligation or other security of any foreign government, the reproduction of which is prohibited by law.

§ 103.53 Availability of information.

(a) The Secretary may within his discretion disclose information reported under this part for any reason consistent with the purposes of the Bank Secrecy Act, including those set forth in paragraphs (b) through (d) of this section.

(b) The Secretary may make any information set forth in any report received pursuant to this part available to another agency of the United States, to an agency of a state or local government or to an agency of a foreign government, upon the request of the head of such department or agency made in writing and stating the particular information desired, the criminal, tax or regulatory purpose for which the information is sought, and the official need for the information.

(c) The Secretary may make any information set forth in any report received pursuant to this part available to the Congress, or any committee or subcommittee thereof, upon a written request stating the particular information desired, the criminal, tax or regulatory purpose for which the information is sought, and the official need for the information.

(d) The Secretary may make any information set forth in any report received pursuant to this part available to any other department or agency of the United States that is a member of the Intelligence Community, as defined by Executive Order 12333 or any succeeding executive order, upon the request of the head of such department or agency made in writing and stating the particular information desired, the national security matter with which the information is sought and the official need therefor.

(e) Any information made available under this section to other department or agencies of the United States, any state or local government, or any foreign government shall be received by them in confidence, and shall not be disclosed to any person except for official purposes relating to the investigation, proceeding or matter in connection with which the information is sought.

(f) The Secretary may require that a state or local government department or agency requesting information under paragraph (b) of this section pay fees to reimburse the Department of the Treasury for costs incidental to such disclosure. The amount of such fees will be set in accordance with the statute on fees for government services, 31 U.S.C. 9701.

(Approved by the Office of Management and Budget under control number 1505–0104)

[50 FR 42693, Oct. 22, 1985, as amended at 50 FR 46283, Nov. 7, 1985; 52 FR 35545, Sept. 22, 1987]

§ 103.54 Disclosure.

All reports required under this part and all records of such reports are specifically exempted from disclosure under section 552 of Title 5, United States Code.

§ 103.55 Exceptions, exemptions, and reports.

(a) The Secretary, in his sole discretion, may by written order or authorization make exceptions to or grant exemptions from the requirements of this part. Such exceptions or exemptions may be conditional or unconditional, may apply to particular persons or to classes of persons, and may apply to particular transactions or classes of transactions. They shall, however, be applicable only as expressly stated in the order of authorization, and they shall be revocable in the sole discretion of the Secretary.

(b) The Secretary shall have authority to further define all terms used herein.

(c)(1) The Secretary may, as an alternative to the reporting and recordkeeping requirements for casinos in §§ 103.22(a)(2) and 103.25(a)(2), and 103.36, grant exemptions to the casinos in any state whose regulatory system substantially meets the reporting and recordkeeping requirements of this part.

(2) In order for a state regulatory system to qualify for an exemption on behalf of its casinos, the state must provide:

(i) That the Treasury Department be allowed to evaluate the effectiveness of the state's regulatory system by periodic oversight review of that system;

(ii) That the reports required under the state's regulatory system be submitted to the Treasury Department within 15 days of receipt by the state;

(iii) That any records required to be maintained by the casinos relevant to any matter under this part and to which the state has access or maintains under its regulatory system be made available to the Treasury Department within 30 days of request;

(iv) That the Treasury Department be provided with periodic status reports on the state's compliance efforts and findings;

(v) That all but minor violations of the state requirements be reported to Treasury within 15 days of discovery; and

(vi) That the state will initiate compliance examinations of specific institutions at the request of Treasury within a reasonable time, not to exceed 90 days where appropriate, and will provide reports of these examinations to Treasury within 15 days of completion or periodically during the course of the examination upon the request of the Secretary. If for any reason the state were not able to conduct an investigation within a reasonable time, the state will permit Treasury to conduct the investigation.

(3) Revocation of any exemption under this subsection shall be in the sole discretion of the Secretary.

[38 FR 2176, Jan. 22, 1973, as amended at 50 FR 5069, Feb. 6, 1985; 50 FR 36875, Sept. 10, 1985]

§ 103.56 Enforcement.

(a) Overall authority for enforcement and compliance, including coordination and direction of procedures and activities of all other agencies exercising delegated authority under this part, is delegated to the Assistant Secretary (Enforcement).

(b) Authority to examine institutions to determine compliance with the requirements of this part is delegated as follows:

(1) To the Comptroller of the Currency with respect to those financial institutions regularly examined for safety and soundness by national bank examiners;

(2) To the Board of Governors of the Federal Reserve System with respect to those financial institutions regularly examined for safety and soundness by Federal Reserve bank examiners;

(3) To the Federal Deposit Insurance Corporation with respect to those financial institutions regularly examined for safety and soundness by FDIC bank examiners;

(4) To the Federal Home Loan Bank Board with respect to those financial institutions regularly examined for safety and soundness by FHLBB bank examiners;

(5) To the Chairman of the Board of the National Credit Union Administration with respect to those financial institutions regularly examined for safety and soundness by NCUA examiners.

(6) To the Securities and Exchange Commission with respect to brokers and dealers in securities and investment companies as that term is defined in the Investment Company Act of 1940 (15 U.S.C. 80–1 et seq.);

(7) To the Commissioner of Customs with respect to §§ 103.23 and 103.58;

(8) To the Commissioner of Internal Revenue with respect to all financial institutions, except brokers or dealers in securities, futures commission merchants, introducing brokers in commodities, and commodity trading advisors, not currently examined by Federal bank supervisory agencies for soundness and safety; and

(9) To the Commodity Futures Trading Commission with respect to futures commission merchants, introducing brokers in commodities, and commodity trading advisors.

(c) Authority for investigating criminal violations of this part is delegated as follows:

(1) To the Commissioner of Customs with respect to § 103.23;

(2) To the Commissioner of Internal Revenue except with respect to § 103.23.

(d) Authority for the imposition of civil penalties for violations of this part lies with the Assistant Secretary, and in the Assistant Secretary's absence, the Deputy Assistant Secretary (Law Enforcement).

(e) Periodic reports shall be made to the Assistant Secretary by each agency to which compliance authority has been delegated under paragraph (b) of this section. These reports shall be in such a form and submitted at such intervals as the Assistant Secretary may direct. Evidence of specific violations of any of the requirements of this part may be submitted to the Assistant Secretary at any time.

(f) The Assistant Secretary or his delegate, and any agency to which compliance has been delegated under paragraph (b) of this section, may examine any books, papers, records, or other data of domestic financial institutions relevant to the recordkeeping or reporting requirements of this part.

(g) The authority to enforce the provisions of 31 U.S.C. 5314 and §§ 103.24 and 103.32 of this part has been redelegated from FinCEN to the Commissioner of Internal Revenue by means of a Memorandum of Agreement between FinCEN and IRS. Such authority includes, with respect to 31 U.S.C. 5314 and §§ 103.24 and 103.32 of this part, the authority to: assess and collect civil penalties under 31 U.S.C. 5321 and 31 CFR 103.57; investigate possible civil violations of these provisions (in addition to the authority already provided at paragraph (c)(2)) of this section); employ the summons power of subpart F of part 103; issue administrative rulings under subpart G of part 103; and take any other action reasonably necessary for the enforcement of these and related provisions, including pursuit of injunctions.

(Sec. 21, Federal Deposit Insurance Act, 84 Stat. 1114, 12 U.S.C. 1829b; 84 Stat. 1116, 12 U.S.C. 1951–1959; and the Currency and Foreign Transactions Reporting Act, 84 Stat. 1118, 31 U.S.C. 1051–1122)

[37 FR 6912, Apr. 5, 1972, as amended at 50 FR 42693, Oct. 22, 1985; 52 FR 11445, Apr. 8, 1987. Redesignated and amended at 64 FR 45451, 45453, Aug. 20, 1999; 67 FR 21121, Apr. 29, 2002; 68 FR 26489, May 16, 2003; 68 FR 65399, Nov. 20, 2003]

§ 103.57 Civil penalty.

(a) For any willful violation, committed on or before October 12, 1984, of any reporting requirement for financial institutions under this part or of any recordkeeping requirements of § 103.22, the Secretary may assess upon any domestic financial institution, and upon any partner, director, officer, or employee thereof who willfully participates in the violation, a civil penalty not to exceed $1,000.

(b) For any willful violation committed after October 12, 1984 and before October 28, 1986, of any reporting requirement for financial institutions under this part or of the recordkeeping requirements of § 103.32, the Secretary may assess upon any domestic financial institution, and upon any partner, director, officer, or employee thereof who willfully participates in the violation, a civil penalty not to exceed $10,000.

(c) For any willful violation of any recordkeeping requirement for financial institutions, except violations of § 103.32, under this part, the Secretary may assess upon any domestic financial institution, and upon any partner, director, officer, or employee thereof who willfully participates in the violation, a civil penalty not to exceed $1,000.

(d) For any failure to file a report required under § 103.23 or for filing such a report containing any material omission or misstatement, the Secretary may assess a civil penalty up to the amount of the currency or monetary instruments transported, mailed or shipped, less any amount forfeited under § 103.58.

(e) For any willful violation of § 103.63 committed after January 26, 1987, the

Secretary may assess upon any person a civil penalty not to exceed the amount of coins and currency involved in the transaction with respect to which such penalty is imposed. The amount of any civil penalty assessed under this paragraph shall be reduced by the amount of any forfeiture to the United States in connection with the transaction for which the penalty was imposed.

(f) For any willful violation committed after October 27, 1986, of any reporting requirement for financial institutions under this part (except § 103.24, § 103.25 or § 103.32), the Secretary may assess upon any domestic financial institution, and upon any partner, director, officer, or employee thereof who willfully participates in the violation, a civil penalty not to exceed the greater of the amount (not to exceed $100,000) involved in the transaction or $25,000.

(g) For any willful violation committed after October 27, 1986, of any requirement of § 103.24, § 103.25, or § 103.32, the Secretary may assess upon any person, a civil penalty:

(1) In the case of a violation of § 103.25 involving a transaction, a civil penalty not to exceed the greater of the amount (not to exceed $100,000) of the transaction, or $25,000; and

(2) In the case of a violation of § 103.24 or § 103.32 involving a failure to report the existence of an account or any identifying information required to be provided with respect to such account, a civil penalty not to exceed the greater of the amount (not to exceed $100,000) equal to the balance in the account at the time of the violation, or $25,000.

(h) For each negligent violation of any requirement of this part, committed after October 27, 1986, the Secretary may assess upon any financial institution a civil penalty not to exceed $500.

[37 FR 6912, Apr. 5, 1972, as amended at 52 FR 11445, Apr. 8, 1987; 52 FR 12641, Apr. 17, 1987. Redesignated and amended at 64 FR 45451, 45453, Aug. 20, 1999]

§ 103.58 Forfeiture of currency or monetary instruments.

Any currency or other monetary instruments which are in the process of any transportation with respect to which a report is required under § 103.23 are subject to seizure and forfeiture to the United States if such report has not been filed as required in § 103.25, or contains material omissions or misstatements. The Secretary may, in his sole discretion, remit or mitigate any such forfeiture in whole or in part upon such terms and conditions as he deems reasonable.

§ 103.59 Criminal penalty.

(a) Any person who willfully violates any provision of Title I of Pub. L. 91–508, or of this part authorized thereby may, upon conviction thereof, be fined not more than $1,000 or be imprisoned not more than 1 year, or both. Such person may in addition, if the violation is of any provision authorized by Title I of Pub. L. 91–508 and if the violation is committed in furtherance of the commission of any violation of Federal law punishable by imprisonment for more than 1 year, be fined not more than $10,000 or be imprisoned not more than 5 years, or both.

(b) Any person who willfully violates any provision of Title II of Pub. L. 91–508, or of this part authorized thereby, may, upon conviction thereof, be fined not more than $250,000 or be imprisoned not more than 5 years, or both.

(c) Any person who willfully violates any provision of Title II of Pub. L. 91–508, or of this part authorized thereby, where the violation is either

(1) Committed while violating another law of the United States, or

(2) Committed as part of a pattern of any illegal activity involving more than $100,000 in any 12-month period, may, upon conviction thereof, be fined not more than $500,000 or be imprisoned not more than 10 years, or both.

(d) Any person who knowingly makes any false, fictitious or fraudulent statement or representation in any report required by this part may, upon conviction thereof, be fined not more than $10,000 or be imprisoned not more than 5 years, or both.

[37 FR 6912, Apr. 5, 1972, as amended at 50 FR 18479, May 1, 1985; 53 FR 4138, Feb. 12, 1988]

§ 103.60 Enforcement authority with respect to transportation of currency or monetary instruments.

(a) If a customs officer has reasonable cause to believe that there is a monetary instrument being transported without the filing of the report required by §§ 103.23 and 103.25 of this chapter, he may stop and search, without a search warrant, a vehicle, vessel, aircraft, or other conveyance, envelope or other container, or person entering or departing from the United States with respect to which or whom the officer reasonably believes is transporting such instrument.

(b) If the Secretary has reason to believe that currency or monetary instruments are in the process of transportation and with respect to which a report required under § 103.23 has not been filed or contains material omissions or misstatements, he may apply to any court of competent jurisdiction for a search warrant. Upon a showing of probable cause, the court may issue a warrant authorizing the search of any or all of the following:

(1) One or more designated persons.

(2) One or more designated or described places or premises.

(3) One or more designated or described letters, parcels, packages, or other physical objects.

(4) One or more designated or described vehicles. Any application for a search warrant pursuant to this section shall be accompanied by allegations of fact supporting the application.

(c) This section is not in derogation of the authority of the Secretary under any other law or regulation.

[37 FR 6912, Apr. 5, 1972, as amended at 50 FR 18479, May 1, 1985]

§ 103.61 Access to records.

Except as provided in §§ 103.34(a)(1), 103.35(a)(1), and 103.36(a) and except for the purpose of assuring compliance with the recordkeeping and reporting requirements of this part, this part does not authorize the Secretary or any other person to inspect or review the records required to be maintained by subpart C of this part. Other inspection, review or access to such records is governed by other applicable law.

[50 FR 5069, Feb. 6, 1985]

§ 103.62 Rewards for informants.

(a) If an individual provides original information which leads to a recovery of a criminal fine, civil penalty, or forfeiture, which exceeds $50,000, for a violation of the provisions of the Act or of this part, the Secretary may pay a reward to that individual.

(b) The Secretary shall determine the amount of the reward to be paid under this section; however, any reward paid may not be more than 25 percent of the net amount of the fine, penalty or forfeiture collected, or $150,000, whichever is less.

(c) An officer or employee of the United States, a State, or a local government who provides original information described in paragraph (a) in the performance of official duties is not eligible for a reward under this section.

[50 FR 18479, May 1, 1985]

§ 103.63 Structured transactions.

No person shall for the purpose of evading the reporting requirements of § 103.22 with respect to such transaction:

(a) Cause or attempt to cause a domestic financial institution to fail to file a report required under § 103.22;

(b) Cause or attempt to cause a domestic financial institution to file a report required under § 103.22 that contains a material omission or misstatement of fact; or

(c) Structure (as that term is defined in § 103.11(n) of this part) or assist in structuring, or attempt to structure or assist in structuring, any transaction with one or more domestic financial institutions.

[52 FR 11446, Apr. 8, 1987, as amended at 54 FR 3027, Jan. 23, 1989]

§ 103.64 Special rules for casinos.

(a) *Compliance programs.* (1) Each casino shall develop and implement a written program reasonably designed to assure and monitor compliance with the requirements set forth in 31 U.S.C. chapter 53, subchapter II and the regulations contained in this part.

(2) At a minimum, each compliance program shall provide for:

(i) A system of internal controls to assure ongoing compliance;

(ii) Internal and/or external independent testing for compliance. The scope and frequency of the testing shall be commensurate with the money laundering and terrorist financing risks posed by the products and services provided by the casino;

(iii) Training of casino personnel, including training in the identification of unusual or suspicious transactions, to the extent that the reporting of such transactions is required by this part, by other applicable law or regulation, or by the casino's own administrative and compliance policies;

(iv) An individual or individuals to assure day-to-day compliance;

(v) Procedures for using all available information to determine:

(A) When required by this part, the name, address, social security number, and other information, and verification of the same, of a person;

(B) The occurrence of any transactions or patterns of transactions required to be reported pursuant to § 103.21;

(C) Whether any record as described in subpart C of this part must be made and retained; and

(vi) For casinos that have automated data processing systems, the use of automated programs to aid in assuring compliance.

(b) *Special terms.* As used in this part, as applied to casinos:

(1) *Business year* means the annual accounting period, such as a calendar or fiscal year, by which a casino maintains its books and records for purposes of subtitle A of title 26 of the United States Code.

(2) *Casino account number* means any and all numbers by which a casino identifies a customer.

(3) *Customer* includes every person which is involved in a transaction to which this part applies with a casino, whether or not that person participates, or intends to participate, in the gaming activities offered by that casino.

(4) *Gaming day* means the normal business day of a casino. For a casino that offers 24 hour gaming, the term means that 24 hour period by which the casino keeps its books and records for business, accounting, and tax purposes. For purposes of the regulations contained in this part, each casino may have only one gaming day, common to all of its divisions.

(5) *Machine-readable* means capable of being read by an automated data processing system.

[58 FR 13549, Mar. 12, 1993, as amended at 59 FR 61662, Dec. 1, 1994; 60 FR 33725, June 29, 1995; 67 FR 60730, Sept. 26, 2002]

Subpart F—Summons

SOURCE: 52 FR 23979, June 26, 1987, unless otherwise noted. Redesignated at 64 FR 45451, Aug. 20, 1999.

§ 103.71 General.

For any investigation for the purpose of civil enforcement of violations of the Currency and Foreign Transactions Reporting Act, as amended (31 U.S.C. 5311 through 5324), section 21 of the Federal Deposit Insurance Act (12 U.S.C. 1829b), section 411 of the National Housing Act (12 U.S.C. 1730d), or Chapter 2 of Pub. L. 91–508 (12 U.S.C. 1951 *et seq.*), or any regulation under any such provision, the Secretary or delegate of the Secretary may summon a financial institution or an officer or employee of a financial institution (including a former officer or employee), or any person having possession, custody, or care of any of the records and reports required under the Currency and Foreign Transactions Reporting Act or this part to appear before the Secretary or his delegate, at a time and place named in the summons, and to give testimony, under oath, and be examined, and to produce such books, papers, records, or other data as may be relevant or material to such investigation.

§ 103.72 Persons who may issue summons.

For purposes of this part, the following officials are hereby designated as delegates of the Secretary who are authorized to issue a summons under § 103.71, solely for the purposes of civil enforcement of this part:

(a) *Office of the Secretary.* The Assistant Secretary (Enforcement), the Deputy Assistant Secretary (Law Enforcement), and the Director, Office of Financial Enforcement.

(b) *Internal Revenue Service.* Except with respect to § 103.23 of this part, the Commissioner, the Deputy Commissioner, or a delegate of either official, and, for the purposes of perfecting seizures and forfeitures related to civil enforcement of this part, the Chief (Criminal Investigation) or a delegate.

(c) *Customs Service.* With respect to § 103.23 of this part, the Commissioner, the Deputy Commissioner, the Assistant Commissioner (Enforcement), Regional Commissioners, Assistant Regional Commissioners (Enforcement), and Special Agents in Charge.

[52 FR 23979, June 26, 1987. Redesignated and amended at 64 FR 45451, 45453, Aug. 20, 1999; 68 FR 26489, May 16, 2003]

§ 103.73 Contents of summons.

(a) *Summons for testimony.* Any summons issued under § 103.71 of this part to compel the appearance and testimony of a person shall state:

(1) The name, title, address, and telephone number of the person before whom the appearance shall take place (who may be a person other than the persons who are authorized to issue such a summons under § 103.72 of this part);

(2) The address to which the person summoned shall report for the appearance;

(3) The date and time of the appearance; and

(4) The name, title, address, and telephone number of the person who has issued the summons.

(b) *Summons of books, papers, records, or data.* Any summons issued under § 103.71 of this part to require the production of books, papers, records, or other data shall describe the materials to be produced with reasonable specificity, and shall state:

(1) The name, title, address, and telephone number of the person to whom the materials shall be produced (who may be a person other than the persons who are authorized to issue such a summons under § 103.72 of this part);

(2) The address at which the person summoned shall produce the materials, not to exceed 500 miles from any place where the financial institution operates or conducts business in the United States;

(3) The specific manner of production, whether by personal delivery, by mail, or by messenger service;

(4) The date and time for production; and

(5) The name, title, address, and telephone number of the person who has issued the summons.

[52 FR 23979, June 26, 1987. Redesignated and amended at 64 FR 45451, 45453, Aug. 20, 1999]

§ 103.74 Service of summons.

(a) *Who may serve.* Any delegate of the Secretary authorized under § 103.72 of this part to issue a summons, or any other person authorized by law to serve summonses or other process, is hereby authorized to serve a summons issued under this part.

(b) *Manner of service.* Service of a summons may be made—

(1) Upon any person, by registered mail, return receipt requested, directed to the person summoned;

(2) Upon a natural person by personal delivery; or

(3) Upon any other person by delivery to an officer, managing or general agent, or any other agent authorized to receive service of process.

(c) *Certificate of service.* The summons shall contain a certificate of service to be signed by the server of the summons. On the hearing of an application for enforcement of the summons, the certificate of service signed by the person serving the summons shall be evidence of the facts it states.

[52 FR 23979, June 26, 1987. Redesignated and amended at 64 FR 45451, 45453, Aug. 20, 1999]

§ 103.75 Examination of witnesses and records.

(a) *General.* Any delegate of the Secretary authorized under § 103.72 of this part to issue a summons, or any officer or employee of the Treasury Department or any component thereof who is designated by that person (whether in the summons or otherwise), is hereby authorized to receive evidence and to examine witnesses pursuant to the summons. Any person authorized by law may administer any oaths and affirmations that may be required under this subpart.

(b) *Testimony taken under oath.* Testimony of any person under this part may be taken under oath, and shall be

taken down in writing by the person examining the person summoned or shall be otherwise transcribed. After the testimony of a witness has been transcribed, a copy of that transcript shall be made available to the witness upon request, unless for good cause the person issuing the summons determines, under 5 U.S.C. 555, that a copy should not be provided. If such a determination has been made, the witness shall be limited to inspection of the official transcript of the testimony.

(c) *Disclosure of summons, testimony, or records.* Unless the Secretary or a delegate of the Secretary listed under § 103.72(a) of this part so authorizes in writing, or it is otherwise required by law, no delegate of the Secretary listed under § 103.72 (b) or (c) of this part or other officer or employee of the Treasury Department or any component thereof shall—

(1) Make public the name of any person to whom a summons has been issued under this part, or release any information to the public concerning that person or the issuance of a summons to that person prior to the time and date set for that person's appearance or production of records; or

(2) Disclose any testimony taken (including the name of the witness) or material presented pursuant to the summons, to any person other than an officer or employee of the Treasury Department or of any component thereof.

Nothing in the preceding sentence shall preclude a delegate of the Secretary, or other officer or employee of the Treasury Department or any component thereof, from disclosing testimony taken, or material presented pursuant to a summons issued under this part, to any person in order to obtain necessary information for investigative purposes relating to the performance of official duties, or to any officer or employee of the Department of Justice in connection with a possible violation of Federal law.

[52 FR 23979, June 26, 1987. Redesignated and amended at 64 FR 45451, 45453, Aug. 20, 1999]

§ 103.76 Enforcement of summons.

In the case of contumacy by, or refusal to obey a summons issued to, any person under this part, the Secretary or any delegate of the Secretary listed under § 103.72 of this part shall refer the matter to the Attorney General or delegate of the Attorney General (including any United States Attorney or Assistant United States Attorney, as appropriate), who may bring an action to compel compliance with the summons in any court of the United States within the jurisdiction of which the investigation which gave rise to the summons being or has been carried on, the jurisdiction in which the person summoned is a resident, or the jurisdiction in which the person summoned carries on business or may be found. When a referral is made by a delegate of the Secretary other than a delegate named in § 103.72(a) of this part, prompt notification of the referral must be made to the Director, Office of Financial Enforcement, Office of the Assistant Secretary (Enforcement). The court may issue an order requiring the person summoned to appear before the Secretary or delegate of the Secretary to produce books, papers, records, or other data, to give testimony as may be necessary in order to explain how such material was compiled and maintained, and to pay the costs of the proceeding. Any failure to obey the order of the court may be punished by the court as a contempt thereof. All process in any case under this section may be served in any judicial district in which such person may be found.

[52 FR 23979, June 26, 1987. Redesignated and amended at 64 FR 45451, 45453, Aug. 20, 1999]

§ 103.77 Payment of expenses.

Persons summoned under this part shall be paid the same fees and mileage for travel in the United States that are paid witnesses in the courts of the United States. The United States shall not be liable for any other expense incurred in connection with the production of books, papers, records, or other data under this part.

Subpart G—Administrative Rulings

SOURCE: 52 FR 35546, Sept. 22, 1987, unless otherwise noted. Redesignated at 64 FR 45451, Aug. 20, 1999.

§ 103.80 Scope.

This subpart provides that the Assistant Secretary (Enforcement), or his designee, either unilaterally or upon request, may issue administrative rulings interpreting the application of part 103.

§ 103.81 Submitting requests.

(a) Each request for an administrative ruling must be in writing and contain the following information:

(1) A complete description of the situation for which the ruling is requested,

(2) A complete statement of all material facts related to the subject transaction,

(3) A concise and unambiguous question to be answered,

(4) A statement certifying, to the best of the requestor's knowledge and belief, that the question to be answered is not applicable to any ongoing state or federal investigation, litigation, grand jury proceeding, or proceeding before any other governmental body involving either the requestor, any other party to the subject transaction, or any other party with whom the requestor has an agency relationship,

(5) A statement identifying any information in the request that the requestor considers to be exempt from disclosure under the Freedom of Information Act, 5 U.S.C. 552, and the reason therefor,

(6) If the subject situation is hypothetical, a statement justifying why the particular situation described warrants the issuance of a ruling,

(7) The signature of the person making the request, or

(8) If an agent makes the request, the signature of the agent and a statement certifying the authority under which the request is made.

(b) A request filed by a corporation shall be signed by a corporate officer and a request filed by a partnership shall be signed by a partner.

(c) A request may advocate a particular proposed interpretation and may set forth the legal and factual basis for that interpretation.

(d) Requests shall be addressed to: Director, Office of Financial Enforcement, Office of the Assistant Secretary (Enforcement), U.S. Department of the Treasury, 1500 Pennsylvania Avenue NW., Room 4320, Washington, DC 20220.

(e) The requester shall advise the Director, Office of Financial Enforcement, immediately in writing of any subsequent change in any material fact or statement submitted with a ruling request in conformity with paragraph (a) of this section.

(Approved by the Office of Management and Budget under control number 1505–0105)

§ 103.82 Nonconforming requests.

The Director, Office of Financial Enforcement, shall notify the requester if the ruling request does not conform with the requirements of § 103.81. The notice shall be in writing and shall describe the requirements that have not been met. A request that is not brought into conformity with such requirements within 30 days from the date of such notice, unless extended for good cause by the Office of Financial Enforcement, shall be treated as though it were withdrawn.

(Approved by the Office of Management and Budget under control number 1505–0105)

[52 FR 23979, June 26, 1987. Redesignated and amended at 64 FR 45451, 45453, Aug. 20, 1999]

§ 103.83 Oral communications.

(a) The Office of the Assistant Secretary (Enforcement) will not issue administrative rulings in response to oral requests. Oral opinions or advice by Treasury, the Customs Service, the Internal Revenue Service, the Office of the Comptroller of the Currency, or any other bank supervisory agency personnel, regarding the interpretation and application of this part, do not bind the Treasury Department and carry no precedential value.

(b) A person who has made a ruling request in conformity with § 103.81 may request an opportunity for oral discussion of the issues presented in the request. The request should be made to the Director, Office of Financial Enforcement, and any decision to grant such a conference is wholly within the discretion of the Director. Personal conferences or telephone conferences may be scheduled only for the purpose of affording the requester an opportunity to discuss freely and openly the matters set forth in the administrative

ruling request. Accordingly, the conferees will not be bound by any argument or position advocated or agreed to, expressly or impliedly, during the conference. Any new arguments or facts put forth by the requester at the meeting must be reduced to writing by the requester and submitted in conformity with § 103.81 before they may be considered in connection with the request.

(Approved by the Office of Management and Budget under control number 1505–0105)

[52 FR 23979, June 26, 1987. Redesignated and amended at 64 FR 45451, 45453, Aug. 20, 1999]

§ 103.84 Withdrawing requests.

A person may withdraw a request for an administrative ruling at any time before the ruling has been issued.

§ 103.85 Issuing rulings.

The Assistant Secretary (Enforcement), or his designee may issue a written ruling interpreting the relationship between part 103 and each situation for which such a ruling has been requested in conformity with § 103.81. A ruling issued under this section shall bind the Treasury Department only in the event that the request describes a specifically identified actual situation. A ruling issued under this section shall have precedential value, and hence may be relied upon by others similarly situated, only if it is published or will be published by the Office of Financial Enforcement in the FEDERAL REGISTER. Rulings with precedential value will be published periodically in the FEDERAL REGISTER and yearly in the Appendix to this part. All rulings with precedential value will be available by mail to any person upon written request specifically identifying the ruling sought. Treasury will make every effort to respond to each requestor within 90 days of receiving a request.

(Approved by the Office of Management and Budget under control number 1505–0105)

[52 FR 23979, June 26, 1987. Redesignated and amended at 64 FR 45451, 45453, Aug. 20, 1999]

§ 103.86 Modifying or rescinding rulings.

(a) The Assistant Secretary (Enforcement), or his designee may modify or rescind any ruling made pursuant to § 103.85:

(1) When, in light of changes in the statute or regulations, the ruling no longer sets forth the interpretation of the Assistant Secretary (Enforcement) with respect to the described situation,

(2) When any fact or statement submitted in the original ruling request is found to be materially inaccurate or incomplete, or

(3) For other good cause.

(b) Any person may submit to the Assistant Secretary (Enforcement) a written request that an administrative ruling be modified or rescinded. The request should conform to the requirements of § 103.81, explain why rescission or modification is warranted, and refer to any reasons in paragraph (a) of this section that are relevant. The request may advocate an alternative interpretation and may set forth the legal and factual basis for that interpretation.

(c) Treasury shall modify an existing administrative ruling by issuing a new ruling that rescinds the relevant prior ruling. Once rescinded, an administrative ruling shall no longer have any precedential value.

(d) An administrative ruling may be modified or rescinded retroactively with respect to one or more parties to the original ruling request if the Assistant Secretary determines that:

(1) A fact or statement in the original ruling request was materially inaccurate or incomplete,

(2) The requestor failed to notify in writing the Office of Enforcement of a material change to any fact or statement in the original request, or

(3) A party to the original request acted in bad faith when relying upon the ruling.

(Approved by the Office of Management and Budget under control number 1505–0105)

[52 FR 23979, June 26, 1987. Redesignated and amended at 64 FR 45451, 45453, Aug. 20, 1999]

§ 103.87 Disclosing information.

(a) Any part of any administrative ruling, including names, addresses, or information related to the business transactions of private parties, may be disclosed pursuant to a request under the Freedom of Information Act, 5 U.S.C. 552. If the request for an administrative ruling contains information

which the requestor wishes to be considered for exemption from disclosure under the Freedom of Information Act, the requestor should clearly identify such portions of the request and the reasons why such information should be exempt from disclosure.

(b) A requestor claiming an exemption from disclosure will be notified, at least 10 days before the administrative ruling is issued, of a decision not to exempt any of such information from disclosure so that the underlying request for an administrative ruling can be withdrawn if the requestor so chooses.

(Approved by the Office of Management and Budget under control number 1505–0105)

Subpart H—Special Information Sharing Procedures To Deter Money Laundering and Terrorist Activity

SOURCE: 67 FR 9876, Mar. 4, 2002, unless otherwise noted.

§ 103.90 Definitions.

For purposes of this subpart, the following definitions apply:

(a) *Money laundering* means an activity criminalized by 18 U.S.C. 1956 or 1957.

(b) *Terrorist activity* means an act of domestic terrorism or international terrorism as those terms are defined in 18 U.S.C. 2331.

(c) *Account* means a formal banking or business relationship established to provide regular services, dealings, and other financial transactions, and includes, but is not limited to, a demand deposit, savings deposit, or other transaction or asset account and a credit account or other extension of credit.

(d) *Transaction*. (1) Except as provided in paragraph (d)(2) of this section, the term ''transaction'' shall have the same meaning as provided in § 103.11(ii).

(2) For purposes of § 103.100, a transaction shall not mean any transaction conducted through an account.

[67 FR 60585, Sept. 26, 2002]

§ 103.100 Information sharing between Federal law enforcement agencies and financial institutions.

(a) *Definitions*. For purposes of this section:

(1) The definitions in § 103.90 apply.

(2) *Financial institution* means any financial institution described in 31 U.S.C. 5312(a)(2).

(3) *Transmittal of funds* has the same meaning as provided in § 103.11(jj).

(b) *Information requests based on credible evidence concerning terrorist activity or money laundering*—(1) *In general.* A Federal law enforcement agency investigating terrorist activity or money laundering may request that FinCEN solicit, on the investigating agency's behalf, certain information from a financial institution or a group of financial institutions. When submitting such a request to FinCEN, the Federal law enforcement agency shall provide FinCEN with a written certification, in such form and manner as FinCEN may prescribe. At a minimum, such certification must: state that each individual, entity, or organization about which the Federal law enforcement agency is seeking information is engaged in, or is reasonably suspected based on credible evidence of engaging in, terrorist activity or money laundering; include enough specific identifiers, such as date of birth, address, and social security number, that would permit a financial institution to differentiate between common or similar names; and identify one person at the agency who can be contacted with any questions relating to its request. Upon receiving the requisite certification from the requesting Federal law enforcement agency, FinCEN may require any financial institution to search its records to determine whether the financial institution maintains or has maintained accounts for, or has engaged in transactions with, any specified individual, entity, or organization.

(2) *Obligations of a financial institution receiving an information request*—(i) *Record search.* Upon receiving an information request from FinCEN under this section, a financial institution shall expeditiously search its records to determine whether it maintains or has maintained any account for, or has engaged in any transaction with, each individual, entity, or organization named in FinCEN's request. A financial institution may contact the Federal law enforcement agency named in the

information request provided to the institution by FinCEN with any questions relating to the scope or terms of the request. Except as otherwise provided in the information request, a financial institution shall only be required to search its records for:

(A) Any current account maintained for a named suspect;

(B) Any account maintained for a named suspect during the preceding twelve months; and

(C) Any transaction, as defined by § 103.90(d), conducted by or on behalf of a named suspect, or any transmittal of funds conducted in which a named suspect was either the transmittor or the recipient, during the preceding six months that is required under law or regulation to be recorded by the financial institution or is recorded and maintained electronically by the institution.

(ii) *Report to FinCEN.* If a financial institution identifies an account or transaction identified with any individual, entity, or organization named in a request from FinCEN, it shall report to FinCEN, in the manner and in the time frame specified in FinCEN's request, the following information:

(A) The name of such individual, entity, or organization;

(B) The number of each such account, or in the case of a transaction, the date and type of each such transaction; and

(C) Any Social Security number, taxpayer identification number, passport number, date of birth, address, or other similar identifying information provided by the individual, entity, or organization when each such account was opened or each such transaction was conducted.

(iii) *Designation of contact person.* Upon receiving an information request under this section, a financial institution shall designate one person to be the point of contact at the institution regarding the request and to receive similar requests for information from FinCEN in the future. When requested by FinCEN, a financial institution shall provide FinCEN with the name, title, mailing address, e-mail address, telephone number, and facsimile number of such person, in such manner as FinCEN may prescribe. A financial institution that has provided FinCEN with contact information must promptly notify FinCEN of any changes to such information.

(iv) *Use and security of information request.* (A) A financial institution shall not use information provided by FinCEN pursuant to this section for any purpose other than:

(*1*) Reporting to FinCEN as provided in this section;

(*2*) Determining whether to establish or maintain an account, or to engage in a transaction; or

(*3*) Assisting the financial institution in complying with any requirement of this part.

(B)(*1*) A financial institution shall not disclose to any person, other than FinCEN or the Federal law enforcement agency on whose behalf FinCEN is requesting information, the fact that FinCEN has requested or has obtained information under this section, except to the extent necessary to comply with such an information request.

(*2*) Notwithstanding paragraph (b)(2)(iv)(B)(*1*) of this section, a financial institution authorized to share information under § 103.110 may share information concerning an individual, entity, or organization named in a request from FinCEN in accordance with the requirements of such section. However, such sharing shall not disclose the fact that FinCEN has requested information concerning such individual, entity, or organization.

(C) Each financial institution shall maintain adequate procedures to protect the security and confidentiality of requests from FinCEN for information under this section. The requirements of this paragraph (b)(2)(iv)(C) shall be deemed satisfied to the extent that a financial institution applies to such information procedures that the institution has established to satisfy the requirements of section 501 of the Gramm-Leach-Bliley Act (15 U.S.C. 6801), and applicable regulations issued thereunder, with regard to the protection of its customers' nonpublic personal information.

(v) *No other action required.* Nothing in this section shall be construed to require a financial institution to take any action, or to decline to take any action, with respect to an account established for, or a transaction engaged

in with, an individual, entity, or organization named in a request from FinCEN, or to decline to establish an account for, or to engage in a transaction with, any such individual, entity, or organization. Except as otherwise provided in an information request under this section, such a request shall not require a financial institution to report on future account opening activity or transactions or to treat a suspect list received under this section as a government list for purposes of section 326 of Public Law 107–56.

(3) *Relation to the Right to Financial Privacy Act and the Gramm-Leach-Bliley Act.* The information that a financial institution is required to report pursuant to paragraph (b)(2)(ii) of this section is information required to be reported in accordance with a Federal statute or rule promulgated thereunder, for purposes of subsection 3413(d) of the Right to Financial Privacy Act (12 U.S.C. 3413(d)) and subsection 502(e)(8) of the Gramm-Leach-Bliley Act (15 U.S.C. 6802(e)(8)).

(4) *No effect on law enforcement or regulatory investigations.* Nothing in this subpart affects the authority of a Federal agency or officer to obtain information directly from a financial institution.

[67 FR 60585, Sept. 26, 2002]

§ 103.110 Voluntary information sharing among financial institutions.

(a) *Definitions.* For purposes of this section:

(1) The definitions in § 103.90 apply.

(2) *Financial institution.* (i) Except as provided in paragraph (a)(2)(ii) of this section, the term ''financial institution'' means any financial institution described in 31 U.S.C. 5312(a)(2) that is required under this part to establish and maintain an anti-money laundering program, or is treated under this part as having satisfied the requirements of 31 U.S.C. 5318(h)(1).

(ii) For purposes of this section, a financial institution shall not mean any institution included within a class of financial institutions that FinCEN has designated as ineligible to share information under this section.

(3) *Association of financial institutions* means a group or organization the membership of which is comprised entirely of financial institutions as defined in paragraph (a)(2) of this section.

(b) *Voluntary information sharing among financial institutions*—(1) *In general.* Subject to paragraphs (b)(2), (b)(3), and (b)(4) of this section, a financial institution or an association of financial institutions may, under the protection of the safe harbor from liability described in paragraph (b)(5) of this section, transmit, receive, or otherwise share information with any other financial institution or association of financial institutions regarding individuals, entities, organizations, and countries for purposes of identifying and, where appropriate, reporting activities that the financial institution or association suspects may involve possible terrorist activity or money laundering.

(2) *Notice requirement.* A financial institution or association of financial institutions that intends to share information as described in paragraph (b)(1) of this section shall submit to FinCEN a notice described in Appendix A to this subpart H. Each notice provided pursuant to this paragraph (b)(2) shall be effective for the one year period beginning on the date of the notice. In order to continue to engage in the sharing of information after the end of the one year period, a financial institution or association of financial institutions must submit a new notice. Completed notices may be submitted to FinCEN by accessing FinCEN's Internet Web site, *http://www.treas.gov/fincen,* and entering the appropriate information as directed, or, if a financial institution does not have Internet access, by mail to: FinCEN, P.O. Box 39, Mail Stop 100, Vienna, VA 22183.

(3) *Verification requirement.* Prior to sharing information as described in paragraph (b)(1) of this section, a financial institution or an association of financial institutions must take reasonable steps to verify that the other financial institution or association of financial institutions with which it intends to share information has submitted to FinCEN the notice required by paragraph (b)(2) of this section. A financial institution or an association of financial institutions may satisfy this paragraph (b)(3) by confirming that the other financial institution or association of financial institutions appears

on a list that FinCEN will periodically make available to financial institutions or associations of financial institutions that have filed a notice with it, or by confirming directly with the other financial institution or association of financial institutions that the requisite notice has been filed.

(4) *Use and security of information.* (i) Information received by a financial institution or an association of financial institutions pursuant to this section shall not be used for any purpose other than:

(A) Identifying and, where appropriate, reporting on money laundering or terrorist activities;

(B) Determining whether to establish or maintain an account, or to engage in a transaction; or

(C) Assisting the financial institution in complying with any requirement of this part.

(ii) Each financial institution or association of financial institutions that engages in the sharing of information pursuant to this section shall maintain adequate procedures to protect the security and confidentiality of such information. The requirements of this paragraph (b)(4)(ii) shall be deemed satisfied to the extent that a financial institution applies to such information procedures that the institution has established to satisfy the requirements of section 501 of the Gramm-Leach-Bliley Act (15 U.S.C. 6801), and applicable regulations issued thereunder, with regard to the protection of its customers' nonpublic personal information.

(5) *Safe harbor from certain liability*—(i) *In general.* A financial institution or association of financial institutions that shares information pursuant to paragraph (b) of this section shall be protected from liability for such sharing, or for any failure to provide notice of such sharing, to an individual, entity, or organization that is identified in such sharing, to the full extent provided in subsection 314(b) of Public Law 107–56.

(ii) *Limitation.* Paragraph (b)(5)(i) of this section shall not apply to a financial institution or association of financial institutions to the extent such institution or association fails to comply with paragraphs (b)(2), (b)(3), or (b)(4) of this section.

(c) *Information sharing between financial institutions and the Federal Government.* If, as a result of information shared pursuant to this section, a financial institution knows, suspects, or has reason to suspect that an individual, entity, or organization is involved in, or may be involved in terrorist activity or money laundering, and such institution is subject to a suspicious activity reporting requirement under this part or other applicable regulations, the institution shall file a Suspicious Activity Report in accordance with those regulations. In situations involving violations requiring immediate attention, such as when a reportable violation involves terrorist activity or is ongoing, the financial institution shall immediately notify, by telephone, an appropriate law enforcement authority and financial institution supervisory authorities in addition to filing timely a Suspicious Activity Report. A financial institution that is not subject to a suspicious activity reporting requirement is not required to file a Suspicious Activity Report or otherwise to notify law enforcement of suspicious activity that is detected as a result of information shared pursuant to this section. Such a financial institution is encouraged, however, to voluntarily report such activity to FinCEN.

(d) *No effect on financial institution reporting obligations.* Nothing in this subpart affects the obligation of a financial institution to file a Suspicious Activity Report pursuant to subpart B of this part or any other applicable regulations, or to otherwise contact directly a Federal agency concerning individuals or entities suspected of engaging in terrorist activity or money laundering.

[67 FR 60587, Sept. 26, 2002]

APPENDIX A TO SUBPART H—NOTICE FOR PURPOSES OF SUBSECTION 314(B) OF THE USA PATRIOT ACT AND 31 CFR 103.110

Notice for Purposes of Subsection 314(b)
of the USA Patriot Act and 31 CFR 103.110

Notice is given, on behalf of (insert name, address, and federal employer identification number (EIN) of financial institution or association of financial institutions)

_____

_____

_____

that:

(1) (i) The financial institution specified above is a "financial institution" as such term is defined in 31 CFR 103.110(a)(2), or (ii) the association specified above is an "association of financial institutions" as such term is defined in 31 CFR 103.110(a)(3).

(2) The financial institution or association specified above intends, for a period of one (1) year beginning on the date of this notice, to engage in the sharing of information with other financial institutions or associations of financial institutions regarding individuals, entities, organizations, and countries, as permitted by subsection 314(b) of the USA Patriot Act of 2001 (Public Law 107-56) and the implementing regulations of the Department of the Treasury, Financial Crimes Enforcement Network (31 CFR 103.110).

(3) The financial institution or association of financial institutions specified above has established and will maintain adequate procedures to safeguard the security and confidentiality of such information.

(4) Information received by the above named financial institution or association pursuant to section 314(b) and 31 CFR 103.110 will not be used or disclosed for any purpose other than as permitted by 31 CFR 103.110(b)(4).

(5) In the case of a financial institution, the primary federal regulator, if applicable, of the above named financial institution is _____.

(6) The following person may be contacted in connection with inquiries related to the information sharing under subsection 314(b) of the USA Patriot Act and 31 CFR 103.110:

NAME: _____
TITLE: _____
MAILING ADDRESS: _____
_____
_____
E-MAIL ADDRESS: _____
TELEPHONE NUMBER: _____
FACSIMILE NUMBER: _____

BY: _____
Name

_____
Title

_____
Date

[68 FR 60587, Sept. 26, 2002]

Subpart I—Anti-Money Laundering Programs

ANTI-MONEY LAUNDERING PROGRAMS

§ 103.120 Anti-money laundering program requirements for financial institutions regulated by a Federal functional regulator or a self-regulatory organization, and casinos.

(a) *Definitions.* For purposes of this section:

(1) *Financial institution* means a financial institution defined in 31 U.S.C. 5312(a)(2) or (c)(1) that is subject to regulation by a Federal functional regulator or a self-regulatory organization.

(2) *Federal functional regulator* means:

(i) The Board of Governors of the Federal Reserve System;

(ii) The Office of the Comptroller of the Currency;

(iii) The Board of Directors of the Federal Deposit Insurance Corporation;

(iv) The Office of Thrift Supervision;

(v) The National Credit Union Administration;

(vi) The Securities and Exchange Commission; or

(vii) The Commodity Futures Trading Commission.

(3) *Self-regulatory organization:*

(i) Shall have the same meaning as provided in section 3(a)(26) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(26)); and

(ii) Means a ''registered entity'' or a ''registered futures association'' as provided in section 1a(29) or 17, respectively, of the Commodity Exchange Act (7 U.S.C. 1a(29), 21).

(4) *Casino* has the same meaning as provided in § 103.11(n)(5).

(b) *Requirements for financial institutions regulated only by a Federal functional regulator, including banks, savings associations, and credit unions.* A financial institution regulated by a Federal functional regulator that is not subject to the regulations of a self regulatory organization shall be deemed to satisfy the requirements of 31 U.S.C. 5318(h)(1) if it implements and maintains an anti-money laundering program that complies with the regulation of its Federal functional regulator governing such programs.

(c) *Requirements for financial institutions regulated by a self-regulatory organization, including registered securities broker-dealers and futures commission merchants.* A financial institution regulated by a self-regulatory organization shall be deemed to satisfy the requirements of 31 U.S.C. 5318(h)(1) if:

(1) The financial institution complies with any applicable regulation of its Federal functional regulator governing the establishment and implementation of anti-money laundering programs; and

(2)(i) The financial institution implements and maintains an anti-money laundering program that complies with the rules, regulations, or requirements of its self-regulatory organization governing such programs; and

(ii) The rules, regulations, or requirements of the self-regulatory organization have been approved, if required, by the appropriate Federal functional regulator.

(d) *Requirements for casinos.* A casino shall be deemed to satisfy the requirements of 31 U.S.C. 5318(h)(1) if it implements and maintains a compliance program described in § 103.64.

[67 FR 21113, Apr. 29, 2002]

§ 103.121 Customer Identification Programs for banks, savings associations, credit unions, and certain non-Federally regulated banks.

(a) *Definitions.* For purposes of this section:

(1)(i) *Account* means a formal banking relationship established to provide or engage in services, dealings, or other financial transactions including a deposit account, a transaction or asset account, a credit account, or other extension of credit. *Account* also includes a relationship established to provide a safety deposit box or other safekeeping services, or cash management, custodian, and trust services.

(ii) *Account* does not include:

(A) A product or service where a formal banking relationship is not established with a person, such as check-cashing, wire transfer, or sale of a check or money order;

(B) An account that the bank acquires through an acquisition, merger, purchase of assets, or assumption of liabilities; or

(C) An account opened for the purpose of participating in an employee

benefit plan established under the Employee Retirement Income Security Act of 1974.

(2) *Bank* means:

(i) A bank, as that term is defined in § 103.11(c), that is subject to regulation by a Federal functional regulator; and

(ii) A credit union, private bank, and trust company, as set forth in § 103.11(c), that does not have a Federal functional regulator.

(3)(i) *Customer* means:

(A) A person that opens a new account; and

(B) An individual who opens a new account for:

(*1*) An individual who lacks legal capacity, such as a minor; or

(*2*) An entity that is not a legal person, such as a civic club.

(ii) *Customer* does not include:

(A) A financial institution regulated by a Federal functional regulator or a bank regulated by a state bank regulator;

(B) A person described in § 103.22(d)(2)(ii) through (iv); or

(C) A person that has an existing account with the bank, provided that the bank has a reasonable belief that it knows the true identity of the person.

(4) *Federal functional regulator* is defined at § 103.120(a)(2).

(5) *Financial institution* is defined at 31 U.S.C. 5312(a)(2) and (c)(1).

(6) *Taxpayer identification number* is defined by section 6109 of the Internal Revenue Code of 1986 (26 U.S.C. 6109) and the Internal Revenue Service regulations implementing that section (*e.g.*, social security number or employer identification number).

(7) *U.S. person* means:

(i) A United States citizen; or

(ii) A person other than an individual (such as a corporation, partnership, or trust), that is established or organized under the laws of a State or the United States.

(8) *Non-U.S. person* means a person that is not a *U.S. person*.

(b) *Customer Identification Program: minimum requirements*—(1) *In general.* A bank must implement a written Customer Identification Program (CIP) appropriate for its size and type of business that, at a minimum, includes each of the requirements of paragraphs (b)(1) through (5) of this section. If a bank is required to have an anti-money laundering compliance program under the regulations implementing 31 U.S.C. 5318(h), 12 U.S.C. 1818(s), or 12 U.S.C. 1786(q)(1), then the CIP must be a part of the anti-money laundering compliance program. Until such time as credit unions, private banks, and trust companies without a Federal functional regulator are subject to such a program, their CIPs must be approved by their boards of directors.

(2) *Identity verification procedures.* The CIP must include risk-based procedures for verifying the identity of each customer to the extent reasonable and practicable. The procedures must enable the bank to form a reasonable belief that it knows the true identity of each customer. These procedures must be based on the bank's assessment of the relevant risks, including those presented by the various types of accounts maintained by the bank, the various methods of opening accounts provided by the bank, the various types of identifying information available, and the bank's size, location, and customer base. At a minimum, these procedures must contain the elements described in this paragraph (b)(2).

(i) *Customer information required*—(A) *In general.* The CIP must contain procedures for opening an account that specify the identifying information that will be obtained from each customer. Except as permitted by paragraphs (b)(2)(i)(B) and (C) of this section, the bank must obtain, at a minimum, the following information from the customer prior to opening an account:

(*1*) Name;

(*2*) Date of birth, for an individual;

(*3*) Address, which shall be:

(*i*) For an individual, a residential or business street address;

(*ii*) For an individual who does not have a residential or business street address, an Army Post Office (APO) or Fleet Post Office (FPO) box number, or the residential or business street address of next of kin or of another contact individual; or

(*iii*) For a person other than an individual (such as a corporation, partnership, or trust), a principal place of business, local office, or other physical location; and

(*4*) Identification number, which shall be:

(*i*) For a U.S. person, a taxpayer identification number; or

(*ii*) For a non-U.S. person, one or more of the following: a taxpayer identification number; passport number and country of issuance; alien identification card number; or number and country of issuance of any other government-issued document evidencing nationality or residence and bearing a photograph or similar safeguard.

NOTE TO PARAGRAPH (b)(2)(i)(A)(*4*)(*ii*): When opening an account for a foreign business or enterprise that does not have an identification number, the bank must request alternative government-issued documentation certifying the existence of the business or enterprise.

(B) *Exception for persons applying for a taxpayer identification number.* Instead of obtaining a taxpayer identification number from a customer prior to opening the account, the CIP may include procedures for opening an account for a customer that has applied for, but has not received, a taxpayer identification number. In this case, the CIP must include procedures to confirm that the application was filed before the customer opens the account and to obtain the taxpayer identification number within a reasonable period of time after the account is opened.

(C) *Credit card accounts.* In connection with a customer who opens a credit card account, a bank may obtain the identifying information about a customer required under paragraph (b)(2)(i)(A) by acquiring it from a third-party source prior to extending credit to the customer.

(ii) *Customer verification.* The CIP must contain procedures for verifying the identity of the customer, using information obtained in accordance with paragraph (b)(2)(i) of this section, within a reasonable time after the account is opened. The procedures must describe when the bank will use documents, non-documentary methods, or a combination of both methods as described in this paragraph (b)(2)(ii).

(A) *Verification through documents.* For a bank relying on documents, the CIP must contain procedures that set forth the documents that the bank will use. These documents may include:

(*1*) For an individual, unexpired government-issued identification evidencing nationality or residence and bearing a photograph or similar safeguard, such as a driver's license or passport; and

(*2*) For a person other than an individual (such as a corporation, partnership, or trust), documents showing the existence of the entity, such as certified articles of incorporation, a government-issued business license, a partnership agreement, or trust instrument.

(B) *Verification through non-documentary methods.* For a bank relying on non-documentary methods, the CIP must contain procedures that describe the non-documentary methods the bank will use.

(*1*) These methods may include contacting a customer; independently verifying the customer's identity through the comparison of information provided by the customer with information obtained from a consumer reporting agency, public database, or other source; checking references with other financial institutions; and obtaining a financial statement.

(*2*) The bank's non-documentary procedures must address situations where an individual is unable to present an unexpired government-issued identification document that bears a photograph or similar safeguard; the bank is not familiar with the documents presented; the account is opened without obtaining documents; the customer opens the account without appearing in person at the bank; and where the bank is otherwise presented with circumstances that increase the risk that the bank will be unable to verify the true identity of a customer through documents.

(C) *Additional verification for certain customers.* The CIP must address situations where, based on the bank's risk assessment of a new account opened by a customer that is not an individual, the bank will obtain information about individuals with authority or control over such account, including signatories, in order to verify the customer's identity. This verification method applies only when the bank cannot verify the customer's true identity using the

verification methods described in paragraphs (b)(2)(ii)(A) and (B) of this section.

(iii) *Lack of verification.* The CIP must include procedures for responding to circumstances in which the bank cannot form a reasonable belief that it knows the true identity of a customer. These procedures should describe:

(A) When the bank should not open an account;

(B) The terms under which a customer may use an account while the bank attempts to verify the customer's identity;

(C) When the bank should close an account, after attempts to verify a customer's identity have failed; and

(D) When the bank should file a Suspicious Activity Report in accordance with applicable law and regulation.

(3) *Recordkeeping.* The CIP must include procedures for making and maintaining a record of all information obtained under the procedures implementing paragraph (b) of this section.

(i) *Required records.* At a minimum, the record must include:

(A) All identifying information about a customer obtained under paragraph (b)(2)(i) of this section;

(B) A description of any document that was relied on under paragraph (b)(2)(ii)(A) of this section noting the type of document, any identification number contained in the document, the place of issuance and, if any, the date of issuance and expiration date;

(C) A description of the methods and the results of any measures undertaken to verify the identity of the customer under paragraph (b)(2)(ii)(B) or (C) of this section; and

(D) A description of the resolution of any substantive discrepancy discovered when verifying the identifying information obtained.

(ii) *Retention of records.* The bank must retain the information in paragraph (b)(3)(i)(A) of this section for five years after the date the account is closed or, in the case of credit card accounts, five years after the account is closed or becomes dormant. The bank must retain the information in paragraphs (b)(3)(i)(B), (C), and (D) of this section for five years after the record is made.

(4) *Comparison with government lists.* The CIP must include procedures for determining whether the customer appears on any list of known or suspected terrorists or terrorist organizations issued by any Federal government agency and designated as such by Treasury in consultation with the Federal functional regulators. The procedures must require the bank to make such a determination within a reasonable period of time after the account is opened, or earlier, if required by another Federal law or regulation or Federal directive issued in connection with the applicable list. The procedures must also require the bank to follow all Federal directives issued in connection with such lists.

(5)(i) *Customer notice.* The CIP must include procedures for providing bank customers with adequate notice that the bank is requesting information to verify their identities.

(ii) *Adequate notice.* Notice is adequate if the bank generally describes the identification requirements of this section and provides the notice in a manner reasonably designed to ensure that a customer is able to view the notice, or is otherwise given notice, before opening an account. For example, depending upon the manner in which the account is opened, a bank may post a notice in the lobby or on its website, include the notice on its account applications, or use any other form of written or oral notice.

(iii) *Sample notice.* If appropriate, a bank may use the following sample language to provide notice to its customers:

IMPORTANT INFORMATION ABOUT PROCEDURES FOR OPENING A NEW ACCOUNT

To help the government fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify, and record information that identifies each person who opens an account.

What this means for you: When you open an account, we will ask for your name, address, date of birth, and other information that will allow us to identify you. We may also ask to see your driver's license or other identifying documents.

(6) *Reliance on another financial institution.* The CIP may include procedures

specifying when a bank will rely on the performance by another financial institution (including an affiliate) of any procedures of the bank's CIP, with respect to any customer of the bank that is opening, or has opened, an account or has established a similar formal banking or business relationship with the other financial institution to provide or engage in services, dealings, or other financial transactions, provided that:

(i) Such reliance is reasonable under the circumstances;

(ii) The other financial institution is subject to a rule implementing 31 U.S.C. 5318(h) and is regulated by a Federal functional regulator; and

(iii) The other financial institution enters into a contract requiring it to certify annually to the bank that it has implemented its anti-money laundering program, and that it will perform (or its agent will perform) the specified requirements of the bank's CIP.

(c) *Exemptions.* The appropriate Federal functional regulator, with the concurrence of the Secretary, may, by order or regulation, exempt any bank or type of account from the requirements of this section. The Federal functional regulator and the Secretary shall consider whether the exemption is consistent with the purposes of the Bank Secrecy Act and with safe and sound banking, and may consider other appropriate factors. The Secretary will make these determinations for any bank or type of account that is not subject to the authority of a Federal functional regulator.

(d) *Other requirements unaffected.* Nothing in this section relieves a bank of its obligation to comply with any other provision in this part, including provisions concerning information that must be obtained, verified, or maintained in connection with any account or transaction.

[68 FR 25109, May 9, 2003]

§ 103.122 Customer identification programs for broker-dealers.

(a) *Definitions.* For the purposes of this section:

(1)(i) *Account* means a formal relationship with a broker-dealer established to effect transactions in securities, including, but not limited to, the purchase or sale of securities and securities loaned and borrowed activity, and to hold securities or other assets for safekeeping or as collateral.

(ii) *Account* does not include:

(A) An account that the broker-dealer acquires through any acquisition, merger, purchase of assets, or assumption of liabilities; or

(B) An account opened for the purpose of participating in an employee benefit plan established under the Employee Retirement Income Security Act of 1974.

(2) *Broker-dealer* means a person registered or required to be registered as a broker or dealer with the Commission under the Securities Exchange Act of 1934 (15 U.S.C 77a *et seq.*), except persons who register pursuant to 15 U.S.C 78o(b)(11).

(3) *Commission* means the United States Securities and Exchange Commission.

(4)(i) *Customer* means: (A) A person that opens a new account; and (B) an individual who opens a new account for: (*1*) An individual who lacks legal capacity; or (*2*) an entity that is not a legal person.

(ii) *Customer* does not include: (A) A financial institution regulated by a Federal functional regulator or a bank regulated by a state bank regulator; (B) a person described in § 103.22(d)(2)(ii) through (iv); or (C) a person that has an existing account with the broker-dealer, provided the broker-dealer has a reasonable belief that it knows the true identity of the person.

(5) *Federal functional regulator* is defined at § 103.120(a)(2).

(6) *Financial institution* is defined at 31 U.S.C. 5312(a)(2) and (c)(1).

(7) *Taxpayer identification number* is defined by section 6109 of the Internal Revenue Code of 1986 (26 U.S.C. 6109) and the Internal Revenue Service regulations implementing that section (*e.g.*, social security number or employer identification number).

(8) *U.S. person* means: (i) A United States citizen; or (ii) a person other than an individual (such as a corporation, partnership or trust) that is established or organized under the laws of a State or the United States.

(9) *Non-U.S. person* means a person that is not a *U.S. person.*

(b) *Customer identification program: minimum requirements*—(1) *In general.* A broker-dealer must establish, document, and maintain a written Customer Identification Program (''CIP'') appropriate for its size and business that, at a minimum, includes each of the requirements of paragraphs (b)(1) through (b)(5) of this section. The CIP must be a part of the broker-dealer's anti-money laundering compliance program required under 31 U.S.C. 5318(h).

(2) *Identity verification procedures.* The CIP must include risk-based procedures for verifying the identity of each customer to the extent reasonable and practicable. The procedures must enable the broker-dealer to form a reasonable belief that it knows the true identity of each customer. The procedures must be based on the broker-dealer's assessment of the relevant risks, including those presented by the various types of accounts maintained by the broker-dealer, the various methods of opening accounts provided by the broker-dealer, the various types of identifying information available and the broker-dealer's size, location and customer base. At a minimum, these procedures must contain the elements described in this paragraph (b)(2).

(i)(A) *Customer information required.* The CIP must contain procedures for opening an account that specify identifying information that will be obtained from each customer. Except as permitted by paragraph (b)(2)(i)(B) of this section, the broker-dealer must obtain, at a minimum, the following information prior to opening an account:

(*1*) Name;

(*2*) Date of birth, for an individual;

(*3*) Address, which shall be: (*i*) For an individual, a residential or business street address; (*ii*) for an individual who does not have a residential or business street address, an Army Post Office (APO) or Fleet Post Office (FPO) box number, or the residential or business street address of a next of kin or another contact individual; or (*iii*) for a person other than an individual (such as a corporation, partnership or trust), a principal place of business, local office or other physical location; and

(*4*) Identification number, which shall be: (*i*) For a U.S. person, a taxpayer identification number; or (*ii*) for a non-U.S. person, one or more of the following: a taxpayer identification number, a passport number and country of issuance, an alien identification card number, or the number and country of issuance of any other government-issued document evidencing nationality or residence and bearing a photograph or similar safeguard.

NOTE TO PARAGRAPH (b)(2)(i)(A)(*4*)(*ii*): When opening an account for a foreign business or enterprise that does not have an identification number, the broker-dealer must request alternative government-issued documentation certifying the existence of the business or enterprise.

(B) *Exception for persons applying for a taxpayer identification number.* Instead of obtaining a taxpayer identification number from a customer prior to opening an account, the CIP may include procedures for opening an account for a customer that has applied for, but has not received, a taxpayer identification number. In this case, the CIP must include procedures to confirm that the application was filed before the customer opens the account and to obtain the taxpayer identification number within a reasonable period of time after the account is opened.

(ii) *Customer verification.* The CIP must contain procedures for verifying the identity of each customer, using information obtained in accordance with paragraph (b)(2)(i) of this section, within a reasonable time before or after the customer's account is opened. The procedures must describe when the broker-dealer will use documents, non-documentary methods, or a combination of both methods, as described in this paragraph (b)(2)(ii).

(A) *Verification through documents.* For a broker-dealer relying on documents, the CIP must contain procedures that set forth the documents the broker-dealer will use. These documents may include:

(*1*) For an individual, an unexpired government-issued identification evidencing nationality or residence and bearing a photograph or similar safeguard, such as a driver's license or passport; and

(2) For a person other than an individual (such as a corporation, partnership or trust), documents showing the existence of the entity, such as certified articles of incorporation, a government-issued business license, a partnership agreement, or a trust instrument.

(B) *Verification through non-documentary methods.* For a broker-dealer relying on non-documentary methods, the CIP must contain procedures that set forth the non-documentary methods the broker-dealer will use.

(*1*) These methods may include contacting a customer; independently verifying the customer's identity through the comparison of information provided by the customer with information obtained from a consumer reporting agency, public database, or other source; checking references with other financial institutions; or obtaining a financial statement.

(2) The broker-dealer's non-documentary procedures must address situations where an individual is unable to present an unexpired government-issued identification document that bears a photograph or similar safeguard; the broker-dealer is not familiar with the documents presented; the account is opened without obtaining documents; the customer opens the account without appearing in person at the broker-dealer; and where the broker-dealer is otherwise presented with circumstances that increase the risk that the broker-dealer will be unable to verify the true identity of a customer through documents.

(C) *Additional verification for certain customers.* The CIP must address situations where, based on the broker-dealer's risk assessment of a new account opened by a customer that is not an individual, the broker-dealer will obtain information about individuals with authority or control over such account. This verification method applies only when the broker-dealer cannot verify the customer's true identity using the verification methods described in paragraphs (b)(2)(ii)(A) and (B) of this section.

(iii) *Lack of verification.* The CIP must include procedures for responding to circumstances in which the broker-dealer cannot form a reasonable belief that it knows the true identity of a customer. These procedures should describe:

(A) When the broker-dealer should not open an account;

(B) The terms under which a customer may conduct transactions while the broker-dealer attempts to verify the customer's identity;

(C) When the broker-dealer should close an account after attempts to verify a customer's identity fail; and

(D) When the broker-dealer should file a Suspicious Activity Report in accordance with applicable law and regulation.

(3) *Recordkeeping.* The CIP must include procedures for making and maintaining a record of all information obtained under procedures implementing paragraph (b) of this section.

(i) *Required records.* At a minimum, the record must include:

(A) All identifying information about a customer obtained under paragraph (b)(2)(i) of this section,

(B) A description of any document that was relied on under paragraph (b)(2)(ii)(A) of this section noting the type of document, any identification number contained in the document, the place of issuance, and if any, the date of issuance and expiration date;

(C) A description of the methods and the results of any measures undertaken to verify the identity of a customer under paragraphs (b)(2)(ii)(B) and (C) of this section; and

(D) A description of the resolution of each substantive discrepancy discovered when verifying the identifying information obtained.

(ii) *Retention of records.* The broker-dealer must retain the records made under paragraph (b)(3)(i)(A) of this section for five years after the account is closed and the records made under paragraphs (b)(3)(i)(B), (C) and (D) of this section for five years after the record is made. In all other respects, the records must be maintained pursuant to the provisions of 17 CFR 240.17a–4.

(4) *Comparison with government lists.* The CIP must include procedures for determining whether a customer appears on any list of known or suspected terrorists or terrorist organizations issued by any Federal government

agency and designated as such by Treasury in consultation with the Federal functional regulators. The procedures must require the broker-dealer to make such a determination within a reasonable period of time after the account is opened, or earlier if required by another Federal law or regulation or Federal directive issued in connection with the applicable list. The procedures also must require the broker-dealer to follow all Federal directives issued in connection with such lists.

(5)(i) *Customer notice.* The CIP must include procedures for providing customers with adequate notice that the broker-dealer is requesting information to verify their identities.

(ii) *Adequate notice.* Notice is adequate if the broker-dealer generally describes the identification requirements of this section and provides such notice in a manner reasonably designed to ensure that a customer is able to view the notice, or is otherwise given notice, before opening an account. For example, depending upon the manner in which the account is opened, a broker-dealer may post a notice in the lobby or on its Web site, include the notice on its account applications or use any other form of oral or written notice.

(iii) *Sample notice.* If appropriate, a broker-dealer may use the following sample language to provide notice to its customers:

IMPORTANT INFORMATION ABOUT PROCEDURES FOR OPENING A NEW ACCOUNT

To help the government fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify, and record information that identifies each person who opens an account.

What this means for you: When you open an account, we will ask for your name, address, date of birth and other information that will allow us to identify you. We may also ask to see your driver's license or other identifying documents.

(6) *Reliance on another financial institution.* The CIP may include procedures specifying when the broker-dealer will rely on the performance by another financial institution (including an affiliate) of any procedures of the broker-dealer's CIP, with respect to any customer of the broker-dealer that is opening an account or has established an account or similar business relationship with the other financial institution to provide or engage in services, dealings, or other financial transactions, provided that:

(i) Such reliance is reasonable under the circumstances;

(ii) The other financial institution is subject to a rule implementing 31 U.S.C. 5318(h), and regulated by a Federal functional regulator; and

(iii) The other financial institution enters into a contract requiring it to certify annually to the broker-dealer that it has implemented its anti-money laundering program, and that it will perform (or its agent will perform) specified requirements of the broker-dealer's CIP.

(c) *Exemptions.* The Commission, with the concurrence of the Secretary, may by order or regulation exempt any broker-dealer that registers with the Commission pursuant to 15 U.S.C. 78o or 15 U.S.C. 78o–4 or any type of account from the requirements of this section. The Secretary, with the concurrence of the Commission, may exempt any broker-dealer that registers with the Commission pursuant to 15 U.S.C. 78o–5. In issuing such exemptions, the Commission and the Secretary shall consider whether the exemption is consistent with the purposes of the Bank Secrecy Act, and in the public interest, and may consider other necessary and appropriate factors.

(d) *Other requirements unaffected.* Nothing in this section relieves a broker-dealer of its obligation to comply with any other provision of this part, including provisions concerning information that must be obtained, verified, or maintained in connection with any account or transaction.

[68 FR 25129, May 9, 2003]

§ 103.123 Customer identification programs for futures commission merchants and introducing brokers.

(a) *Definitions.* For the purposes of this section:

(1)(i) *Account* means a formal relationship with a futures commission merchant, including, but not limited to, those established to effect transactions in contracts of sale of a commodity for future delivery, options on

any contract of sale of a commodity for future delivery, or options on a commodity.

(ii) *Account* does not include:

(A) An account that the futures commission merchant acquires through any acquisition, merger, purchase of assets, or assumption of liabilities; or

(B) An account opened for the purpose of participating in an employee benefit plan established under the Employee Retirement Income Security Act of 1974.

(2) *Commission* means the United States Commodity Futures Trading Commission.

(3) *Commodity* means any good, article, service, right, or interest described in Section 1a(4) of the Commodity Exchange Act (7 U.S.C. 1a(4)).

(4) *Contract of sale* means any sale, agreement of sale or agreement to sell as described in Section 1a(7) of the Commodity Exchange Act (7 U.S.C. 1a(7)).

(5)(i) *Customer* means:

(A) A person that opens a new account with a futures commission merchant; and

(B) An individual who opens a new account with a futures commission merchant for:

(*1*) An individual who lacks legal capacity; or

(*2*) An entity that is not a legal person.

(ii) *Customer* does not include:

(A) A financial institution regulated by a Federal functional regulator or a bank regulated by a state bank regulator;

(B) A person described in § 103.22(d)(2)(ii) through (iv); or

(C) A person that has an existing account, provided the futures commission merchant or introducing broker has a reasonable belief that it knows the true identity of the person.

(iii) When an account is introduced to a futures commission merchant by an introducing broker, the person or individual opening the account shall be deemed to be a *customer* of both the futures commission merchant and the introducing broker for the purposes of this section.

(6) *Federal functional regulator* is defined at § 103.120(a)(2).

(7) *Financial institution* is defined at 31 U.S.C. 5312(a)(2) and (c)(1).

(8) *Futures commission merchant* means any person registered or required to be registered as a futures commission merchant with the Commission under the Commodity Exchange Act (7 U.S.C. 1 *et seq.*), except persons who register pursuant to Section 4f(a)(2) of the Commodity Exchange Act (7 U.S.C. 6f(a)(2)).

(9) *Introducing broker* means any person registered or required to be registered as an introducing broker with the Commission under the Commodity Exchange Act (7 U.S.C. 1 *et seq.*), except persons who register pursuant to Section 4f(a)(2) of the Commodity Exchange Act (7 U.S.C. 6f(a)(2)).

(10) *Option* means an agreement, contract or transaction described in Section 1a(26) of the Commodity Exchange Act (7 U.S.C. 1a(26)).

(11) *Taxpayer identification number* is defined by section 6109 of the Internal Revenue Code of 1986 (26 U.S.C. 6109) and the Internal Revenue Service regulations implementing that section (*e.g.*, social security number or employer identification number).

(12) *U.S. person* means:

(i) A United States citizen; or

(ii) A person other than an individual (such as a corporation, partnership or trust) that is established or organized under the laws of a State or the United States.

(13) *Non-U.S. person* means a person that is not a *U.S. person*.

(b) *Customer identification program: minimum requirements*—(1) *In general.* Each futures commission merchant and introducing broker must implement a written Customer Identification Program (CIP) appropriate for its size and business that, at a minimum, includes each of the requirements of paragraphs (b)(1) through (b)(5) of this section. The CIP must be a part of each futures commission merchant's and introducing broker's anti-money laundering compliance program required under 31 U.S.C. 5318(h).

(2) *Identity verification procedures.* The CIP must include risk-based procedures for verifying the identity of each customer to the extent reasonable and practicable. The procedures must enable each futures commission merchant and introducing broker to form a

reasonable belief that it knows the true identity of each customer. The procedures must be based on the futures commission merchant's or introducing broker's assessment of the relevant risks, including those presented by the various types of accounts maintained, the various methods of opening accounts, the various types of identifying information available, and the futures commission merchant's or introducing broker's size, location and customer base. At a minimum, these procedures must contain the elements described in paragraph (b)(2) of this section.

(i)(A) *Customer information required.* The CIP must include procedures for opening an account that specify identifying information that will be obtained from each customer. Except as permitted by paragraph (b)(2)(i)(B) of this section, each futures commission merchant and introducing broker must obtain, at a minimum, the following information prior to opening an account:

(*1*) Name;

(*2*) Date of birth, for an individual;

(*3*) Address, which shall be:

(*i*) For an individual, a residential or business street address;

(*ii*) For an individual who does not have a residential or business street address, an Army Post Office (APO) or Fleet Post Office (FPO) box number, or the residential or business street address of a next of kin or another contact individual; or

(*iii*) For a person other than an individual (such as a corporation, partnership or trust), a principal place of business, local office or other physical location; and

(*4*) Identification number, which shall be:

(*i*) For a U.S. person, a taxpayer identification number; or

(*ii*) For a non-U.S. person, one or more of the following: a taxpayer identification number, a passport number and country of issuance, an alien identification card number, or the number and country of issuance of any other government-issued document evidencing nationality or residence and bearing a photograph or similar safeguard.

NOTE TO PARAGRAPH (b)(2)(i)(A)(*4*)(*ii*): When opening an account for a foreign business or enterprise that does not have an identification number, the futures commission merchant or introducing broker must request alternative government-issued documentation certifying the existence of the business or enterprise.

(B) *Exception for persons applying for a taxpayer identification number.* Instead of obtaining a taxpayer identification number from a customer prior to opening an account, the CIP may include procedures for opening an account for a customer that has applied for, but has not received, a taxpayer identification number. In this case, the CIP must include procedures to confirm that the application was filed before the customer opens the account and to obtain the taxpayer identification number within a reasonable period of time after the account is opened.

(ii) *Customer verification.* The CIP must contain procedures for verifying the identity of each customer, using information obtained in accordance with paragraph (b)(2)(i) of this section, within a reasonable time before or after the customer's account is opened. The procedures must describe when the futures commission merchant or introducing broker will use documents, non-documentary methods, or a combination of both methods, as described in this paragraph (b)(2)(ii).

(A) *Verification through documents.* For a futures commission merchant or introducing broker relying on documents, the CIP must contain procedures that set forth the documents the futures commission merchant or introducing broker will use. These documents may include:

(*1*) For an individual, an unexpired government-issued identification evidencing nationality or residence and bearing a photograph or similar safeguard, such as a driver's license or passport; and

(*2*) For a person other than an individual (such as a corporation, partnership or trust), documents showing the existence of the entity, such as certified articles of incorporation, a government-issued business license, a partnership agreement, or a trust instrument.

(B) *Verification through non-documentary methods.* For a futures commission merchant or introducing broker relying on non-documentary methods, the

CIP must contain procedures that set forth the non-documentary methods the futures commission merchant or introducing broker will use.

(*1*) These methods may include contacting a customer; independently verifying the customer's identity through the comparison of information provided by the customer with information obtained from a consumer reporting agency, public database, or other source; checking references with other financial institutions; or obtaining a financial statement.

(*2*) The futures commission merchant's or introducing broker's non-documentary procedures must address situations where an individual is unable to present an unexpired government-issued identification document that bears a photograph or similar safeguard; the futures commission merchant or introducing broker is not familiar with the documents presented; the account is opened without obtaining documents; the customer opens the account without appearing in person at the futures commission merchant or introducing broker; and where the futures commission merchant or introducing broker is otherwise presented with circumstances that increase the risk that the futures commission merchant or introducing broker will be unable to verify the true identity of a customer through documents.

(C) *Additional verification for certain customers.* The CIP must address situations where, based on the futures commission merchant's or introducing broker's risk assessment of a new account opened by a customer that is not an individual, the futures commission merchant or introducing broker will obtain information about individuals with authority or control over such account in order to verify the customer's identity. This verification method applies only when the futures commission merchant or introducing broker cannot verify the customer's true identity after using the verification methods described in paragraphs (b)(2)(ii)(A) and (B) of this section.

(iii) *Lack of verification.* The CIP must include procedures for responding to circumstances in which the futures commission merchant or introducing broker cannot form a reasonable belief that it knows the true identity of a customer. These procedures should describe:

(A) When an account should not be opened;

(B) The terms under which a customer may conduct transactions while the futures commission merchant or introducing broker attempts to verify the customer's identity;

(C) When an account should be closed after attempts to verify a customer's identity have failed; and

(D) When the futures commission merchant or introducing broker should file a Suspicious Activity Report in accordance with applicable law and regulation.

(3) *Recordkeeping.* The CIP must include procedures for making and maintaining a record of all information obtained under procedures implementing paragraph (b) of this section.

(i) *Required records.* At a minimum, the record must include:

(A) All identifying information about a customer obtained under paragraph (b)(2)(i) of this section;

(B) A description of any document that was relied on under paragraph (b)(2)(ii)(A) of this section noting the type of document, any identification number contained in the document, the place of issuance, and if any, the date of issuance and expiration date;

(C) A description of the methods and the results of any measures undertaken to verify the identity of a customer under paragraphs (b)(2)(ii)(B) and (C) of this section; and

(D) A description of the resolution of each substantive discrepancy discovered when verifying the identifying information obtained.

(ii) *Retention of records.* Each futures commission merchant and introducing broker must retain the records made under paragraph (b)(3)(i)(A) of this section for five years after the account is closed and the records made under paragraphs (b)(3)(i)(B), (C), and (D) of this section for five years after the record is made. In all other respects, the records must be maintained pursuant to the provisions of 17 CFR 1.31.

(4) *Comparison with government lists.* The CIP must include procedures for determining whether a customer appears on any list of known or suspected

terrorists or terrorist organizations issued by any Federal government agency and designated as such by Treasury in consultation with the Federal functional regulators. The procedures must require the futures commission merchant or introducing broker to make such a determination within a reasonable period of time after the account is opened, or earlier if required by another Federal law or regulation or Federal directive issued in connection with the applicable list. The procedures also must require the futures commission merchant or introducing broker to follow all Federal directives issued in connection with such lists.

(5)(i) *Customer notice.* The CIP must include procedures for providing customers with adequate notice that the futures commission merchant or introducing broker is requesting information to verify their identities.

(ii) *Adequate notice.* Notice is adequate if the futures commission merchant or introducing broker generally describes the identification requirements of this section and provides such notice in a manner reasonably designed to ensure that a customer is able to view the notice, or is otherwise given notice, before opening an account. For example, depending upon the manner in which the account is opened, a futures commission merchant or introducing broker may post a notice in the lobby or on its Web site, include the notice on its account applications or use any other form of written or oral notice.

(iii) *Sample notice.* If appropriate, a futures commission merchant or introducing broker may use the following sample language to provide notice to its customers:

IMPORTANT INFORMATION ABOUT PROCEDURES FOR OPENING A NEW ACCOUNT

To help the government fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify, and record information that identifies each person who opens an account.

What this means for you: When you open an account, we will ask for your name, address, date of birth and other information that will allow us to identify you. We may also ask to see your driver's license or other identifying documents.

(6) *Reliance on another financial institution.* The CIP may include procedures specifying when the futures commission merchant or introducing broker will rely on the performance by another financial institution (including an affiliate) of any procedures of its CIP, with respect to any customer of the futures commission merchant or introducing broker that is opening an account, or has established an account or similar business relationship with the other financial institution to provide or engage in services, dealings, or other financial transactions, provided that:

(i) Such reliance is reasonable under the circumstances;

(ii) The other financial institution is subject to a rule implementing 31 U.S.C. 5318(h), and is regulated by a Federal functional regulator; and

(iii) The other financial institution enters into a contract requiring it to certify annually to the futures commission merchant or introducing broker that it has implemented its anti-money laundering program, and that it will perform (or its agent will perform) specified requirements of the futures commission merchant's or introducing broker's CIP.

(c) *Exemptions.* The Commission, with the concurrence of the Secretary, may by order or regulation exempt any futures commission merchant or introducing broker that registers with the Commission or any type of account from the requirements of this section. In issuing such exemptions, the Commission and the Secretary shall consider whether the exemption is consistent with the purposes of the Bank Secrecy Act, and in the public interest, and may consider other necessary and appropriate factors.

(d) *Other requirements unaffected.* Nothing in this section relieves a futures commission merchant or introducing broker of its obligation to comply with any other provision of this part, including provisions concerning information that must be obtained, verified, or maintained in connection with any account or transaction.

[68 FR 25160, May 9, 2003]

§ 103.125 Anti-money laundering programs for money services businesses.

(a) Each money services business, as defined by § 103.11(uu), shall develop, implement, and maintain an effective anti-money laundering program. An effective anti-money laundering program is one that is reasonably designed to prevent the money services business from being used to facilitate money laundering and the financing of terrorist activities.

(b) The program shall be commensurate with the risks posed by the location and size of, and the nature and volume of the financial services provided by, the money services business.

(c) The program shall be in writing, and a money services business shall make copies of the anti-money laundering program available for inspection to the Department of the Treasury upon request.

(d) At a minimum, the program shall:

(1) Incorporate policies, procedures, and internal controls reasonably designed to assure compliance with this part.

(i) Policies, procedures, and internal controls developed and implemented under this section shall include provisions for complying with the requirements of this part including, to the extent applicable to the money services business, requirements for:

(A) Verifying customer identification;

(B) Filing reports;

(C) Creating and retaining records; and

(D) Responding to law enforcement requests.

(ii) Money services businesses that have automated data processing systems should integrate their compliance procedures with such systems.

(iii) A person that is a money services business solely because it is an agent for another money services business as set forth in § 103.41(a)(2), and the money services business for which it serves as agent, may by agreement allocate between them responsibility for development of policies, procedures, and internal controls required by this paragraph (d)(1). Each money services business shall remain solely responsible for implementation of the requirements set forth in this section, and nothing in this paragraph (d)(1) relieves any money services business from its obligation to establish and maintain an effective anti-money laundering program.

(2) Designate a person to assure day to day compliance with the program and this part. The responsibilities of such person shall include assuring that:

(i) The money services business properly files reports, and creates and retains records, in accordance with applicable requirements of this part;

(ii) The compliance program is updated as necessary to reflect current requirements of this part, and related guidance issued by the Department of the Treasury; and

(iii) The money services business provides appropriate training and education in accordance with paragraph (d)(3) of this section.

(3) Provide education and/or training of appropriate personnel concerning their responsibilities under the program, including training in the detection of suspicious transactions to the extent that the money services business is required to report such transactions under this part.

(4) Provide for independent review to monitor and maintain an adequate program. The scope and frequency of the review shall be commensurate with the risk of the financial services provided by the money services business. Such review may be conducted by an officer or employee of the money services business so long as the reviewer is not the person designated in paragraph (d)(2) of this section.

(e) *Effective date.* A money services business must develop and implement an anti-money laundering program that complies with the requirements of this section on or before the later of July 24, 2002, and the end of the 90-day period beginning on the day following the date the business is established.

[67 FR 21116, Apr. 29, 2002]

§ 103.130 Anti-money laundering programs for mutual funds.

(a) For purposes of this section, ''mutual fund'' means an open-end company as defined in section 5(a)(1) of

the Investment Company act of 1940 (15 U.S.C. 80a–5(a)(1)).

(b) Effective July 24, 2002, each mutual fund shall develop and implement a written anti-money laundering program reasonably designed to prevent the mutual fund from being used for money laundering or the financing of terrorist activities and to achieve and monitor compliance with the applicable requirements of the Bank Secrecy Act (31 U.S.C. 5311, et seq.), and the implementing regulations promulgated thereunder by the Department of the Treasury. Each mutual fund's anti-money laundering program must be approved in writing by its board of directors or trustees. A mutual fund shall make its anti-money laundering program available for inspection by the Commission.

(c) The anti-money laundering program shall at a minimum:

(1) Establish and implement policies, procedures, and internal controls reasonably designed to prevent the mutual fund from being used for money laundering or the financing of terrorist activities and to achieve compliance with the applicable provisions of the Bank Secrecy Act and the implementing regulations thereunder;

(2) Provide for independent testing for compliance to be conducted by the mutual fund's personnel or by a qualified outside party;

(3) Designate a person or persons responsible for implementing and monitoring the operations and internal controls of the program; and

(4) Provide ongoing training for appropriate persons.

[67 FR 21121, Apr. 29, 2002]

§ 103.131 Customer identification programs for mutual funds.

(a) *Definitions.* For purposes of this section:

(1)(i) *Account* means any contractual or other business relationship between a person and a mutual fund established to effect transactions in securities issued by the mutual fund, including the purchase or sale of securities.

(ii) *Account* does not include:

(A) An account that a mutual fund acquires through any acquisition, merger, purchase of assets, or assumption of liabilities; or

(B) An account opened for the purpose of participating in an employee benefit plan established under the Employee Retirement Income Security Act of 1974.

(2)(i) *Customer* means:

(A) A person that opens a new account; and

(B) An individual who opens a new account for:

(*1*) An individual who lacks legal capacity, such as a minor; or

(*2*) An entity that is not a legal person, such as a civic club.

(ii) *Customer* does not include:

(A) A financial institution regulated by a federal functional regulator or a bank regulated by a state bank regulator;

(B) A person described in § 103.22(d)(2)(ii) through (iv); or

(C) A person that has an existing account with the mutual fund, provided that the mutual fund has a reasonable belief that it knows the true identity of the person.

(3) *Federal functional regulator* is defined at § 103.120(a)(2).

(4) *Financial institution* is defined at 31 U.S.C. 5312(a)(2) and (c)(1).

(5) *Mutual fund* means an ''investment company'' (as the term is defined in section 3 of the Investment Company Act (15 U.S.C. 80a–3)) that is an ''open-end company'' (as that term is defined in section 5 of the Investment Company Act (15 U.S.C. 80a–5)) that is registered or is required to register with the Commission under section 8 of the Investment Company Act (15 U.S.C. 80a–8).

(6) *Non-U.S. person* means a person that is not a *U.S. person*.

(7) *Taxpayer identification number* is defined by section 6109 of the Internal Revenue Code of 1986 (26 U.S.C. 6109) and Internal Revenue Service regulations implementing that section (*e.g.*, social security number or employer identification number).

(8) *U.S. person* means:

(i) A United States citizen; or

(ii) A person other than an individual (such as a corporation, partnership or trust), that is established or organized under the laws of a State or the United States.

(b) *Customer identification program: minimum requirements*—(1) *In general.* A

mutual fund must implement a written Customer Identification Program (''CIP'') appropriate for its size and type of business that, at a minimum, includes each of the requirements of paragraphs (b)(1) through (5) of this section. The CIP must be a part of the mutual fund's anti-money laundering program required under the regulations implementing 31 U.S.C. 5318(h).

(2) *Identity verification procedures.* The CIP must include risk-based procedures for verifying the identity of each customer to the extent reasonable and practicable. The procedures must enable the mutual fund to form a reasonable belief that it knows the true identity of each customer. The procedures must be based on the mutual fund's assessment of the relevant risks, including those presented by the manner in which accounts are opened, fund shares are distributed, and purchases, sales and exchanges are effected, the various types of accounts maintained by the mutual fund, the various types of identifying information available, and the mutual fund's customer base. At a minimum, these procedures must contain the elements described in this paragraph (b)(2).

(i) *Customer information required*—(A) *In general.* The CIP must contain procedures for opening an account that specify the identifying information that will be obtained with respect to each customer. Except as permitted by paragraph (b)(2)(i)(B) of this section, a mutual fund must obtain, at a minimum, the following information prior to opening an account:

(*1*) Name;

(*2*) Date of birth, for an individual;

(*3*) Address, which shall be:

(*i*) For an individual, a residential or business street address;

(*ii*) For an individual who does not have a residential or business street address, an Army Post Office (APO) or Fleet Post Office (FPO) box number, or the residential or business street address of next of kin or of another contact individual; or

(*iii*) For a person other than an individual (such as a corporation, partnership, or trust), a principal place of business, local office or other physical location; and

(*4*) Identification number, which shall be:

(*i*) For a U.S. person, a taxpayer identification number; or

(*ii*) For a non-U.S. person, one or more of the following: a taxpayer identification number; passport number and country of issuance; alien identification card number; or number and country of issuance of any other government-issued document evidencing nationality or residence and bearing a photograph or similar safeguard.

NOTE TO PARAGRAPH (b)(2)(i)(A)(*4*)(*ii*): When opening an account for a foreign business or enterprise that does not have an identification number, the mutual fund must request alternative government-issued documentation certifying the existence of the business or enterprise.

(B) *Exception for persons applying for a taxpayer identification number.* Instead of obtaining a taxpayer identification number from a customer prior to opening an account, the CIP may include procedures for opening an account for a person that has applied for, but has not received, a taxpayer identification number. In this case, the CIP must include procedures to confirm that the application was filed before the person opens the account and to obtain the taxpayer identification number within a reasonable period of time after the account is opened.

(ii) *Customer verification.* The CIP must contain procedures for verifying the identity of the customer, using the information obtained in accordance with paragraph (b)(2)(i) of this section, within a reasonable time after the account is opened. The procedures must describe when the mutual fund will use documents, non-documentary methods, or a combination of both methods as described in this paragraph (b)(2)(ii).

(A) *Verification through documents.* For a mutual fund relying on documents, the CIP must contain procedures that set forth the documents that the mutual fund will use. These documents may include:

(*1*) For an individual, unexpired government-issued identification evidencing nationality or residence and bearing a photograph or similar safeguard, such as a driver's license or passport; and

(*2*) For a person other than an individual (such as a corporation, partnership, or trust), documents showing the existence of the entity, such as certified articles of incorporation, a government-issued business license, a partnership agreement, or trust instrument.

(B) *Verification through non-documentary methods.* For a mutual fund relying on non-documentary methods, the CIP must contain procedures that describe the non-documentary methods the mutual fund will use.

(*1*) These methods may include contacting a customer; independently verifying the customer's identity through the comparison of information provided by the customer with information obtained from a consumer reporting agency, public database, or other source; checking references with other financial institutions; and obtaining a financial statement.

(*2*) The mutual fund's non-documentary procedures must address situations where an individual is unable to present an unexpired government-issued identification document that bears a photograph or similar safeguard; the mutual fund is not familiar with the documents presented; the account is opened without obtaining documents; the customer opens the account without appearing in person; and where the mutual fund is otherwise presented with circumstances that increase the risk that the mutual fund will be unable to verify the true identity of a customer through documents.

(C) *Additional verification for certain customers.* The CIP must address situations where, based on the mutual fund's risk assessment of a new account opened by a customer that is not an individual, the mutual fund will obtain information about individuals with authority or control over such account, including persons authorized to effect transactions in the shareholder of record's account, in order to verify the customer's identity. This verification method applies only when the mutual fund cannot verify the customer's true identity using the verification methods described in paragraphs (b)(2)(ii)(A) and (B) of this section.

(iii) *Lack of verification.* The CIP must include procedures for responding to circumstances in which the mutual fund cannot form a reasonable belief that it knows the true identity of a customer. These procedures should describe:

(A) When the mutual fund should not open an account;

(B) The terms under which a customer may use an account while the mutual fund attempts to verify the customer's identity;

(C) When the mutual fund should file a Suspicious Activity Report in accordance with applicable law and regulation; and

(D) When the mutual fund should close an account, after attempts to verify a customer's identity have failed.

(3) *Recordkeeping.* The CIP must include procedures for making and maintaining a record of all information obtained under paragraph (b) of this section.

(i) *Required records.* At a minimum, the record must include:

(A) All identifying information about a customer obtained under paragraph (b)(2)(i) of this section;

(B) A description of any document that was relied on under paragraph (b)(2)(ii)(A) of this section noting the type of document, any identification number contained in the document, the place of issuance, and if any, the date of issuance and expiration date;

(C) A description of the methods and the results of any measures undertaken to verify the identity of the customer under paragraph (b)(2)(ii)(B) or (C) of this section; and

(D) A description of the resolution of any substantive discrepancy discovered when verifying the identifying information obtained.

(ii) *Retention of records.* The mutual fund must retain the information in paragraph (b)(3)(i)(A) of this section for five years after the date the account is closed. The mutual fund must retain the information in paragraphs (b)(3)(i)(B), (C), and (D) of this section for five years after the record is made.

(4) *Comparison with government lists.* The CIP must include procedures for determining whether the customer appears on any list of known or suspected

terrorists or terrorist organizations issued by any federal government agency and designated as such by the Department of the Treasury in consultation with the federal functional regulators. The procedures must require the mutual fund to make such a determination within a reasonable period of time after the account is opened, or earlier, if required by another federal law or regulation or federal directive issued in connection with the applicable list. The procedures must also require the mutual fund to follow all federal directives issued in connection with such lists.

(5)(i) *Customer notice.* The CIP must include procedures for providing mutual fund customers with adequate notice that the mutual fund is requesting information to verify their identities.

(ii) *Adequate notice.* Notice is adequate if the mutual fund generally describes the identification requirements of this section and provides the notice in a manner reasonably designed to ensure that a customer is able to view the notice, or is otherwise given notice, before opening an account. For example, depending on the manner in which the account is opened, a mutual fund may post a notice on its website, include the notice on its account applications, or use any other form of written or oral notice.

(iii) *Sample notice.* If appropriate, a mutual fund may use the following sample language to provide notice to its customers:

IMPORTANT INFORMATION ABOUT PROCEDURES FOR OPENING A NEW ACCOUNT

To help the government fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify, and record information that identifies each person who opens an account.

What this means for you: When you open an account, we will ask for your name, address, date of birth, and other information that will allow us to identify you. We may also ask to see your driver's license or other identifying documents.

(6) *Reliance on other financial institutions.* The CIP may include procedures specifying when a mutual fund will rely on the performance by another financial institution (including an affiliate) of any procedures of the mutual fund's CIP, with respect to any customer of the mutual fund that is opening, or has opened, an account or has established a similar formal business relationship with the other financial institution to provide or engage in services, dealings, or other financial transactions, provided that:

(i) Such reliance is reasonable under the circumstances;

(ii) The other financial institution is subject to a rule implementing 31 U.S.C. 5318(h) and is regulated by a federal functional regulator; and

(iii) The other financial institution enters into a contract requiring it to certify annually to the mutual fund that it has implemented its anti-money laundering program, and that it (or its agent) will perform the specific requirements of the mutual fund's CIP.

(c) *Exemptions.* The Commission, with the concurrence of the Secretary, may, by order or regulation, exempt any mutual fund or type of account from the requirements of this section. The Commission and the Secretary shall consider whether the exemption is consistent with the purposes of the Bank Secrecy Act and is in the public interest, and may consider other appropriate factors.

(d) *Other requirements unaffected.* Nothing in this section relieves a mutual fund of its obligation to comply with any other provision in this part, including provisions concerning information that must be obtained, verified, or maintained in connection with any account or transaction.

[68 FR 25147, May 9, 2003]

§ 103.135 Anti-money laundering programs for operators of credit card systems.

(a) *Definitions.* For purposes of this section:

(1) *Operator of a credit card system* means any person doing business in the United States that operates a system for clearing and settling transactions in which the operator's credit card, whether acting as a credit or debit card, is used to purchase goods or services or to obtain a cash advance. To fall within this definition, the operator must also have authorized another person (whether located in the United

States or not) to be an issuing or acquiring institution for the operator's credit card.

(2) *Issuing institution* means a person authorized by the operator of a credit card system to issue the operator's credit card.

(3) *Acquiring institution* means a person authorized by the operator of a credit card system to contract, directly or indirectly, with merchants or other persons to process transactions, including cash advances, involving the operator's credit card.

(4) *Operator's credit card* means a credit card capable of being used in the United States that:

(i) Has been issued by an issuing institution; and

(ii) Can be used in the operator's credit card system.

(5) *Credit card* has the same meaning as in 15 U.S.C. 1602(k). It includes charge cards as defined in 12 CFR 226.2(15).

(6) *Foreign bank* means any organization that is organized under the laws of a foreign country; engages in the business of banking; is recognized as a bank by the bank supervisory or monetary authority of the country of its organization or the country of its principal banking operations; and receives deposits in the regular course of its business. For purposes of this definition:

(i) The term foreign bank includes a branch of a foreign bank in a territory of the United States, Puerto Rico, Guam, American Samoa, or the U.S. Virgin Islands.

(ii) The term foreign bank does not include:

(A) A U.S. agency or branch of a foreign bank; and

(B) An insured bank organized under the laws of a territory of the United States, Puerto Rico, Guam, American Samoa, or the U.S. Virgin Islands.

(b) *Anti-money laundering program requirement.* Effective July 24, 2002, each operator of a credit card system shall develop and implement a written anti-money laundering program reasonably designed to prevent the operator of a credit card system from being used to facilitate money laundering and the financing of terrorist activities. The program must be approved by senior management. Operators of credit card systems must make their anti-money laundering programs available to the Department of the Treasury or the appropriate Federal regulator for review.

(c) *Minimum requirements.* At a minimum, the program must:

(1) Incorporate policies, procedures, and internal controls designed to ensure the following:

(i) That the operator does not authorize, or maintain authorization for, any person to serve as an issuing or acquiring institution without the operator taking appropriate steps, based upon the operator's money laundering or terrorist financing risk assessment, to guard against that person issuing the operator's credit card or acquiring merchants who accept the operator's credit card in circumstances that facilitate money laundering or the financing of terrorist activities;

(ii) For purposes of making the risk assessment required by paragraph (c)(1)(i) of this section, the following persons are presumed to pose a heightened risk of money laundering or terrorist financing when evaluating whether and under what circumstances to authorize, or to maintain authorization for, any such person to serve as an issuing or acquiring institution:

(A) A foreign shell bank that is not a regulated affiliate, as those terms are defined in 31 CFR 104.10(e) and (j);

(B) A person appearing on the Specially Designated Nationals List issued by Treasury's Office of Foreign Assets Control;

(C) A person located in, or operating under a license issued by, a jurisdiction whose government has been identified by the Department of State as a sponsor of international terrorism under 22 U.S.C. 2371;

(D) A foreign bank operating under an offshore banking license, other than a branch of a foreign bank if such foreign bank has been found by the Board of Governors of the Federal Reserve System under the Bank Holding Company Act (12 U.S.C. 1841, et seq.) or the International Banking Act (12 U.S.C. 3101, et seq.) to be subject to comprehensive supervision or regulation on a consolidated basis by the relevant supervisors in that jurisdiction;

(E) A person located in, or operating under a license issued by, a jurisdiction that has been designated as non-cooperative with international anti-money laundering principles or procedures by an intergovernmental group or organization of which the United States is a member, with which designation the United States representative to the group or organization concurs; and

(F) A person located in, or operating under a license issued by, a jurisdiction that has been designated by the Secretary of the Treasury pursuant to 31 U.S.C. 5318A as warranting special measures due to money laundering concerns;

(iii) That the operator is in compliance with all applicable provisions of subchapter II of chapter 53 of title 31, United States Code and this part;

(2) Designate a compliance officer who will be responsible for assuring that:

(i) The anti-money laundering program is implemented effectively;

(ii) The anti-money laundering program is updated as necessary to reflect changes in risk factors or the risk assessment, current requirements of part 103, and further guidance issued by the Department of the Treasury; and

(iii) Appropriate personnel are trained in accordance with paragraph (c)(3) of this section;

(3) Provide for education and training of appropriate personnel concerning their responsibilities under the program; and

(4) Provide for an independent audit to monitor and maintain an adequate program. The scope and frequency of the audit shall be commensurate with the risks posed by the persons authorized to issue or accept the operator's credit card. Such audit may be conducted by an officer or employee of the operator, so long as the reviewer is not the person designated in paragraph (c)(2) of this section or a person involved in the operation of the program.

[67 FR 21126, Apr. 29, 2002]

§ 103.140 Anti-money laundering programs for dealers in precious metals, precious stones, or jewels.

(a) *Definitions.* For purposes of this section:

(1) *Covered goods* means:

(i) Jewels (as defined in paragraph (a)(3) of this section);

(ii) Precious metals (as defined in paragraph (a)(4) of this section);

(iii) Precious stones (as defined in paragraph (a)(5) of this section); and

(iv) Finished goods (including, but not limited to, jewelry, numismatic items, and antiques), that derive 50 percent or more of their value from jewels, precious metals, or precious stones contained in or attached to such finished goods;

(2) *Dealer.* (i) Except as provided in paragraphs (a)(2)(ii) and (a)(2)(iii) of this section, the term ''dealer'' means a person engaged within the United States as a business in the purchase and sale of covered goods and who, during the prior calendar or tax year:

(A) Purchased more than $50,000 in covered goods; and

(B) Received more than $50,000 in gross proceeds from the sale of covered goods.

(ii) For purposes of this section, the term ''dealer'' does not include:

(A) A retailer (as defined in paragraph (a)(7) of this section), unless the retailer, during the prior calendar or tax year, purchased more than $50,000 in covered goods from persons other than dealers or other retailers (such as members of the general public or foreign sources of supply); or

(B) A person licensed or authorized under the laws of any State (or political subdivision thereof) to conduct business as a pawnbroker, but only to the extent such person is engaged in pawn transactions (including the sale of pawn loan collateral).

(iii) For purposes of paragraph (a)(2) of this section, the terms ''purchase'' and ''sale'' do not include a retail transaction in which a retailer or a dealer accepts from a customer covered goods, the value of which the retailer or dealer credits to the account of the customer, and the retailer or dealer does not provide funds to the customer in exchange for such covered goods.

(iv) For purposes of paragraphs (a)(2) and (b) of this section, the terms ''purchase'' and ''sale'' do not include the purchase of jewels, precious metals, or precious stones that are incorporated into machinery or equipment to be

used for industrial purposes, and the purchase and sale of such machinery or equipment.

(v) For purposes of applying the $50,000 thresholds in paragraphs (a)(2)(i) and (a)(2)(ii)(A) of this section to finished goods defined in paragraph (a)(1)(iv) of this section, only the value of jewels, precious metals, or precious stones contained in, or attached to, such goods shall be taken into account.

(3) *Jewel* means an organic substance with gem quality market-recognized beauty, rarity, and value, and includes pearl, amber, and coral.

(4) *Precious metal* means:

(i) Gold, iridium, osmium, palladium, platinum, rhodium, ruthenium, or silver, having a level of purity of 500 or more parts per thousand; and

(ii) An alloy containing 500 or more parts per thousand, in the aggregate, of two or more of the metals listed in paragraph (a)(3)(i) of this section.

(5) *Precious stone* means a substance with gem quality market-recognized beauty, rarity, and value, and includes diamond, corundum (including rubies and sapphires), beryl (including emeralds and aquamarines), chrysoberyl, spinel, topaz, zircon, tourmaline, garnet, crystalline and cryptocrystalline quartz, olivine peridot, tanzanite, jadeite jade, nephrite jade, spodumene, feldspar, turquoise, lapis lazuli, and opal.

(6) *Person* shall have the same meaning as provided in § 103.11(z).

(7) *Retailer* means a person engaged within the United States in the business of sales primarily to the public of covered goods.

(b) *Anti-money laundering program requirement.* (1) Each dealer shall develop and implement a written anti-money laundering program reasonably designed to prevent the dealer from being used to facilitate money laundering and the financing of terrorist activities through the purchase and sale of covered goods. The program must be approved by senior management. A dealer shall make its anti-money laundering program available to the Department of Treasury through FinCEN or its designee upon request.

(2) To the extent that a retailer's purchases from persons other than dealers and other retailers exceeds the $50,000 threshold contained in paragraph (a)(2)(ii)(A), the anti-money laundering compliance program required of the retailer under this paragraph need only address such purchases.

(c) *Minimum requirements.* At a minimum, the anti-money laundering program shall:

(1) Incorporate policies, procedures, and internal controls based upon the dealer's assessment of the money laundering and terrorist financing risks associated with its line(s) of business. Policies, procedures, and internal controls developed and implemented by a dealer under this section shall include provisions for complying with the applicable requirements of the Bank Secrecy Act (31 U.S.C. 5311 *et seq.*), and this part.

(i) For purposes of making the risk assessment required by paragraph (c)(1) of this section, a dealer shall take into account all relevant factors including, but not limited to:

(A) The type(s) of products the dealer buys and sells, as well as the nature of the dealer's customers, suppliers, distribution channels, and geographic locations;

(B) The extent to which the dealer engages in transactions other than with established customers or sources of supply, or other dealers subject to this rule; and

(C) Whether the dealer engages in transactions for which payment or account reconciliation is routed to or from accounts located in jurisdictions that have been identified by the Department of State as a sponsor of international terrorism under 22 U.S.C. 2371; designated as non-cooperative with international anti-money laundering principles or procedures by an intergovernmental group or organization of which the United States is a member and with which designation the United States representative or organization concurs; or designated by the Secretary of the Treasury pursuant to 31 U.S.C. 5318A as warranting special measures due to money laundering concerns.

(ii) A dealer's program shall incorporate policies, procedures, and internal controls to assist the dealer in

identifying transactions that may involve use of the dealer to facilitate money laundering or terrorist financing, including provisions for making reasonable inquiries to determine whether a transaction involves money laundering or terrorist financing, and for refusing to consummate, withdrawing from, or terminating such transactions. Factors that may indicate a transaction is designed to involve use of the dealer to facilitate money laundering or terrorist financing include, but are not limited to:

(A) Unusual payment methods, such as the use of large amounts of cash, multiple or sequentially numbered money orders, traveler's checks, or cashier's checks, or payment from third parties;

(B) Unwillingness by a customer or supplier to provide complete or accurate contact information, financial references, or business affiliations;

(C) Attempts by a customer or supplier to maintain an unusual degree of secrecy with respect to the transaction, such as a request that normal business records not be kept;

(D) Purchases or sales that are unusual for the particular customer or supplier, or type of customer or supplier; and

(E) Purchases or sales that are not in conformity with standard industry practice.

(2) Designate a compliance officer who will be responsible for ensuring that:

(i) The anti-money laundering program is implemented effectively;

(ii) The anti-money laundering program is updated as necessary to reflect changes in the risk assessment, requirements of this part, and further guidance issued by the Department of the Treasury; and

(iii) Appropriate personnel are trained in accordance with paragraph (c)(3) of this section.

(3) Provide for on-going education and training of appropriate persons concerning their responsibilities under the program.

(4) Provide for independent testing to monitor and maintain an adequate program. The scope and frequency of the testing shall be commensurate with the risk assessment conducted by the dealer in accordance with paragraph (c)(1) of this section. Such testing may be conducted by an officer or employee of the dealer, so long as the tester is not the person designated in paragraph (c)(2) of this section or a person involved in the operation of the program.

(d) *Effective date.* A dealer must develop and implement an anti-money laundering program that complies with the requirements of this section on or before the later of January 1, 2006, or six months after the date a dealer becomes subject to the requirements of this section.

[70 FR 33716, June 9, 2005]

EFFECTIVE DATE NOTE: At 70 FR 33716, June 9, 2005, §103.140 was added, effective July 11, 2005.

§ 103.170 Exempted anti-money laundering programs for certain financial institutions.

(a) *Exempt financial institutions.* Subject to the provisions of paragraphs (c) and (d) of this section, the following financial institutions (as defined in 31 U.S.C. 5312(a)(2) or (c)(1)) are exempt from the requirement in 31 U.S.C. 5318(h)(1) concerning the establishment of anti-money laundering programs:

(1) An agency of the United States Government, or of a State or local government, carrying out a duty or power of a business described in 31 U.S.C. 5312(a)(2); and

(2) [Reserved]

(b) *Temporary exemption for certain financial institutions.* (1) Subject to the provisions of paragraphs (c) and (d) of this section, the following financial institutions (as defined in 31 U.S.C. 5312(a)(2) or (c)(1)) are exempt from the requirement in 31 U.S.C. 5318(h)(1) concerning the establishment of anti-money laundering programs:

(i) Dealer in precious metals, stones, or jewels;

(ii) Pawnbroker;

(iii) Loan or finance company;

(iv) Travel agency;

(v) Telegraph company;

(vi) Seller of vehicles, including automobiles, airplanes, and boats;

(vii) Person involved in real estate closings and settlements;

(viii) Private banker;

(ix) Insurance company;

(x) Commodity pool operator;

(xi) Commodity trading advisor; or

(xii) Investment company.

(2) Subject to the provisions of paragraphs (c) and (d) of this section, a bank (as defined in § 103.11(c)) that is not subject to regulation by a Federal functional regulator (as defined in § 103.120(a)(2)) is exempt from the requirement in 31 U.S.C. 5318(h)(1) concerning the establishment of anti-money laundering programs.

(3) Subject to the provisions of paragraphs (c) and (d) of this section, a person described in § 103.11(n)(7) is exempt from the requirement in 31 U.S.C. 5318(h)(1) concerning the establishment of anti-money laundering programs.

(c) *Limitation on exemption.* The exemptions described in paragraphs (a)(2) and (b) of this section shall not apply to any financial institution that is otherwise required to establish an anti-money laundering program by this subpart I.

(d) *Compliance obligations of deferred financial institutions.* Nothing in this section shall be deemed to relieve an exempt financial institution from its responsibility to comply with any other applicable requirement of law or regulation, including title 31 of the U.S.C. and this part.

[67 FR 21113, Apr. 29, 2002, as amended at 67 FR 67549, Nov. 6, 2002; 67 FR 68935, Nov. 14, 2002]

SPECIAL DUE DILIGENCE FOR CORRESPONDENT ACCOUNTS AND PRIVATE BANKING ACCOUNTS

SOURCE: 67 FR 48351, July 23, 2002, unless otherwise noted.

§ 103.175 Definitions.

Except as otherwise provided, the following definitions apply for purposes of §§ 103.176 through 103.190:

(a) *Attorney General* means the Attorney General of the United States.

(b) [Reserved]

(c) *Certification* and *Recertification* mean the certification and recertification forms described in Appendices A and B, respectively, to this subpart.

(d) *Correspondent account.* (1) The term *correspondent account* means:

(i) [Reserved]

(ii) For purposes of §§ 103.177 and 103.185, a correspondent account is an account established by a covered financial institution for a foreign bank to receive deposits from, to make payments or other disbursements on behalf of a foreign bank, or to handle other financial transactions related to the foreign bank.

(2) For purposes of this definition, the term *account:*

(i) Means any formal banking or business relationship established to provide regular services, dealings, and other financial transactions; and

(ii) Includes a demand deposit, savings deposit, or other transaction or asset account and a credit account or other extension of credit.

(e) *Correspondent relationship* has the same meaning as correspondent account for purposes of §§ 103.177 and 103.185.

(f) *Covered financial institution* means:

(1) [Reserved]

(2) For purposes of §§ 103.177 and 103.185:

(i) An insured bank (as defined in section 3(h) of the Federal Deposit Insurance Act (12 U.S.C. 1813(h));

(ii) A commercial bank or trust company;

(iii) A private banker;

(iv) An agency or branch of a foreign bank in the United States;

(v) A credit union;

(vi) A thrift institution;

(vii) A corporation acting under section 25A of the Federal Reserve Act (12 U.S.C. 611 *et seq.*); and

(viii) A broker or dealer registered or required to be registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*).

(g) *Foreign bank.* The term *foreign bank* shall have the meaning provided in § 103.11(o).

(h) [Reserved]

(i) *Foreign shell bank* means a foreign bank without a physical presence in any country.

(j) [Reserved]

(k) [Reserved]

(l) *Owner.* (1) The term *owner* means any person who, directly or indirectly:

(i) Owns, controls, or has power to vote 25 percent or more of any class of voting securities or other voting interests of a foreign bank; or

(ii) Controls in any manner the election of a majority of the directors (or individuals exercising similar functions) of a foreign bank.

(2) For purposes of this definition:

(i) Members of the same family shall be considered to be one person.

(ii) The term *same family* means parents, spouses, children, siblings, uncles, aunts, grandparents, grandchildren, first cousins, stepchildren, stepsiblings, and parents-in-law, and spouses of any of the foregoing.

(iii) Each member of the same family who has an ownership interest in a foreign bank must be identified if the family is an owner as a result of aggregating the ownership interests of the members of the family. In determining the ownership interests of the same family, any voting interest of any family member shall be taken into account.

(iv) *Voting securities or other voting interests* means securities or other interests that entitle the holder to vote for or select directors (or individuals exercising similar functions).

(m) *Person* has the same meaning as provided in § 103.11(z).

(n) *Physical presence* means a place of business that:

(1) Is maintained by a foreign bank;

(2) Is located at a fixed address (other than solely an electronic address or a post-office box) in a country in which the foreign bank is authorized to conduct banking activities, at which location the foreign bank:

(i) Employs 1 or more individuals on a full-time basis; and

(ii) Maintains operating records related to its banking activities; and

(3) Is subject to inspection by the banking authority that licensed the foreign bank to conduct banking activities.

(o) [Reserved]

(p) *Regulated affiliate.* (1) The term *regulated affiliate* means a foreign shell bank that:

(i) Is an affiliate of a depository institution, credit union, or foreign bank that maintains a physical presence in the United States or a foreign country, as applicable; and

(ii) Is subject to supervision by a banking authority in the country regulating such affiliated depository institution, credit union, or foreign bank.

(2) For purposes of this definition:

(i) *Affiliate* means a foreign bank that is controlled by, or is under common control with, a depository institution, credit union, or foreign bank.

(ii) *Control* means:

(A) Ownership, control, or power to vote 50 percent or more of any class of voting securities or other voting interests of another company; or

(B) Control in any manner the election of a majority of the directors (or individuals exercising similar functions) of another company.

(q) *Secretary* means the Secretary of the Treasury.

(r) [Reserved]

(s) *Territories and Insular Possessions* has the meaning provided in § 103.11(tt).

(t) *United States* has the meaning provided in § 103.11(nn).

[67 FR 60570, Sept. 26, 2002]

§ 103.177 Prohibition on correspondent accounts for foreign shell banks; records concerning owners of foreign banks and agents for service of legal process.

(a) *Requirements for covered financial institutions*—(1) *Prohibition on correspondent accounts for foreign shell banks.* (i) A covered financial institution shall not establish, maintain, administer, or manage a correspondent account in the United States for, or on behalf of, a foreign shell bank.

(ii) A covered financial institution shall take reasonable steps to ensure that any correspondent account established, maintained, administered, or managed by that covered financial institution in the United States for a foreign bank is not being used by that foreign bank to indirectly provide banking services to a foreign shell bank.

(iii) Nothing in paragraph (a)(1) of this section prohibits a covered financial institution from providing a correspondent account or banking services to a regulated affiliate.

(2) *Records of owners and agents.* (i) Except as provided in paragraph (a)(2)(ii) of this section, a covered financial institution that maintains a correspondent account in the United

States for a foreign bank shall maintain records in the United States identifying the owners of each such foreign bank whose shares are not publicly traded and the name and street address of a person who resides in the United States and is authorized, and has agreed to be an agent to accept service of legal process for records regarding each such account.

(ii) A covered financial institution need not maintain records of the owners of any foreign bank that is required to have on file with the Federal Reserve Board a Form FR Y–7 that identifies the current owners of the foreign bank as required by such form.

(iii) For purposes of paragraph (a)(2)(i) of this section, *publicly traded* refers to shares that are traded on an exchange or on an organized over-the-counter market that is regulated by a foreign securities authority as defined in section 3(a)(50) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(50)).

(b) *Safe harbor.* Subject to paragraphs (c) and (d) of this section, a covered financial institution will be deemed to be in compliance with the requirements of paragraph (a) of this section with respect to a foreign bank if the covered financial institution obtains, at least once every three years, a certification or recertification from the foreign bank.

(c) *Interim verification.* If at any time a covered financial institution knows, suspects, or has reason to suspect, that any information contained in a certification or recertification provided by a foreign bank, or otherwise relied upon by the covered financial institution for purposes of this section, is no longer correct, the covered financial institution shall request that the foreign bank verify or correct such information, or shall take other appropriate measures to ascertain the accuracy of the information or to obtain correct information, as appropriate. See paragraph (d)(3) of this section for additional requirements if a foreign bank fails to verify or correct the information or if a covered financial institution cannot ascertain the accuracy of the information or obtain correct information.

(d) *Closure of correspondent accounts*—(1) *Accounts existing on October 28, 2002.* In the case of any correspondent account that was in existence on October 28, 2002, if the covered financial institution has not obtained a certification (or recertification) from the foreign bank, or has not otherwise obtained documentation of the information required by such certification (or recertification), on or before March 31, 2003, and at least once every three years thereafter, the covered financial institution shall close all correspondent accounts with such foreign bank within a commercially reasonable time, and shall not permit the foreign bank to establish any new positions or execute any transaction through any such account, other than transactions necessary to close the account.

(2) *Accounts established after October 28, 2002.* In the case of any correspondent account established after October 28, 2002, if the covered financial institution has not obtained a certification (or recertification), or has not otherwise obtained documentation of the information required by such certification (or recertification) within 30 calendar days after the date the account is established, and at least once every three years thereafter, the covered financial institution shall close all correspondent accounts with such foreign bank within a commercially reasonable time, and shall not permit the foreign bank to establish any new positions or execute any transaction through any such account, other than transactions necessary to close the account.

(3) *Verification of previously provided information.* In the case of a foreign bank with respect to which the covered financial institution undertakes to verify information pursuant to paragraph (c) of this section, if the covered financial institution has not obtained, from the foreign bank or otherwise, verification of the information or corrected information within 90 calendar days after the date of undertaking the verification, the covered financial institution shall close all correspondent accounts with such foreign bank within a commercially reasonable time, and shall not permit the foreign bank to establish any new positions or execute

any transaction through any such account, other than transactions necessary to close the account.

(4) *Reestablishment of closed accounts and establishment of new accounts.* A covered financial institution shall not reestablish any account closed pursuant to this paragraph (d), and shall not establish any other correspondent account with the concerned foreign bank, until it obtains from the foreign bank the certification or the recertification, as appropriate.

(5) *Limitation on liability.* A covered financial institution shall not be liable to any person in any court or arbitration proceeding for terminating a correspondent account in accordance with this paragraph (d).

(e) *Recordkeeping requirement.* A covered financial institution shall retain the original of any document provided by a foreign bank, and the original or a copy of any document otherwise relied upon by the covered financial institution, for purposes of this section, for at least 5 years after the date that the covered financial institution no longer maintains any correspondent account for such foreign bank. A covered financial institution shall retain such records with respect to any foreign bank for such longer period as the Secretary may direct.

(f) *Special rules concerning information requested prior to October 28, 2002*—(1) *Definition.* For purposes of this paragraph (f) the term ''Interim Guidance'' means:

(i) The Interim Guidance of the Department of the Treasury dated November 20, 2001 and published in the FEDERAL REGISTER on November 27, 2001; or

(ii) The guidance issued in a document published in the FEDERAL REGISTER on December 28, 2001.

(2) *Use of Interim Guidance certification.* In the case of a correspondent account in existence on October 28, 2002, the term ''certification'' as used in paragraphs (b), (c), (d)(1), and (d)(3) of this section shall also include the certification appended to the Interim Guidance, provided that such certification was requested prior to October 28, 2002 and obtained by the covered financial institution on or before December 26, 2002.

(3) *Recordkeeping requirement.* Paragraph (e) of this section shall apply to any document provided by a foreign bank, or otherwise relied upon by a covered financial institution, for purposes of the Interim Guidance.

(Approved by the Office of Management and Budget under Control Number 1505–0184.)

[67 FR 60570, Sept. 26, 2002, as amended at 67 FR 78384, Dec. 24, 2002]

§ 103.181 Special due diligence programs for banks, savings associations, and credit unions.

The requirements of 31 U.S.C. 5318(i) shall apply, effective July 23, 2002, to a financial institution that is:

(a) An insured bank (as defined in section 3(h) of the Federal Deposit Insurance Act (12 U.S.C. 1813(h)));

(b) A commercial bank;

(c) An agency or branch of a foreign bank in the United States;

(d) A federally insured credit union;

(e) A thrift institution; or

(f) A corporation acting under section 25A of the Federal Reserve Act (12 U.S.C. 611 *et seq.*).

§ 103.182 Special due diligence programs for securities brokers and dealers, futures commission merchants, and introducing brokers.

(a) *Private banking accounts.* The requirements of 31 U.S.C. 5318(i) relating to due diligence and enhanced due diligence for private banking accounts shall apply, effective July 23, 2002, to a financial institution that is:

(1) A broker or dealer registered, or required to register, with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*); or

(2) A futures commission merchant or introducing broker registered, or required to register, with the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1 *et seq.*).

(b) *Correspondent accounts.* A financial institution described in paragraph (a) of this section is exempt from the requirements of 31 U.S.C. 5318(i) relating to due diligence and enhanced due diligence for certain correspondent accounts.

(c) *Other compliance obligations of financial institutions unaffected.* Nothing

in this section shall be construed to relieve a financial institution from its responsibility to comply with any other applicable requirement of law or regulation, including title 31 of the United States Code and this part.

§ 103.183 Deferred due diligence programs for other financial institutions.

(a) *Exempt financial institutions.* Except as provided in § 103.181 and § 103.182, a financial institution defined in 31 U.S.C. 5312(a)(2) and (c)(1) or § 103.11(n) is exempt from the requirements of 31 U.S.C. 5318(i).

(b) *Other compliance obligations of financial institutions unaffected.* Nothing in this section shall be construed to relieve a financial institution from its responsibility to comply with any other applicable requirement of law or regulation, including title 31 of the United States Code and this part.

LAW ENFORCEMENT ACCESS TO FOREIGN BANK RECORDS

§ 103.185 Summons or subpoena of foreign bank records; Termination of correspondent relationship.

(a) *Definitions.* The definitions in § 103.175 apply to this section.

(b) *Issuance to foreign banks.* The Secretary or the Attorney General may issue a summons or subpoena to any foreign bank that maintains a correspondent account in the United States and may request records related to such correspondent account, including records maintained outside of the United States relating to the deposit of funds into the foreign bank. The summons or subpoena may be served on the foreign bank in the United States if the foreign bank has a representative in the United States, or in a foreign country pursuant to any mutual legal assistance treaty, multilateral agreement, or other request for international law enforcement assistance.

(c) *Issuance to covered financial institutions.* Upon receipt of a written request from a Federal law enforcement officer for information required to be maintained by a covered financial institution under paragraph (a)(2) of § 103.177, the covered financial institution shall provide the information to the requesting officer not later than 7 days after receipt of the request.

(d) *Termination upon receipt of notice.* A covered financial institution shall terminate any correspondent relationship with a foreign bank not later than 10 business days after receipt of written notice from the Secretary or the Attorney General (in each case, after consultation with the other) that the foreign bank has failed:

(1) To comply with a summons or subpoena issued under paragraph (b) of this section; or

(2) To initiate proceedings in a United States court contesting such summons or subpoena.

(e) *Limitation on liability.* A covered financial institution shall not be liable to any person in any court or arbitration proceeding for terminating a correspondent relationship in accordance with paragraph (d) of this section.

(f) *Failure to terminate relationship.* Failure to terminate a correspondent relationship in accordance with this section shall render the covered financial institution liable for a civil penalty of up to $10,000 per day until the correspondent relationship is so terminated.

[67 FR 60572, Sept. 26, 2002]

§ 103.186 Special measures against Burma.

(a) *Definitions.* For purposes of this section:

(1) *Correspondent account* has the same meaning as provided in § 103.175(d).

(2) *Covered financial institution* has the same meaning as provided in § 103.175(f)(2) and also includes the following:

(i) A futures commission merchant or an introducing broker registered, or required to register, with the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1 *et seq.*); and

(ii) An investment company (as defined in section 3 of the Investment Company Act of 1940 (15 U.S.C. 80a–5)) that is an open-end company (as defined in section 5 of the Investment Company Act (15 U.S.C. 80a–5)) and that is registered, or required to register, with the Securities and Exchange Commission pursuant to that Act.

(3) *Burmese banking institution* means any foreign bank, as that term is defined in § 103.11(o), chartered or licensed by Burma, including branches and offices located outside Burma.

(b) *Requirements for covered financial institutions*—(1) *Prohibition on correspondent accounts.* A covered financial institution shall terminate any correspondent account that is established, maintained, administered, or managed in the United States for, or on behalf of, a Burmese banking institution.

(2) *Prohibition on indirect correspondent accounts.* (i) If a covered financial institution has or obtains knowledge that a correspondent account established, maintained, administered, or managed by that covered financial institution in the United States for a foreign bank is being used by the foreign bank to provide banking services indirectly to a Burmese banking institution, the covered financial institution shall ensure that the correspondent account is no longer used to provide such services, including, where necessary, terminating the correspondent account; and

(ii) A covered financial institution required to terminate an account pursuant to paragraph (b)(2)(i) of this section:

(A) Shall do so within a commercially reasonable time, and shall not permit the foreign bank to establish any new positions or execute any transactions through such account, other than those necessary to close the account; and

(B) May reestablish an account closed pursuant to this paragraph if it determines that the account will not be used to provide banking services indirectly to a Burmese banking institution.

(3) *Exception.* The provisions of paragraphs (b)(1) and (2) of this section shall not apply to a correspondent account provided that the operation of such account is not prohibited by Executive Order 13310 and the transactions involving Burmese banking institutions that are conducted through the correspondent account are limited solely to transactions that are exempted from, or otherwise authorized by regulation, order, directive, or license pursuant to, Executive Order 13310.

(4) *Reporting and recordkeeping not required.* Nothing in this section shall require a covered financial institution to maintain any records, obtain any certification, or report any information not otherwise required by law or regulation.

[69 FR 19098, Apr. 12, 2004]

§ 103.187 Special measures against Myanmar Mayflower Bank and Asia Wealth Bank.

(a) *Definitions.* For purposes of this section:

(1) *Correspondent account* has the same meaning as provided in § 103.175(d).

(2) *Covered financial institution* has the same meaning as provided in § 103.175(f)(2) and also includes the following:

(i) A futures commission merchant or an introducing broker registered, or required to register, with the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1 *et seq.*); and

(ii) An investment company (as defined in section 3 of the Investment Company Act of 1940 (15 U.S.C. 80a–5)) that is an open-end company (as defined in section 5 of the Investment Company Act (15 U.S.C. 80a–5)) and that is registered, or required to register, with the Securities and Exchange Commission pursuant to that Act.

(3) *Myanmar Mayflower Bank* means all headquarters, branches, and offices of Myanmar Mayflower Bank operating in Burma or in any jurisdiction.

(4) *Asia Wealth Bank* means all headquarters, branches, and offices of Asia Wealth Bank operating in Burma or in any jurisdiction.

(b) *Requirements for covered financial institutions*—(1) *Prohibition on correspondent accounts.* A covered financial institution shall terminate any correspondent account that is established, maintained, administered, or managed in the United States for, or on behalf of, Myanmar Mayflower Bank or Asia Wealth Bank.

(2) *Prohibition on indirect correspondent accounts.* (i) If a covered financial institution has or obtains

knowledge that a correspondent account established, maintained, administered, or managed by that covered financial institution in the United States for a foreign bank is being used by the foreign bank to provide banking services indirectly to Myanmar Mayflower Bank or Asia Wealth Bank, the covered financial institution shall ensure that the correspondent account is no longer used to provide such services, including, where necessary, terminating the correspondent account; and

(ii) A covered financial institution required to terminate an account pursuant to paragraph (b)(2)(i) of this section:

(A) Shall do so within a commercially reasonable time, and shall not permit the foreign bank to establish any new positions or execute any transactions through such account, other than those necessary to close the account; and

(B) May reestablish an account closed pursuant to this paragraph if it determines that the account will not be used to provide banking services indirectly to Myanmar Mayflower Bank or Asia Wealth Bank.

(3) *Reporting and recordkeeping not required.* Nothing in this section shall require a covered financial institution to maintain any records, obtain any certification, or to report any information not otherwise required by law or regulation.

[69 FR 19103, Apr. 12, 2004]

APPENDIX A TO SUBPART I OF PART 103 – CERTIFICATION REGARDING CORRESPONDENT ACCOUNTS FOR FOREIGN BANKS

[OMB Control Number 1505-0184]

The information contained in this Certification is sought pursuant to Sections 5318(j) and 5318(k) of Title 31 of the United States Code, as added by sections 313 and 319(b) of the USA PATRIOT Act of 2001 (Public Law 107-56).

This Certification should be completed by any **foreign bank** that maintains a **correspondent account** with any U.S. bank or U.S. broker-dealer in securities (a **covered financial institution** as defined in 31 C.F.R. 103.175(f)). An entity that is not a foreign bank is not required to complete this Certification.

A **foreign bank** is a bank organized under foreign law and located outside of the United States (see definition at 31 C.F.R. 103.11(o)). A **bank** includes offices, branches, and agencies of commercial banks or trust companies, private banks, national banks, thrift institutions, credit unions, and other organizations chartered under banking laws and supervised by banking supervisors of any state (see definition at 31 C.F.R. 103.11(c)).*

A **Correspondent Account** for a foreign bank is any account to receive deposits from, make payments or other disbursements on behalf of a foreign bank, or handle other financial transactions related to the foreign bank.

Special instruction for foreign branches of U.S. banks: A branch or office of a U.S. bank outside the United States is a foreign bank. Such a branch or office is not required to complete this Certification with respect to Correspondent Accounts with U.S. branches and offices of the same U.S. bank.

Special instruction for covering multiple branches on a single Certification: A foreign bank may complete one Certification for its branches and offices outside the United States. The Certification must list all of the branches and offices that are covered and must include the information required in Part C for **each** branch or office that maintains a Correspondent Account with a Covered Financial Institution. Use attachment sheets as necessary.

A. The undersigned financial institution, _____ ("**Foreign Bank**") hereby certifies as follows:

* A "foreign bank" does not include any foreign central bank or monetary authority that functions as a central bank, or any international financial institution or regional development bank formed by treaty or international agreement.

B. Correspondent Accounts Covered by this Certification: Check **one** box.

☐ This Certification applies to **all** accounts established for Foreign Bank by Covered Financial Institutions.

☐ This Certification applies to Correspondent Accounts established by _____ (name of Covered Financial Institution(s)) for Foreign Bank.

C. Physical Presence/Regulated Affiliate Status: Check **one** box and complete the blanks.

☐ Foreign Bank maintains a **physical presence** in any country. That means:

- Foreign Bank has a place of business at the following street address: _____, where Foreign Bank employs one or more individuals on a full-time basis and maintains operating records related to its banking activities.
- The above address is in _____ (insert country), where Foreign Bank is authorized to conduct banking activities.
- Foreign Bank is subject to inspection by _____, (insert Banking Authority), the banking authority that licensed Foreign Bank to conduct banking activities.

☐ Foreign Bank does not have a physical presence in any country, but Foreign Bank is a **regulated affiliate**. That means:

- Foreign Bank is an affiliate of a depository institution, credit union, or a foreign bank that maintains a physical presence at the following street address: _____, where it employs one or more persons on a full-time basis and maintains operating records related to its banking activities.
- The above address is in _____ (insert country), where the depository institution, credit union, or foreign bank is authorized to conduct banking activities.
- Foreign Bank is subject to supervision by _____, (insert Banking Authority), the same banking authority that regulates the depository institution, credit union, or foreign bank.

☐ Foreign Bank does **not** have a physical presence in a country and is **not** a regulated affiliate.

D. Indirect Use of Correspondent Accounts: Check box to certify.

☐ No Correspondent Account maintained by a Covered Financial Institution may be used to indirectly provide banking services to certain foreign banks. Foreign Bank hereby certifies that it does **not** use any Correspondent Account with a Covered Financial Institution to indirectly provide banking services to

any foreign bank that does not maintain a physical presence in any country and that is not a regulated affiliate.

E. Ownership Information: Check box 1 or 2 below, **if applicable.**

☐ 1. **Form FR Y-7 is on file.** Foreign Bank has filed with the Federal Reserve Board a current Form FR Y-7 and has disclosed its ownership information on Item 4 of Form FR Y-7.

☐ 2. **Foreign Bank's shares are publicly traded**. Publicly traded means that the shares are traded on an exchange or an organized over-the-counter market that is regulated by a foreign securities authority as defined in section 3(a)(50) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(50)).

If **neither** box 1 or 2 of Part E is checked, complete item 3 below, **if applicable**.

☐ 3. Foreign Bank has no **owner(s)** except as set forth below. For purposes of this Certification, **owner** means any person who, directly or indirectly, (a) owns, controls, or has power to vote 25 percent or more of any class of voting securities or other voting interests of Foreign Bank; or (b) controls in any manner the election of a majority of the directors (or individuals exercising similar functions) of Foreign Bank. For purposes of this Certification, (i) **person** means any individual, bank, corporation, partnership, limited liability company or any other legal entity; (ii) **voting securities or other voting interests** means securities or other interests that entitle the holder to vote for or select directors (or individuals exercising similar functions); and (iii) members of the same family* shall be considered one **person**.

Name	Address

F. Process Agent: complete the following.

The following individual or entity: _____
is a resident of the United States at the following street address:
_____, **and**
is authorized to accept service of legal process on behalf of Foreign Bank from the

* The same family means parents, spouses, children, siblings, uncles, aunts, grandparents, grandchildren, first cousins, stepchildren, stepsiblings, parents-in-law and spouses of any of the foregoing. In determining the ownership interests of the same family, any voting interest of any family member shall be taken into account.

Secretary of the Treasury or the Attorney General of the United States pursuant to Section 5318(k) of title 31, United States Code.

G. General

Foreign Bank hereby agrees to notify in writing each Covered Financial Institution at which it maintains any Correspondent Account of any change in facts or circumstances reported in this Certification. Notification shall be given within 30 calendar days of such change.

Foreign Bank understands that each Covered Financial Institution at which it maintains a Correspondent Account may provide a copy of this Certification to the Secretary of the Treasury and the Attorney General of the United States. Foreign Bank further understands that the statements contained in this Certification may be transmitted to one or more departments or agencies of the United States of America for the purpose of fulfilling such departments' and agencies' governmental functions.

I, _____(name of signatory), certify that I have read and understand this Certification, that the statements made in this Certification are complete and correct, and that I am authorized to execute this Certification on behalf of Foreign Bank.

_____
[Name of Foreign Bank}

_____
[Signature]

_____
[Printed Name]

_____
[Title]

Executed on this _____ day of _____, 200__.

Received and reviewed by:

Name: _____
Title: _____
For: _____
[Name of Covered Financial Institution]

Date: _____

[67 FR 60573, Sept. 26, 2002]

APPENDIX B TO SUBPART I OF PART 103 – RECERTIFICATION REGARDING CORRESPONDENT ACCOUNTS FOR FOREIGN BANKS

[OMB CONTROL NUMBER 1505-0184]

The information contained in this Certification is sought pursuant to Sections 5318(j) and 5318(k) of Title 31 of the United States Code, as added by sections 313 and 319(b) of the USA PATRIOT Act of 2001 (Public Law 107-56).

The undersigned financial institution, _____ ("Foreign Bank"), hereby certifies as follows:

1. Foreign Bank has executed a Certification dated _____, 20__ (the "Certification") relating to one or more Correspondent Accounts maintained by one or more Covered Financial Institutions for Foreign Bank. Terms defined in the Certification have the same meaning in this Recertification.

2. The information contained in the Certification:

☐ remains true and correct.

☐ is revised by the information provided with this Recertification (attach a statement describing the information that is no longer correct and stating the correct information).

Foreign Bank understands that each Covered Financial Institution at which it maintains a Correspondent Account may provide a copy of this Recertification to the Secretary of the Treasury and the Attorney General of the United States. Foreign Bank further understands that the statements contained in this Recertification may be transmitted to one or more departments or agencies of the United States of America for the purpose of fulfilling such departments' and agencies' governmental functions.

I, _____(name of signatory), certify that I have read and understand this Recertification, that the statements made in this Recertification are complete and correct, and that I am authorized to execute this Recertification on behalf of Foreign Bank.

_____
[Name of Foreign Bank]

_____
[Signature]

_____
[Title]

Executed on this _____ day of _____, 200__.

Received and reviewed by:

Name: _____
Title: _____
For: _____
[Name of Covered Financial Institution]

Date: _____

[67 FR 60573, Sept. 26, 2002]

APPENDIX A TO PART 103—ADMINISTRATIVE RULINGS

88–1 (June 22, 1988)

Issue

What action should a financial institution take when it believes that it is being misused by persons who are intentionally structuring transactions to evade the reporting requirement or engaging in transactions that may involve illegal activity such as drug trafficking, tax evasion or money laundering?

Facts

A teller at X State Bank notices that the same person comes into the bank each day and purchases, with cash, between $9,000 and $9,900 in cashier's checks. Even when aggregated, these purchases never exceed $10,000 during any one business day. The teller also notices that this person tries to go to different tellers for each transaction and is very reluctant to provide information about his frequent transactions or other information such as name, address, etc. Likewise, the payees on these cashier's checks all have common names such as "John Smith" or "Mary Jones." The teller informs the bank's compliance officer that she believes that this person is structuring his transactions in order to evade the reporting requirements under the Bank Secrecy Act. X State Bank wants to know what actions it should take in this situation or in any other situation where a transaction or a person conducting a transaction appears suspicious.

Law and Analysis

As it appears that the person may be intentionally structuring the transactions to evade the Bank Secrecy Act reporting requirements, X State Bank should immediately telephone the local office of the Internal Revenue Service ("IRS") and speak to a Special Agent in the IRS Criminal Investigation Division, or should call 1–800–BSA-CTRS, where his call will be referred to a Special Agent.

Any information provided to the IRS should be given within the confines of §1103(c) of the Right to Financial Privacy Act. 12 U.S.C. 3401–3422. Section 1103(c) of that Act permits a financial instituiton to

notify a government authority of information relevant to a possible violation of any statute or regulation. Such information may consist of the names of any individuals or corporate entities involved in the suspicious transactions; account numbers; home and business addresses; social security numbers; type of account; interest paid on account; location of the branch or office where the suspicious transaction occurred; a specification of the offense that the financial institution believes has been committed; and a description of the activities giving rise to the bank's suspicion. S. Rep. 99–433, 99th Cong., 2d Sess., pp. 15–16.

Additionally, the bank may be required, by the Federal regulatory agency which supervises it, to submit a criminal referral form. Thus, the bank should check with its regulatory agency to determine whether a referral form should be submitted.

Lastly, under the facts as described above, X State Bank is not required to file a Currency Transaction Report (''CTR'') because the currency transaction (i.e. purchase of cashier's checks) did not exceed $10,000 during one business day. If the bank had found that on a particular day the person had in fact used a total of more than $10,000 in currency to purchase cashier's checks, but had each individual cashier's check made out in amounts of less than $10,000, the bank is obligated to file a CTR, and should follow the other steps described above.

Holding

If X State Bank notices that a person may be misusing it by intentionally structuring transactions to evade the BSA reporting requirements or engaging in transactions that may involve other illegal activity, the bank should telephone the local office of the Internal Revenue Service, Criminal Investigation Division, and report that information to a Special Agent, or should call 1–800–BSA-CTRS. In addition, the Federal regulatory agency which supervises X State Bank may require the bank to submit a criminal referral form. All disclosures to the Government should be made in accordance with the provisions of the Right to Financial Privacy Act.

88–2 (June 22, 1988)

Issue

When, if ever, should a bank file a CMIR on behalf of its customer, when the customer is importing or exporting more than $10,000 in currency or monetary instruments?

Facts

A customer walks into B National Bank (''B'') with $15,000 in cash for deposit into her account. As is required, the bank teller begins to fill out a Currency Transaction Report (''CTR'', IRS Form 4789) in order to report a transaction in currency of more than $10,000. While the teller is filling out the CTR, the customer mentions to the teller that she has just received the money in a letter from a relative in France. Should the teller also file a CMIR, either on the customer's behalf or on the bank's behalf?

Law and Analysis

B National Bank should not file a CMIR when a customer deposits currency in excess of $10,000 into her account, even if the bank has knowledge that the customer received the currency from a place outside the United States. 31 CFR 103.23 requires that a CMIR be filed by anyone who transports, mails, ships or receives, or attempts, causes or attempts to cause the transportation, mailing, shipping or receiving of currency or monetary instruments in excess of $10,000, from or to a place outside the United States. The term ''monetary instruments'' includes currency and instruments such as negotiable instruments endorsed without restriction. *See* 31 CFR 103.11(k).

The obligation to file the CMIR is solely on the person who transports, mails, ships or receives, or causes or attempts to transport, mail, ship or receive. No other person is under any obligation to file a CMIR. Thus, if a customer walks into the bank and declares that he or she has received or transported currency in an aggregate amount exceeding $10,000 from a place outside the United States and wishes to deposit the currency into his or her account, the bank is under no obligation to file a CMIR on the customer's behalf. Likewise, because the bank itself did not receive the money from a customer outside the United States, it has no obligation to file a CMIR on its own behalf. The same holds true if a customer declares his intent to transport currency or monetary instruments in excess of $10,000 to a place outside the United States.

However, the bank is strongly encouraged to inform the customer of the CMIR reporting requirement. If the bank has knowledge that the customer is aware of the CMIR reporting requirement, but is nevertheless disregarding the requirement or if information about the transaction is otherwise suspicious, the bank should contact the local office of the U.S. Customs Service or 1–800–BE ALERT. The United States Customs Service has been delegated authority by the Assistant Secretary (Enforcement) to investigate criminal violations of 31 CFR 103.23. *See* 31 CFR 103.36(c)(1).

Any information provided to Customs should be given within the confines of section 1103(c) of the Right to Financial Privacy Act, 12 U.S.C. 3401–3422. Section 1103(c) permits a financial institution to notify a Government authority of information relevant to a possible violation of any statute or regulation. Such information may consist of the

name (including those of corporate entities) of any individual involved in the suspicious transaction; account numbers; home and business addresses; social security numbers; type of account; interest paid on account; location of branch where the suspicious transaction occurred; a specification of the offense that the financial institution believes has been committed; and a description of the activities giving rise to the bank's suspicions. *See* S. Rep. 99–433, 99th Cong., 2nd Sess., pp. 15–16. Therefore, under the facts above, the teller need only file a CTR for the deposit of the customer's $15,000 in currency.

A previous interpretation of §103.23(b) by Treasury held that if a bank received currency or monetary instruments over the counter from a person who may have transported them into the United States, and knows that such items have been transported into the country, it must file a report on Form 4790 if a complete and truthful report has not been filed by the customer. *See* 31 CFR 103 appendix, §103.23, interpretation 2, at 364 (1987). This ruling hereby supersedes that interpretation.

Holding

A bank should not file a CMIR when a customer deposits currency or monetary instruments in excess of $10,000 into her account even if the bank has knowledge that the currency or monetary instruments were received or transported from a place outside the United States. 31 CFR 103.23. The same is true if the bank has knowledge that the customer intends to transport the currency or monetary instruments to a place outside the United States. However, the bank is required to file a CTR if it receives in excess of $10,000 in cash from its customer, and is strongly encouraged to inform the customer of the CMIR requirements. In addition, if the bank has knowledge that the customer is aware of the CMIR reporting requirement and is nevertheless planning to disregard it or if the transaction is otherwise suspicious, the bank should notify the local office of the United States Customs Service (or 1–800–*Be Alert*) of the suspicious transaction. Such notice should be made within the confines of the Right to Financial Privacy Act, 12 U.S.C. 3403(c).

88–3 (June 22, 1988)

Issue

Whether a bank may exempt ''cash-back'' transactions of a customer whose primary business is of a type that may be exempted either unilaterally by the bank or pursuant to additional authority granted by the IRS.

Facts

The ABC Grocery (''ABC''), a retail grocery store, has an account at the X State Bank for its daily deposits of currency. Because ABC regularly and frequently deposits amounts ranging from $20,000 to $30,000, the bank has properly granted ABC an exemption for daily deposits up to a limit of $30,000.

Recently, ABC began providing its customers with a check-cashing service as an adjunct to its primary business of selling groceries. ABC's primary business still consists of the sale of groceries. However, the unexpectedly heavy demand for ABC's check-cashing service has required ABC to maintain a substantially greater quantity of cash in the store than was necessary for the grocery business in the past. To facilitate the operations of its check-cashing service, ABC is presenting the bank with large numbers of checks in ''cash-back'' transactions, rather than depositing the checks into its account and withdrawing cash from that account. X State Bank has just been presented with a ''cash-back'' transaction wherein an employee of ABC is exchanging $15,000 worth of checks for cash. How should the bank treat this transaction?

Law and Analysis

A *cash back* transaction is one where one or more checks or other monetary instruments are presented in exchange for cash or a portion of the checks or monetary instruments are deposited while the remainder is exchanged for cash. ''Cash back'' transactions can never be exempted from the Bank Secrecy Act reporting requirements. Thus, the bank must file a Currency Transaction Report on IRS Form 4789 reporting this $15,000 ''cash back'' transaction, even though the customer's account has been granted an exemption for daily deposits of up to $30,000. This is because §103.22(b)(i) permits a bank to exempt only ''*(d)eposits or withdrawals of currency* from an existing account by an established depositor who is a United States resident and operates a retail type of business in the United States'' (emphasis added). As ''cash-back'' transactions do not constitute either a ''deposit or withdrawal of currency'' within the meaning of the regulations, the bank must report on a CTR any ''cash-back'' transaction that results in the transfer of more than $10,000 in currency to a customer during a single banking day, regardless of whether the customer has properly been granted an exemption for its deposits or withdrawals.

Moreover, because ''cash back'' transactions are never exemptible, the bank may not unilaterally exempt ''cash-back'' transactions by ABC, or seek additional authority from the IRS to grant a special exemption for ABC's ''cash-back'' transactions. Instead, the bank must report ABC's ''cash back'' transaction on a CTR, listing it as a $15,000 ''check cashed'' transaction.

Holding

A bank may never grant a unilateral exemption, or obtain additional authority from the IRS to grant a special exemption to the ''cash-back'' transactions of a customer. A ''cash back'' transaction is one where one or more checks or other monetary instruments are presented in exchange for cash or a portion of the checks or monetary instruments are deposited while the remainder is exchanged for cash. If a bank handles a ''cash-back'' transaction that results in the transfer of more than $10,000 to a customer during a single banking day, it must report that transaction on IRS Form 4789, the Currency Transaction Report, as a ''check cashed'' transaction, regardless of whether the customer has been properly granted an exemption for daily deposits or withdrawals.

88–4 (August 2, 1988)

Issue

If a bank has exempted a single account of a customer into which multiple establishments of that customer make deposits, must the bank list all of the establishments on its exemption list or may the bank list only the §103.22(f) information of the customer's headquarters or its principal business establishment on its exemption list?

Facts

A fast food company operates a chain of fast-food restaurants in several states. In New York, the company has established a single deposit account at Bank A, into which all of the company's establishments in that area make deposits. In Connecticut, the company has established ten bank accounts at Bank B; each of the company's ten establishments in Connecticut have been assigned a separate account into which it makes deposits. Banks A and B have properly exempted the company's accounts, but now seek guidance on the manner in which they should add these accounts to their exemption lists. All of the company's establishments use the same taxpayer identification number (''TIN'').

Law and Analysis

Under the regulations, the bank must keep ''in a centralized list,'' §103.22(f) information for ''each depositor that has engaged in currency transactions which have not been reported because of (an) exemption * * *'' However, where all of the company's establishments deposit into one exempt account as at Bank A, above, the bank need only maintain §103.22(f) information on its list for the customer's corporate headquarters or the principal establishment that obtained the exemption. The bank may, but is not required to, list identifying information for all of the customers' establishments depositing into the one account. If the bank chooses to list only the information for the customer's headquarters or principal establishment, it should briefly note that on the exemption list and should ensure that the individual addresses for each establishment are readily available upon request. Where each of the company's establishments deposit into separate exempt accounts as at Bank B, the bank must maintain separate §103.22(f) information on the exemption list for each establishment.

Under §103.22(b)(2) (i), (ii), and (iv) and §103.22(e) of the regulation, a bank can only grant an exemption for ''an existing account (of) an established depositor who is a United States resident.'' Under these provisions, therefore, the bank can only grant an exemption for an existing individual account, not for an individual customer or group of accounts. Thus, if a customer has a separate account for each of its business establishments, the bank must consider each account for a separate exemption. If the bank grants exemptions for more than one account, it should prepare a separate exemption statement and establish a separate dollar limit for each account.

Once an exemption has been granted for an account, §103.22(f) requires the bank to maintain a centralized exemption list that includes the name, address, business, types of transactions exempted, the dollar limit of the exemption, taxpayer identification number, and account number of the customers whose accounts have been exempted.

Holding

Under 31 CFR 103.22, when a bank has exempted a single account of a customer into which more than one of the customer's establishments make deposits, the bank may include the name, address, business, type of transactions exempted, the dollar limit of the exemption, taxpayer identification number, and account number (''§103.22(f) information'') of either the customer's headquarters or the principal business establishment, or it may separately list §103.22(f) information for each of the establishments using that account. If the bank chooses to list only the information for the customer's headquarters or principal establishment, it should briefly note that fact on the exemption list, and it should ensure that the individual addresses of those establishments not on the list are readily available upon request. If a bank has granted separate exemptions to several accounts, each of which is used by a single establishment of the same customer, the bank must include on its exemption list §103.22(f) information for each of those establishments. Previous Treasury correspondence or interpretations contrary to this policy are hereby rescinded.

88–5 (August 2, 1988)

Issue

Does a financial institution have a duty to file a CTR on currency transactions where the financial institution never physically receives the cash because it uses an armored car service to collect, transport and process its customer's cash receipts?

Facts

X State Bank (the ''Bank'') and Acme Armored Car Service (''Acme'') have entered into a contract which provides for Acme to collect, transport and process revenues received from Bank customers:

Each day, Acme picks up cash, checks, and deposit tickets from Little Z, a non-exempt customer of the Bank. Recently, receipts of cash from Little Z have exceeded $10,000. Acme delivers the checks and deposit tickets to the Bank where they are processed and Little Z's account is credited. All cash collected, however, is taken by Acme to its central office where it is counted and processed. The cash is then delivered by Acme to the Federal Reserve Bank for deposit into the Bank's account. Must the Bank file a CTR to report a receipt of cash in excess of $10,000 by Acme from Little Z?

Law and Anaylsis

Yes. Since Acme is receiving cash in excess of $10,000 on behalf of the Bank, the Bank must file a CTR in order to report these transactions.

Section 103.22(a)(1) requires ''(e)ach financial institution * * * [to] file a report of each deposit, withdrawal, exchange of currency or other payment or transfer, by, through or to such financial institution which involves a transaction in currency of more than $10,000.'' Section 103.11 (a) and (g) defines ''Bank'' and ''Financial Institution'' to include agents of those banks and financial institutions.

Under the facts presented, Acme is acting as an agent of the Bank. This is because Acme and the Bank have a contractual relationship whereby the Bank has authorized Acme to pick up, transport and process Little Z's receipts on behalf of the Bank. The Federal Reserve Bank's acceptance of deposits from Acme into the Bank's account at the Fed, is additional evidence of the agency relationship between the Bank and Acme.

Therefore, when Acme receives currency in excess of $10,000 from Little Z, the Bank must report that transaction on Form 4789. Likewise, if Acme receives currency from Little Z in multiple transactions, § 103.22(a)(1) requires the Bank to aggregate these transactions and file a single CTR for the total amount of currency received by Acme, if the Bank has knowledge of these multiple transactions. Knowledge by the Bank's agent, i.e., Acme, that the currency was received in multiple transactions, is attributable to the Bank. The Bank must assure that Acme, as its agent, obtains all the information and identification necessary to complete the CTR.

Holding

Financial institutions must file a CTR for the currency received by an armored car service from the financial institution's customer when the armored car service physically receives the cash from the customer, transports it and processes the receipts, even though the currency may never physically be received by the financial institution. This is because the armored car service is acting as an agent of the financial institution.

89–1 (January 12, 1989)

Issue

Under § 103.22 of the BSA regulations, may a bank unilaterally grant one exemption or establish a single dollar exemption limit for a group of existing accounts of the same customer? If not, may a bank obtain additional authority from the IRS to grant a single exemption for a group of exemptible accounts belonging to the same customer?

Facts

ABC Inc. (''ABC''), with TIN 12–3456789, owns five fast food restaurants. Each restaurant has its own account at the X State Bank and each restaurant routinely deposits less than $10,000 into its individual account. However, when the deposits into these five accounts are aggregated they regularly and frequently exceed $10,000. Accordingly, the bank prepares and files one CTR for ABC Inc., on each business day that ABC's aggregated currency transactions exceed $10,000. X State Bank wants to know whether it can unilaterally exempt these five accounts having the same TIN, and, if not, whether it can obtain additional authority from the IRS to grant a single exemption to the group of five accounts belonging to ABC.

Law and Analysis

Under § 103.22(b)(2) (i) and (ii) of the Bank Secrecy Act (''BSA'') regulations, 31 CFR part 103, only an individual account of a customer may be unilaterally exempted from the currency transaction reporting provisions. The bank may not unilaterally grant one exemption or establish a single dollar exemption limit for multiple accounts of the same customer. This is because §§ 103.22(b)(2)(i) and 103.22(b)(2)(ii) of the BSA regulations only permit a bank to unilaterally exempt ''[d]eposits or withdrawals of currency from an existing account by an established depositor who is a United States

resident and operates a retail type of business in the United States.'' 31 CFR 103.22(b)(2) (i) and (ii).

Section 103.22(e) of the BSA regulations provides, however, that ''[a] bank may apply to the * * * [IRS] for additional authority to grant exemptions to the reporting requirements not otherwise permitted under paragraph (b) of this section * * *'' 31 CFR 103.22(e). Therefore, under this authority, and at the request of a bank, the IRS may, in its discretion, grant the requesting bank additional authority to exempt a group of accounts when the following conditions are met:

(1) Each of the accounts in the group is owned by the same person and has the same taxpayer identification number.

(2) The deposits or withdrawals into each account are made by a customer that operates a business that may be either unilaterally or specially exemptible and each account meets the other exemption criteria (except for the dollar amount).

(3) Currency transactions for each account individually do not exceed $10,000 on a regular and frequent basis.

(4) Aggregated currency transactions for all accounts included in the group regularly and frequently exceed $10,000.

If a bank determines that an exemption would be appropriate in a situation involving a group of accounts belonging to a single customer, it must apply to the IRS for authority to grant one special exemption covering the accounts in question. As with all requests for special exemptions, any request for additional authority to grant a special exemption must be made in writing and accompanied by a statement of the circumstances that warrant special exemption treatment and a copy of the statement signed by the customer as required by § 103.22(d). 31 CFR 103.22(d).

Additional authority to grant a special exemption for a group of accounts must be obtained from the IRS regardless of whether the businesses may be unilaterally exempted under § 103.22(b)(2), because the exemption, if granted, would apply to a group of existing accounts as opposed to an individual existing account. 31 CFR 103.22(b)(2).

Also, if any one of a given customer's accounts has regular and frequent currency transactions which exceed $10,000, that account may not be included in the group exemption. This is because the bank may, as provided by § 103.22(b)(2), either unilaterally exempt that account or obtain authority from the IRS to grant a special exemption for that account if it meets the other criteria for exemption. Thus, only accounts of exemptible businesses which do not have regular and frequent (*e.g.*, daily, weekly or twice a month) currency transactions in excess of $10,000 may be eligible for a group exemption.

The intention of this special exemption is to permit banks to exempt the accounts of established customers, such as the ABC Inc. restaurants described above, which are owned by the same person and have the same TIN but which individually do not have sufficient currency deposit or withdrawal activity that regularly and frequently exceed $10,000.

Holding

If X State Bank determines that an exemption would be appropriate for ABC Inc., it must apply to the IRS for authority to grant one special exemption covering ABC's five separate accounts. As with all requests for special exemptions, ABC's request for additional authority to grant a special exemption must be made in writing and accompanied by a statement of the circumstances that warrant special exemption treatment and a copy of the statement signed by the customer as required by § 103.22(d). 31 CFR 103.22(d). The IRS may, in its discretion, grant additional authority to exempt the ABC accounts if: (1) They have the same taxpayer identification number; (2) they each are for customers that operate a business that may be either unilaterally or specially exemptible and each account meets the other exemption criteria (except for dollar amount); (3) the currency transactions for each account individually do not exceed $10,000 on a regular and frequent basis; but (4) when aggregated the currency transactions for all the accounts regularly and frequently do exceed $10,000.

89–2 (June 21, 1989)

Issue

When a customer has established bank accounts for each of several establishments that it owns, and the bank has exempted one or more of those accounts, how does the bank aggregate the customer's currency transactions?

Facts

X Company (''X'') operates two fast-food restaurants and a wholesale food business. X has opened separate bank accounts at the A National Bank (the ''Bank'') for each of its two restaurants, account numbers 1 and 2 respectively. Each of these two accounts has been properly exempted by the bank. Account number 1 has an exemption limit of $25,000 for deposits, and account number 2 has an exemption limit of $40,000 for deposits. X also has a third account, account number 3, at the bank for use in the operation of its wholesale food business. On occasion, cash deposits of more than $10,000 are made into this third account. Because these cash

deposits are infrequent, the bank cannot obtain additional authority to grant this account a special exemption.

During the same business day, two $15,000 cash deposits totalling $30,000 are made into account number 1, a separate cash deposit of $35,000 is made into account number 2 and a deposit of $9,000 in currency is made into account number 3 (X's account for its wholesale food business).

The bank must now determine how to aggregate and report all of these transactions on a Form 4789, Currency Transaction Report, (''CTR''). Must they aggregate all of the deposits made into account numbers 1, 2 and 3 and report them on a single CTR?

Law and Analysis

Section 103.22 of the Bank Secrecy Act (''BSA''), 31 CFR part 103, requires a financial institution to treat multiple currency transactions ''as a single transaction if the financial institution has knowledge that they are by or on behalf of any person and result in either cash-in or cash-out totalling more than $10,000 during any one business day.'' This means that a financial institution must file a CTR if it knows that multiple currency transactions involving two or more accounts have been conducted by or on behalf of the same person and, those transactions, when aggregated, exceed $10,000. Knowledge, in this context, means knowledge on the part of a partner, director, officer or employee of the institution or on the part of any existing computer or manual system at the institution that permits it to aggregate transactions.

Thus, if the bank has knowledge of multiple transactions, the bank should aggregate the transactions in the following manner.

First, the bank should separately review and total all cash-in and cash-out transactions within each account. Cash-in transactions should be aggregated with other cash-in transactions and cash-out transactions should be aggregated with cash-out transactions. Cash-in and cash-out transactions should not be aggregated together or offset against each other.

Second, the bank should determine whether the account has an exemption limit. If the account has an exemption limit, the bank should determine whether it has been exceeded. If the exemption limit has not been exceeded, the transactions for the exempted account should not be aggregated with other transactions.

If the total transactions during the same business day for a particular account exceed the exemption limit, the total of all of the transactions for that account should be aggregated with the total amount of the transactions for other accounts that exceed their respective exemption limits, with any accounts without exemption limits, and with transactions conducted by or on behalf of the same person that do not involve accounts (e.g., purchases of bank checks with cash) of which the bank has knowledge.

In the example discussed above, all of the transactions have been conducted ''on behalf of'' X, as X owns the restaurants and the wholesale food business. The total $30,000 deposit for account 1 exceeds the $25,000 exemption limit for that account. The $35,000 deposit into account number 2 is less than the $40,000 exemption limit for that account. Finally, the $9,000 deposit into account number 3, does not by itself constitute a reportable transaction.

Therefore, under the facts above, the bank should aggregate the entire $30,000 deposit into account number 1 (not just the amount that exceeds the exemption limit), with the $9,000 deposit into account number 3, for a total of $39,000. The bank should not include the $35,000 deposit into account number 2, as that deposit does not exceed the exemption limit for that account. Accordingly, the bank should complete and file a single CTR for $39,000.

If the bank does not have knowledge that multiple currency transactions have been conducted in these accounts on the same business day (e.g., because it does not have a system that aggregates among accounts and the deposits were made by three different individuals at different times) the bank should file one CTR for $30,000 for account number 1, as the activity into that account exceeds its exemption limit.

Holding

When a customer has more than one account and a bank employee has knowledge that multiple currency transaction have been conducted in the accounts or the bank has an existing computer or manual system that permits it to aggregate transactions for multiple accounts, the bank should aggregate the transactions in the following manner.

First, the bank should aggregate for each account all cash-in or cash-out transactions conducted during one business day. If the account has an exemption limit, the bank should determine whether the exemption limit of that account has been exceeded. If the exemption limit has not been exceeded, the total of the transactions for that particular account does not have to be aggregated with other transactions. If the total transactions during the same business day for a particular account exceed the exemption limit, however, the total of all of the transactions for that account should be aggregated with any total from other accounts that exceed their respective exemption limits, with any accounts without exemption limits, and with any reportable transactions conducted by or on behalf of the customer not involving accounts (e.g., purchases of

bank checks or ''cash back'' transactions) of which the bank has knowledge. The bank should then file a CTR for the aggregated amount.

89–5 (December 21, 1989)

Issue

How does a financial institution fulfill the requirement that it furnish information about the person on whose behalf a reportable currency transaction is being conducted?

Facts

No. 1. Linda Scott has had an account relationship with the Bank for 15 years. Ms. Scott enters the bank and deposits $15,000 in cash into her personal checking account. The bank knows that Ms. Scott is an artist who on occasions exhibits and sells her art work and that her art work currently is on exhibit at the local gallery. The bank further knows that cash deposits in the amount of $15,000 are commensurate with Ms. Scott's art sales.

No. 2. Dick Wallace has recently opened a personal account at the Bank. Although the bank verified his identity when the account was opened, the bank has no additional information about Mr. Wallace. Mr. Wallace enters the bank with $18,000 in currency and asks that it be wire transferred to a bank in a foreign country.

No. 3. Dorothy Green, a partner at a law firm, makes a $50,000 cash deposit into the firm's trust account.[1] The bank knows that this is a trust account. The $50,000 represents cash received from three clients.

No. 4. Carlos Gomez enters a Currency Dealer and asks to buy $12,000 in traveler's checks with cash.

No. 5. Gail Julian, a trusted employee of Q-mart, a large retail chain, enters the bank three times during one business day and makes three large cash deposits totalling $48,000 into Q-mart's account. The Bank knows that Ms. Julian is responsible for making the deposits on behalf of Q-mart. Q-mart has an exemption limit of $45,000.

Law and Analysis

Under §103.28 of the Bank Secrecy Act (''BSA'') regulations, 31 CFR part 103, a financial institution must report on a Currency Transaction Report (''CTR'') the name and address of the individual conducting the transaction, and the identity, account number, and the social security or taxpayer identification number of any person on whose behalf the transaction was conducted. See 31 U.S.C. 5313. ''A participant acting for another person shall make the report as the agent or bailee of the person and identify the person for whom the transaction is being made.'' Identifying information about the person on whose behalf the transaction is conducted must always be furnished if the transaction is reportable under the BSA, regardless of whether the transaction involves an account.

Because the BSA requires financial institutions to file complete and accurate CTR's, it is the financial institution's responsibility to ascertain the real party in interest. 31 U.S.C. 5313. One way that a financial institution can obtain information about the identity of the person on whose behalf the transaction is being conducted is to ask the person conducting the transaction whether he is acting for himself or on behalf of another person. Only if as a result of strong ''know your customer'' or other internal control policies, the financial institution is satisfied that its records contain information concerning the true identity of the person on whose behalf the transaction is conducted, may the financial institution rely on those records to complete the CTR.

No. 1. Linda Scott, an artist, is a known customer of the bank. The bank is aware that she is exhibiting her work at a local gallery and that cash deposits in the amount of $15,000 would not be unusual or inconsistent with Ms. Scott's business practices. Therefore, if the bank through its stringent ''know your customer'' policies is satisfied that the money being deposited by Ms. Scott into her personal account is for her benefit, the bank need not ask Ms. Scott whether she is acting on behalf of someone else.

No. 2. Because Dick Wallace is a new customer of the bank and because the bank has no additional information about him or his business activity, the bank should ask Mr. Wallace whether he is acting on his own behalf or on behalf of someone else. This is particularly true given the nature of the transaction—a wire transfer with cash for an individual to a foreign country.

No. 3. Dorothy Green's cash deposit of $50,000 into the law firm's trust account clearly is being done on behalf of someone else. The bank should ask Ms. Green to identify the clients on whose behalf the transaction is being conducted. Because Ms. Green is acting both on behalf of her employer and the clients, the names of the three clients and the law firm should be included on the CTR filed by the bank.

No. 4. The currency dealer, having no account relationship with Carlos Gomez, should ask Mr. Gomez if he is acting on behalf of someone else.

No. 5. Gail Julian is known to the bank as a trusted employee of Q-mart, who often deposits cash into Q-mart's account. If the

[1] This type of account is sometimes called a trust account, attorney account or special account. It is an account established by an attorney into which commingled funds of clients may be deposited. It is not necessarily a ''trust'' in the legal sense of the term.

bank, through its strong ''know your customer'' policies is satisfied that Ms. Julian makes these deposits on behalf of Q-mart, the bank need not ask her if she is acting on behalf of someone other than Q-mart.

Holding

It is the responsibility of a financial institution to file complete and accurate CTRs. This includes providing identifying information about the person on whose behalf the transaction is conducted in Part II of the CTR. One way that a financial institution can obtain information about the true identity of the person on whose behalf the transaction is being conducted is to ask the person conducting the transaction whether he is acting for himself or on behalf of another person. Only if as a result of strong ''know your customer'' or other internal control policies, the financial institution is satisfied that its record contain the necessary information concerning the true identity of the person on whose behalf the transaction is being conducted, may the financial institutions rely on those records in completing the CTR.

92–1 (November 16, 1992)

31 U.S.C. 5313—Reports on Domestic Coins and Currency Transactions
31 U.S.C. 5325—Identification Required to Purchase Certain Monetary Instruments
31 CFR 103.28—Identification Required
31 CFR 103.29—Purchases of Bank Checks and Drafts, Cashier's Checks, Money Orders and Traveler's Checks

Identification of elderly or disabled patrons conducting large currency transactions. Financial institutions must file a form 4789, Currency Transaction Report (CTR) on transactions in currency in excess of $10,000, and must verify and record information about the identity of the person(s) who conduct(s) the transaction in Part I of the CTR. Financial institutions also must record on a chronological log sales of, and verify the identity of individuals who purchase, certain monetary instruments with currency in amounts between $3,000 and $10,000, inclusive. Many financial institutions have asked Treasury how they can meet the requirement to examine an identifying document that contains the person's name and address when s/he does not possess such a document (*e.g.,* a driver's license). Financial institutions have indicated that this question arises almost exclusively with their elderly and/or disabled patrons. This Administrative Ruling answers those inquiries.

Issue

How does a financial institution fulfill the requirement to verify and record the name and address of an elderly or disabled individual who conducts a currency transaction in excess of $10,000 or who purchases certain monetary instruments with currency valued between $3,000 and $10,000 when he/she does not possess a passport, alien identification card or other official document, or other document that is normally acceptable within the banking community as a means of identification when cashing checks for non-depositors?

Holding

It is the responsibility of a financial institution to file complete and accurate CTRs and to maintain complete and accurate monetary instrument logs pursuant to 31 CFR §§103.27(d) and 103.29 of the BSA regulations. It is also the responsibility of a financial institution to verify and to record the identity of individuals conducting reportable currency transactions and/or cash purchases of certain monetary instruments as required by BSA regulations §§103.28 and 103.29. Only if the financial institution is confident that an elderly or disabled patron is who s/he says s/he is may it complete these transactions. A financial institution shall use whatever information it has available, in accordance with its established policies and procedures, to determine its patron's identity. This includes review of its internal records for any information on file, and asking for other forms of identification, including a social security or medicare/medicaid card along with another document which contains both the patron's name and address such as an organizational membership card, voter registration card, utility bill or real estate tax bill. These forms of identification shall also be identified as acceptable in the bank's formal written policy and operating procedures as identification for transactions involving the elderly or the disabled. Once implemented, the financial institution should permit no exception to its policy and procedures. In these cases, the financial institution should record the word ''Elderly'' or ''Disabled'' on the CTR and/or chronological log and the method used to identify the elderly, or disabled patron such as ''Social Security and (organization) Membership Card only ID.''

Law and Analysis

Before concluding a transaction for which a Currency Transaction Report is required pursuant to 31 CFR 103.22, a financial institution must verify and record the name and address of the individual conducting the transaction. 31 CFR 103.28. Verification of the individual's identity must be made by examination of a document, other than a bank signature card, that is normally acceptable within the banking community as a means of identification when cashing checks for non-depositors (*e.g.,* a driver's license). A bank signature card may be relied upon only if it was issued after documents establishing the

identity of the individual were examined and a notation of the method and specific information regarding identification (*e.g.*, state of issuance and driver's license number) was made on the signature card. In each instance, the specific identifying information noted above and used to verify the identity of the individual must be recorded on the CTR. The notation of ''known customer'' or ''bank signature card on file'' on the CTR is prohibited. 31 CFR 103.28.

Before issuing or selling bank checks or drafts, cashier's checks, traveler's checks or money orders to an individual(s), for currency between $3,000 and $10,000, a financial institution must verify whether the individual has a deposit account or verify the individual's identity. 31 CFR 103.29. Verification may be made by examination of a signature card or other account record at the financial institution if the deposit accountholder's name and address were verified at the time the account was opened, or at any subsequent time, and that information was recorded on the signature card or record being examined.

Verification may also be made by examination of a document that contains the name and address of the purchaser and which is normally acceptable within the banking community as a means of identification when cashing checks for nondepositors. In the case of a deposit accountholder whose identity has not been previously verified, the financial institution shall record the specific identifying information on its chronological log (*e.g.* state of issuance and driver's license number). In all situations, the financial institution must record all the appropriate information required by §103.29(a)(1)(i) for deposit account holders or 103.29(a)(2)(i) for nondeposit account holders.

Certain elderly or disabled patrons do not possess identification documents that would normally be considered acceptable within the banking community (*e.g.*, driver's licenses, passports, or state-issued identification cards). Accordingly, the procedure set forth below should be followed to fulfill the identification verification requirements of §§103.28 and 103.29.

Financial institutions may accept as appropriate identification a social security, medicare, medicaid or other insurance card presented along with another document that contains both the name and address of the patron (*e.g.* an organization membership or voter registration card, utility or real estate tax bill). Such forms of identification shall be specified in the bank's formal written policy and operating procedures as acceptable identification for transactions involving elderly or disabled patrons who do not possess identification documents normally considered acceptable within the banking community for cashing checks for nondepositors.

This procedure may only be applied if the following circumstances exist. First, the financial institution must establish that the identification the elderly or disabled patron has is limited to a social security or medicare/medicaid card plus another document which contains the patron's name and address. Second, the financial institution must use whatever information it has available, or policies and procedures it has in place, to determine the patron's identity. If the patron is a deposit accountholder, the financial institution should review its internal records to determine if there is information on file to verify his/her identity. Only if the financial institution is confident that the elderly or disabled patron is who s/he says s/he is, may the transaction be concluded. Failure to identify an elderly or a disabled customer's identity as required by 31 CFR §103.28 and as described herein may result in the imposition of civil and or criminal penalties. Finally, the financial institution shall establish a formal written policy and implement operating procedures for processing reportable currency transactions or recording cash sales of certain monetary instruments to elderly or disabled patrons who do not have forms of identification ordinarily considered ''acceptable.'' Once implemented, the financial institution shall permit no exceptions to its policy and procedures. In addition, financial institutions are encouraged to record the elderly or disabled patron's identity and address as well as the method of identification on a signature card or other record when it is obtained and verified.

In completing a CTR, if all of the above conditions are satisfied, the financial institution should enter the words ''Elderly'' or ''Disabled'' and the method used to verify the patron's identity, such as ''Social Security and (organization) Membership Cards Only ID,'' in Item 15a.

Similarly, when logging the cash purchase of a monetary instrument(s), the financial institution shall enter on its chronological log the words, ''Elderly'' or ''Disabled,'' and the method used to verify such patron's identity.

Example

Jesse Fleming, a 75 year old retiree, has been saving $10 bills for twenty years in order to help pay for his granddaughter's college education. He enters the Trustworthy National Bank where he has no account but his granddaughter has a savings account, and presents $13,000 in $10 bills to the teller. He instructs the teller to deposit $9,000 into his granddaughter's savings account, and requests a cashier's check for $4,000 made payable to State University.

Because of poor eyesight, Mr. Fleming no longer drives and does not possess a valid

driver's license. When asked for identification by the teller he presents a social security card and his retirement organization membership card that contains his name and address.

Application of Law to Example

In this example, the Trustworthy National Bank must check to determine if Mr. Fleming's social security and organizational membership cards are acceptable forms of identification as defined in the bank's policy and procedures. If so, and the bank is confident that Mr. Fleming is who he says he is, it may complete the transaction. Because Mr. Fleming conducted a transaction in currency which exceeded $10,000 (deposit of $9,000 and purchase of $4,000 monetary instrument), First National Bank must complete a CTR. It should record information about Mr. Fleming in Part I of the CTR and in Item 15a record the words ''Elderly—Social Security and (organization) Membership Cards Only ID.'' The balance of the CTR must be appropriately completed as required by §§103.22 and 103.27(d). First National Bank must also record the transaction in its monetary instrument sales log because it issued to Mr. Fleming a cashier's check for $4,000 in currency. Mr. Fleming must be listed as the purchaser and the bank should record on the log the words ''Elderly—Social Security and (organization) Membership Cards Only ID'' as the method used to verify his identity. In addition, because Mr. Fleming is not a deposit accountholder at First National Bank, the bank is required to record on the log all the information required under §103.29(a)(2)(i) for cash purchases of monetary instruments by nondeposit accountholders.

92–2 (November 16, 1992)

31 U.S.C. 5313—Reports on Domestic Coins and Currency Transactions
31 CFR 103.22—Reporting of Currency Transactions
31 CFR 103.28—Identification Required

Proper completion of the Currency Transaction Report (CTR), IRS Form 4789, when reporting multiple transactions. Financial institutions must report transactions in currency that exceed $10,000 or an exempted account's established exemption limit and provide certain information including verified identifying information about the individual conducting the transaction. Multiple currency transactions must be treated as a single transaction, aggregated, and reported on a single Form 4789, if the financial institution has knowledge that the transactions are by or on behalf of any person and result in either cash in or cash out totalling more than $10,000, or the exemption limit, during any one business day. All CTRs must be fully and accurately completed. Some or all of the individual transactions which comprise an aggregated CTR are frequently below the $10,000 reporting or applicable exemption threshold and, as such, are not reportable and financial institutions do not gather the information required to complete a CTR.

Issue

How should a financial institution complete a CTR when multiple transactions are aggregated and reported on a single form and all or part of the information called for in the form may not be known?

Holding

Multiple transactions that total in excess of $10,000, or an established exemption limit, when aggregated must be reported on a CTR if the financial institution has knowledge that the transactions have occurred. In many cases, the individual transactions being reported are each under $10,000, or the exemption limit, and the institution was not aware at the time of any one of the transactions that a CTR would be required. Therefore, the identifying information on the person conducting the transaction was not required to be obtained at the time the transaction was conducted.

If after a reasonable effort to obtain the information required to complete items 4 through 15 of the CTR, all or part of such information is not available, the institution must check item 3d to indicate that the information is not being provided because the report involves multiple transactions for which complete information is not available. The institution must, however, provide as much of the information as is reasonably available.

All subsections of item 48 on the CTR must be completed to report the number of transactions involved and the number of locations of the financial institution and zip codes of those locations where the transactions were conducted.

Law and Analysis

Sections 103.22(a)(1) and (c) of the Bank Secrecy Act (BSA) regulations, 31 CFR part 103, require a financial institution to file a CTR for each deposit, withdrawal, exchange of currency, or other payment or transfer, by, through, or to the financial institution, which involves a transaction in currency of more than $10,000 or the established exemption limit for an exempt account. Multiple transactions must be treated as a single transaction if the financial institution has knowledge that they are by, or on behalf of, any person and result in either cash in or cash out of the financial institution totalling more than $10,000 or the exemption limit during any one business day. Knowledge, in this context, means knowledge on the part of a partner, director, officer or employee of

the financial institution or on the part of any existing automated or manual system at the financial institution that permits it to aggregate transactions.

The purpose of item 3 on the CTR is to indicate why all or part of the information required in items 4 through 15 is not being provided on the form. If the reason information is missing is solely because the transaction(s) occurred through an armored car service, a mail deposit or shipment, or a night deposit or Automated Teller Machine (ATM), the financial institution must check either box a, b, or c, as appropriate, in item 3. CTR instructions state that item 3d is to be checked for multiple transactions where none of the individual transactions exceeds $10,000 or the exemption limit and all of the required information might not be available.

As described in Example No. 5 below, there may be situations where one transaction among several exceeds the applicable threshold. Item 3d should be checked whenever multiple transactions are being reported and all or part of the information necessary to complete items 4 through 15 is not available because at the time of any one of the individual transactions, a CTR was not required and the financial institution did not obtain the appropriate information.

When reporting multiple transactions, the financial institution must complete as many of items 4 through 15 as possible. In the event the institution learns that more than one person conducted the multiple transactions being reported, it must check item 2 on the CTR and is encouraged to make reasonable efforts to obtain and report any appropriate information on each of the persons in items 4 through 15 on the front and back of the CTR form, and if necessary, on additional sheets of paper attached to the report.

The purpose of item 48 is to indicate that multiple transactions are involved in the CTR being filed. Items 48 a, b, and c require information about the number of transactions being reported and the number of bank branches and the zip code of each branch where the transactions took place. If multiple transactions exceeding $10,000 or an account exemption limit occur at the same time, the financial institution should treat the transactions in a manner consistent with its internal transaction posting procedures. For example, if a customer presents four separate deposits, at the same time, totalling over $10,000, the institution may report the transactions in item 48a to be one or four separate transactions. If the transactions are posted as four separate transactions the financial institution should enter the number 4 in item 48a and the number 1 in item 48b. If the transactions are posted as one transaction the institution should enter the 1 in both 48a and 48b. Reporting the transactions in this manner will guarantee the integrity of the paper trail being created, that is, the number of transactions reported on the CTR will be the same as the number of transactions showing in the institution's records.

These situations should be differentiated from those cases where separate transactions occur at different times during the same business day, and which, when aggregated, exceed $10,000 or the exemption limit. For instance, if the same or another individual conducts two of the same type of transactions at different times during the same business day at two different branches of the financial institution on behalf of the same person, and the institution has knowledge that the transactions occurred and exceed $10,000 or the exemption limit, then the financial institution must enter the number 2 in items 48a and 48b.

Examples and Application of Law to Examples

Example No. 1

Dorothy Fishback presents a teller with three cash deposits to the same account, at the same time, in amounts of $5,000, $6,000, and $8,500 requesting that the deposits be posted to the account separately. It is the bank's procedure to post the transactions separately. A CTR is completed while the customer is at the teller window.

Application of Law to Example No. 1

A CTR is completed based upon the information obtained at the time Dorothy Fishback presents the multiple transactions. Item 3d would not be checked on the CTR because all of the information in items 4 through 15 is being provided contemporaneously with the transaction. As it is the bank's procedure to post the transactions separately, the number of transactions reported in item 48a would be 3 and the number of branches reported in item 48b would be 1. The zip code for the location where the transactions were conducted would be entered in item 48c.

Example No. 2

Andrew Weiner makes a $7,000 cash deposit to his account at ABC Federal Savings Bank. Later the same day, Mr. Weiner returns to the same teller and deposits $5,000 in cash to a different account. At the time Mr. Weiner makes the second deposit, the teller realizes that the two deposits exceed $10,000 and prepares a CTR obtaining all of the necessary identifying information directly from Mr. Weiner.

Application of Law to Example No. 2

Even though the two transactions were conducted at different times during the same business day, Mr. Weiner conducted both

transactions at the same place and the appropriate identifying information was obtained by the teller at the time of the second transaction. Item 3d would not be checked on the CTR. The number of transactions reported in item 48a must be 2 and the number of branches reported in item 48b would be 1. The zip code for the location where the transactions took place would be entered in item 48c.

Example No. 3

Internal auditor Mike Pelzer is reviewing the daily cash transactions report for People's Bank and notices that five cash deposits were made the previous day to account #12345. The total of the deposits is $25,000 and they were made at three different offices of the bank. Mike researches the account data base and finds that the account belongs to a department store and that the account is exempted for deposits up to $17,000 per day. Each of the five transactions was under $17,000.

Application of Law to Example No. 3

Having reviewed the report of aggregated transactions, Mike Pelzer has knowledge that transactions exceeding the account exemption limit have occurred during a single business day. A CTR must be filed. People's Bank is encouraged to make a reasonable effort to provide the information for items 4 through 15 on the CTR. Such efforts could include a search of the institution's records or a phone call to the department store to identify the persons that conducted the transactions. If all of the information is not contained in the institution's records or otherwise obtained, item 3d must be checked. The number of transactions reported in item 48a must be 5 and the number of branches reported in 48b would be 3. The zip codes for the three locations where the transactions occurred must be entered in item 48c.

Example No. 4

Mrs. Saunders makes a cash withdrawal, for $4,000, from a joint savings account she owns with her husband. That day her husband, Mr. Saunders, withdraws $7,000 cash using the same teller. Realizing that the withdrawals exceed $10,000, the teller obtains identifying information on Mr. Saunders required to complete a CTR.

Application of Law to Example No. 4

In this case, item 2 on the CTR must be checked because the teller knows that more than one person conducted the transactions. Information on Mr. Saunders would appear in Part I and the bank is encouraged to ask him for, or to check its records for the required identifying information on Mrs. Saunders. If after taking reasonable efforts to locate the desired information, all of the required information is not found on file in the institution's records or is not otherwise obtained, box 3d must be checked to indicate that all information is not being provided because multiple transactions are being reported. Whatever information on Mrs. Saunders is contained in the records of the institution must be reported in the continuation of Part I on the back of Form 4789. The number of transactions reported in item 48a must be 2 and the number of branches reported in item 48b would be 1. The zip code for the branch where the transactions took place would be entered in item 48c.

Example No. 5

On another day, Mrs. Saunders makes a deposit of $3,000 cash and no information required for Part I of the CTR is requested of her. She is followed later the same day by her husband, Mr. Saunders, who deposits $12,000 in currency and who provides all data required to complete Part I for himself.

Application of Law to Example No. 5

Item 2 on the CTR must be checked because the teller knows that more than one person conducted the transactions. Information on Mr. Saunders would appear in Part I and the bank is encouraged to ask him for, or to check its records for the required identifying information on Mrs. Saunders. If after taking reasonable efforts to locate the desired information, all of the required information is not found on file in the institution's records or is not otherwise obtained, box 3d must be checked to indicate that all information is not being provided because multiple transactions are being reported. Whatever information on Mrs. Saunders is contained in the records of the institution must be reported in the continuation of Part I on the back of Form 4789. The number of transactions reported in item 48a must be 2 and the number of branches reported in item 48b would be 1. The zip code for the branch where the transactions took place would be entered in item 48c.

Example No. 6

A review of First Federal Bank's daily cash transactions report for a given day indicates several cash deposits to a single account totaling more than $10,000. Two separate deposits were made in the night depository at the institution's main office, and two deposits were conducted at the teller windows of two other branch locations. Each deposit was under $10,000.

Application of Law to Example No. 6

Item 3c should be checked to indicate that identifying information is not provided because transactions were received through the night deposit box. If the tellers involved with the two face to face deposits remember who

conducted the transactions, institution records can be checked for identifying information. If the records contain some of the information required by items 4 through 15, that information must be provided, and item 3d must be checked to indicate that some information is missing because multiple transactions are being reported and the information was not obtained at the time the transactions were conducted. Item 48a must indicate 4 transactions and item 48b must indicate 3 locations. The zip code of those locations would be provided in item 48c.

[53 FR 40064, Oct. 13, 1988, as amended at 54 FR 21214, May 17, 1989; 54 FR 30543, July 21, 1989; 55 FR 1022, Jan. 11, 1990; 58 FR 7048, Feb. 4, 1993. Redesignated and amended at 67 FR 9877, Mar. 4, 2002]

APPENDIX B TO PART 103—CERTIFICATION FOR PURPOSES OF SECTION 314(B) OF THE USA PATRIOT ACT AND 31 CFR 103.110

Certification for Purposes of Section 314(b) of the USA PATRIOT Act and 31 CFR 103.110

I hereby certify, on behalf of (insert name, address, and federal employer identification number (EIN) of financial institution or association of financial institutions)_____
_____
_____
_____ that:

(1) (i) The financial institution specified above is a "financial institution" as such term is defined in 31 CFR 103.110(a)(2), or (ii) The association specified above is an "association of financial institutions" as such term is defined in 31 CFR 103.110(a)(3) .

(2) The financial institution or association specified above intends, for a period of one (1) year beginning on the date of this certification, to engage in the sharing of information with other financial institutions or associations of financial institutions regarding individuals, entities, organizations, and countries, as permitted by section 314(b) of the USA PATRIOT Act of 2001 (Public Law 107-56) and the implementing regulations of the Department of the Treasury, Financial Crimes Enforcement Network (31 CFR 103.110).

(3) The financial institution or association of financial institutions specified above has established and will maintain adequate procedures to safeguard the security and confidentiality of such information.

(4) Information received by the above named financial institution or association pursuant to section 314(b) and 31 CFR 103.110 will not be used for any purpose other than as permitted by 31 CFR 103.110(c)(2).

(5) In the case of a financial institution, the primary federal regulator, if applicable, of the above named financial institution is _____.

(6) The following person may be contacted in connection with inquiries related to the information sharing under section 314(b) of the USA PATRIOT Act and 31 CFR 103.110:

NAME: _____
TITLE: _____
MAILING ADDRESS: _____
_____
_____
E-MAIL ADDRESS: _____
TELEPHONE NUMBER: _____
FACSIMILE NUMBER: _____

BY: _____
Name
_____
Title

Executed on this _____ day of _____, 200____.

[67 FR 9877, Mar. 4, 2002]

APPENDIX C TO PART 103—INTERPRETIVE RULES

RELEASE NO. 2004–01

This Interpretive Guidance sets forth our interpretation of the regulation requiring Money Services Businesses that are required to register with FinCEN to establish and maintain anti-money laundering programs. See 31 CFR 103.125. Specifically, this Interpretive Guidance clarifies that the anti-money laundering program regulation requires Money Services Businesses to establish adequate and appropriate policies, procedures, and controls commensurate with the risks of money laundering and the financing of terrorism posed by their relationship with foreign agents or foreign counterparties of the Money Services Business.[1]

Under existing Bank Secrecy Act regulations, we have defined Money Services Businesses to include five distinct types of financial services providers and the U.S. Postal Service: (1) Currency dealers or exchangers; (2) check cashers; (3) issuers of traveler's checks, money orders, or stored value; (4) sellers or redeemers of traveler's checks, money orders, or stored value; and (5) money transmitters. See 31 CFR 103.11(uu). With limited exception, Money Services Businesses are subject to the full range of Bank Secrecy Act regulatory controls, including the anti-money laundering program rule, suspicious activity and currency transaction reporting rules, and various other identification and recordkeeping rules.[2]

Many Money Services Businesses, including the vast majority of money transmitters in the United States, operate through a system of agents both domestically and internationally. We estimate that a substantial majority of all cross-border remittances by money transmitters are conducted using this model. Other Money Services Businesses may operate through more informal relationships, such as the trust-based hawala system.[3] Regardless of the form of the relationship between a Money Services Business and its foreign agents or counterparties, Money Services Business transactions generally are initiated by customers seeking to send or receive funds, cash checks, buy or sell money orders or traveler's checks, or buy or sell currency. The customer directs the Money Services Business to execute the transactions; the Money Services Business does not unilaterally determine the recipient of its products or services. Although the customer can use the Money Services Business' services, the customer does not typically establish an account relationship with the Money Services Business. The focus of this Interpretive Guidance is the establishment of, and ongoing relationship between, a Money Services Business and its foreign agent or foreign counterparty that facilitates the flow of funds cross-border into and out of the United States on behalf of customers.

THE CROSS-BORDER FLOW OF FUNDS THROUGH MONEY SERVICES BUSINESSES AND ASSOCIATED RISKS

Ensuring that financial institutions based in the United States establish and apply adequate and appropriate policies, procedures, and controls in their anti-money laundering compliance programs to protect the international gateways to the U.S. financial system is an essential element of the Bank Secrecy Act regulatory regime. This Interpretive Guidance forms a part of our comprehensive approach to accomplishing this

[1] This Interpretive Guidance focuses on the need to control risks arising out of the relationship between a Money Service Business and its foreign counterparty or agent. Under existing FinCEN regulations, only Money Service Business principals are required to register with FinCEN, and only Money Service Business principals establish the counterparty or agency relationships. 31 CFR 103.41. Accordingly, this Interpretive Guidance only applies to those Money Service Businesses required to register with FinCEN, that is, only those Money Service Businesses that may have a relationship with a foreign agent or counterparty.

[2] *See* 31 CFR 103.125 (requirement for Money Service Businesses to establish and maintain an anti-money laundering compliance program); 31 CFR 103.22 (requirement for Money Service Businesses to file currency transaction reports); 31 CFR 103.20 (requirement for Money Service Businesses, other than check cashers and issuers, sellers, or redeemers of stored value, to file suspicious activity reports); 31 CFR 103.29 (requirement for Money Service Businesses that sell money orders, traveler's checks, or other instruments for cash to verify the identity of the customer and create and maintain a record of each cash purchase between $3,000 and $10,000, inclusive); 31 CFR 103.33(f) (requirement for Money Service Businesses that send or accept instructions to transmit funds of $3,000 or more to verify the identity of the sender or receiver and create and maintain a record of the transmittal regardless of the method of payment); and 31 CFR 103.37 (requirement for currency exchangers to create and maintain a record of each exchange of currency in excess of $1,000).

[3] For an analysis of informal value transfer systems, see FinCEN's Report to Congress Pursuant to Section 359 of the Patriot Act, available on *www.fincen.gov*.

goal. To the extent Money Services Businesses utilize relationships with foreign agents or counterparties to facilitate the movement of funds into or out of the United States, they must take reasonable steps to guard against the flow of illicit funds, or the flow of funds from legitimate sources to persons seeking to use those funds for illicit purposes, through such relationships.

The money laundering or terrorism financing risks associated with foreign agents or counterparties are similar to the risks presented by domestic agents of Money Services Businesses. For example, the foreign agent of the domestic Money Services Business may have lax anti-money laundering policies, procedures, and internal controls, or actually may be complicit with those seeking to move illicit funds. In some instances, the risk with foreign agents can be greater than with domestic agents because foreign agents are not subject to the Bank Secrecy Act regulatory regime; the extent to which they are subject to anti-money laundering regulation, and the quality of that regulation, will vary with the jurisdictions in which they are located.

There are a variety of ways in which a Money Services Business may be susceptible to the unwitting facilitation of money laundering through foreign agents or counterparties. For example, our review of Bank Secrecy Act data revealed several instances of suspected criminal activity—detected by existing anti-money laundering and suspicious activity reporting programs of Money Services Businesses and banks—where foreign agents of Money Services Business have engaged in bulk sales of sequentially numbered, U.S. denominated traveler's checks or blocks of money orders, to one or two individuals. The individuals involved frequently purchased the instruments on multiple dates and in different locations, structuring the purchases to avoid reporting thresholds and issuer limits on daily instrument sales. The instruments usually had illegible signatures or failed to designate a beneficiary or payor. The instruments were then negotiated with one or more dealers in goods, such as diamonds, gems, or precious metals, deposited in foreign banks, and cleared through U.S. banks. In such cases, the clearing banks were so far removed from the transactions that they could not trace back or screen either the intervening transactions or the individuals involved in the transactions.

A case involving suspicious activity in a Money Services Business' domestic agent provides a further example of the type of high-risk activity that also may be engaged in by foreign agents or counterparties. In this instance, the domestic Money Service Business had policies, procedures, and controls that facilitated the detection of illicit activity at the agent. A group of six customers entered a money transmitter agent at approximately five-minute intervals to send the same structured amounts ($2,500) to the same receiver in a foreign country. Several weeks later, another group of six customers entered the same agent location and conducted an identical pattern of successive $2,500 transfers (a few minutes apart) to the same recipient in the same foreign country as the first set of transactions. Some of the individuals in the second group had the same last names as customers in the first group. Additional suspicious activity reports filed by the primary Money Services Business identified several other groups of customers initiating money transfers at this same agent business location, in the same manner, and in the same overall time frame. This activity by an agent drew the scrutiny of the Money Services Business, and in addition to the filing of suspicious activity reports, led to the termination of the relationship of the Money Services Business with the agent.

These examples of illicit activity occurring at the agents of Money Services Businesses underscore the need for Money Services Businesses to include, as a part of their anti-money laundering programs, procedures, policies, and controls to govern relationships with foreign agents and counterparties to enable the Money Services Business to perform the appropriate level of suspicious activity and risk monitoring. We believe that this obligation is an essential part of each Money Services Business' existing obligation under 31 CFR 103.125 to develop and implement an effective anti-money laundering program.[4] This Interpretive Guidance will aid Money Services Businesses in adopting appropriate risk-based policies, procedures, and controls on cross-border relationships with foreign agents and counterparties.

ANTI-MONEY LAUNDERING PROGRAM ELEMENTS RELATING TO FOREIGN AGENTS AND COUNTERPARTIES

Under 31 CFR 103.125(a), Money Services Businesses are required to develop, implement, and maintain an effective anti-money laundering program reasonably designed to prevent the Money Services Business from being used to facilitate money laundering and the financing of terrorist activities. The program must be commensurate with the risks posed by the location, size, nature, and volume of the financial services provided by the Money Services Business. Additionally, the program must incorporate policies, procedures, and controls reasonably designed to

[4] FinCEN previously interpreted 31 CFR 103.125 to impose a similar obligation on a money transmitter with respect to its domestic agents. See Matter of Western Union, No. 2003–2 (Mar. 6, 2003) *(www.fincen.gov)*.

assure compliance with the Bank Secrecy Act and implementing regulations.

With respect to Money Services Businesses that utilize foreign agents or counterparties, a Money Services Business' anti-money laundering program must include risk-based policies, procedures, and controls designed to identify and minimize money laundering and terrorist financing risks associated with foreign agents and counterparties that facilitate the flow of funds into and out of the United States. The program must be aimed at preventing the products and services of the Money Services Business from being used to facilitate money laundering or terrorist financing through these relationships and detecting the use of these products and services for money laundering or terrorist financing by the Money Services Business or agent. Relevant risk factors may include, but are not limited to:

- The foreign agent or counterparty's location and jurisdiction of organization, chartering, or licensing. This would include considering the extent to which the relevant jurisdiction is internationally recognized as presenting a greater risk for money laundering or is considered to have more robust anti-money laundering standards.
- The ownership of the foreign agent or counterparty. This includes whether the owners are known, upon reasonable inquiry, to be associated with criminal conduct or terrorism. For example, have the individuals been designated by Treasury's Office of Foreign Assets Control as Specially Designated Nationals or Blocked Persons (*i.e.*, involvement in terrorism, drug trafficking, or the proliferation of weapons of mass destruction)?
- The extent to which the foreign agent or counterparty is subject to anti-money laundering requirements in its jurisdiction and whether it has established such controls.
- Any information known or readily available to the Money Services Business about the foreign agent or counterparty's anti-money laundering record, including public information in industry guides, periodicals, and major publications.
- The nature of the foreign agent or counterparty's business, the markets it serves, and the extent to which its business and the markets it serves present an increased risk for money laundering or terrorist financing.
- The types and purpose of services to be provided to, and anticipated activity with, the foreign agent or counterparty.
- The nature and duration of the Money Services Business' relationship with the foreign agent or counterparty.

Specifically, a Money Services Business' anti-money laundering program should include procedures for the following:

1. Conduct of Due Diligence on Foreign Agents and Counterparties

Money Services Businesses should establish procedures for conducting reasonable, risk-based due diligence on potential and existing foreign agents and counterparties to help ensure that such foreign agents and counterparties are not themselves complicit in illegal activity involving the Money Services Business' products and services, and that they have in place appropriate anti-money laundering controls to guard against the abuse of the Money Services Business' products and services. Such due diligence must, at a minimum, include reasonable procedures to identify the owners of the Money Services Business' foreign agents and counterparties, as well as to evaluate, on an ongoing basis, the operations of those foreign agents and counterparties and their implementation of policies, procedures, and controls reasonably designed to help assure that the Money Services Business' products and services are not subject to abuse by the foreign agent's or counterparty's customers, employees, or contractors.[5] The extent of the due diligence required will depend on a variety of factors specific to each agent or counterparty. We expect Money Services Businesses to assess such risks and perform due diligence in a manner consistent with that risk, in light of the availability of information.

2. Risk-based Monitoring of Foreign Agents or Counterparties

In addition to the due diligence described above, in order to detect and report suspected money laundering or terrorist financing, Money Services Businesses should establish procedures for risk-based monitoring and review of transactions from, to, or through the United States that are conducted through foreign agents and counterparties.[6] Such procedures should also

[5] Our anti-money laundering program rule, 31 CFR 103.125(d)(iii), permits Money Service Businesses to satisfy this last requirement with regard to their domestic agents (which are also Money Service Businesses under the BSA regulations), by allocating responsibility for the program to their agents. Such an allocation, however, does not relieve a Money Service Business from ultimate responsibility for establishing and maintaining an effective anti-money laundering program. *Id.*

[6] Nothing in this Interpretive Guidance is intended to require Money Service Businesses to monitor or review, for purposes of the Bank Secrecy Act, transactions or activities of foreign agents or counterparties that occur entirely outside of the United

Continued

focus on identifying material changes in the agent's risk profile, such as a change in ownership, business, or the regulatory scrutiny to which it is subject.

The review of transactions should enable the Money Services Business to identify and, where appropriate, report as suspicious such occurrences as: instances of unusual wire activity, bulk sales or purchases of sequentially numbered instruments, multiple purchases or sales that appear to be structured, and illegible or missing customer information. Additionally, Money Services Businesses should establish procedures to assure that their foreign agents or counterparties are effectively implementing an anti-money laundering program and to discern obvious breakdowns in the implementation of the program by the foreign agent or counterparty.

Similarly, money transmitters should have procedures in place to enable them to review foreign agent or counterparty activity for signs of structuring or unnecessarily complex transmissions through multiple jurisdictions that may be indicative of layering. Such procedures should also enable them to discern attempts to evade identification or other requirements, whether imposed by applicable law or by the Money Services Business' own internal policies. Activity by agents or counterparties that appears aimed at evading the Money Services Business' own controls can be indicative of complicity in illicit conduct; this activity must be scrutinized, reported as appropriate, and corrective action taken as warranted.

3. Corrective Action and Termination

Money Services Businesses should have procedures for responding to foreign agents or counterparties that present unreasonable risks of money laundering or the financing of terrorism. Such procedures should provide for the implementation of corrective action on the part of the foreign agent or counterparty or for the termination of the relationship with any foreign agent or counterparty that the Money Services Business determines poses an unacceptable risk of money laundering or terrorist financing, or that has demonstrated systemic, willful, or repeated lapses in compliance with the Money Services Business' own anti-money laundering procedures or requirements.

While Money Services Businesses may already have implemented some or all of the procedures described in this Interpretive Guidance as a part of their anti-money laundering programs, we wish to provide a reasonable period of time for all affected Money Services Businesses to assess their operations, review their existing policies and programs for compliance with this Advisory, and implement any additional necessary changes. We will expect full compliance with this Interpretive Release within 180 days.

Finally, we are mindful of the potential impact that this Interpretive Release may have on continuing efforts to bring informal value transfer systems into compliance with the existing regulatory framework of the Bank Secrecy Act. Experience has demonstrated the challenges in securing compliance by, for instance, hawalas and other informal value transfer systems. Further specification of Bank Secrecy Act compliance obligations carries with it the risk of driving these businesses underground, thereby undermining our ultimate regulatory goals. On balance, however, we believe that outlining the requirements for dealing with foreign agents and counterparties, including informal networks, is appropriate in light of the risks of money laundering and the financing of terrorism.

RELEASE NO. 2004–02

This FinCEN interpretive guidance clarifies that reports filed with the Department of the Treasury's Office of Foreign Assets Control (''OFAC'') of blocked transactions with Specially Designated Global Terrorists, Specially Designated Terrorists, Foreign Terrorist Organizations, Specially Designated Narcotics Trafficker Kingpins, and Specially Designated Narcotics Traffickers will be deemed by FinCEN to fulfill the requirement to file suspicious activity reports on such transactions for purposes of FinCEN's suspicious activity reporting rules. However, the filing of a blocking report with OFAC will not be deemed to satisfy a financial institution's obligation to file a suspicious activity report if the transactions would be reportable under FinCEN's suspicious activity reporting rules even if there were no OFAC match. Moreover, to the extent that the financial institution is in possession of information not included on the blocking report filed with OFAC, a separate suspicious activity report should be filed with FinCEN including that information.

Background

The Bank Secrecy Act authorizes the Secretary of the Treasury to require financial institutions to report ''any suspicious transaction relevant to a possible violation of law or regulation.''[1] Under this authority, FinCEN has issued regulations requiring banks, securities broker-dealers, introducing

States and do not flow from, to, or through the United States.

[1] *See* 31 U.S.C. 5318(g)(1).

brokers, casinos, futures commission merchants, and money services businesses, to report suspicious activity that meets a particular dollar threshold.[2] Each rule includes filing procedures requiring that a suspicious transaction shall be reported by completing a suspicious activity report and filing it with FinCEN in a central location to be determined by FinCEN. Generally, the rules provide a financial institution with thirty days from the date of the initial detection of suspicious activity to file a report, with an additional thirty days if the financial institution is unable to identify a suspect. Reports are filed on forms developed for each industry subject to the reporting requirement.[3]

OFAC administers and enforces economic and trade sanctions based on U.S. foreign policy and national security goals against targeted foreign countries, terrorists, international narcotics traffickers, and those engaged in activities related to the proliferation of weapons of mass destruction. OFAC's Reporting, Procedures and Penalties Regulations at 31 CFR part 501 require U.S. financial institutions to block and file reports on accounts, payments, or transfers in which an OFAC-designated country, entity, or individual has any interest.[4] These reports must be filed with OFAC within ten business days of the blocking of the property.[5]

Prior Guidance

Transactions involving an individual or entity designated on OFAC's list of Specially Designated Nationals and Blocked Persons as a global terrorist, terrorist, terrorist organization, narcotics trafficker, or narcotics kingpin[6] may be in furtherance of a criminal act, and therefore relevant to a possible violation of law. Thus, blocking reports related to such persons also describe potentially suspicious activity. In the November 2003 edition of its ''SAR Activity Review,''[7] FinCEN instructed financial institutions to file suspicious activity reports on verified matches of persons designated by OFAC. While this guidance ensured that the relevant information would be available to law enforcement, it also resulted in financial institutions being required to make two separate filings with the Department of the Treasury—one with OFAC pursuant to its Reporting, Procedures and Penalties Regulations, and one with FinCEN pursuant to its suspicious activity reporting rules.

Revised Guidance

FinCEN is hereby revising its prior guidance to eliminate the need for duplicative reporting in cases where a financial institution identifies a verified match with individuals or entities designated by OFAC. As of the date of publication of this interpretation, FinCEN will deem its rules requiring the filing of suspicious activity reports to be satisfied by the filing of a blocking report with OFAC in accordance with OFAC's Reporting, Penalties and Procedures Regulations. OFAC will then provide the information to FinCEN for inclusion in the suspicious activity reporting database where it will be made available to law enforcement. This construction of the suspicious activity reporting rules will serve the public interest by enabling FinCEN to obtain and provide potentially important information about terrorists and major drug traffickers to law enforcement on an expedited basis without imposing duplicative reporting burdens on the regulated industry.

Accordingly, a financial institution that files a blocking report with OFAC due to the involvement in a transaction or account of a person designated as a Specially Designated Global Terrorist, a Specially Designated Terrorist, a Foreign Terrorist Organization, a Specially Designated Narcotics Trafficker Kingpin, or a Specially Designated Narcotics Trafficker, shall be deemed to have simultaneously filed a suspicious activity report on the fact of the match with FinCEN, in satisfaction of the requirements of the applicable suspicious activity reporting rule. This interpretation does not affect a financial institution's obligation to identify and report suspicious activity beyond the fact of the OFAC match. To the extent that the financial institution is in possession of information not included on the blocking report filed with OFAC, a separate suspicious activity report should be filed with FinCEN including that information. This interpretation also does not affect a financial institution's obligation to file a suspicious activity report even if it has filed a blocking report with OFAC, to the extent that the facts and circumstances surrounding the OFAC match

[2] See 31 CFR 103.17–21. The threshold for most financial institutions is $5,000; transactions conducted at points of sale for money services businesses have a reporting threshold of $2,000. See 31 CFR 103.20.

[3] See TD F 90–22.47 (depository institutions); TD F 22.56 (money services businesses); FinCEN Form 101 (securities and futures industries); FinCEN Form 102 (casinos and card clubs).

[4] 31 CFR 501.603.

[5] 31 CFR 501.603(b)(1)(i).

[6] The specific designations are as follows: Specially designated terrorist; foreign terrorist organization; specially designated global terrorist; specially designated narcotics trafficker; specially designated narcotics trafficker kingpin. *See* 31 CFR parts 595, 597, 598 and the Foreign Narcotics Kingpin Act, 21 U.S.C. 1901–08, 8 U.S.C. 1182. These categories of designations are subject solely to blocking requirements.

[7] Issue 6 (Nov. 2003).

are independently suspicious—and are otherwise required to be reported under existing FinCEN regulations. In those cases, the OFAC blocking report would not satisfy a financial institution's suspicious activity report filing obligation.

Further, nothing in this interpretation is intended to preclude a financial institution from filing a suspicious activity report to disclose additional information concerning the OFAC match,[8] nor does it preclude a financial institution from filing a suspicious activity report if the financial institution has reason to believe that terrorism or drug trafficking is taking place, even though there is no OFAC match. Finally, this interpretation does not apply to blocking reports filed to report transactions and accounts involving persons owned by, or who are nationals of, countries subject to OFAC-administered sanctions programs. Such transactions should be reported on suspicious activity reports under the suspicious activity reporting rules if, and only, if, the activity itself appears to be suspicious under the criteria established by the suspicious activity reporting rules.

[69 FR 74439, Dec. 14, 2004, as amended at 69 FR 76847, Dec. 23, 2004]

[8] Such a report would be a voluntary report under the statute and regulations. *See* 31 U.S.C. 5318(g)(3) (extending safe harbor protection from civil liability to voluntary filings).

PART 123 [RESERVED]

PART 128—REPORTING OF INTERNATIONAL CAPITAL AND FOREIGN-CURRENCY TRANSACTIONS AND POSITIONS

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APPENDIX A TO PART 128—DETERMINATION MADE BY NATIONAL ADVISORY COUNCIL PURSUANT TO SECTION 2 (A) AND (B) OF E.O. 10033

AUTHORITY: 22 U.S.C. 286f and 3101 *et seq.*; 31 U.S.C. 5315 and 5321.

SOURCE: 58 FR 58495, Nov. 2, 1993, unless otherwise noted.

Subpart A—General Information

§ 128.1 General reporting requirements.

(a) *International capital transactions and positions.* (1) In order to implement the International Investment and Trade in Services Survey Act, as amended (22 U.S.C. 3101 *et seq.*); and E.O. 11961, and to obtain information requested by the International Monetary Fund under the articles of agreement of the Fund pursuant to section 8(a) of the Bretton Woods Agreements Act (22 U.S.C. 286f) and E.O. 10033, persons subject to the jurisdiction of the United States are required to report information pertaining to—

(i) United States claims on, and liabilities to, foreigners;

(ii) Transactions in securities and other financial assets with foreigners; and

(iii) The monetary reserves of the United States.

(2) Data pertaining to direct investment transactions are not required to be reported under this Part.

(3) Reports shall be made in such manner and at such intervals as specified by the Secretary of the Treasury. See subpart B of this part for additional requirements concerning these reports.

(b) *Foreign currency positions.* (1) In order to provide data on the nature and source of flows of mobile capital, including transactions by large United States business enterprises (as determined by the Secretary) and their foreign affiliates as required by 31 U.S.C. 5315, persons subject to the jurisdiction of the United States are required to report information pertaining to—

(i) Transactions in foreign exchange;

(ii) Transfers of credit that are, in whole or part, denominated in a foreign currency; and

(iii) The creation or acquisition of claims that reference transactions, holdings, or evaluations of foreign exchange.

(2) Reports shall be made in such manner and at such intervals as specified by the Secretary. See subpart C of this part for additional requirements concerning these reports.

(c) *Notice of reports.* Notice of reports required by this part, specification of persons required to file report, and forms to be used to file reports will be published in the FEDERAL REGISTER. Persons currently required to file reports shall continue to file such reports using existing Treasury International Capital Forms BL–1/BL–1(SA), BL–2/BL–2(SA), BL–3, BC/BC(SA), BQ–1, BQ–2, CM, CQ–1, CQ–2, S, and existing Treasury Foreign Currency Forms FC–1, FC–2, FC–3, and FC–4 until further notice is published in the FEDERAL REGISTER.

§ 128.2 Manner of reporting.

(a) *Methods of reporting*—(1) *Prescribed forms.* (i) Except as provided in § 128.2(a)(2), reports required by this part shall be made on forms prescribed by the Secretary. The forms and accompanying instructions will be published in accordance with § 128.1(c).

(ii) Copies of forms and instructions prescribed by the Secretary for reporting under this Part may be obtained from any Federal Reserve Bank, or from the Office of the Assistant Secretary (Economic Policy), Department of the Treasury, Washington, DC 20220.

(2) *Alternative methods of reporting.* In lieu of reporting on forms prescribed by the Secretary pursuant to this part, reports may be filed on magnetic tape or other media acceptable to, and approved in writing by, the Federal Reserve district bank with which the report is filed, or by the Assistant Secretary (Economic Policy) in the case of a special exception filing pursuant to § 128.2(b)(3). The Secretary may require that magnetic tape or other machine-readable media, or other rapid means of communication be used for filing special survey reports under subpart B or C of this part.

(b) *Filing of periodic reports*—(1) *Banks and other depository institutions, International Banking Facilities, and bank holding companies.* Except as provided in § 128.2(b)(3), each bank, depository institution, International Banking Facility, and bank holding company in the United States required to file periodic reports under subpart B or C of this part shall file such reports with the Federal Reserve bank of the district in which such bank, depository institution, International Banking Facility or bank holding company has its principal place of business in the United States.

(2) *Nonbanking enterprises and other persons.* Except as provided in § 128.2(b)(3), nonbanking enterprises and other persons in the United States required to file periodic reports under subpart B or C of this part shall file such reports with the Federal Reserve Bank of New York.

(3) *Special exceptions.* If a respondent described in § 128.2(b)(1) or (2) is unable to file with a Federal Reserve district bank, such respondent shall file periodic reports with the Office of the Assistant Secretary (Economic Policy), Department of the Treasury, Washington, DC 20220, or as otherwise provided in the instructions to the periodic report forms.

(c) *Filing of special survey reports.* All respondents required to file special survey reports under subpart B or C of this part file such reports as provided in § 128.2(b) unless otherwise provided in the instructions to the special survey reports.

§ 128.3 Use of information reported.

(a) Except for use in violation and enforcement proceedings pursuant to the International Investment and Trade in Services Survey Act, 22 U.S.C. 3101 *et seq.*, information submitted by any individual respondent on reports required under subpart B of this part may be used only for analytical and statistical purposes within the United States Government and will not be disclosed publicly by the Department of the Treasury, or by any other Federal agency or Federal Reserve district bank having access to the information as provided herein. Aggregate data derived from these forms may be published or otherwise publicly disclosed only in a manner which will not reveal the amounts reported by any individual respondent. The Department may furnish information from these forms to the Federal Reserve Board and to Federal agencies to the extent permitted by applicable law.

(b) The information submitted by any individual respondent on reports required under subpart C of this part will not be disclosed publicly. Aggregated data may be published or disclosed only in a manner which will not reveal the information reported by any individual respondent. The Department may furnish to Federal agencies, the Board of Governors of the Federal Reserve System, and to Federal Reserve district banks data reported pursuant to subpart C of this part to the extent permitted by applicable law.

§ 128.4 Penalties.

(a) Whoever fails to file a report required by subpart B of this part shall be subject to a civil penalty of not less than $2,500 and not more than $25,000

(b) Whoever willfully fails to file a report required by subpart B of this part may be criminally prosecuted and upon conviction fined not more than $10,000 and, if an individual (including any officer, director, employee, or agent of any corporation who knowingly participates in such violation),

may be imprisoned for not more than one year, or both.

(c) Whoever fails to file a report required by subpart C of this part shall be subject to a civil penalty of not more than $10,000.

§ 128.5 Recordkeeping requirements.

Banks, other depository institutions, International Banking Facilities, bank holding companies, brokers and dealers, and nonbanking enterprises subject to the jurisdiction of the United States shall maintain all information necessary to make a complete report pursuant to this Part for not less than three years from the date such report is required to be filed or was filed, whichever is later, or for such shorter period as may be specified in the instructions to the applicable report form.

(Approved by the Office of Management and Budget under control number 1505–0149)

Subpart B—Reports on International Capital Transactions and Positions

§ 128.11 Purpose of reports.

Reports on international capital transactions and positions provide timely and reliable information on international portfolio capital movements by U.S. persons. This information is needed for preparation of the capital accounts of the United States balance of payments and the international investment position of the United States.

§ 128.12 Periodic reports.

(a) *International capital positions.* (1) Banks and other depository institutions, International Banking Facilities, bank holding companies, and brokers and dealers in the United States shall file monthly, quarterly and semiannual reports with respect to specified claims and liabilities positions with foreigners held for their own account and for the accounts of their customers.

(2) Nonbanking enterprises in the United States not described in § 128.12(a)(1) shall file monthly and quarterly reports with respect to deposits and certificates of deposit with banks outside the United States and specified claims and liabilities positions with unaffiliated foreigners.

(b) *Transactions in certain domestic and foreign long-term securities.* Banks and nonbanking enterprises in the United States shall file monthly reports on their transactions in domestic and foreign long-term securities or other financial assets with foreign residents.

(c) *Notice of periodic reports.* Notice of periodic reports will be published in accordance with § 128.1(c).

§ 128.13 Special survey reports.

The Secretary may prescribe special survey reports at such times as the Secretary determines there is a need for detailed information on the aggregate data derived from current periodic reports or to provide additional qualitative information with respect to such data. Notice of special survey reports will be published in accordance with § 128.1(c).

Subpart C—Reports on Foreign Currency Positions

§ 128.21 Purpose of reports.

Reports by respondents on foreign currency positions provide data on the nature and source of flows of mobile capital, including transactions by large United States business enterprises (as determined by the Secretary) and their foreign affiliates as required by 31 U.S.C. 5315.

§ 128.22 Periodic reports.

Respondents shall file reports weekly, monthly and quarterly on the value of such items as outstanding foreign exchange contracts, dealing positions, derivative foreign currency instruments, and other assets and liabilities denominated in the currencies specified on the forms. Notice of periodic reports will be published in accordance with § 128.1(c).

§ 128.23 Special survey reports.

The Secretary may prescribe special survey reports with respect to foreign exchange positions and related information at such times as the Secretary determines that there is a need for

prompt or expanded information on current conditions in the foreign exchange markets. Notice of special survey reports will be published in accordance with §128.1(c).

APPENDIX A TO PART 128—DETERMINATION MADE BY NATIONAL ADVISORY COUNCIL PURSUANT TO SECTION 2 (A) AND (B) OF E.O. 10033

I. Determination of the National Advisory Council pursuant to E.O. 10033

In an action dated September 7, 1965, the National Advisory Council on International Monetary and Financial Problems made the following determination pursuant to section 2(a) of E.O. 10033 of February 8, 1949.

Action 65 (E.O.)–49. The National Advisory Council, having consulted with the Director of the Bureau of the Budget, determines the current information with respect to international capital movements, derived from data on U.S. liabilities to and claims on foreigners and transactions in securities with foreigners, and current information with respect to U.S. gold holdings, foreign-currency holdings, and dollar liabilities to foreigners, are essential in order that the United States may comply with official requests of the International Monetary Fund for information with respect to the U.S. balance of payments and monetary reserves.

Action No. 320, March 17, 1949 is superseded by this determination and is hereby revoked.

II. Designation of the Treasury Department by the Director of the Bureau of the Budget pursuant to section 2(b) of E.O. 10033.

On December 1, 1965, the Treasury Department was designated, pursuant to section 2(b) of E.O. 10033 of February 8, 1949, to collect information for the International Monetary Fund under the National Advisory Council determination of September 7, 1965. The letter containing the designation reads as follows:

December 1, 1965.

Hon. Henry H. Fowler,
Secretary of the Treasury, Washington, DC 20220.

Dear Mr. Secretary: On September 7, 1965, the National Advisory Council after consultation with this Bureau in accordance with section 2(a) of Executive Order 10033, made the following determination (Action 65 (E.O.)–49:

''The National Advisory Council, having consulted with the Director of the Bureau of the Budget, determines that current information with respect to international capital movements, derived from data on U.S. liabilities to claims on foreigners and transactions in securities with foreigners, and current information with respect to U.S. gold holdings, foreign-currency holdings, and dollar liabilities to foreigners, are essential in order that the United States may comply with official requests of the International Monetary Fund for information with respect to the U.S. balance of payments and monetary reserves.''

It is hereby determined pursuant to section 2(b) of Executive Order 10033, that the Treasury Department shall collect information pertaining to capital movements between the United States and foreign countries and pertaining to the monetary reserves of the United States, except information pertaining to direct-investment transactions, U.S. Government foreign lending operations, and claims and liabilities of U.S. Government agencies (other than public debt obligations), which is collected by the Department of Commerce.

This letter supersedes the earlier determination as to the responsibilities of the Treasury Department in this area, dated April 21, 1949, as amended May 4, 1950.

Sincerely yours,

Raymond T. Bowman,
Assistant Director for Statistical Standards.

PART 129—PORTFOLIO INVESTMENT SURVEY REPORTING

Sec.
129.1 Purpose.
129.2 Definitions.
129.3 Reporting requirements.
129.4 Recordkeeping requirements.
129.5 Confidentiality.
129.6 Penalties specified by law.

AUTHORITY: 22 U.S.C. 3101 et seq.; E.O. 11961, 42 FR 4321, 3 CFR, 1977 Comp., p. 86.

SOURCE: 58 FR 30707, May 27, 1993, unless otherwise noted.

§129.1 Purpose.

The purpose of this part is to provide general information on portfolio investment survey data collection programs and analyses under the International Investment and Trade in Services Survey Act ((formerly the International Investment Survey Act of 1976) (the ''Act'')). The purpose of the Act is to provide for the collection of comprehensive and reliable information concerning international investment, including portfolio investment. The Act specifies that regular data collection programs and surveys specified by the Act or deemed necessary by the

Secretary of the Treasury shall be conducted to secure information on international capital flows and other information related to international portfolio investment, including information that may be necessary for computing and analyzing the United States balance of payments.

§ 129.2 Definitions.

For purposes of the Act and for reporting requirements under this Part:

(a) *United States,* when used in a geographic sense, means the several States, the District of Columbia, the Commonwealth of Puerto Rico, and the territories and possessions of the United States.

(b) *Foreign,* when used in a geographic sense, means that which is situated outside the United States or which belongs to or is characteristic of a country other than the United States.

(c) *Person* means any individual, branch, partnership, associated group, association, estate, trust, corporation, or other organization (whether or not organized under the laws of any State), and any government (including a foreign government, the United States Government, a State or local government, and any agency, corporation, financial institution, or other entity or instrumentality thereof, including a government-sponsored agency).

(d) *United States person* means any person resident in the United States or subject to the jurisdiction of the United States.

(e) *Foreign person* means any person resident outside the United States or subject to the jurisdiction of a country other than the United States.

(f) *Foreign parent* means any foreign person who owns or controls, directly or indirectly, 10 percent or more of the voting securities of an incorporated United States business enterprise, or an equivalent interest in an unincorporated United States business enterprise.

(g) *Reporter* means a United States person required to file a report.

(h) *Foreign official institution* means central governments of foreign countries and their possessions, including recognized central banks of issue.

§ 129.3 Reporting requirements.

(a) Notice of specific reporting requirements, including who is required to report, the information to be reported, the manner of reporting, and the time and place of filing reports, will be published by the Secretary of the Treasury in the FEDERAL REGISTER prior to the implementation of each survey or study.

(b) Written responses are required from all reporters.

(c) Information required from reporters shall be furnished under oath.

§ 129.4 Recordkeeping requirement.

Reporters shall maintain all information used in preparing a report under this part for the period specified in the notice published by the Secretary of the Treasury pursuant to section 129.3, and shall make this information available for review and inspection at the request of the Department of the Treasury.

§ 129.5 Confidentiality.

(a) Information collected pursuant to the Act will be kept in confidence.

(b) Access to information collected pursuant to the Act shall be available only to officials and employees (including consultants and contractors and their employees) designated by the Secretary of the Treasury to perform functions under the Act.

(c) Nothing in this part shall be construed to require any Federal agency to disclose information otherwise protected by law.

(d) No person can compel the submission or disclosure of reports, or constituent parts thereof, or copies of such reports or constituents parts thereof, prepared pursuant to this part, without the prior written consent of the person who maintained or who furnished the report and the customer of the person who furnished the report, where the information supplied is identifiable as being derived from the records of the customer. As required by the Act, any published reports issued by the Treasury based upon information pursuant to this part will only contain data aggregated in such a way that neither the person supplying the information nor the investor can be identified.

§ 129.6 Penalties specified by law.

Reporters are advised that the Act provides the following penalties:

(a) *Civil Penalties.* Whoever fails to furnish any information required under the Act, whether required to be furnished in the form of a report or otherwise, or to comply with any other rule, regulation, order, or instruction promulgated under the Act, shall be subject to a civil penalty of not less than $2,500 and not more than $25,000.

(b) *Criminal Penalties.* Whoever willfully violates any rule, regulation, order, or instruction promulgated under the Act, upon conviction, shall be fined not more than $10,000 and, if an individual, may be imprisoned for not more than one year, or both, and any officer, director, employee, or agent of any corporation who knowingly participates in such violation, upon conviction, may be punished by a like fine, imprisonment or both.

PARTS 130–199 [RESERVED]

FINDING AIDS

A list of CFR titles, subtitles, chapters, subchapters and parts and an alphabetical list of agencies publishing in the CFR are included in the CFR Index and Finding Aids volume to the Code of Federal Regulations which is published separately and revised annually.

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Material Approved for Incorporation by Reference

(Revised as of July 1, 2005)

The Director of the Federal Register has approved under 5 U.S.C. 552(a) and 1 CFR Part 51 the incorporation by reference of the following publications. This list contains only those incorporations by reference effective as of the revision date of this volume. Incorporations by reference found within a regulation are effective upon the effective date of that regulation. For more information on incorporation by reference, see the preliminary pages of this volume.

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American National Standards Institute	
25 West 43rd Street, Fourth floor, New York, NY 10036; Telephone: (212) 642–4900	
ANSI A117.1—80, Specifications for Making Buildings and Facilities Accessible to, and Usable by the Physically Handicapped.	51.55(k)(9)
(The following standard is available from: The Engineering Society Library, 345 E. 47th St., New York, NY 10017 (212) 644–7611 and Document Engineering Company, 15210 Stagg St., Van Nuys, CA 91405, (213) 782–1010, 873–5366.)	
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Redesignation Table

At 54 FR 4957, Jan. 31, 1989, §§ 601.901—601.942 (subpart I), formerly appearing in title 26, part 601, were redesignated as part 19 of title 31.

For the convenience of the user, the following table shows the relationship of the redesignated sections.

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List of CFR Sections Affected

All changes in this volume of the Code of Federal Regulations that were made by documents published in the FEDERAL REGISTER since January 1, 2001, are enumerated in the following list. Entries indicate the nature of the changes effected. Page numbers refer to FEDERAL REGISTER pages. The user should consult the entries for chapters and parts as well as sections for revisions.

For the period before January 1, 2001, see the ''List of CFR Sections Affected, 1949–1963, 1964–1972, 1973–1985, 1986–2000'' published in 11 separate volumes.

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1.36 (c)(1)(i) table, (iv) table, (g)(1)(i) table, (ii) table, (iv) table, (m)(1)(ii) table and (v) table amended 16603
(h)(1)(i), (ii), (2)(i)(A), (B), (C), (ii), (iv) and (6)(iii) revised; (h)(2) introductory text, (iii), (4) introductory text and (6) introductory text amended 18192
(g)(1)(viii) table amended 48556
1.20—1.36 (Subpart C) Appendix D amended 9959
29 Authority citation revised 36705
29.102 (a) revised; (f) added; interim 36705
29.103 (a) amended; interim 36705
29.501—29.526 (Subpart E) Added; interim 36705

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103 Exception 32746
Policy statement 67086
Authority citation revised 67681
103.30 Added; interim 67680

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1.1—1.7 (Subpart A) Appendix I amended 34402
1.20—1.36 (Subpart C) Appendix C amended 34402
1.36 (c)(1)(iii) and (g)(1)(iii) amended 34403

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(g)(1)(viii) table amended 48387, 62886
5 Revised; interim 65845
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10.21 Revised 48771
10.22 Revised 48771
10.23 Revised 48771
10.24 Revised 48771
10.25 Revised 48771
10.26 Revised 48771
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10.28 Revised 48771
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10.50—10.53 (Subpart C) Revised 48774
10.60—10.82 (Subpart D) Revised 48774
10.90—10.93 (Subpart E) Revised 48774

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103 Authority citation revised 9876, 21113, 48351, 60570, 67549, 78384
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Appendix redesignated as Appendix A; Appendix B added; interim 9877
103.11 (ii)(1) revised; (ww) added 44055
(n)(5)(ii), (iii), (6)(i) and (ii) amended; (n)(6)(ii)(1) revised 60729
103.19 Added 44056
103.21 Added 60729

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103.56 (b)(6) revised; interim 21121
103.64 (a)(2)(ii) and (v)(B) revised; (a)(2)(iii) amended 60730
103.90—103.110 (Subpart H) Added; interim 9876
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103.90 Revised 60585
103.100 Added 60585
103.110 Revised 60587
103.120—103.170 (Subpart I) Added; interim 21113
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103.120 Undesignated center heading added 48351
103.125 Added; interim 21116
103.130 Added; interim 21121
103.135 Added; interim 21126
103.170 Heading, (b) and (c) revised; (d) added; interim 67549
Corrected 68935
103.175 Added 60570
103.177 Added 60570
(d)(1) revised 78384
103.181 Undesignated center heading and section added 48351
103.182 Added 48351
103.183 Added 48351
103.185 Added 60572

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1.1 (a)(1)(i)(k) and (2) revised; (a)(1)(xiii) added 55310
1.1—1.7 (Subpart A) Appendix M added 55310
1.8 Amended; interim 12586
1.10 (a) revised; interim 12586
1.11 Revised; interim 12586
1.12 Amended; interim 12588
1.20 (a)(11) revised; (m) and concluding text amended 55311
1.36 (c)(1)(i) table, (viii) table, (g)(1)(i) table and (viii) table amended 32638
(c)(1)(i), (e)(1) and (g)(1)(i) amended; (c)(1)(xiii), (g)(1)(xiii) and (m)(1)(xiii) added; (c)(2), (g)(2) and (m)(2) revised 55311
(g)(1)(x) amended 67944
1.20—1.36 (Subpart C) Appendix N added 55311
19 Revised; interim 66544, 66605
19.440 Added; interim 66607

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20 Added; interim 66557, 66607
20.510 (c) amended; interim 66607
20.605 (a)(2) removed; interim 66607
50 Added; interim 9811
50.2 Added 41264
50.5 (c), (d)(1), (f)(1) and (l) revised 41264
(d) introductory text, (1) and (3) revised 48281
50.8 Added 41266
50.9 Added 41266
50.10 Added; interim 19306
50.11 Added; interim 19306
50.12 Added; interim 19306
(d) revised 59727
50.13 Added; interim 19306
50.14 Added; interim 19306
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50.17 Added; interim 19306
50.18 Added; interim 19306
(b)(2) revised 59727
50.19 Added; interim 19306
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50.20 Added; interim 19307
50.21 Added; interim 19307
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50.23 Added; interim 19307
50.24 Added; interim 19307
50.30 Added 59720
50.33 Added 59720
50.35 Added 59720
50.36 Added 59720

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103 Technical correction 493
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Authority citation revised 25109, 25159
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103.11 (j) amended 25109
(f) and (ii)(1) revised; (n)(8), (9), (xx), (yy), (zz), (aaa) and (bbb) added 65398
103.17 Added 65398
103.19 (b)(1), (2), (3), (c)(1), (d) and (e) amended 6617
103.20 (a)(1) and (b)(3) amended; (a)(2)(iv) added 6617
103.33 (e)(6)(i)(E), (F), (G), (f)(6)(i)(E), (F) and (G) redesignated as (e)(6)(i)(G), (H), (I), (f)(6)(i)(G), (H) and (I); new (e)(6)(i)(E), (F), (f)(6)(i)(E) and (F) added 65399
103.34 (a)(1), (b)(11), and (12) amended 25109

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103.35 (a)(1) amended 25129
103.56 (g) added 26489
(b)(8) revised; (b)(9) added 65399
103.72 (b) revised 26489
103.121 Added 25109
103.122 Added 25129
103.123 Added 25160
103.131 Added 25147

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1.8 Revised 54003
1.9 Revised 54003
1.10 Revised 54003
1.11 Revised 54003
1.12 Revised 54003
10 Authority citation revised 75841
10.33 Revised 75841
10.35 Added 75842
10.36 Added 75842
10.37 Added 75842
10.38 Added 75842
10.52 Revised 75845
50.5 (e) revised; eff. 7-29-04 39306
50.50—50.54 (Subpart F) Added; eff. 7-29-04 39307
50.60—50.61 (Subpart G) Added; eff. 7-29-04 39309

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50.80—50.84 (Subpart I) Added 44941

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103 Authority citation revised 19098, 19103
103.11 (ii)(1) corrected 4237
103.186 Added 19098
103.187 Added 19098
103 Appendix C added 74439
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1.36 (g)(1)(viii) table amended 2806
10.35 (b)(2)(ii)(B) introductory text and (4)(i) revised 19892
(b)(2)(ii) and (8) revised; (b)(10) added 28825
10.37 (b) corrected 19559, 20805
50.5 (g)(3) added 7404
(c)(6) added; eff. 7–14–05 34351
50.20 (b) revised 7405
50.21 (a) revised 7405
50.55 Added; eff. 7–14–05 34351

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103.140 Added; interim; eff. 7–11–05 33716