§ 870.86 Credit for previous education, training and military experience.

Line	A If the applicant has successfully completed	B then the PAS may credit	C and additionally, the Commandant, AFROTC, may credit
1	a U.S. Armed Forces, Coast Guard, or Merchant Marine Academy preparatory school, or portions of the first two years at a U.S. Armed Forces, Coast Guard, or Merchant Marine Academy (note 1)	up to, but not exceeding an equivalent portion of the GMC	
2	the basic course or portions of the basic course while a member of Army, Navy, or Air Force ROTC		
3	at least two years of junior level (high school) ROTC, or equivalent training in the Civil Air Patrol	one academic term (semester, trimester, or quarter) of the GMC	
4	three years of junior level (high school) ROTC or equivalent training in the Civil Air Patrol (note 2)	one year of the GMC (note 3)	
5	four years of junior level ROTC (high school) at a military school or academy	the GMC or a portion of it (note 4)	
6	more than 60 days of active duty or active duty for training in any U.S. military department	the GMC or portion of it as prescribed by the Commandant, AFROTC (note 5)	(note 6)
7	portions of the last two years at a U.S. Armed Forces, Coast Guard, or Merchant Marine Academy	portions of the POC on a term-for-term/academic year basis (2d classman=AS 300) not to exceed one year	one additional term of the POC if the ex-academy cadet was disenrolled from the academy after successful completion of the first half of his senior year (note 1)
8	portions of the last two years of advanced training and/or field training of the Army	portions of the POC on a term-for-term/academic year basis not to exceed one year and field training	one additional term of the POC if the former ROTC cadet was disenrolled from Senior ROTC after successful completion of at least one academic term of the last year (note 7)

Notes: 1. Refer to § 870.84 to determine required waiver action.

2. CAP cadets who earned the Carl A. Spaatz Award may be credited with 75 percent of the GMC.

3. Students presenting evidence of successful completion of a junior ROTC program are entitled to one year's credit in the GMC upon their request.

4. Rather than waive the entire GMC, consider requiring the cadet to complete at least one quarter or semester to give a basis on which to evaluate him for entrance into the POC.

5. The entire GMC will not be waived for cadets with less than 180 days of active duty or active duty for training.

6. The Commandant, AFROTC, may establish requirements and procedures for accrediting 4-week field training on the basis of previous military training and experience.

7. An additional term or terms may be credited by AU.

By order of the Secretary of the Air Force.

JOHN W. FAHRNEY,
Colonel, USAF, Chief, Legislative Division, Office of The Judge Advocate General.

[FR Doc.73-15803 Filed 8-3-73;8:45 am]

Title 41—Public Contracts and Property Management

CHAPTER 14—DEPARTMENT OF THE INTERIOR

PART 14-1—GENERAL

PART 14-12—LABOR

Identical Bid Reports; Deviations From Listing of Employment Openings

Pursuant to the authority of the Secretary of the Interior contained in 5 U.S.C. 301, Part 14-1 and Part 14-12 of Chapter 14 of Title 41 of the Code of Federal Regulations, are hereby amended.

It is the general policy of the Department of the Interior to allow time for interested parties to participate in the rule-making process. However, the amendments herein are minor and entirely administrative in nature. Therefore, the public rulemaking process is waived and these changes will become effective on August 10, 1973.

RICHARD R. HITE,
Deputy Assistant Secretary of the Interior.

JULY 30, 1973.

1. Part 14-1 of the Interior procurement regulations is amended by adding the following to the table of contents:

Subpart 14-1.16—Reports of Identical Bids

Sec.
14-1.1603 Reporting requirements.

2. Part 14-12 of the Interior procurement regulations is amended by adding the following to the table of contents:

Subpart 14-12.11—Listing of Employment Openings

Sec.
14-12.1102 List of employment openings.
14-12.1102-3 Deviations.

(AUTHORITY: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c).)

2. Part 14-1 of the Interior Procurement Regulations is amended by adding the following § 14-1.1603 to Subpart 14-1.16.

Subpart 14-1.16—Reports of Identical Bids

§ 14-1.1603 Reporting requirements.

Reports on identical bids required by § 1-1.1603 of this title shall be submitted by the heads of bureaus and offices directly to the Attorney General in accord with § 1-1.1603-3 of this title. A copy of the transmittal letter and a copy of the abstract of bids shall be furnished to the Assistant Director for Procurement Policy, Office of Survey and Review.

3. Part 14-12 of the Interior Procurement Regulations is amended by adding the following to Subpart 14-12.11.

Subpart 14-12.11—Listing of Employment Openings

§ 14-12.1102 Listing of employment openings.

§ 14-12.1102-3 Deviations.

Any request to deviate from the requirements of Subpart 1-12.11 of this title shall be approved by the Director of Survey and Review before the request is sent to the Department of Labor.

(Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c))

[FR Doc.73-16099 Filed 8-3-73;8:45 am]

CHAPTER 15—ENVIRONMENTAL PROTECTION AGENCY

PART 15-16—PROCUREMENT FORMS

Subpart 15-16.5—Forms for Advertised and Negotiated Nonpersonal Service Contracts (Other Than Construction and Architect-Engineer Contracts)

On January 10, 1973, a notice of proposed rule making was published in the FEDERAL REGISTER (38 FR 1219-1223) stating that the Environmental Protection Agency proposed an amendment to 41 CFR 15-16.553, to add General Provisions to be used in Cost Reimbursement Contracts with Educational and other Nonprofit Institutions. Interested parties were invited to submit written data, views, or comments within 30 days after publication. Written comments were received, and after due consideration of the views presented, the regulation was revised and adopted as set forth below.

The purpose of this amendment is to illustrate EPA Form 1900-28, General Provisions for Use in Cost Reimbursement Contracts with Educational and Other Nonprofit Institutions.

Effective date. This amendment shall become effective on or before September 1, 1973.

Dated: August 1, 1973.

ROBERT W. FRI,
Acting Administrator.

A new Subpart 15-16.5, Forms for Advertised and Negotiated Nonpersonal Service Contracts (Other than Construction and Architect-Engineer Contracts), consisting of § 15-16.553-4, is added to 40 CFR Part 15-16 to read as follows:

§ 15-16.553-4 General provisions.

GENERAL PROVISIONS

FOR USE IN COST REIMBURSEMENT CONTRACTS WITH EDUCATIONAL AND OTHER NONPROFIT INSTITUTIONS

The following listed clauses (1-39), previously published in the FEDERAL REGISTER, dated September 20, 1972, will be included:

1. Definitions
2. Disputes
3. Changes
4. Printing
5. Stop Work Order (Not applicable to contracts with Educational Institutions)

Sec.
6. Inspection.
7. Subcontracts
8. Competition in Subcontracting
9. Overtime
10. Foreign Travel
11. Services of Consultants
12. Insurance
13. Litigation and Claims
14. Notice to the Government of Delays
15. Limitation on Withholding of Payments
16. Interest (Not applicable to contracts with Educational Institutions)
17. Payment of Interest of Contractor's Claims
18. Audit and Records
19. Examination of Records by Comptroller General
20. Price Reduction for Defective Cost or Pricing Data
21. Subcontractor Cost and Pricing Data
22. Pricing of Adjustments
23. Assignment of Claims
24. Utilization of Small Business Concerns
25. Utilization of Labor Surplus Area Concerns
26. Utilization of Minority Business Enterprises.
27. Equal Opportunity
28. Listing of Employment Openings
29. Walsh-Healey Public Contracts Act
30. Contract Work Hours and Safety Standards Act—Overtime Compensation
31. Convict Labor
32. Buy American Act
33. Officials not to Benefit
34. Covenant Against Contingent Fees
35. Gratuities
36. Authorization and Consent
37. Rights in Data
38. Data Requirements
39. Notice and Assistance Regarding Patent and Copyright Infringement

In addition to the above, the following clauses will be included for use in cost reimbursement contracts with educational and other nonprofit institutions:

40. TERMINATION FOR CONVENIENCE OF THE GOVERNMENT

(a) The performance of work under this contract may be terminated, in whole or from time to time in part, by the Government whenever for any reason the Contracting Officer shall determine that such termination is in the best interest of the Government. Termination of work hereunder shall be effected by delivery to the Contractor of a Notice of Termination specifying the extent to which performance of work under the contract is terminated and the date upon which such termination becomes effective.

(b) After receipt of the Notice of Termination the Contractor shall cancel his outstanding commitments hereunder covering the procurement of materials, supplies, equipment, and miscellaneous items. In addition, the Contractor shall exercise all reasonable diligence to accomplish the cancellation or diversion of his outstanding commitments covering personal services and extending beyond the date of such termination to the extent that they relate to the performance of any work terminated by the notice. With respect to such canceled commitments the Contractor agrees to (1) settle all outstanding liabilities and all claims arising out of such cancellation of commitments, with the approval or ratification of the Contracting Officer, to the extent he may require, which approval or ratification shall be final for all purposes of this clause, and (2) assign to the Government, in the manner, at the time, and to the extent directed by the Contracting Officer, all of the right, title, and interest of the Contractor under the orders and subcontracts so terminated, in which case the Government shall have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts.

(c) The Contractor shall submit his termination claim to the Contracting Officer promptly after receipt of a Notice of Termination, but in no event later than one year from the effective date thereof, unless one or more extensions in writing are granted by the Contracting Officer upon written request of the Contractor within such one-year period or authorized extension thereof. Upon failure of the Contractor to submit his termination claim within the time allowed, the Contracting Officer may, subject to any review required by the contracting agency's procedures in effect as of the date of execution of this contract, determine, on the basis of information available to him, the amount, if any, due to the Contractor by reason of the termination and shall thereupon pay to the Contractor the amount so determined.

(d) Any determination of costs under paragraph (c) shall be governed by the contract cost principles and procedures in Subpart 1–15.3 of the Federal Procurement Regulations (41 CFR 1–15.3) in effect on the date of this contract, except that if the Contractor is not an educational institution any costs claimed, agreed to, or determined pursuant to paragraphs (c) or (e) hereof shall be in accordance with Subpart 1–15.2 of the Federal Procurement Regulations (41 CFR 1–15.2) in effect on the date of this contract.

(e) Subject to the provisions of paragraph (c) above, and subject to any review required by the contracting agency's procedures in effect as of the date of execution of this contract, the Contractor and the Contracting Officer may agree upon the whole or any part of the amount or amounts to be paid to the Contractor by reason of the termination under this clause, which amount or amounts may include any reasonable cancellation charges thereby incurred by the Contractor and any reasonable loss upon outstanding commitments for personal services which he is unable to cancel: *Provided, however*, That in connection with any outstanding commitments for personal services which the Contractor is unable to cancel, the Contractor shall have exercised reasonable diligence to divert such commitments to his other activities and operations. Any such agreement shall be embodied in an amendment to this contract and the Contractor shall be paid the agreed amount.

(f) The Government may from time to time, under such terms and conditions as it may prescribe, make partial payments against costs incurred by the Contractor in connection with the terminated portion of this contract, whenever, in the opinion of the Contracting Officer, the aggregate of such payments is within the amount to which the Contractor will be entitled hereunder. If the total of such payments is in excess of the amount finally agreed or determined to be due under this clause, such excess shall be payable by the Contractor to the Government upon demand; *Provided*, That if such excess is not so paid upon demand, interest thereon shall be payable by the Contractor to the Government at the rate of 6 percent per annum, beginning 30 days from the date of such demand.

(g) The Contractor agrees to transfer title to the Government and deliver in the manner, at the times, and to the extent, if any, directed by the Contracting Officer, such information and items which, if the contract had been completed, would have been required to be furnished to the Government, including:

(1) Completed or partially completed plans, drawings, and information; and

(2) Materials or equipment produced or in process or acquired in connection with the performance of the work terminated by the notice.

Other than the above, any termination inventory resulting from the termination of the contract may, with the written approval of the Contracting Officer, be sold or acquired by the Contractor under the conditions prescribed by and at a price or prices approved by the Contracting Officer. The proceeds of any such disposition shall be applied in reduction of any payments to be made by the Government to the Contractor under this contract or shall otherwise be credited to the price or cost of work covered by this contract or paid in such other manner as the Contracting Officer may direct. Pending final disposition of property arising from the termination, the Contractor agrees to take such action as may be necessary, or as the Contracting Officer may direct, for the protection and preservation of the property related to this contract which is in the possession of the Contractor and in which the Government has or may acquire an interest.

(h) Any disputes as to questions of fact which may arise hereunder shall be subject to the "Disputes" clause of this contract.

41. GOVERNMENT PROPERTY

(a) *Government-Furnished Property.* The Government shall deliver to the Contractor, for use in connection with and under the terms of this contract, the property described as Government-furnished property in the Schedule or specifications, together with such related data and information as the Contractor may request and as may reasonably be required for the intended use of such property (hereinafter referred to as "Government-furnished property"). The delivery or performance dates for the supplies or services to be furnished by the Contractor under this contract are based upon the expectation that Government-furnished property suitable for use will be delivered to the Contractor at the times stated in the Schedule or, if not so stated, in sufficient time to enable the Contractor to meet such delivery or performance dates. In the event that Government-furnished property is not delivered to the Contractor by such time or times, the Contracting Officer shall, upon timely written request made by the Contractor, make a determination of the delay, if any, occasioned the Contractor and shall equitably adjust the estimated cost, fixed fee, or delivery or performance dates, or all of them, and any other contractual provisions affected by any such delay, in accordance with the procedures provided for in the clause of this contract entitled "Changes." In the event that Government-furnished property is received by the Contractor in a condition not suitable for the intended use, the Contractor shall, upon receipt thereof notify the Contracting Officer of such fact and, as directed by the Contracting Officer, either (i) return such property at the Government's expense or otherwise dispose of the property or (ii) effect repairs or modifications. Upon completion of (i) or (ii) above, the Contracting Officer upon written request of the Contractor shall equitably adjust the contract price, or delivery or performance dates, or all of them, and any other contractual provision effected by the return or disposition, or the repair or modification in accordance with the procedures provided for in the clause of this contract entitled "Changes." The foregoing provisions for adjustment are exclusive and the Government shall not be liable to suit for breach of contract by reason of any delay in delivery of Government-furnished property or delivery of such property in a

condition not suitable for its intended use.

(b) *Changes in Government-Furnished Property.* (1) By notice in writing, the Contracting Officer may (i) decrease the property furnished or to be furnished by the Government under this contract, and/or (ii) substitute other Government-owned property for property to be furnished by the Government, or to be acquired by the Contractor for the Government, under this contract. The Contractor shall promptly take such action as the Contracting Officer may direct with respect to the removal and shipping of property covered by such notice.

(2) In the event of any decrease in or substitution of property pursuant to paragraph (1) above, or any withdrawal of authority to use property provided under any other contract or lease, which property the Government had agreed in the Schedule to make available for the performance of this contract, the Contracting Officer, upon the written request of the Contractor (or, if the substitution of property causes a decrease in the cost of performance, on his own initiative), shall equitably adjust such contractual provisions as may be affected by the decrease, substitution or withdrawal, in accordance with the procedures provided for in the "Changes" clause of this contract.

(c) *Title.* Title to all property furnished by the Government shall remain in the Government. Title to all property purchased by the Contractor, for the cost of which the Contractor is entitled to be reimbursed as a direct item of cost under this contract, shall pass to and vest in the Government upon delivery of such property by the vendor. Title to other property, the cost of which is reimbursable to the Contractor under the contract, shall pass to and vest in the Government upon (i) issuance for use of such property in the performance on this contract, or (ii) commencement of processing or use of such property in the performance of this contract, or (iii) reimbursement of the cost thereof by the Government in whole or in part, whichever first occurs. All Government-furnished property, together with all property acquired by the Contractor, title to which vests in the Government under this paragraph, is subject to the provisions of this clause and is hereinafter collectively referred to as "Government property." Title to the Government property shall not be affected by the incorporation or attachment thereof to any property not owned by the Government, nor shall such Government property, or any part thereof, be or become a fixture or lose its identity as personalty by reason of affixation to any realty.

(The following paragraph shall be substituted for (c) above when the contract is with an educational institution.)

(c) *Title.* Title to all property furnished by the Government shall remain in the Government. Title to all property purchased by the Contractor with the prior approval of the Contracting Officer shall be vested in the Contractor without further obligation to the Government except as provided below, unless it is determined by the Contracting Officer that such vesting is not in furtherance of the objectives of the Government or unless their is not proper authority to vest title in the Contractor. Such title shall be vested in the Contractor upon acquisition of the property or as soon as feasible thereafter provided that:

(i) The Contractor shall not under any Government contract, or subcontract thereunder, charge for any depreciation, amortization, or use of such property.

(ii) At any time prior to twelve (12) months after completion or termination of the contract, the Contracting Officer reserves the right to require the Contractor to transfer title to property costing $1,000 or more per unit to the Government or to a third party named by the Contracting Officer.

(iii) The Contractor shall, within 30 days after completion of the contract, furnish the Contracting Officer a list of all property where title is vested in the Contractor. If no such property has vested, the report shall so state.

All Government furnished property, together with all property title to which vests in the Government under this clause, is subject to the provisions of this clause and is hereinafter collectively referred to as "Government Property." Title to the Government property shall not be affected by the incorporation or attachment thereof to any property not owned by the Government, nor shall such Government property, or any part thereof, be or become a fixture or lose its identity as personalty by reasons of affixation to any realty.

(d) *Property Administration.* The Contractor agrees to maintain and administer a property control system in accordance with EPA publication "Guide for Control of Government Property by Contractors," in effect as of the date of this contract, supplied by the Government. While the Contractor is responsible for the Government Property (Government furnished and Contractor acquired), the Government will maintain the official accountability records. For Government furnished property and Contractor acquired property to which the Government takes title.

(e) *Use of Government Property.* The Government property shall, unless otherwise provided herein or approved by the Contracting Officer, be used only for the performance of this contract.

(f) *Maintenance of Government Property.* The Contractor shall maintain and administer, in accordance with sound business practice, a program for the maintenance, repair, protection, and preservation of Government property so as to assure its full availability and usefulness for the performance of this contract. The Contractor shall take all reasonable steps to comply with all appropriate directions or instructions which the Contracting Officer may prescribe as reasonably necessary for the protection and disposition of Government property.

(g) *Risk of Loss.* (1) The Contractor shall not be liable for any loss of or damage to the Government property, or for expenses incidental to such loss or damage, except that the Contractor shall be responsible for any such loss or damage (including expenses incidental thereto):

(i) which results from willful misconduct or lack of good faith on the part of any one of the Contractor's directors or officers, or on the part of any of his managers, superintendents, or other equivalent representatives, who has supervision or direction of—

(A) all or substantially all of the Contractor's business; or

(B) all or substantially all of the Contractor's operations at any one plant or separate location, in which this contract is being performed; or

(C) a separate and complete major industrial operation in connection with the performance of this contract;

(ii) which results from a failure on the part of the Contractor, due to the willful misconduct or lack of good faith on the part of any of his directors, officers, or other representatives mentioned in subparagraph (i) above—

(A) to maintain and administer, in accordance with sound industrial practice, the program for utilization, maintenance, repair, protection and preservation of Government property as required by paragraph (f) hereof, or to take all reasonable steps to comply with any appropriate written direction of the Contracting Officer under paragraph (f) hereof; or

(B) to establish, maintain and administer, in accordance with (d) above, a system for control of Government property;

(iii) for which the Contractor is otherwise responsible under the express terms of the clause or clauses designated in the Schedule;

(iv) which results from a risk expressly required to be insured under this contract, but only to the extent of the insurance so required to be procured and maintained, or to the extent of insurance actually procured and maintained, whichever is greater; or

(v) which results from a risk which is in fact covered by insurance or for which the Contractor is otherwise reimbursed, but only to the extent of such insurance or reimbursement.

(2) If more than one of the above exceptions shall be applicable in any case, the Contractor's liability under any one exception shall not be limited by any other exception. The Contractor shall obtain the approval of the Contracting Officer prior to transferring any Goverment property to a subcontractor. If the Contractor transfers Government property to the possession and control of a subcontractor, the transfer shall not affect the liability of the Contractor for loss or destruction of or damage to the property as set forth above. However, the Contractor shall require the subcontractor to assume the risk of, and be responsible for, any loss or destruction of or damage to the property while in the latter's possession or control, except to the extent that the subcontract, with the prior approval of the Contracting Officer, provides for the relief of the subcontractor from such liability. In the absence of such approval, the subcontract shall contain appropriate provisions requiring the return of all Government property in as good condition as when received, except for reasonable wear and tear or for the utilization of the property in accordance with the provisions of the prime contract.

(3) The Contractor shall not be reimbursed for, and shall not include as an item of overhead, the cost of insurance, or any provision for a reserve, covering the risk of loss of or damage to the Government property, except to the extent that the Government may have required the Contractor to carry such insurance under any other provisions of this contract.

(4) Upon the happening of loss or destruction of or damage to the Government property, the Contractor shall notify the Contracting Officer thereof, take all reasonable steps to protect the Government property from further damage, separate the damaged and undamaged Government property, put all the Government property in the best possible order and furnish to the Contracting Officer a statement of—

(i) the lost, destroyed and damaged Government property;

(ii) the time and origin of the loss, destruction or damage;

(iii) all known interests in commingled property of which the Government property is a part; and

(iv) the insurance, if any, covering any part of or interest in such commingled property.

The Contractor shall make repairs and renovations of the damaged Government property or take such other action, as the Contracting Officer directs.

(5) In the event the Contractor is indemnified, reimbursed, or otherwise compensated for any loss or destruction of or damage to the Government property, he shall use the proceeds to repair, renovate or replace the Government property involved, or shall credit such proceeds against the cost of the

work covered by the contract, or shall otherwise reimburse the Government, as directed by the Contracting Officer. The Contractor shall do nothing to prejudice the Government's right to recover against third parties for any such loss, destruction, or damage and, upon the request of the Contracting Officer, shall, at the Government's expense, furnish to the Government all reasonable assistance and cooperation (including the prosecution of suit and the execution of instruments of assignment in favor of the Government) in obtaining recovery. In addition, where the subcontractor has not been relieved from liability for any loss or destruction of or damage to Government property, the Contractor shall enforce the liability of the subcontractor for such loss or destruction of or damage to the Government property for the benefit of the Government.

(h) *Access.* The Contractor agrees to make available to the Contracting Officer, at all reasonable times, at the office of the Contractor, all its property records under this contract, and the Government shall at all reasonable times have access to the premises where any of the Government property is located.

(i) *Final Accounting and Disposition of Government Property.* Upon the completion of this contract, or at such earlier dates as may be fixed by the Contracting Officer, the Contractor shall submit to the Contracting Officer in a form acceptable to him, inventory schedules covering all items of the Government property not consumed in the performance of this contract, or not theretofore delivered to the Government, and shall deliver or make such other disposal of such Government property as may be directed or authorized by the Contracting Officer. The net proceeds of any such disposal shall be credited to the cost of the work covered by the contract or shall be paid in such manner as the Contracting Officer may direct. The foregoing provisions shall apply to scrap from Government property; provided, however, that the Contracting Officer may authorize or direct the Contractor to omit from such inventory schedules any scrap consisting of faulty castings or forgings, or cutting and processing waste, such as chips, cuttings, borings, turnings, short ends, circles, trimmings, clippings, and remnants, and to dispose of such scrap in accordance with the Contractor's normal practice and account therefor as a part of general overhead or other reimbursable cost in accordance with the Contractor's established accounting procedures.

(j) *Restoration of Contractor's Premises and Abandonment.* Unless otherwise provided herein, the Government:

(i) May abandon any Government property in place, and thereupon all obligations of the Government regarding such abandoned property shall cease; and

(ii) has no obligation to the Contractor with regard to restoration or rehabilitation of the Contractor's premises, neither in case of abandonment (paragraph (j)(1) above), disposition on completion of need or of the contract (paragraph (i) above), nor otherwise, except for restoration or rehabilitation costs caused by removal of Government property pursuant to paragraph (b) above.

(k) *Communications.* All communications issued pursuant to this clause shall be in writing.

42. Principal Investigators

Where principal investigators have been identified in this contract, it has been determined that such named investigators are necessary for the successful performance of this contract; and the Contractor agrees to assign such persons to the performance of the work under this contract, and shall not reassign or remove any of them without the consent of the Contracting Officer. Whenever, for any reason, one or more of the aforementioned investigators is unavailable for assignment for work under the contract, the Contractor shall immediately notify the Contracting Officer to that effect and shall, subject to the approval of the Contracting Officer without formal modification to the contract, replace such investigators with investigators of substantially equal ability and qualifications.

43. Allowable Cost and Payment

(a) For the performance of this contract, the Government shall pay to the Contractor the cost thereof (hereinafter referred to as "allowable cost") determined by the Contracting Officer to be allowable in accordance with:

(1) Subpart 1–15.3 of the Federal Procurement Regulations as in effect on the date of this contract except that if the Contractor is not an educational institution the allowable costs shall be determined by Subpart 1–15.2 of FPR; and

(2) The terms of this contract.

(b) Once each month (or more frequent intervals, if approved by the Contracting Officer), the Contractor may submit to an authorized representative of the Contracting Officer, in such form and reasonable detail as such representative may require, an invoice or public voucher supported by a statement of cost incurred by the Contractor in the performance of this contract and claimed to constitute allowable cost.

(c) Promptly after receipt of each invoice or voucher and statement of cost, the Government shall, except as otherwise provided in this contract, subject to the provisions of (e) below, make payment thereon as approved by the Contracting Officer.

(d) (The following paragraph is not applicable to contracts with educational institutions).

Payment of the fixed fee, if any, shall be made to the Contractor as specified in the Schedule: Provided, however, that after payment of eight-five percent (85%) of the fixed fee set forth in the Schedule, further payment on account of the fixed fee shall be withheld until a reserve of either fifteen percent (15%) of the total fixed fee, or fifteen thousand dollars ($15,000.00), whichever is less, shall have been set aside.

(e) At any time or times prior to final payment under this contract, the Contracting Officer may have the invoices or vouchers and statements of cost audited. Each payment theretofore made shall be subject to reduction for amounts included in the related invoice or voucher which are found by the Contracting Officer, on the basis of such audit, not to constitute allowable cost. Any payment may be reduced for overpayments, or increased for underpayments, on preceding invoices or vouchers.

(f) A "completion invoice" or "completion voucher" shall be submitted upon the physical completion of all performance provisions and when all cost applicable to the contract have been incurred.

The completion invoice or voucher shall be submitted by the Contractor promptly following completion of the work under this contract but in no event later than one (1) year (or such longer period as the Contracting Officer may in his discretion approve in writing) from the date of such completion. Upon the completion of the final audit and the receipt of a "final invoice" or "final voucher," the Government shall promptly pay to the Contractor any balance of allowable costs, and any part of the fixed fee, if any, which has been withheld pursuant to (d) above or otherwise not paid to the Contractor.

(g) The Contractor agrees that any refunds, rebates, credits, or other amounts (including any interest thereon) accruing to or received by the Contractor or any assignee under this contract shall be paid by the Contractor to the Government, to the extent that they are properly allocable to costs for which the Contractor has been reimbursed by the Government under this contract. Reasonable expenses incurred by the Contractor for the purpose of securing such refunds, rebates, credits, or other amounts shall be allowable costs hereunder when approved by the Contracting Officer. Prior to final payment under this contract, the Contractor and each assignee under this contract whose assignment is in effect at the time of final payment under this contract shall execute and deliver:

(1) An assignment to the Government, in form and substance satisfactory to the Contracting Officer, of refunds, rebates, credits, or other amounts (including any interest thereon) property allocable to costs for which the Contractor has been reimbursed by the Government under this contract; and

(2) A release discharging the Government, its officers, agents, and employees from all liabilities, obligations, and claims arising out of or under this contract, subject only to the following exceptions:

(A) Specified claims in stated amounts or in estimated amounts where the amounts are not susceptible of exact statement by the Contractor;

(B) Claims, together with reasonable expense incidental thereto, based upon liabilities of the Contractor to third parties arising out of the performance of this contract; provided, that such claims are not known to the Contractor on the date of execution of the release; and provided further, that the Contractor gives notice of such claims in writing to the Contracting Officer not more than six (6) years after the date of the release or the date of any notice to the Contractor that the Government is prepared to make final payment, whichever is earlier; and

(C) Claims for reimbursement of costs (other than expenses of the Contractor by reason of his indemnification of the Government against patent liability), including reasonable expenses incidental thereto, incurred by the Contractor under the provisions of this contract relating to patents.

(h) Any cost incurred by the Contractor under the terms of this contract which would constitute allowable cost under the provisions of this clause shall be included in determining the amount payable under this contract, notwithstanding any provisions contained in the specifications or other documents incorporated in this contract by reference, designating services to be performed or materials to be furnished by the Contractor at his expense or without cost to the Government.

44. Limitation of Cost

(a) It is estimated that the total cost to the Government, for the performance of this contract will not exceed the estimated cost set forth in the Schedule, and the Contractor agrees to use his best efforts to perform the work specified in the Schedule and all obligations under this contract within such estimated cost. If, at any time, the Contractor has reason to believe that the cost which he expects to incur in the performance of this contract in the next succeeding sixty (60) days, when added to all costs previously incurred, will exceed seventy-five percent (75%) of the estimated cost set forth in the Schedule, or if, at any time, the Contractor has reason to believe that the total cost to the Government for the performance of his contract will be greater or substantially less than the then estimated cost hereof, the Contractor shall notify the Contracting

Officer in writing to that effect, giving the revised estimate of such total cost for the performance of this contract.

(b) Except as required by other provisions of this contract specifically citing and stated to be an exception from this clause, the Government shall not be obligated to reimburse the Contractor for costs incurred in excess of the estimated cost set forth in the Schedule, and the Contractor shall not be obligated to continue performance under the contract (including actions under the Termination Clause) or otherwise to incur costs in excess of the estimated cost set forth in the Schedule, unless and until the Contracting Officer shall have notified the Contractor in writing that such estimated cost has been increased and shall have specified in such notice a revised estimated cost which shall thereupon constitute the estimated cost of performance of this contract. No notice, communication or representation in any other form or from any person other than the Contracting Officer shall affect the estimated cost of this contract. In the absence of the specified notice, the Government shall not be obligated to reimburse the Contractor for any costs in excess of the estimated cost set forth in the Schedule, whether those excess costs were incurred during the course of the contract or as a result of termination. When and to the extent that the estimated cost set forth in the Schedule has been increased, any costs incurred by the Contractor in excess of the estimated cost prior to such increase shall be allowable to the same extent as if such costs had been incurred after the increase unless the Contracting Officer issues a termination or other notice and directs that the increase is solely for the purpose of covering termination or other specified expenses.

(c) Change orders issued pursuant to the Changes clause of this contract shall not be considered an authorization to the Contractor to exceed the estimated cost set forth in the Schedule in the absence of a statement in the change order, or other contract modification, increasing the estimated cost.

(d) In the event this contract is terminated or the estimated cost not increased the Government and the Contractor shall negotiate an equitable distribution of all property produced or purchased under the contract based upon the share of costs incurred by each.

45. NEGOTIATED OVERHEAD RATES

(a) The following provisions shall be applicable to Educational Institutions when post determined rates are used:

(1) Notwithstanding the provisions of the clause of this contract entitled "Allowable Cost and Payment" the allowable indirect costs under this contract shall be obtained by applying negotiated overhead rates to bases agreed upon by the parties, as specified in the Contract Schedule Article entitled "Negotiated Overhead Rates."

(2) The Contractor, as soon as possible but not later than ninety (90) days after the expiration of his fiscal year, or such other period as may be specified in the contract, shall submit to the Cost Review and Policy Branch of the Contracts Management Division, with one copy each to the cognizant audit activity and the cognizant negotiating agency delegated in Attachment "A" of Office of Management and Budget Circular A-88, a proposed final overhead rate or rates for that period based on the Contractor's actual cost experience during that period, together with supporting cost data. Negotiation of final overhead rates by the Contractor and the Government shall be undertaken as promptly as practicable after receipt of the Contractor's proposal.

(3) Allowability of costs and acceptability of cost allocation methods shall be determined in accordance with paragraph (a)(1) of the clause of this contract entitled "Allowable Cost and Payment."

(4) The results of each negotiation shall be set forth in a modification to this contract, which shall specify (1) the agreed final rates; (2) the bases to which the rates apply; and (3) the periods for which the rates apply. The incorporation of the negotiated final overhead rates by contract modification shall not change any monetary ceiling, contract obligation, or specific cost allowance or disallowance provided for in the contract.

(5) Pending establishment of final overhead rates for any period, the Contractor shall be reimbursed either at negotiated provisional rates as provided in the Contract Schedule or at billing rates acceptable to the Contracting Officer, subject to appropriate adjustment when the final rates for that period are established. To prevent substantial over and under payment, and to apply either retroactively or prospectively: (1) provisional rates may, at the request of either party, be revised by mutual agreement; and (2) billing rates may be adjusted at any time by the Contracting Officer. Any such revision of negotiated provisional rates provided in the contract shall be set forth in a modification to this contract.

(6) Any failure by the parties to agree on any final rates under this clause shall be considered a dispute concerning a question of fact for decision by the Contracting Officer within the meaning of the "Disputes" clause of this contract.

(7) Nothing in this clause shall preclude the parties from negotiating final overhead rates applicable to this contract for any period, for the purpose of contract close out, provided that (1) the negotiated amount of overhead costs applicable hereto does not exceed $200,000.00 for any one fiscal year; (2) there is agreement between the Government and the Contractor that there will be no adjustment against other Government contracts for over or under recovery under this contract disclosed through a subsequent, regular final overhead rate negotiation or determination; and (3) this contract is appropriately modified to reflect the finality of this negotiation and the fact that other contracts shall not be affected by any over or under recovery resulting therefrom.

(b) The following provisions shall be applicable to Educational Institutions when predetermined rates are used:

(1) Notwithstanding the provisions of the clause of this contract entitled "Allowable Cost and Payment" the allowable indirect costs under this contract shall be obtained by applying predetermined overhead rates for the applicable periods, to the bases agreed upon by the parties, as specified in the Contract Schedule Article entitled "Negotiated Overhead Rates."

(2) The Contractor, as soon as possible but not later than ninety (90) days after the expiration of his fiscal year, or such other periods as may be specified in the contract, shall submit to the Cost Review and Policy Branch of the Contracts Management Division, with one copy each to the cognizant audit activity and the cognizant negotiating agency delegated in Attachment "A" of Office of Management and Budget Circular A-88, a proposed predetermined overhead rate or rates, based on the Contractor's actual cost experience during that period, together with supporting cost data. Negotiation of predetermined overhead rates by the Contractor and the Government shall be undertaken as promptly as practicable after receipt of the Contractor's proposal.

(3) Allowability of costs and acceptability of cost allocation methods shall be determined in accordance with paragraph (a)(1) of the clause of this contract entitled "Allowable Cost and Payment."

(4) The results of each negotiation shall be set forth in a modification to this contract, which shall specify (1) the agreed predetermined overhead rates; (2) the bases to which the rates apply; and (3) the periods for which the rates apply.

(5) Pending establishment of predetermined overhead rates for the initial period of contract performance or for any fiscal year or different period agreed to by the parties, the Contractor shall be reimbursed either at (1) the rates fixed for the previous fiscal year or other period; or (2) billing rates acceptable to the Contracting Officer, subject to appropriate adjustment when the final rates for that fiscal year or other periods are established.

(6) Any failure by the parties to agree on any predetermined overhead rate or rates under this clause shall not be considered a dispute concerning a question of fact for decision by the Contracting Officer within the meaning of the "Disputes" clause of this contract. If for any fiscal year or other period of contract performance the parties fail to agree to a predetermined overhead rate or rates, it is agreed that the allowable indirect costs under this contract shall be obtained by applying negotiated final overhead rates in accordance with the terms of the "Negotiated Overhead Rates—Postdetermined" clause set forth in paragraph (a) of this "Negotiated Overhead Rate Clause."

(c) The following provisions shall be applicable to Educational Institutions when fixed rates subject to carry forward adjustments are used:

(1) Notwithstanding the provisions of the clause of this contract entitled, "Allowable Cost and Payment," the allowable indirect costs under this contract shall be obtained by applying negotiated fixed overhead rates for the applicable periods to bases agreed upon by the parties, as specified in the Contract Schedule Article entitled "Negotiated Overhead Rates." A negotiated fixed rate(s) is based on an estimate of the costs which will be incurred during the period for which the rate(s) applies. When the application of the negotiated fixed rate(s) against the actual base(s) during a given fiscal period produces an amount greater or less than the indirect costs determined for such period, such greater or lesser amounts will be carried forward to a subsequent period.

(2) The Contractor, as soon as possible but not later than ninety (90) days after the expiration of his fiscal year, or such other periods as may be specified in the contract, shall submit to the Cost Review and Policy Branch of the Contracts Management Division, with one copy each to the cognizant audit activity and the cognizant negotiating agency delegated in Attachment "A" of Office of Management and Budget Circular A-88, a proposed fixed overhead rate or rates based on the Contractor's actual cost experience during the fiscal year, including adjustments, if any, for amounts carried forward, together with supporting cost data. When the application of the negotiated fixed rate(s) against the actual base(s) for a given fiscal period produces an amount greater or less than the actual indirect costs determined for that period, such greater or lesser amounts will be carried forward and reflected in the negotiated fixed rate(s) of a subsequent period. Negotiation of the fixed overhead rate(s) by the Contractor and the Government shall be undertaken as promptly as practicable after receipt of the Contractor's proposal.

(3) Allowability of costs and acceptability of cost allocation methods shall be determined in accordance with paragraph (a)(1) of the clause of this contract entitled "Allowable Cost and Payment."

(4) The results of each negotiation shall be set forth in a modification to this contract, which shall specify (1) the agreed fixed overhead rates; (2) the bases to which the rates apply; and (3) the periods for which the rates apply.

(5) Pending establishment of fixed overhead rates for the initial period of contract performance or for any fiscal year or different period agreed to by the parties, the Contractor shall be reimbursed either at (1) the rates fixed for the previous fiscal year or other period; or (2) billing rates acceptable to the Contracting Officer, subject to appropriate adjustment when the final rates for that fiscal year or other periods are established.

(6) Any failure by the parties to agree on any fixed overhead rate or rates or to the amount of any carry forward adjustment under this clause shall not be considered a dispute concerning a question of fact for decision by the Contracting Officer within the meaning of the "Disputes" clause of this contract. If for any fiscal year or other period of contract performance the parties fail to agree to a fixed overhead rate or rates, it is agreed that the allowable indirect costs under this contract shall be obtained by applying negotiated final overhead rates in accordance with the terms of the "Negotiated Overhead Rates—Postdetermined" clause set forth in paragraph (a) of this "Negotiated Overhead Rate Clause."

(d) The following provisions shall be applicable to nonprofit institutions when post determined rates are used:

(1) Notwithstanding the provisions of the clause of this contract entitled "Allowable Cost and Payment" the allowable indirect costs under this contract shall be obtained by applying negotiated overhead rates to bases agreed upon by the parties, as specified in the Contract Schedule Article entitled "Negotiated Overhead Rates."

(2) The Contractor, as soon as possible but not later than ninety (90) days after the expiration of his fiscal year, or such other period as may be specified in the contract, shall submit to the Cost Review and Policy Branch of the Contracts Management Division, with a copy to the cognizant audit activity, a proposed final overhead rate or rates for that period based on the Contractor's actual cost experience during that period, together with supporting cost data. Negotation of final overhead rates by the Contractor and the Cost Review and Policy Branch shall be undertaken as promptly as practicable after receipt of the Contractor's proposal.

(3) Allowability of costs and acceptability of cost allocation methods shall be determined in accordance with paragraph (a)(1) of the clause of this contract entitled "Allowable Cost and Payment."

(4) The results of each negotiation shall be set forth in a modification to this contract, which shall specify (1) the agreed final rates; (2) the bases to which the rates apply; and (3) the periods for which the rates apply. The incorporation of the negotiated final overhead rates by contract modification shall not change any monetary ceiling, contract obligation, or specific cost allowance or disallowance provided for in the contract.

(5) Pending establishment of final overhead rates for any period, the Contractor shall be reimbursed either at negotiated provisional rates as provided in the Contract Schedule or at billing rates acceptable to the Contracting Officer, subject to appropriate adjustment when the final rates for that period are established. To prevent substantial over and under payment, and to apply either retroactively or prospectively: (1) provisional rates may, at the request of either party, be revised by mutual agreement; and (2) billing rates may be adjusted at any time by the Contracting Officer. Any such revision of negotiated provisional rates provided in the contract shall be set forth in a modification to this contract.

(6) Any failure by the parties to agree on any final rates under this clause shall be considered a dispute concerning a question of fact for decision by the Contracting Officer within the meaning of the "Disputes" clause of this contract.

(7) Nothing in this clause shall preclude the parties from negotiating final overhead rates applicable to this contract for any period, for the purpose of contract closeout, provided that (1) the negotiated amount of overhead costs applicable hereto does not exceed $200,000.00 for any one fiscal year; (2) there is agreement between the Government and the Contractor that there will be no adjustment against other Government contracts for over or under recovery under this contract disclosed through a subsequent, regular final overhead rate negotiation or determination; and (3) this contract is appropriately modified to reflect the finality of this negotiation and the fact that other contracts shall not be affected by any over or under recovery resulting therefrom.

37. RIGHTS IN DATA

Paragraph (f) of clause no. 37 is deleted in its entirety and the following is substituted therefor:

(f) Publications. (1) The contractor shall submit to the Contracting Officer or his designee at least 30 (thirty) days prior to publication, a copy of each publication and other dissemination of information (other than publicity) that contains information resulting directly or indirectly from a contract supported activity.

(2) Any publication or other dissemination of information shall acknowledge Federal contract assistance by including the following:

This project has been funded at least in part with Federal funds from the Environmental Protection Agency under contract number _____. The content of this publication does not necessarily reflect the views or policies of the U.S. Environmental Protection Agency; nor does mention of trade names, commercial products, or organizations imply endorsement by the U.S. Government.

(40 U.S.C. 486(c), sec. 205(c), 63 Stat. 377, as amended)

[FR Doc.73-16134 Filed 8-3-73;8:45 am]

Title 43—Public Lands: Interior

SUBTITLE A—OFFICE OF THE SECRETARY OF THE INTERIOR

PART 4—DEPARTMENT HEARINGS AND APPEALS PROCEDURES

PART 17a—RULES FOR PROCEEDINGS UNDER TITLE VI, CIVIL RIGHTS ACT OF 1964

Transfer of Regulations

On July 21, 1972, there was published in the FEDERAL REGISTER (37 FR 14609–14614), pursuant to section 602 of the Civil Rights Act of 1964 (42 U.S.C. 2000d–1) and Part 17 of this title, a notice and text of a proposal (1) to revise the regulations appearing in Part 17a of Title 43 of the Code of Federal Regulations for purposes of effecting clarifications and adapting the regulations to proposed amendments to Part 17 of this title, published December 9, 1971 (36 FR 23491–23494), pursuant to recommendations of an interagency committee for uniform Title VI regulations to effectuate the provisions of Title VI of the Civil Rights Act of 1964, and (2) to redesignate the revised regulations and incorporate them into the Department Hearings and Appeals Procedures contained in 43 CFR Part 4, as Subpart I thereof. The notice stated that Part 17a would thus be vacated.

Interested persons were given 30 days within which to participate in the rule making through the submission of written comments, suggestions or objections. No comments, suggestions or objections were received.

The amendments to Part 17 of this title, as proposed in the FEDERAL REGISTER publication of December 9, 1971, referred to above, to be consistent with the uniform amendments being adopted by Federal agencies, have now been published in the FEDERAL REGISTER as final rule making (38 FR 17975–17978, July 5, 1973). Certain additional amendments to conform to the uniform agency amendments, as well as other minor technical corrections, were included in this final rule making publication.

In view of the foregoing, the proposed revised regulations are adopted, without change other than correction of the obsolete term hearing examiner to administrative law judge (38 FR 10939–10940, May 3, 1973). The revised regulations are set forth below, and Part 17a of this title is vacated.

Effective date. These regulations shall be effective as of July 5, 1973, the effective date of the adoption by this Department of the uniform agency amendments referred to above.

Dated: July 30, 1973.

RICHARD R. HITE,
Deputy Assistant Secretary of the Interior.

1. Subpart I of 43 CFR Part 4 is added to read as set forth below.

Subpart I—Special Procedural Rules Applicable to Practice and Procedure for Hearings, Decisions, and Administrative Review Under Part 17 of this Title—Nondiscrimination in Federally-Assisted Programs of the Department of the Interior—Effectuation of Title VI of the Civil Rights Act of 1964

GENERAL

Sec.
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4.802 Definitions.
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4.805 Reduction of time to file documents.

DESIGNATION AND RESPONSIBILITIES OF ADMINISTRATIVE LAW JUDGE

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4.826 Discovery.
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4.828 Use of depositions at hearing.
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4.830 Production of documents and things and entry upon land for inspection and other purposes.
4.831 Sanctions.
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PREHEARING

4.833 Prehearing conferences.

HEARING

4.834 Purpose.
4.835 Evidence.
4.836 Official notice.
4.837 Testimony.
4.838 Objections.
4.839 Exceptions.
4.840 Offer of proof.
4.841 Official transcript.

POSTHEARING PROCEDURES

4.842 Proposed findings of fact and conclusions of law.
4.843 Record for decision.
4.844 Notification of right to file exceptions.
4.845 Final review by Secretary.

AUTHORITY: The provisions of this Subpart I issued under 43 CFR 17.8 and 5 U.S.C. 301.

[CROSS REFERENCE: See Subpart A for the organization, authority and jurisdiction of the Office of Hearings and Appeals, including its Hearings Division. To the extent they are not inconsistent with these special rules, the general rules applicable to all types of proceedings before the Hearings Division and the several Appeals Boards of the Office of Hearings and Appeals, contained in Subpart B of this part, are applicable also to proceedings under these regulations.]

Subpart I—Special Procedural Rules Applicable To Practice and Procedure for Hearings, Decisions, and Administrative Review Under Part 17 of This Title—Nondiscrimination in Federally-Assisted Programs of the Department of the Interior—Effectuation of Title IV of the Civil Rights Act of 1964

GENERAL

§ 4.800 Scope and construction of rules.

(a) The rules of procedure in this Subpart I supplement Part 17 of this title and are applicable to the practice and procedure for hearings, decisions, and administrative review conducted by the Department of the Interior, pursuant to title VI of the Civil Rights Act of 1964 (section 602, 42 U.S.C. 2000d–1) and Part 17 of this title, concerning nondiscrimination in Federally-assisted programs in connection with which Federal financial assistance is extended under laws administered in whole or in part by the Department of the Interior.

(b) These regulations shall be liberally construed to secure the just, prompt, and inexpensive determination of all proceedings consistent with adequate consideration of the issues involved and full protection of the rights of all interested parties including the Government.

§ 4.801 Suspension of rules.

Upon notice to all parties, the responsible Department official or the administrative law judge, with respect to matters pending before him, may modify or waive any rule in this part upon his determination that no party will be unduly prejudiced and the ends of justice will thereby be served.

§ 4.802 Definitions.

(a) The definitions set forth in § 17.12 of this title apply also to this subpart.

(b) "Director" means the Director, Office for Equal Opportunity, Department of the Interior.

(c) "Administrative law judge" means an administrative law judge designated by the Office of Hearings and Appeals, Office of the Secretary, in accordance with 5 U.S.C. secs. 3105 and 3344.

(d) "Notice" means a notice of hearing in a proceeding instituted under Part 17 of this title and these regulations.

(e) "Party" means a recipient or applicant; the Director; and any person or organization participating in a proceeding pursuant to § 4.808.

4.803 Computation of time.

Except as otherwise provided by law, in computing any period of time under these rules or in an order issued hereunder, the time begins with the day following the act or event, and includes the last day of the period, unless it is a Saturday, Sunday, or Federal legal holiday, or other nonbusiness day, in which event it includes the next following day which is not a Saturday, Sunday, Federal legal holiday, or other nonbusiness day. When the period of time prescribed or allowed is 7 days or less, intermediate Saturdays, Sundays, Federal legal holidays and other nonbusiness days shall be excluded in the computation.

§ 4.804 Extensions of time.

A request for extension of time should be made to the designated administrative law judge or other appropriate Departmental official with respect to matters pending before him. Such request shall be served on all parties and set forth the reasons for the request. Extensions may be granted upon a showing of good cause by the applicant. Answers to such requests are permitted if made promptly.

§ 4.805 Reduction of time to file documents.

For good cause, the responsible Departmental official or the administrative law judge, with respect to matters pending before him, may reduce any time limit prescribed by the rules in this part, except as provided by law or in Part 17 of this title.

DESIGNATION AND RESPONSIBILITIES OF ADMINISTRATIVE LAW JUDGE

§ 4.806 Designation.

Hearings shall be held before an administrative law judge designated by the Office of Hearings and Appeals.

§ 4.807 Authority and responsibilities.

The administrative law judge shall have all powers necessary to preside over the parties and the proceedings, conduct the hearing, and make decisions in accordance with 5 U.S.C. secs. 554–557. His powers shall include, but not be limited to, the power to:

(a) Hold conferences to settle, simplify, or fix the issues in a proceeding, or to consider other matters that may aid in the expeditious disposition of the proceeding.

(b) Require parties to state their position with respect to the various issues in the proceedings.

(c) Establish rules for media coverage of the proceedings.

(d) Rule on motions and other procedural items in matters before him.

(e) Regulate the course of the hearing, the conduct of counsel, parties, witnesses, and other participants.

(f) Administer oaths, call witnesses on his own motion, examine witnesses, and direct witnesses to testify.

(g) Receive, rule on, exclude, or limit evidence.

(h) Fix time limits for submission of written documents in matters before him.

(i) Take any action authorized by these regulations, by 5 U.S.C. sec. 556, or by other pertinent law.

APPEARANCE AND PRACTICE

§ 4.808 Participation by a party.

Subject to the provisions contained in Part 1 of this subtitle, a party may appear in person, by representative, or by counsel, and participate fully in any proceeding held pursuant to Part 17 of this title and these regulations. A State agency or any instrumentality thereof, a political subdivision of the State or instrumentality thereof, or a corporation may appear by any of its officers or employees duly authorized to appear on its behalf.

§ 4.809 Determination of parties.

(a) The affected applicant or recipient to whom a notice of hearing or a notice of an opportunity for hearing has been mailed in accordance with Part 17 of this title and § 4.815, and the Director, are the initial parties to the proceeding.

(b) Other persons or organizations shall have the right to participate as parties if the final decision could directly and adversely affect them or the class they represent, and if they may contribute materially to the disposition of the proceedings.

(c) An person or organization wishing to participate as a party under this section shall submit a petition to the administrative law judge within 15 days after the notice has been served. The petition should be filed with the administrative law judge and served on the affected applicant or recipient, on the Di-

rector, and on any other person or organization who has been made a party at the time of filing. Such petition shall concisely state: (1) Petitioner's interest in the proceeding, (2) how his participation as a party will contribute materially to the disposition of the proceeding, (3) who will appear for petitioner, (4) the issues on which petitioner wishes to participate, and (5) whether petitioner intends to present witnesses.

(d) The administrative law judge shall promptly ascertain whether there are objections to the petition. He shall then determine whether petitioners have the requisite interest to be a party in the proceedings, as defined in paragraphs (a) and (b) of this section, and shall permit or deny participation accordingly. Where petitions to participate as parties are made by individuals or groups with common interests, the administrative law judge may request all such petitioners to designate a single representative, or he may recognize one or more of such petitioners to represent all such petitioners. The administrative law judge shall give each such petitioner written notice of the decision on his petition. If the petition is denied, he shall briefly state the grounds for denial and shall then treat the petition as a request for participation as amicus curiae. The administrative law judge shall give written notice to each party of each petition granted.

(e) Persons or organizations whose petition for party participation is denied may appeal the decision to the Director, Office of Hearings and Appeals, within 7 days of receipt of denial. The Director, Office of Hearings and Appeals, will make the final decision for the Department to grant or deny the petition.

§ 4.810 Complainants not parties.

A person submitting a complaint pursuant to § 17.6 of this title is not a party to the proceedings governed by Part 17 of this title and these regulations, but may petition, after proceedings are initiated, to become an amicus curiae. In any event a complainant shall be advised of the time and place of the hearing.

§ 4.811 Determination and participation of amici.

(a) Any interested person or organization wishing to participate as amicus curiae in the proceeding shall file a petition before the commencement of the hearing. Such petition shall concisely state the petitioner's interest in the hearing and who will represent petitioner.

(b) The administrative law judge will grant the petition if he finds that the petitioner has an interest in the proceedings and may contribute materially to the disposition of the proceedings. The administrative law judge shall give the petitioner written notice of the decision on his petition.

(c) An amicus curiae is not a party and may not introduce evidence at a hearing but may only participate as provided in paragraph (d) of this section.

(d) An amicus curiae may submit a written statement of position to the administrative law judge at any time prior to the beginning of a hearing, and shall serve a copy on each party. He may also file a brief or written statement on each occasion a decision is to be made or a prior decision is subject to review. His brief or written statement shall be filed and served on each party within the time limits applicable to the party whose position he deems himself to support; or if he does not deem himself to support the position of any party, within the longest time limit applicable to any party at that particular stage of the proceedings.

(e) When all parties have completed their initial examination of a witness, any amicus curiae may request the administrative law judge to propound specific questions to the witness. The administrative law judge, in his discretion, may grant any such request if he believes the proposed additional testimony may assist materially in elucidating factual matters at issue between the parties and will not expand the issues.

FORM AND FILING OF DOCUMENTS

§ 4.812 Form.

Documents filed pursuant to a proceeding herein shall show the docket description and title of the proceeding, the party or amicus submitting the document, the dates signed, and the title, if any, and address of the signatory. The original will be signed in ink by the party representing the party or amicus. Copies need not be signed, but the name of the person signing the original shall be reproduced.

§ 4.813 Filing and service.

(a) All documents submitted in a proceeding shall be served on all parties. The original and two copies of each document shall be submitted for filing. Filings shall be made with the administrative law judge or other appropriate Departmental official before whom the proceeding is pending. With respect to exhibits and transcripts of testimony, only originals need be filed.

(b) Service upon a party or amicus shall be made by delivering one copy of each document requiring service in person or by certified mail, return receipt requested, properly addressed with postage prepaid, to the party or amicus or his attorney, or designated representative. Filing will be made in person or by certified mail, return receipt requested, to the administrative law judge or other appropriate Departmental official before whom the proceeding is pending.

(c) The date of filing or of service shall be the day when the matter is deposited in the U.S. mail or is delivered in person.

§ 4.814 Certificate of service.

The original of every document filed and required to be served upon parties shall be endorsed with a certificate of service signed by the party or amicus curiae making service or by his attorney or representative, stating that such service has been made, the date of service, and the manner of service.

PROCEDURES

§ 4.815 How proceedings are commenced.

Proceedings are commenced by the Director by mailing to an applicant or recipient a notice of alleged noncompliance with the Act and the regulations thereunder. The notice shall include either a notice of hearing fixing a date therefor or a notice of an opportunity for a hearing as provided in § 17.8 of this title. The notice shall advise the applicant or recipient of the action proposed to be taken, the specific provisions of Part 17 of this title under which the proposed action is to be taken, and the matters of fact or law asserted as the basis of the action.

§ 4.816 Notice of hearing and response thereto.

A notice of hearing shall fix a date not less than 30 days from the date of service of the notice of a hearing on matters alleged in the notice. If the applicant recipient does not desire a hearing, he should so state in writing, in which case the applicant or recipient shall have the right to further participate in the proceeding. Failure to appear at the time set for a hearing, without good cause, shall be deemed a waiver of the right to a hearing under section 602 of the Act and the regulations thereunder and consent to the making of a decision on such information as is available which may be presented for the record.

§ 4.817 Notice of opportunity to request a hearing and response thereto.

A notice of opportunity to request a hearing shall set a date not less than 20 days from service of said notice within which the applicant or recipient may file a request for a hearing, or may waive a hearing and submit written information and argument for the record, in which case, the applicant or recipient shall have the right to further participate in the proceeding. When the applicant or recipient elects to file a request for a hearing, a time shall be set for the hearing at a date not less than 20 days from the date applicant or recipient is notified of the date set for the hearing. Failure of the applicant or recipient to request a hearing or to appear at the date set shall be deemed a waiver of the right to a hearing, under section 602 of the Act and the regulations thereunder and consent to the making of a decision on such information as is available which may be presented for the record.

§ 4.818 Answer.

In any case covered by § 4.816 or § 4.817, the applicant or recipient shall file an answer. Said answer shall admit or deny each allegation of the notice, unless the applicant or recipient is without knowledge, in which case the answer shall so state, and the statement will be considered a denial. Failure to file an answer shall be deemed an admission of all allegations of fact in the notice. Allegations of fact in tht notice not denied or controverted by answer shall be deemed admitted. Matters alleged in the answer as affirmative defenses shall be separately stated and numbered. The

answer under § 4.816 shall be filed within 20 days from the date of service of the notice of hearing. The answer under § 4.817 shall be filed within 20 days of service of the notice of opportunity to request a hearing.

§ 4.819 Amendment of notice or answer.

The Director may amend the notice of hearing or opportunity for hearing once as a matter of course before an answer is filed, and each respondent may amend his answer once as a matter of course not later than 10 days before the date fixed for hearing but in no event later than 20 days from the date of service of his original answer. Other amendments of the notice or of the answer to the notice shall be made only by leave of the administrative law judge. An amended notice shall be answered within 10 days of its service, or within the time for filing an answer to the original notice, whichever period is longer.

§ 4.820 Consolidated or joint hearings.

As provided in § 17.8(e) of this title, the Secretary may provide for proceedings in the Department to be joined or consolidated for hearing with proceedings in other Federal departments or agencies, by agreement with such other departments or agencies. All parties to any proceedings consolidated subsequently to service of the notice of hearing or opportunity for hearing shall be promptly served with notice of such consolidation.

§ 4.821 Motions.

Motions and petitions shall state the relief sought, the basis for relief and the authority relied upon. If made before or after the hearing itself, these matters shall be in writing. If made at the hearing, they may be stated orally; but the administrative law judge may require that they be reduced to writing and filed and served on all parties. Within 8 days after a written motion or petition is served, any party may file a response to a motion or petition. An immediate oral response may be made to an oral motion. Oral argument on motions will be at the discretion of the administrative law judge.

§ 4.822 Disposition of motions.

The administrative law judge may not grant a written motion or petition prior to expiration of the time for filing responses thereto, but may overrule or deny such motion or petition without awaiting response: *Provided, however,* That prehearing conferences, hearings, and decisions need not be delayed pending disposition of motions or petitions. Oral motions and petitions may be ruled on immediately.

§ 4.823 Interlocutory appeals.

Except as provided in § 4.809(e), a ruling of the administrative law judge may not be appealed to the Director, Office of Hearings and Appeals, prior to consideration of the entire proceeding by the administrative law judge unless permission is first obtained from the Director, Office of Hearings and Appeals, and the administrative law judge has certified the interlocutory ruling on the record or abused his discretion in refusing a request to so certify. Permission will not be granted except upon a showing that the ruling complained of involves a controlling question of law and that an immediate appeal therefrom may materially advance the final decision. An interlocutory appeal shall not operate to suspend the hearing unless otherwise ordered by the Director, Office of Hearings and Appeals. If an appeal is allowed, any party may file a brief within such period as the Director, Office of Hearings and Appeals, directs. Upon affirmance, reversal, or modification of the administrative law judge's interlocutory ruling or order, by the Director, Office of Hearings and Appeals, the case will be remanded promptly to the administrative law judge for further proceedings.

§ 4.824 Exhibits.

Proposed exhibits shall be exchanged at the prehearing conference, or otherwise prior to the hearing, if the administrative law judge so directs. Proposed exhibits not so exchanged in accordance with the administrative law judge's order may be denied admission as evidence. The authenticity of all exhibits submitted prior to the hearing, under direction of the administrative law judge, will be deemed admitted unless written objection thereto is filed and served on all parties, or unless good cause is shown for failure to file such written objection.

§ 4.825 Admissions as to facts and documents.

Not later than 15 days prior to the date of the hearing any party may serve upon an opposing party a written request for the admission of the genuineness and authenticity of any relevant documents described in, and exhibited with, the request, or for the admission of the truth of any relevant matters of fact stated in the request. Each of the matters as to which an admission is requested shall be deemed admitted, unless within a period of 10 days, the party to whom the request is directed serves upon the requesting party a statement either (a) denying specifically the matters as to which an admission is requested, or (b) setting forth in detail the reasons why he cannot truthfully either admit or deny such matters.

§ 4.826 Discovery.

(a) *Methods.* Parties may obtain discovery as provided in these rules by depositions, written interrogatories, production of documents, or other items; or by permission to enter property, for inspection and other purposes.

(b) *Scope.* Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the hearing.

(c) *Protective orders.* Upon motion by a party or by the person from whom discovery is sought, and for good cause shown, the administrative law judge may make any order which justice requires to limit or condition discovery in order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense.

(d) *Sequence and timing.* Methods of discovery may be used in any sequence. The fact that a party is conducting discovery shall not operate to delay any other party's discovery.

(e) *Time limit.* Discovery by all parties will be completed within such time as the administrative law judge directs, from the date the notice of hearing is served on the applicant or recipient.

§ 4.827 Depositions.

(a) A party may take the testimony of any person, including a party, by deposition upon oral examination. This may be done by stipulation or by notice, as set forth in paragraph (b) of this section. On motion of any party or other person upon whom the notice is served, the administrative law judge may for cause shown enlarge or shorten the time for the deposition, change the place of the deposition, limit the scope of the deposition or quash the notice. Depositions of persons other than parties or their representatives shall be upon consent of the deponent.

(b)(1) The party will give reasonable notice in writing to every other party of the time and place for taking depositions, the name and address of each person to be examined, if known, or a general description sufficient to identify him or the particular class or group to which he belongs.

(2) The notice to a deponent may be accompanied by a request for the production of documents and tangible things at the taking of the deposition.

(3) A party may name as the deponent a corporation, partnership, association, or governmental agency and may designate a particular person within the organization whose testimony is desired and the matters on which examination is requested. If no particular person is named, the organization shall designate one or more agents to testify on its behalf, and may set forth the matters on which each will testify. The persons so designated shall testify as to matters known or reasonably available to the organization.

(c) Examination and cross-examination of witnesses may proceed as permitted at the hearing. The witness shall be placed under oath by a disinterested person qualified to administer oaths by the laws of the United States or of the place where the examination is held, and the testimony taken by such person shall be recorded verbatim.

(d) During the taking of a deposition a party or deponent may request suspension of the deposition on grounds of bad faith in the conduct of the examination, annoyance, embarrassment, oppression of a deponent or party or improper questions propounded. The deposition will then be adjourned. However, the objecting party or deponent must immediately move the administrative law judge for a ruling on his objections to the deposi-

tion conduct or proceedings. The administrative law judge may then limit the scope or manner of the taking of the deposition.

(e) The officer shall certify the deposition and promptly file it with the administrative law judge. Documents or true copies of documents and other items produced for inspection during the examination of the witness shall, upon the request of a party, be marked for identification and annexed to the deposition.

(f) The party taking the deposition shall give prompt notice of its filing to all other parties.

§ 4.828 Use of depositions at hearing.

(a) Any part or all of a deposition so far as admissible under § 4.835 applied as though the witness were then present and testifying, may be used against any party who was present or represented at the taking of the deposition or who had reasonable notice thereof as follows:

(1) Any deposition may be used for contradiction or impeachment of the deponent as a witness.

(2) The deposition of a party, or of an agent designated to testify on behalf of a party, may be used by an adverse party for any purpose.

(3) The deposition of any witness may be used for any purpose if the party offering the deposition has been unable to procure the attendance of the witness because he is dead; or if the witness is at a greater distance than 100 miles from the place of hearing, or is out of the United States, unless it appears that the absence of the witness was procured by the party offering the deposition; or if the witness is unable to attend or testify because of age, illness, infirmity, or imprisonment; or, upon application and notice, that such exceptional circumstances exist as to make it desirable, in the interest of justice and with due regard to the importance of presenting the testimony of witnesses orally in open hearing, to allow the deposition to be used.

(b) If only part of a deposition is offered in evidence, the remainder becomes subject to introduction by any party.

(c) Objection may be made at the hearing to receiving in evidence any deposition or part thereof for any reason which would require the exclusion of the evidence if the witness were then present and testifying.

§ 4.829 Interrogatories to parties.

(a) Any party may serve upon any other party written interrogatories after the notice of hearing has been filed. If the party served is a corporation, partnership, association, or governmental agency, an agent shall furnish such information as is available to the party.

(b) Each interrogatory shall be answered separately and fully in writing under oath, unless it is objected to, in which event the objection shall be stated in lieu of an answer. The answers are to be signed by the person making them, and the objections signed by the attorney or other representative making them. Answers and objections shall be made within 30 days after the service of the interrogatories. The party submitting the interrogatories may move for an order under § 4.831 with respect to any objection to or other failure to answer an interrogatory.

(c) Interrogatories shall relate to any matter not privileged which is relevant to the subject matter of the hearing.

§ 4.830 Production of documents and things and entry upon land for inspection and other purposes.

(a) After the notice of hearing has been filed, any party may serve on any other party a request to produce and/or permit the party, or someone acting on his behalf, to inspect and copy any designated documents, phonorecords, and other data compilations from which information can be obtained and which are in the possession, custody, or control of the party upon whom the request is served. If necessary, translation of data compilations shall be done by the party furnishing the information.

(b) After the notice of hearing has been filed, any party may serve on any other party a request to permit entry upon designated property in the possession or control of the party upon whom the request is served for the purpose of inspection, measuring, surveying or photographing, testing, or sampling the property or any designated object.

(c) Each request shall set forth with reasonable particularity the items to be inspected and shall specify a reasonable time, place, and manner of making the inspection and performing the related acts.

(d) The party upon whom the request is served shall respond within 15 days after the service of the request. The response shall state, with respect to each item, that inspection and related activities will be permitted as requested, unless there are objections in which case the reasons for each objection shall be stated. The party submitting the request may move for an order under § 4.831 with respect to any objection to or other failure to respond.

§ 4.831 Sanctions.

(a) A party, upon reasonable notice to other parties and all persons affected thereby, may move for an order as follows:

(1) If a deponent fails to answer a question propounded or submitted under § 4.827(c), or a corporation or other entity fails to make a designation under § 4.827(b)(3), or a party fails to answer an interrogatory submitted under § 4.829, or if a party, under § 4.830 fails to respond that inspection will be permitted or fails to permit inspection, the discovering party may move for an order compelling an answer, a designation, or inspection.

(2) An evasive or incomplete answer is to be treated as a failure to answer.

(b) If a party or an agent designated to testify fails to obey an order to permit discovery, the administrative law judge may make such orders as are just, including:

(1) That the matters regarding which the order was made or any other designated facts shall be established in accordance with the claim of the party obtaining the order;

(2) Refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting him from introducing designated matters in evidence.

(c) If a party or an agent designated to testify fails after proper service (1) to appear for his deposition, (2) to serve answers or objections to interrogatories submitted under § 4.829 or (3) to serve a written response to a request for inspection, submitted under § 4.830, the administrative law judge on motion may make such orders as are just, including those authorized under subparagraphs (1) and (2) of paragraph (b) of this section.

§ 4.832 Ex parte communications.

(a) Written or oral communications involving any substantive or procedural issue in a matter subject to these proceedings, directed to the administrative law judge, the Director, or the Director, Office of Hearings and Appeals, shall be deemed ex parte communications and are not to be considered part of any record or the basis for any official decision, unless the communication is made by motion pursuant to these rules.

(b) The administrative law judge shall not consult any person, or party, on any fact in issue or on the merits of the matter before him unless upon notice and opportunity for all parties to participate.

(c) No employee or agent of the Federal Government engaged in the investigation and prosecution of a proceeding governed by these rules shall participate or advise in the rendering of any recommended or final decision, except as witness or counsel in the proceeding.

PREHEARING

§ 4.833 Prehearing conferences.

(a) Within 15 days after the answer has been filed, the administrative law judge will establish a prehearing conference date for all parties including persons or organizations whose petition requesting party status has not been ruled upon. Written notice of the prehearing conference shall be sent by the administrative law judge.

(b) At the prehearing conference the following matters, among others, shall be considered: (1) Simplification and delineation of the issues to be heard; (2) stipulations; (3) limitation of number of witnesses; and exchange of witness lists; (4) procedure applicable to the proceeding; (5) offers of settlement; and (6) scheduling of the dates for exchange of exhibits. Additional prehearing conferences may be scheduled at the discretion of the administrative law judge, upon his own motion or the motion of a party.

HEARING

§ 4.834 Purpose.

(a) The hearing is directed primarily to receiving factual evidence and expert opinion testimony related to the issues in the proceeding. A hearing will be held only in cases where issues of fact must be resolved in order to determine whether the applicant or recipient has failed to comply with one or more applicable requirements of title VI of the Civil Rights Act of 1964 (sec. 602, 42 U.S.C. 2000d–1) and Part 17 of this title. However, this shall not prevent the parties from entering into a stipulation of the facts.

(b) If all facts are stipulated, the proceedings shall go to conclusion in accordance with Part 17 of this title and the rules in this subpart.

(c) In any case where it appears from the answer of the applicant or recipient to the notice of hearing or notice of opportunity to request a hearing, from his failure timely to answer, or from his admissions or stipulations in the record that there are no matters of material fact in dispute, the administrative law judge may enter an order so finding, vacating the hearing date if one has been set, and fixing the time for the submission of evidence by the Government for the record. Thereafter, the proceedings shall go to conclusion in accordance with Part 17 of this title and the rules in this subpart. An appeal from such order may be allowed in accordance with the rules for interlocutory appeal in § 4.823.

§ 4.835 Evidence.

Formal rules of evidence will not apply to the proceeding. Irrelevant, immaterial, unreliable, and unduly repetitious evidence will be excluded from the record of a hearing. Hearsay evidence shall not be inadmissible as such.

§ 4.836 Official notice.

Whenever a party offers a public document, or part thereof, in evidence, and such document, or part thereof, has been shown by the offeror to be reasonably available to the public, such document need not be produced or marked for identification, but may be offered for official notice as a public document item by specifying the document or relevant part thereof. Official notice may also be taken of other matters, at the discretion of the administrative law judge.

§ 4.837 Testimony.

Testimony shall be given under oath by witnesses at the hearing. A witness shall be available for cross-examination, and, at the discretion of the administrative law judge, may be cross-examined without regard to the scope of direct examination as to any matter which is material to the proceeding.

§ 4.838 Objections.

Objections to evidence shall be timely, and the party making them shall briefly state the ground relied upon.

§ 4.839 Exceptions.

Exceptions to rulings of the administrative law judge are unnecessary. It is sufficient that a party, at the time the ruling of the administrative law judge is sought, makes known the action which he desires the administrative law judge to take, or his objection to an action taken, and his ground therefor.

§ 4.840 Offer of proof.

An offer of proof made in connection with an objection taken to any ruling of the administrative law judge excluding proffered oral testimony shall consist of a statement of the substance of the evidence which counsel contends would be adduced by such testimony. If the excluded evidence consists of evidence in written form or consists of reference to documents, a copy of such evidence shall be marked for identification and shall accompany the record as the offer of proof.

§ 4.841 Official transcript.

An official reporter will be designated for all hearings. The official transcripts of testimony and argument taken, together with any exhibits, briefs, or memoranda of law filed therewith, shall be filed with the administrative law judge. Transcripts may be obtained by the parties and the public from the official reporter at rates not to exceed the applicable rates fixed by the contract with the reporter. Upon notice to all parties, the administrative law judge may authorize such corrections to the transcript as are necessary to accurately reflect the testimony.

POSTHEARING PROCEDURES

§ 4.842 Proposed findings of fact and conclusions of law.

Within 30 days after the close of the hearing each party may file, or the administrative law judge may request, proposed findings of fact and conclusions of law together with supporting briefs. Such proposals and briefs shall be served on all parties and amici. Reply briefs may be submitted within 15 days after receipt of the initial proposals and briefs. Reply briefs should be filed and served on all parties and amici.

§ 4.843 Record for decision.

The administrative law judge will make his decision upon the basis of the record before him. The transcript of testimony, exhibits, and all papers, documents, and requests filed in the proceedings, shall constitute the record for decision and may be inspected and copied.

§ 4.844 Notification of right to file exceptions.

The provisions of § 17.9 of this title govern the making of decisions by administrative law judges, the Director, Office of Hearings and Appeals, and the Secretary. An administrative law judge shall, in any initial decision made by him, specifically inform the applicant or recipient of his right under § 17.9 of this title to file exceptions with the Director, Office of Hearings and Appeals. In instances in which the record is certified to the Director, Office of Hearings and Appeals, or he reviews the decision of an administrative law judge, he shall give the applicant or recipient a notice of certification or notice of review which specifically informs the applicant or recipient that, within a stated period, which shall not be less than 30 days after service of the notice, he may file briefs or other written statements of his contentions.

§ 4.845 Final review by Secretary.

Paragraph (f) of § 17.9 of this title requires that any final decision of an administrative law judge or of the Director, Office of Hearings and Appeals, which provides for the suspension or termination of, or the refusal to grant or continue Federal financial assistance, or the imposition of any other sanction available under Part 17 of this title or the Act, shall be transmitted to the Secretary. The applicant or recipient shall have 20 days following service upon him of such notice to submit to the Secretary exceptions to the decision and supporting briefs or memoranda suggesting remission or mitigation of the sanctions proposed. The Director shall have 10 days after the filing of the exceptions and briefs in which to reply.

2. Part 17a of Title 43 of the Code of Federal Regulations is vacated and reserved.

[FR Doc.73-16009 Filed 8-3-73;8:45 am]

CHAPTER II—BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR

APPENDIX—PUBLIC LAND ORDERS

[Public Land Order 5372]

[Oregon 8920]

OREGON

Withdrawal for Natural Area

By virtue of the authority vested in the President and pursuant to Executive Order No. 10355 of May 26, 1952 (17 FR 4831), it is ordered as follows:

1. Subject to valid existing rights, the following described land, which is under the jurisdiction of the Secretary of the Interior, is hereby withdrawn from all forms of appropriation under the public land laws, including the mining laws, 30 U.S.C. Ch. 2, but not from leasing under the mineral leasing laws, and reserved for scientific, educational, and research purposes:

WILLAMETTE MERIDIAN

LITTLE SINK NATURAL AREA

T. 8 S., R. 6 W.,
sec. 33, W½NW¼.

The area described aggregates 80 acres in Polk County.

2. The withdrawal made by this order does not alter the applicability of the public land laws governing the use of the land under lease, license, easement or permit, or governing the disposal of its mineral or vegetative resources other than under the mining laws.

JACK O. HORTON,
Assistant Secretary of the Interior.

JULY 30, 1973.

[FR Doc.73-16089 Filed 8-3-73;8:45 am]

[Public Land Order 5373]

[Idaho 07510]

IDAHO

Withdrawal for National Forest Recreation Area

By virtue of the authority vested in the President and pursuant to Executive Order No. 10355 of May 26, 1952 (17 FR 4831), it is ordered as follows:

1. Subject to valid existing rights, the following described national forest lands are hereby withdrawn from appropriation under the mining laws, 30 U.S.C. Ch. 2, but not from leasing under the mineral leasing laws, in aid of programs of the Department of Agriculture:

BOISE NATIONAL FOREST

BOISE MERIDIAN

Sage Hen Reservoir Recreation Area

T. 11 N., R. 2 E.,
sec. 2, lots 1 thru 4;
sec. 3, lot 1.
T. 12 N., R. 2 E.,
sec. 34, SE¼NE¼, E½SE¼;
sec. 35, N½N½, E½E½SE¼NE¼, W½NE¼SW¼NE¼, NW¼SW¼NE¼, N½SE¼NW¼, N½SW¼NW¼, W½SE¼SW¼NW¼, SW¼SW¼NW¼, E½NE¼SE¼, E½W½NE¼SE¼, W½E½NW¼SW¼, W½NW¼SW¼, SE¼SE¼, E½SW¼SE¼, E½W½SW¼SE¼, W½SW¼SW¼SE¼, E½SE¼SE¼SW¼, SW¼SE¼SE¼SW¼, S½SW¼SE¼SW¼, SE¼SE¼SW¼SW¼, W½E½SW¼SW¼, W½SW¼SW¼;
sec. 36, NW¼NW¼, SW¼NW¼, NW¼SW¼.

The areas described aggregate 728.59 acres in Gem and Valley Counties.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of the national forest lands under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

JACK O. HORTON,
Assistant Secretary of the Interior.

JULY 30, 1973.

[FR Doc.73-16090 Filed 8-3-73;8:45 am]

[Public Land Order 5374]

[New Mexico 16184]

NEW MEXICO

Partial Revocation of Executive Orders 6143, 6276, and 6583

By virtue of the authority vested in the President and pursuant to Executive Order No. 10355 of May 26, 1952 (17 FR 4831), it is ordered as follows:

1. Executive Orders No. 6143 of May 23, 1933, No. 6276 of September 8, 1933, and No. 6583 of February 3, 1934, withdrawing lands in New Mexico to aid the State of New Mexico in making exchange selections, as provided for by the Act of June 15, 1926, 44 Stat. 746-748, are hereby revoked so far as they affect the following described lands:

NEW MEXICO PRINCIPAL MERIDIAN

T. 20 S., R. 3 W.,
sec. 7, SE¼;
sec. 8, SW¼, N½SE¼;
sec. 9, SW¼;
sec. 17, N½NW¼.
T. 21 S., R. 6 W.,
sec. 24, N½;
sec. 26, NE¼SE¼.
T. 17 S., R. 7 W.,
sec. 6.
T. 19 S., R. 7 W.,
sec. 31, NE¼, NE¼NW¼.
T. 19 S., R. 8 W.,
sec. 21, NE¼, NE¼NW¼, S½NW¼;
sec. 22, SW¼NW¼.
T. 20 S., R. 8 W.,
sec. 8.
T. 20 S., R. 10 W.,
sec. 17, NE¼NE¼, SE¼NW¼, NE¼SW¼, NW¼SE¼.
T. 20 S., R. 11 W.,
sec. 11, E½, E½NW¼, SW¼;
sec. 14;
sec. 15, SE¼.
T. 26 S., R. 10 W.,
sec. 28, E½SW¼;
sec. 30, lots 3 and 4;
sec. 31, lots 1 thru 4, S½NE¼, SE¼NW¼, E½SW¼, SE¼;
sec. 32, SE¼;
sec. 33, NW¼, W½SW¼, SE¼;
sec. 34, S½.
T. 27 S., R. 10 W.,
sec. 15, S½SW¼;
sec. 22, N½NW¼.
T. 28 S., R. 10 W.,
sec. 4, NW¼SE¼, S½SE¼;
sec. 9, E½;
sec. 21, E½;
sec. 30, lots 3, 4, E½SW¼, SE¼;
sec. 33, E½.
T. 19 S., R. 11 W.,
sec. 23, N½S½;
sec. 24, S½NE¼, N½SW¼, NW¼SE¼.
T. 24 S., R. 11 W.,
sec. 18, S½SE¼;
sec. 19, lots 1 thru 4, E½W½;
sec. 21, W½NW¼;
sec. 27, SW¼;
sec. 28, E½;
sec. 30, NE¼;
sec. 31, lots 3, 4, E½SW¼;
sec. 34, W½.
T. 25 S., R. 11 W.,
sec. 19, NE¼SW¼, N½SE¼, SE¼SE¼;
sec. 30, lot 1, N½NE¼, SW¼NE¼, NE¼NW¼, W½SE¼.
T. 26 S., R. 11 W.,
sec. 3, S½SW¼;
sec. 4, S½S½;
sec. 5, S½SE¼;
sec. 7, lot 4, N½NE¼, SE¼NW¼, E½SW¼, SW¼SE¼;
sec. 8, NW¼NW¼, SE¼;
sec. 9, S½;
sec. 10, NE¼, S½;
sec. 11, S½;
sec. 12, S½;
sec. 17, NE¼, SW¼, SW¼SE¼;
sec. 18, lots 1, 4, E½, E½SW¼;
sec. 19, lots 1, 2, NE¼, E½NW¼;
sec. 20, E½NW¼;
sec. 21, E½;
sec. 22, N½;
sec. 23, W½;
sec. 26, W½;
sec. 27, SW¼, S½SE¼;
sec. 28, SW¼;
sec. 29, N½NW¼, SE¼NW¼, E½SW¼;
sec. 33, E½W½;
sec. 34, E½;
sec. 35, NW¼NE¼, S½NE¼, NW¼.
T. 27 S., R. 11 W.,
sec. 1, NE¼;
sec. 13, S½;
sec. 24, N½;
sec. 28, N½SW¼;
sec. 29, SW¼NE¼, S½NW¼, NE¼SE¼;
sec. 30, lot 2, NW¼NE¼, S½NE¼, SE¼NW¼.
T. 24 S., R. 12 W.,
sec. 15, E½SE¼;
sec. 19, lots 1, 2, NE¼, E½NW¼;
sec. 20, N½;
sec. 22, NE¼NE¼.
T. 25 S., R. 13 W.,
sec. 15, S½S½;
sec. 22, N½N½;
sec. 33, S½;
sec. 34, S½;
sec. 35, S½.
T. 26 S., R. 13 W.,
sec. 6, lots 1, 2, SW¼NE¼, SE¼NW¼, E½SW¼, W½SE¼;
sec. 7, W½E½, E½W½;
sec. 11, E½;
sec. 14, NE¼, S½;
sec. 15, S½;
sec. 17, S½;
sec. 18, W½NE¼, E½W½, SE¼;
sec. 19, NE¼NE¼;
sec. 20, NW¼NW¼;
sec. 23, E½NE¼, SE¼;
sec. 24, E½SW¼;
sec. 25, W½NE¼, W½;
sec. 26, NW¼NE¼, E½NW¼, NE¼SW¼;
sec. 28, S½S½;
sec. 30, S½SE¼;
sec. 31, lots 1 thru 4, N½NE¼, E½W½;
sec. 34, SW¼NE¼, SE¼NW¼, E½SW¼, W½SE¼;
sec. 35, N½NE¼, SW¼NE¼, N½SW¼, SW¼SW¼, NW¼SE¼.
T. 27 S., R. 13 W.,
sec. 1, lot 2, SW¼NE¼, W½SE¼;
sec. 3, lots 2, 3, SW¼NE¼, SE¼NW¼, NE¼SW¼, S½SW¼, NW¼SE¼;
sec. 4, S½S½;
sec. 5, S½S½;
sec. 6, lots 3 thru 7, SE¼NW¼, E½SW¼, SE¼;
sec. 7;
sec. 8, N½N½;
sec. 9, N½N½;
sec. 10, N½NW¼;
sec. 12, E½NW¼, W½SW¼;
sec. 13, NW¼;
sec. 15, N½;
sec. 19, lots 1 thru 4;
sec. 22, W½W½;
sec. 34, N½N½;
sec. 35, N½N½.
T. 27 S., R. 14 W.,
sec. 4, NW¼SE¼;
sec. 8, SE¼;
sec. 9, NE¼NE¼, S½NE¼, E½W½, SE¼;
sec. 10, SE¼;
sec. 11, S½;
sec. 13, E½, N½NW¼;
sec. 14, N½, NE¼SE¼;
sec. 15, N½N½;
sec. 24, E½;
sec. 25;
sec. 26, SE¼;
sec. 35, N½N½.

The areas described aggregate approximately 29,215.66 acres of land in Dona Ana, Grant, Luna and Sierra Counties, of which 1,600 acres are privately owned.

The topography consists of broad nearly level to gently sloping semi-desert plains from which rise relatively narrow, but steep and rugged mountain ridges, isolated peaks and ranges of hills. The elevation ranges between 3,500 to 5,500 feet. Soils are shallow to moderately deep sandy loams. Vegetation is of the southwestern desert shrub type, of which the most common are creosote bush, mesquite, cacti, black grama, tobosa and dropseed grasses.

2. At 10 a.m. on September 4, 1973, the public lands described in paragraph 1 of this order shall be open to the operation of the public land laws generally, sub-