

Brownsville, Tex.—Brownsville Int'l Arpt., NDB Rwy 17L, Orig., Canceled.
 Ft. Lauderdale, Fla.—Ft. Lauderdale Executive Arpt., NDB Rwy 8, Orig.
 Heber Springs, Ark.—Heber Springs Municipal Arpt., NDB-A, Amdt. 2.
 Philadelphia, Pa.—Philadelphia Int'l Arpt., NDB Rwy 27L, Orig.
 Waco, Tex.—Waco-Madison Cooper Arpt., NDB Rwy 18, Amdt. 9.

4. Section 97.29 is amended by originating, amending, or canceling the following ILS SIAP's, effective October 28, 1973.

Ft. Worth, Tex.—Greater Southwest Int'l Dallas/Ft. Worth Field, ILS Rwy 13, Amdt. 17, Canceled.

* * * effective October 25, 1973

Brownsville, Tex.—Brownsville Int'l Arpt., ILS Rwy 13R, Amdt. 2.
 Miami, Fla.—Miami Int'l Arpt., ILS Rwy 27R, Amdt. 1.
 Pontiac, Mich.—Oakland-Pontiac Arpt., ILS Rwy 9R, Amdt. 2.
 Waco, Tex.—Waco-Madison Cooper Arpt., ILS Rwy 18, Amdt. 6.

* * * effective September 27, 1973

Salinas, Cal.—Salinas Municipal Arpt., ILS/DME Rwy 31, Orig.

* * * effective August 30, 1973

Newark, N.J.—Newark Int'l Arpt., ILS Rwy 22R, Amdt. 5, Canceled.

5. Section 97.31 is amended by originating, amending, or canceling the following Radar SIAP's, effective October 28, 1973.

Ft. Worth, Tex.—Greater Southwest Int'l Dallas/Ft. Worth Field, RADAR-1, Amdt. 8, Canceled.

* * * effective October 25, 1973

Augusta, Ga.—Daniel Field, RADAR-1, Orig.
 Augusta, Ga.—Bush Field, RADAR-1, Orig.
 Covington, Ky.—Greater Cincinnati Arpt., RADAR-1, Amdt. 14.

6. Section 97.33 is amended by originating, amending, or canceling the following RNAV SIAP's, effective October 28, 1973.

Ft. Worth, Tex.—Greater Southwest Int'l Arpt. Dallas/Ft. Worth Field RNAV Rwy 31, Amdt. 1, Canceled.
 Ft. Worth, Tex.—Greater Southwest Int'l Arpt. Dallas/Ft. Worth Field RNAV Rwy 35, Amdt. 1, Canceled.

* * * effective October 25, 1973

Cleveland, Ohio—Cleveland Hopkins Int'l Arpt., RNAV Rwy 23L, Amdt. 2, Canceled.
 Houston, Tex.—Houston Intercontinental Arpt. RNAV Rwy 26, Orig.
 Pontiac, Mich.—Oakland-Pontiac Arpt., RNAV Rwy 27L, Amdt. 1.

* * * effective August 30, 1973

Columbus, Ind.—Bakalar Municipal Arpt., RNAV Rwy 22, Orig., Canceled.

(Secs. 307, 313, 601, 1110, Federal Aviation Act of 1948; 49 U.S.C. 1438, 1354, 1421, 1510, Sec. 6(c) Department of Transportation Act, 49 U.S.C. 1655(c) and 5 U.S.C. 552(a)(1).)

Issued in Washington, D.C., on September 6, 1973.

JAMES M. VINES,
 Chief,
 Aircraft Programs Divisions.

NOTE.—Incorporation by reference provisions in §§ 97.10 and 97.20 (35 FR 5610) approved by the Director of the Federal Register on May 12, 1969.

[FR Doc. 73-20357 Filed 9-24-73; 8:45 am]

Title 17—Commodity and Securities Exchanges

CHAPTER II—SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-10391]

PART 241—INTERPRETATIVE RELEASES RELATING TO THE SECURITIES EXCHANGE ACT OF 1934 AND GENERAL RULES AND REGULATIONS THEREUNDER

Interpretation of "Affiliated Person"

The Securities and Exchange Commission today announced that it has sent the following letter to the New York Stock Exchange in response to the Exchange's proposed interpretation of the term "affiliated person" as used in Rule 19b-2 under the Securities Exchange Act of 1934 [17 C.F.R. 240.19b-2] and in the New York Stock Exchange's Rule 318:

THE NEW YORK STOCK EXCHANGE,
 Eleven Wall Street,
 New York, N.Y.

Attention: David D. Huntoon

Re: Proposed Interpretation of the Term "Affiliated Person"

GENTLEMEN: This is in further response to your letter of May 31, 1973 enclosing for our concurrence a "significant interpretation" of the term "affiliated person", as that term is used in Securities Exchange Act Rule 19b-2 and NYSE Rule 318. While our letter of June 1, 1973 indicated that we had no objection to your issuance of the proposed interpretation as of that date, pending our consideration of its appropriateness, it also indicated that, because of the importance of this interpretation, we would solicit public comments thereon. We further stated that it might be necessary to revise the proposed interpretation as a result of our conclusions after further consideration of the interpretation and any comments received. We have received comments from thirteen persons and organizations representing various sectors of the investment community expressing diverse views regarding the appropriateness of the interpretation. Our conclusions, based on our consideration of the comments received and our view of the purposes of Rule 19b-2, as expressed in Securities Exchange Act Release No. 9950 (January 16, 1973), are set forth below.

The proposed interpretation delineates certain circumstances under which the term "affiliated person" would include an institutional account over which a money manager exercises investment discretion. Rule 19b-2, clause (b) provides, in part, that an "affiliated person" of a member shall include:

"(1) any person directly or indirectly controlling, controlled by or under common control with such member, whether by contractual arrangement or otherwise, provided that the right to exercise investment discretion with respect to an account, without more, shall not constitute control; * * * Thus, under clause (b)(1), in order to find that a person is an "affiliated person" for purposes of Rule 19b-2 a finding of "control" must be made. NYSE Rule 318 contains identical language.

The NYSE's proposed interpretation would find the existence of "control" in all cases

where, in addition to having investment discretion, a money manager, by contract or by furnishing additional services, has decreased the likelihood that his customer will dispense with his services in favor of those of another money manager on the basis of competitive merit alone. While in certain respects the NYSE's interpretation is consistent with the "competitive merit" considerations which we enunciated in Release No. 9950, at pages 152 and 153, the rigid approach implicit in the interpretation would deprive the term "control" of the flexibility which we intended it to have by giving rise to an irrebuttable presumption of control without regard to whether, in a particular case, control is actually present.

The terms "affiliated person" and "control" were assigned by the Commission "their traditional legal meanings", as indicated in Release No. 9950 at footnote 434 on page 152, and the NYSE should utilize those traditional meanings in applying Rule 19b-2 and its Rule 318. While it may be difficult for securities exchanges to probe the relationships between customers and their money managers and other factual circumstances having a bearing on the question of control, denial of membership on an exchange is a serious matter and must be based on a careful review of all relevant facts and the particular circumstances of each case. At page 8 of Release No. 9950 we stated that Rule 19b-2 "requires" exchanges "to make exchange membership available to any person or entity, assuming minimum standards of financial responsibility and competency are met" and assuming the availability of a seat, "provided only that each member demonstrate his commitment to compete for the public's exchange securities business" [emphasis supplied]. This does not mean that each member must prove that persons for whom the member effected at least 80 percent of the value of its exchange securities transactions during the preceding six months were not affiliates of the member. Rather, disclosure of the identity of a member's affiliates (if any) and a showing that the required volume of transactions was for persons other than those affiliates satisfactorily demonstrates the requisite commitment of the public's business. A determination that a broker-dealer is not engaged in a "public securities business" as defined in Rule 19b-2 and Rule 318 must be based on findings more substantial and more carefully tailored to particular situations than those envisaged by the NYSE's proposed interpretation. All exchanges should carefully formulate questions to be put to their memberships and to applicants for membership designed to uncover the identities of affiliates and the amount of business done for the accounts of those affiliates. The exchanges' power under their rules to compel disclosures which will reveal control relationships cannot be questioned. The burden of proof that a broker-dealer's claimed "public" business is in fact a "private" business because of a control relationship with its customer, however, must rest with the securities exchange which denies membership.

An additional disagreement we have with the NYSE's interpretation stems from its premise that a money manager's "control" over an "account" can be determined without also determining that a money manager is in a control relationship with the persons who own the account or are charged with its care. It is difficult to conceive of a money management relationship which by itself so separates an account from the persons whose account it is or those charged with its care that control over the account could be said to have passed to the money manager. We believe that such a situation generally could

exist only where other factors clearly establish a money manager's control relationship with those persons sufficient to enable the money manager to direct their allocation of money management for the account. Those ultimately responsible for an account are legally entitled, and, indeed, are obliged, to make such disposition of the funds constituting the account as they deem appropriate. No money management agreement, whatever its terms may be, can deprive such ultimately responsible persons of that right or relieve them of that duty. At page 153 of Release No. 9950 we noted that whether an adviser "with mere discretionary authority over an account" was a broker, an insurance company or a bank, he was "subject to discharge by whoever is ultimately in control of the account." We also noted that if the element of competition for the account's business was present and the money manager had no authority in the selection or retention of a money manager, that account "should not be considered a captive or 'controlled' advisory account." In the words of Release No. 9950, at page 152, it is the receipt of business "because of an identity of interest between the broker and his 'customer'" that requires the business to be characterized as private, rather than public. In this context, the person owning or ultimately responsible for the account, not the account itself, is the customer.

A transaction executed by a broker-dealer subsidiary of an insurance company, for example, for an account of its parent—consisting of the parent's assets invested for its sole benefit—is clearly executed for an affiliated person and does not qualify as public securities business. A transaction executed for a corporation's pension fund account managed by that insurance company parent, however, should qualify as public business absent other circumstances evidencing a control relationship between the insurance company and the trustees of the pension fund or the corporation (in the event the pension fund's trustees are deemed affiliates of the corporation). As we stated in Release No. 9950 at pages 155 and 156:

"Where the insurance company, or its subsidiary, is simply managing and investing pension fund assets without any other indicia of control, as is typically the case with a separate account, we would consider transactions executed on an exchange for the account by the insurer's affiliated member to be public business . . ."

The NYSE's interpretation would make ready and inexpensive mobility of an account the definitive test of whether a control relationship exists between the money manager and the person owning or charged with custody of that account. Mobility of a managed account is, of course, an evidentiary factor to be considered in determining whether a control relationship exists between a money manager and his customer, but the customer must be allowed sufficient latitude to exchange easy mobility of the account for economic packages of money management, brokerage and other services. Contractual impediments to mobility (e.g., notice periods prior to cancellation, liquidated damages, termination or increase in price of other services) do not by themselves, except in extreme cases, demonstrate either conclusively or presumptively that a control relationship between the parties exists.

Similarly, the coupling of investment discretion over a customer's account with commercial banking, insurance or investment banking services does not prove the existence of a control relationship, although it may be evidence of it, particularly where it can be demonstrated that a mix of services provided to the customer at a particular price was not

obtainable from any other source. For example, the fact that a bank may provide various banking services to a corporation in addition to managing its employees' profit-sharing plan is not a sufficient basis for concluding that a control relationship exists between them. Moreover, the fact that an insurance company may write group life insurance for a corporation in addition to managing its employees' pension fund would be unlikely to affect the corporation's desire to seek the best available performance, consistent with the most economical cost of management, for its pension fund.

Certainly state law to the effect that "separate accounts" of an insurance company are to be deemed property of that insurance company has little, if anything, to do with whether the persons beneficially interested in or ultimately responsible for such accounts are in a control relationship with the insurance company. While many states have adopted statutes under which separate accounts legally are deemed to be the property of insurance companies (for purposes quite different from those governing qualification for exchange membership), such laws do not change the practical nature of these separate accounts whereby all gains and losses, as well as income, inure to the benefit of the account holder. Furthermore, these state statutes typically provide that the assets of separate accounts may not be used to satisfy the obligations of the insurance company. Even more significantly, the technical ownership of the funds by the insurer does not, as a practical matter, restrict their mobility. Thus, such laws cannot be said to constitute a realistic index of control sufficient to overcome our view that for purposes of Rule 19b-2 separate accounts of insurance companies are essentially public business. To assert the existence of affiliation under such circumstances would appear to contravene the conclusion articulated in Release No. 9950 that separate accounts of insurance companies would be considered to be "public" business, absent a showing of other indicia of control. As stated by the Supreme Court in *Rochester Telephone Corp. v. United States*, 307 U.S. 125, 145 (1959): "... control cannot be determined by artificial tests but is an issue of fact to be determined by the special circumstances of each case."

In light of the foregoing, it appears that none of the hypothetical cases submitted by the NYSE set forth facts sufficient to support a predetermined finding of control by a money manager over the persons owning or charged with custody of a pension fund or trust. Thus, it does not appear that the NYSE's proposed interpretation is in accord with the intent of Rule 19b-2 and the interpretation therefore should be promptly withdrawn. While the Commission encourages the NYSE to publish new hypothetical situations which illustrate cases in which the NYSE believes that facts will require it to find that a control relationship exists, such hypotheticals should be drawn with the principles set forth above in mind. Such hypotheticals, of course, as significant interpretations, should be submitted to the Commission for its review prior to their circulation.

The Commission, in promulgating Rule 19b-2, of course, stressed the experimental nature of its policymaking endeavors, thus leaving open the possibility that changes in the rule might be appropriate after necessary experience with the rule has been obtained. The interpretations you have furnished would effect significant changes in the concept of the term "affiliated person" bringing the scope of that term closer to the formulation utilized by two Congressional subcommittees in drafting new legislation. As you know, we have advised the Congress that

its approach—which would preclude any exchange member from executing transactions for any institutional account the member manages—reflects a valid legislative resolution of the issues involved. As a matter of administrative policymaking, however we did not believe we should adopt that approach without first obtaining some practical experience with a somewhat more gradual formulation.

The Commission has no further comment at this time.

Sincerely yours,

RAY GARRETT, JR.,
Chairman.

The Exchange's proposed interpretation, which was enclosed with its letter to the Commission dated May 31, 1973, is attached hereto as Exhibit 1.

By the Commission.

[SEAL] GEORGE A. FITZSIMMONS,
Secretary.

SEPTEMBER 13, 1973.

MAY 31, 1973.

Mr. JOHN LIFTIN,
Associate Director,
Division of Market Regulation,
Securities and Exchange Commission,
Washington, D.C.

DEAR MR. LIFTIN: In SEC Release No. 9950, the Commission stated that it expected national securities exchanges to discuss in advance significant interpretations of the rule adopted by them pursuant to Rule 19b-2. The interpretation which is the subject of this letter is significant because the dollar value of transactions involved.

The definition of "affiliated person" in Exchange Rule 318, adopted pursuant to SEC Rule 19b-2 includes the following language:

"any person directly or indirectly controlling, controlled by or under common control with the member or member organization, whether by contractual arrangement or otherwise, provided that the right to exercise investment discretion with respect to an account, without more, shall not constitute control."

The Exchange intends to issue a circular containing the attached language. We would appreciate your concurrence that this interpretation is consistent with SEC Rule 19b-2.

Questions regarding this matter may be directed to David D. Huntoon at (212) 623-5253.

Very truly yours,

JAMES E. BUCK.

INTERPRETATION OF RULE 318

Under the existing definition of "affiliated person", the Exchange has determined that for an account not to be considered to be in a control relationship with the person holding the investment discretion, the conferring of such discretion must be based on competitive merit and may not be the result of or incidental to other circumstances or relationships. Among other circumstances and relationships which are considered to constitute such a control relationship for the purposes of Rule 318 are:

- (1) Investment discretion is given pursuant to a contract or agreement which can be cancelled only on notice of more than 30 days.
- (2) Investment discretion is given pursuant to a contract or agreement which provides for a penalty upon termination.
- (3) Investment discretion cannot be cancelled without the incurrence of substantial expense or hardship.
- (4) Investment discretion is part of a more extensive relationship which includes providing other services to a substantial degree,

including, but not limited to, commercial banking, insurance and investment banking.

(5) The account is a so-called "separate account" managed by an insurance company which exercises investment discretion and under applicable law the securities in the account are the property of the insurance company.

The following examples may serve to illustrate this interpretation.

(1) The portfolio of a pension fund is managed by an investment manager which has discretion over the account. The discretion may be cancelled at any time on receipt by the investment manager from the fund of written notice without the payment of any penalty of any sort. Neither the investment manager nor the pension fund have any other relationship which might constitute control. The pension fund is not considered to be controlled by the investment manager, and is not an "affiliated person" of the investment manager.

(2) The circumstances are the same as in (1) above, except that the investment discretion is given by a contract which may be cancelled only on notice which must be given at least 90 days prior to the effective date of cancellations. The pension fund is considered to be controlled by the investment manager and is an "affiliated person" of the investment manager.

(3) A pension fund is managed by an insurance company as a "separate account" and the insurance company has investment discretion over the account. The agreement between the pension fund and the insurance company provides that investment discretion may be cancelled upon 30 days written notice, but that in the event of such cancellation a substantial cash penalty must be paid. The pension fund is considered to be controlled by the insurance company and is an "affiliated person" of the insurance company, even though under applicable law the securities in the "separate account" are not considered to be the property of the insurance company.

(4) A charitable trust is managed by an investment manager which exercises investment discretion over the trust account. The discretion may be cancelled at any time by the trustees (who have no other relationship with the investment manager) upon written notice, without penalty. However, the investment manager also provides office space, clerical support, telephones and other services which are necessary to the trust. In order to cancel the investment discretion, the trustees would have to find other quarters and arrange for clerical, telephone and other essential services. The trust is considered to be controlled by the investment manager, and is an "affiliated person" of the manager.

(5) A pension or profit sharing trust established by the X corporation is managed by an investment manager which holds investment discretion over the trust account. The discretion may be cancelled forthwith at any time by the trustees without penalty. The parent of the investment manager is a bank holding company which has as another of its subsidiaries the principal commercial bank servicing the X corporation. The trustees of the trust are officers and/or employees of the X corporation. Under these circumstances, the trust will be considered to be in a control relationship with the investment manager and an "affiliated person" of the manager.

(6) A pension or profit sharing trust established by the X corporation is managed by an investment manager which holds investment discretion over the trust account. The discretion may be cancelled forthwith at any time by the trustees without penalty. The

investment manager is also an investment banker and has traditionally been a managing underwriter of securities issued by X corporation. The trustees of the trust are officers and/or employees of X corporation. Under these circumstances, the trust will be considered to be controlled by the investment manager and an "affiliated person" of the manager.

(7) A pension or profit sharing trust established by the X corporation is managed by an insurance company as a "separate account" and the insurance company holds investment discretion over the trust account. The discretion may be cancelled forthwith at any time by the trustees without penalty. The account of the trust is operated as a "separate account" by the insurance company. The insurance company provides substantial insurance coverage to X corporation. The trustees of the trust are officers and/or employees of X corporation. Under these circumstances, the trust will be considered to be controlled by the insurance company and an "affiliated person" of the insurance company, even though under applicable state law the securities in the "separate account" are not considered to be the property of the insurance company.

(8) A pension or profit sharing trust is managed by an insurance company which holds investment discretion over the trust account. The discretion may be cancelled forthwith at any time by the trustees without penalty. The trust account is operated as a "separate account" by the insurance company. Under applicable law the securities held in the "separate account" are considered the property of the insurance company which operates the "separate account". Under these circumstances, the "separate account" is considered to be an "affiliated person" of the insurance company.

[FR Doc.73-20336 Filed 9-24-73;8:45 am]

Title 20—Employees' Benefits

CHAPTER III—SOCIAL SECURITY ADMINISTRATION, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

[Reg. No. 5, further amended]

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED (1965.....)

Designation of Extended Care Facilities as Skilled Nursing Facilities

The Social Security Amendments of 1972 (P.L. 92-603; 86 Stat. 1329-1493) designated or redesignated "extended care facilities" as "skilled nursing facilities" throughout title XVIII of the Social Security Act. In order to conform to the regulations of the Social Security Administration to this change in name, the regulations of the Social Security Administration (20 CFR Part 405) are amended as follows: Wherever the terms "extended care facility," and "extended care facilities," appear, the terms "skilled nursing facility" or "skilled nursing facilities," as the case may be, is substituted therefor, and the indefinite article "an" is changed to "a" as appropriate.

(Sec. 1102, 1814, 1861, 1864, 1866, and 1871, 49 Stat. 647, as amended; 79 Stat. 294, as amended; 79 Stat. 313, as amended; 79 Stat. 326, as amended; 79 Stat. 327, as amended; 79 Stat. 331, 42 U.S.C. 1302, 1395f, 1395x, 1395aa, 1395cc, and 1395hh.)

Effective date.—This amendment is effective September 25, 1973.

(Catalog of Federal Domestic Assistance Program Nos. 13.800, Health Insurance for the Aged—Hospital Insurance, and 13.801, Health Insurance for the Aged—Supplemental Medical Insurance.)

Dated September 6, 1973.

ARTHUR E. HESS,
Acting Commissioner of
Social Security.

Approved September 20, 1973.

CASPAR W. WEINBERGER,
Secretary of Health, Education,
and Welfare.

[FR Doc.73-20412 Filed 9-24-73;8:45 am]

Title 29—Labor

CHAPTER V—WAGE AND HOUR DIVISION, DEPARTMENT OF LABOR

PART 723—LAUNDRY AND CLEANING INDUSTRY IN PUERTO RICO

Wage Order

Pursuant to sections 5, 6 and 8 of the Fair Labor Standards Act of 1938 (52 Stat. 1062, 1064, as amended; 29 U.S.C. 205, 206, 208) and Reorganization Plan No. 6 of 1950 (3 CFR 1949-53 Comp., p. 1004), and by means of Administrative Order No. 625 (38 FR 9031), the Secretary of Labor appointed and convened Industry Committee No. 115 for the Laundry and Cleaning Industry in Puerto Rico, referred to the Committee the question of the minimum rate or rates of wages to be paid under section 6(c) of the Act to employees in the industry, and gave notice of a hearing to be held by the Committee.

Subsequent to an investigation and a hearing conducted pursuant to the notice, the Committee has filed with the Administrator of the Wage and Hour Division of the Department of Labor a report containing its findings of fact and recommendations with respect to the matters referred to it.

Accordingly, as authorized and required by section 8 of the Fair Labor Standards Act of 1938, Reorganization Plan No. 6 of 1950, and 29 CFR 511.18, the recommendations of Industry Committee No. 115 are hereby published, amending subparagraph (1) of paragraph (b) of § 723.2, Code of Federal Regulations.

As amended § 723.2 reads as follows:

§ 723.2 Wage rates.

(b) *Other activities classification.* (1) The minimum rate for this classification is \$1.60 an hour.

(Secs. 5, 6, 8, 52 Stat. 1062, 1064, as amended; 29 U.S.C. 205, 206, 208.)

Effective date.—This amendment shall become effective October 11, 1973.

Signed at Washington, D.C., this 18th day of September 1973.

WARREN D. LANDIS,
Acting Administrator, Wage
and Hour Division, U.S. Department of Labor.

[FR Doc.73-20374 Filed 9-24-73;8:45 am]

CHAPTER XIV—EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

PART 1602—RECORDS AND REPORTS

Recordkeeping and Filing Requirements
Report EEO-5

By virtue of the authority vested in it by sec. 713(a) of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. sec. 2000e-12(a), 78 Stat. 265, The Equal Employment Opportunity Commission (hereinafter referred to as the Commission) hereby amends Title 29, Chapter XIV, Part 1602 of the Code of Federal Regulations.

On June 12, 1973, there was published in the FEDERAL REGISTER (38 FR 15462) a notice of proposed rule making with proposed amendments to Part 1602 of the regulations. The proposed amendments adding Subparts L, M, and N, §§ 1602.39-1602.46, would have required public and private elementary and secondary school systems, districts, and individual schools to keep personnel and employment records for a period of two years, keep employment statistics by race and job category as required by Report EEO-5 for a period of three years, and file Report EEO-5 annually unless the school system employed fewer than 100 employees. Pursuant to the June 12, 1973, notice, a duly constituted public hearing was held at 10 a.m., June 27, 1973, in the hearing room of the Equal Employment Opportunity Commission, Washington, D.C., for the purpose of considering the views of the public on the proposed amendments. Three individuals were heard by the Commission and four written comments were received during the period that the record remained open.

All comments submitted with respect to the proposed amendments were given due consideration. The public comments resulted in certain changes. Reporting and recordkeeping requirements for private schools were temporarily eliminated due to an incomplete universe of names and addresses of private schools. The reporting and recordkeeping requirements for private schools will be imposed in 1974. In addition, due to time limitations, the date on which the 1973 EEO-5 must be filed has been deferred from October 15, 1973, to November 30, 1973. The October 15, date shall apply to all calendar years after 1973.

Part 1602, Chapter XIV of Title 29 of the Code of Federal Regulations is amended by adding new subparts L, M, and N and by adding new §§ 1602.39, 1602.40, 1602.41, 1602.42, 1602.43, 1602.44, 1602.45, and 1602.46 thereto to read as follows below. These amendments shall become effective October 25, 1973.

Subpart L—Elementary and Secondary School Systems, Districts, and Individual Schools
Recordkeeping

Sec.

1602.39 Records to be made or kept.

1602.40 Preservation of records made or kept.

Authority.—Sec. 709(c), 78 Stat. 265, 42 U.S.C. sec. 2000e-8(c), 29 CFR 1602.3.

Subpart L—Elementary and Secondary School Systems, Districts, and Individual Schools
Recordkeeping

§ 1602.39 Records to be made or kept.

On or before October 15, 1973, and annually thereafter, every public elementary and secondary school system or district, including every individually or separately administered district within a system, with 15 or more employees and every individual school within such system or district, regardless of the size of the school shall make or keep all records and information therefrom which are or would be necessary for the completion of report EEO-5 whether or not it is required to file such a report under § 1602.41. The instructions for completion of report EEO-5 are specifically incorporated herein by reference and have the same force and effect as other sections of this part.¹ Such records and the information therefrom shall be retained at all times for a period of 3 years at the central office of the elementary or secondary school system or district, or at the individual school which is the subject of the records and the information therefrom, where more convenient, and shall be made available if requested by an officer, agent, or employee of the Commission under sec. 710 of Title VII, as amended. It is the responsibility of every such school system or district, to obtain from the Commission or its delegate necessary instructions in order to comply with the requirements of this section.

§ 1602.40 Preservation of records made or kept.

(a) Any personnel or employment record made or kept by a school system, district, or individual school (including but not necessarily limited to application forms submitted by applicants and other records having to do with hiring, promotion, demotion, transfer, layoff, or termination, rates of pay or other terms of compensation, and selection for training or apprenticeship) shall be preserved by such school system, district, or school, as the case may be, for a period of 2 years from the date of the making of the record or the personnel action involved, whichever occurs later. In the case of involuntary termination of an employee, the personnel records of the individual terminated shall be kept for a period of 2 years from the date of termination. Where a charge of discrimination has been filed, or an action brought against an elementary or secondary school by the Commission or the Attorney General, the respondent elementary or secondary school system, district, or individual school shall preserve similarly at the central office of the system or district or individual school which is the subject of the charge or action, where more convenient, all personnel records relevant

¹NOTE.—Instructions were published as an appendix to the proposed regulations on June 12, 1973 (38 FR 15463).

to the charge or action until final disposition thereof. The term "personnel record relevant to the charge," for example, would include personnel or employment records relating to the person claiming to be aggrieved and to all other employees holding positions similar to that held or sought by the person claiming to be aggrieved; and application forms or test papers completed by an unsuccessful applicant and by all other candidates for the same position as that for which the person claiming to be aggrieved applied and was rejected. The date of "final disposition of the charge or the action" means the date of expiration of the statutory period within which a person claiming to be aggrieved may bring an action in a U.S. district court or, where an action is brought against a school system, district, or school either by a person claiming to be aggrieved, the Commission, or the Attorney General, the date on which such litigation is terminated.

(b) The requirements of this section shall not apply to application forms and other preemployment records of applicants for positions known to applicants to be a temporary or seasonal nature.

NOTE.—The reporting and/or recordkeeping requirements contained herein have been approved by the Office of Management and Budget in accordance with the Federal Reports Act of 1942.

Subpart M—Elementary-Secondary Staff
Information Report

Sec.

1602.41 Requirement for filing and preserving copy of report.

1602.42 Penalty for making of willfully false statements on report.

1602.43 Commission's remedy for school systems', districts', or individual schools' failure to file report.

1602.44 School systems', districts', or individual schools' exemption from reporting requirement.

1602.45 Additional reporting requirements.

Authority.—Sec. 709(c), 78 Stat. 265, 42 U.S.C. sec. 2000e-8(c); 29 CFR 1602.3.

Subpart M—Elementary-Secondary Staff
Information Report

§ 1602.41 Requirement for filing and preserving copy of report.

(a) On or before October 15, 1974, and annually thereafter, certain public elementary and secondary school systems and districts, including individually or separately administered districts within such systems, and individual schools within such systems or districts shall file with the Commission or its delegate executed copies of Elementary-Secondary Staff Information Report EEO-5 in conformity with the directions set forth in the form and accompanying instructions. The elementary and secondary school systems and districts covered are: (1) Every one of those which have 100 or more employees, and (2) every one of those others which have 15 or more employees from whom the Commission requests the filing of reports. Every such elementary or secondary school system or district shall retain at all times, for a

period of 3 years, a copy of the most recently filed report EEO-5 at the central office of the school system or district, or the individual school which is the subject of the report, where more convenient, and shall make the same available if requested by an officer, agent, or employee of the Commission under the authority of sec. 710 of Title VII, as amended. It is the responsibility of the school systems or districts above described in this section to obtain from the Commission or its delegate necessary supplies of the form.

(b) For calendar year 1973, the requirements of paragraph (a) of this section shall be carried out on or before November 30, 1973.

§ 1602.42 Penalty for making of willfully false statements on report.

The making of willfully false statements on report EEO-5 is a violation of the United States Code, Title 18, section 1001, and is punishable by fine or imprisonment as set forth therein.

§ 1602.43 Commission's remedy for school systems', districts', or individual schools' failure to file report.

Any school system, district, or individual school failing or refusing to file report EEO-5 when required to do so may be compelled to file by order of a U.S. district court, upon application of the Commission or the Attorney General.

§ 1602.44 School systems', districts', or individual schools' exemption from reporting requirements.

If it is claimed that the preparation or filing of the report would create undue hardship, the school system, district, or individual school may apply to the Commission for an exemption from the requirements set forth in this part by submitting to the Commission or its delegate a specific proposal for an alternative reporting system prior to the date on which the report is due.

§ 1602.45 Additional reporting requirements.

The Commission reserves the right to require reports, other than that designated as the Elementary-Secondary Information Report EEO-5, about the employment practices of private or public individual school systems, districts, or schools, or groups thereof, whenever, in its judgment, special or supplemental reports are necessary to accomplish the purposes of Title VII. Any system for the requirement of such reports will be established in accordance with the procedures referred to in section 709(c) of Title VII and as otherwise prescribed by law.

Subpart N—Records and Inquiries as to Race, Color, National Origin, or Sex

§ 1602.46 Applicability of State or local law.

The requirements imposed by the Equal Employment Opportunity Commission in these regulations, subparts L and M of this part, supersede any pro-

visions of State or local law which may conflict with them.

(Sec. 709(c), 78 Stat. 265, 42 U.S.C. 2000e-8(c), 29 CFR 1602.3.)

Signed at Washington, D.C., this 17th day of September 1973.

WILLIAM H. BROWN III,
Chairman.

[FR Doc. 73-20438 Filed 9-24-73; 8:45 am]

Title 32—National Defense
CHAPTER I—OFFICE OF THE SECRETARY OF DEFENSE

SUBCHAPTER Q—CIVIL RIGHTS

PART 301—EQUAL OPPORTUNITY IN OFF-BASE HOUSING PROGRAM

The Assistant Secretary of Defense (Manpower and Reserve Affairs) approved the following revision to Part 301. This Part 301 revises the policies covering "restrictive sanctions" and "relief for complainants"; updates the reporting requirements; includes sex discrimination under its provisions; and authorizes commanders to use verifiers under certain conditions.

- Sec.
301.1 Purpose.
301.2 Applicability and scope.
301.3 Definitions.
301.4 Objectives and policies.
301.5 Reports.
301.6 Check list for commanders.
301.7 Definitions of terms.

AUTHORITY.—Sec. 301, 80 Stat. 379; 5 U.S.C. Sec. 301.

§ 301.1 Purpose.

This Part 301 supplements the "equal opportunity" provisions of DOD Directive 1100.15, "Equal Opportunity Within the DOD," dated December 14, 1970,¹ relating to equal opportunity in off-base housing and fair housing enforcement.

§ 301.2 Applicability and scope.

The provisions of this Part apply to all DOD Components (Military Departments, Defense Agencies, Specified and Unified Commands and other DOD Components) which have under their jurisdiction:

- (a) Military personnel authorized to live in the civilian community in the United States, or
(b) DOD personnel authorized to live in the civilian community in areas outside of the United States.

§ 301.3 Definitions.

Terms which apply to this Part are contained in § 301.7.

§ 301.4 Objectives and policies.

The Department of Defense is fully committed to the goal of obtaining equal treatment for all DOD personnel as specified in DOD Directive 1100.15.¹ To

¹ Filed as part of the original. Copies available from the U.S. Naval Publications and Forms Center, 5801 Tabor Avenue, Philadelphia, Pa. 19120, Attention: Code 300.

carry out this policy with regard to off-base housing and fair housing enforcement, the Secretaries of the Military Departments and Heads of other DOD Components concerned will develop and issue implementing regulations consistent with the following:

(a) **National Housing Policy.** In the United States, Federal legislation prohibits discrimination in housing against any person because of race, color, religion, or national origin:

(1) Title VIII of the Civil Rights Act of 1968 contains the fair housing provisions; outlines the responsibilities of the Secretary of Housing and Urban Development with regard to the Act; and requires all executive departments and agencies to administer housing and urban development programs and activities under their jurisdiction in a manner which will reflect "affirmatively" the furthering of the purposes of Title VIII.

(2) Title IX of the Civil Rights Act of 1968 makes it a crime to willfully intimidate or interfere with any person by force or threat because of his activities in support of fair housing.

(3) 42 U.S.C. 1982 states that all citizens shall have the same right as is enjoyed by white citizens to purchase, lease, sell and convey real and personal property.

(b) **DOD Fair Housing Policy.** The Department of Defense intends that Federal fair housing legislation be supported and that DOD personnel have equal opportunity for available housing regardless of race, color, religion, national origin or sex. This includes the objective of eliminating discrimination against DOD personnel in off-base housing. This is not achieved simply by finding a place to live in a particular part of town or in a particular facility for a person from a minority group. It is achieved only when a person who meets the ordinary standards of character and financial responsibility is able to obtain off-base housing in the same manner as any other person anywhere in the area surrounding his installation, without suffering refusal and humiliation because of his race, color, religion, national origin or sex.

(1) The accomplishment of the objective shall not be hampered in any case by requiring the submission of a formal complaint of discrimination. A suspected discriminatory act, with or without the filing of a formal complaint, is a valid basis for investigation and, if discrimination is substantiated, for imposition of restrictive sanctions.

(2) No member of the Armed Forces moving into or changing his place of residence in the commuting area of a military installation or activity in the United States and no DOD member moving into or changing his place of residence in the commuting area of a DOD installation or activity outside the United States, shall be authorized to enter into a rental, purchase or lease arrangement with an agent or a facility which is under restrictive sanctions. (See paragraph (b) (3) of this section.)

(3) Restrictive sanctions shall be imposed upon substantiation that discrimination was practiced by an agent in accordance with (d)(2) of this section. These sanctions are not applicable to DOD personnel who may be residing in a facility at the time the restriction is imposed or to the extension or renewal of a rental or lease agreement originally entered into prior to the imposition of the restrictive sanctions. Relocation of a tenant within a restricted facility is not authorized without the written approval of the commander.

(4) In the case of paragraph (b)(3) of this section, the agent shall be informed in writing that restrictions have been imposed, the reasons therefor, and the actions which must be taken to remove the restriction after the 180 days minimum restriction expires. In order for restrictive sanctions to be removed, the agent must provide assurances of future non-discriminatory practices.

(5) After imposition of restrictive sanctions, the commander shall insure that DOD personnel comply with the restrictive sanctions imposed on the agent.

(6) If a discrimination complaint is substantiated, the commander shall take whatever action is deemed reasonable to assist the complainant in obtaining suitable housing. If, due to discrimination practices in the community, suitable housing cannot be obtained by the complainant in a reasonable amount of time, the complainant and the commander may use this fact as a reason to justify a request for, if otherwise eligible, priority in obtaining military housing or for compassionate reassignment.

(7) The fact that 42 U.S.C. 1982 and P.L. 90-284 may or may not provide a remedy in a given case of discrimination affecting DOD personnel does not relieve a commander of the responsibility to insure equal treatment and opportunity for such personnel or to impose restrictive sanctions against the agent when appropriate.

(8) Consistent with the policy of freedom of choice, commanders shall insure non-discrimination in referring personnel to off-base housing facilities.

(9) Continuing efforts (as described in Part 239a and Part 239b) shall be made to identify and solicit non-discriminatory assurances from those rental facilities within the commuting area which are considered to be suitable for occupancy by DOD personnel.

(10) An information program to apprise DOD personnel of the DOD policy and program for equal opportunity in off-base housing shall be developed at each installation. For support of this program, use should be made of local community resources such as civil rights organizations, religious and civic groups, and others.

(c) DOD personnel seeking off-base housing. DOD personnel shall:

(1) Be processed through the Housing Referral Office in the United States and, when available, in areas outside the United States.

(2) Be provided the following assistance in seeking temporary and permanent off-base housing:

(i) Counseling concerning the Equal Opportunity in Off-Base Housing Program, with particular stress placed on obligation of applicants to report any indication of discrimination against them in their search for housing.

(ii) Personal assistance by:

(a) Ascertaining the applicant's desires and requirements for housing and matching them as nearly as possible with current available listings.

(b) Offering to follow up by a telephone check of the selected listings to insure their availability. In taking this action, a record shall be made of the date, time and nature of the conversation confirming the unit, which record shall be retained for future reference. In no case will the race, color, religion, national origin, or sex of the applicant be divulged.

(c) Offering the services of a command representative (such as a unit sponsor or other person) to accompany and assist the applicant in his search for housing. The command representative will be responsible for taking the following action:

(1) If an agent of a housing facility refuses to accept or consider the applicant as a tenant; falsely indicates the unit sought has been rented to another applicant; or otherwise fails to furnish the unit under the same terms and conditions as are ordinarily applied to applicants for his facilities, the agent will be queried concerning the reasons why the unit is not available. After all reasonable steps have been taken to ascertain whether any valid nondiscriminatory reason can be shown for the agent's rejection of the applicant, and there appears to be no such reason, a reasonable effort will be made to persuade the agent to make the unit available to the applicant.

(2) Failing to persuade the agent to accept the applicant as a tenant, the incident will be reported to the appropriate command official for investigation. (Whether a complaint is or is not filed by the applicant, the procedures outlined in paragraph (d)(1) and (2) of this section as warranted by the circumstances, shall be followed.)

(d) Responsibilities of commanders—

(1) Enforcement procedures in the United States. Every commander shall:

(i) Insure that on office and staff serving the command are available to advise DOD personnel concerning:

(a) The procedures set forth in this part.

(b) The application of 42 U.S.C. 1982 and P.L. 90-284 in specific situations.

(c) The rights of individuals to pursue remedies through civilian channels, without recourse or in addition to the procedures prescribed herein, including the right to:

(1) Make a complaint directly to the Department of Housing and Urban Development (HUD) or to the Department of Justice; and,

(2) Bring a private civil action in any court of competent jurisdiction.

(ii) Periodically review the off-base housing procedures in his command to insure adequacy and compliance with this part. In order to assist the commander in accomplishing this review, a checklist is provided in § 301.6 of this part.

(2) Complaint procedures in the United States. Upon receipt of a housing discrimination complaint, an investigation will be initiated within three (3) working days after receipt of the complaint, using verifiers if deemed necessary. Verifiers will not be used for the sole purpose of ascertaining the sincerity of the practices of an agent unless a housing discrimination complaint has been filed against the agent. The investigation shall conform to the due-process procedure as set forth for Armed Forces Disciplinary Control Boards.^{*}

(i) If the complaint is not substantiated by the investigation, the complainant will be (a) so informed, (b) advised of his rights to pursue further actions through HUD, the Department of Justice, and/or State or Federal Court, and (c) offered whatever assistance is appropriate and can be provided legally by the Military Service in pursuing the courses of action in paragraph (d)(1) of this section.

(ii) If the complaint is substantiated by the investigation, restrictive sanctions will be imposed against the agent for a minimum of 180 days; the agent will be informed in writing of this action and advised on what action he must take to remove the restrictive sanctions after the 180 day minimum.

(a) The complainant will be informed in writing of the results of the investigation and action will be taken to assure relief for the complainant as outlined in paragraph (b)(6) of this section.

(b) The complainant shall also be informed of his rights to pursue further actions through HUD, the Justice Department and/or State or Federal Courts and he shall be offered whatever assistance can be provided legally by the Military Service in pursuing these courses of action.

(c) If the act of discrimination falls under existing laws, the commander shall forward a copy of the complaint directly to HUD using HUD Form 903, if the complainant concurs. A complaint must be received by HUD within 180 days after the occurrence of the alleged discriminatory act. A copy of the Complaint shall also be forwarded to the Department of Justice (Civil Rights Division), Washington, D.C. 20530.

(iii) Where more than one complaint alleging discrimination involves the same agent, documentation may be consolidated. In these cases, if appropriate, the consolidated documentation shall be

^{*}Filed as part of the original. Copies available from The Adjutant General's Center, Attention: DAAG-PAS-I, Washington, D.C. 20314.

forwarded to HUD and to the Department of Justice (Civil Rights Division), Washington, D.C. 20530.

(3) *Complaint procedures in areas outside the United States.* The procedures outlined in paragraph (d)(2) of this section shall be used for processing complaints of housing discrimination in areas outside the United States with the exception of submitting complaints to HUD or the Department of Justice.

(4) *Cooperation with Governmental agencies investigating alleged housing discrimination complaints.* Commanders shall cooperate to the fullest extent possible with other governmental agencies investigating housing discrimination complaints filed by a complainant.

§ 301.5 Reports.

(a) *Reporting requirements.* (1) A copy of each investigative report that substantiates a case of housing discrimination shall be submitted by the Military Services to the Assistant Secretary of Defense (Manpower and Reserve Affairs) and not later than 45 days from the date the case is forwarded from the installation. Under normal circumstances, the installation will complete required investigation and processing of complaints within 20 days from the date that a housing complaint is filed by a complainant. The Military Services shall summarize and make appropriate comments to include the affirmative action taken in the case prior to submission of the report to the Assistant Secretary of Defense (Manpower and Reserve Affairs).

(2) A copy of investigative reports that do not substantiate allegations of housing discrimination shall be kept on file at the installation level for a period of 24 months. Requests for these cases to be forwarded to the Assistant Secretary of Defense (Manpower and Reserve Affairs) normally will be made only when other government or civilian agencies have expressed an interest.

(3) Each Military Service shall submit semi-annual reports to the Assistant Secretary of Defense (Manpower and Reserve Affairs) as follows:

(i) Total number of rental facilities surveyed during the reporting period.

(ii) Total number of rental facilities listed to date and number of rental facilities listed during the reporting period.

(iii) Total number of rental facilities under restrictive sanctions and number of rental facilities restricted during the reporting period.

(iv) Total number of discrimination complaints processed during the reporting period by each Military Service.

(v) The number of compassionate reassignment and priority housing requests received under the provisions of this Part and their disposition during the reporting period.

(vi) By installation in the United States, a list of housing facilities upon which restrictive sanctions have been imposed. This shall include, as available, the name and address of the facility and agent, the reason for the restriction and

the status of negotiations with the agent.

(vii) A short narrative report summarizing servicewide significant Equal Opportunity in Off-Base Housing activities, problems and experiences and appropriate explanatory comments concerning the statistical portion of the report.

(viii) Reports (as of December 31 and June 30) shall be submitted to the Assistant Secretary of Defense (Manpower and Reserve Affairs) not later than the 25th of the month following the end of the reporting period.

(b) *Report control symbol.* (1) Reports of investigation required in (a) (1) and (2) of this section are exempt from RCS by Paragraph IIL.D.6, DoD Directive 5000.19, "Policies for the Management and Control of DoD Information Requirements," June 2, 1971.

(2) The report required in paragraph (a) (3) of this section is assigned Report Control Symbol DD-M(SA) 1146.

§ 301.6 Check list for commanders.

(a) Are newly assigned personnel informed as to the requirements of the equal opportunity in off-base housing program prior to obtaining housing off-base?

(b) Is there an effective equal opportunity in off-base housing information program?

(c) Are community resources being used to support the equal opportunity in off-base housing information program?

(d) Are housing discrimination complaints being expeditiously processed?

(e) Are complainants being informed, in writing, of the results of investigations?

(f) Are housing surveys being conducted periodically to obtain new listings?

(g) Are restrictive sanctions being imposed immediately for a minimum of 180 days on agents found to be practicing discrimination?

(h) Are the services of command representatives offered to accompany and assist applicants in their search for housing?

(i) Are Housing Referral Office and equal opportunity personnel sensitive to the problems of minority personnel?

(j) Are accurate equal opportunity in off-base housing reports being submitted in a timely manner?

§ 301.7 Definition of terms.

(a) *Agent.* Real estate agency, manager, landlord or owner, as appropriate, of a housing facility doing business with DOD personnel or a Housing Referral Office.

(b) *Area Outside the U.S.* An area in which DOD personnel reside but which is not subject to U.S. laws or regulations.

(c) *Commander.* The military or civilian head of any installation, organization or agency of the DOD.

(d) *Commuting Area.* That area defined in DOD Instruction 4165.45, "Determination of Family Housing Requirements," January 19, 1972.

(e) *Complainant.* A military member, adult dependent acting for a military member, or a civilian employee of the DOD who submits a complaint of discrimination.

(f) *Discrimination.* The act of denying housing to DOD personnel because of race, color, religion, national origin, or sex.

(g) *DOD personnel.* In the United States, military personnel and their dependents. Outside the United States, military personnel and their dependents, and non-appropriated and appropriated fund U.S. citizen civilian employees and their dependents, assigned to any DOD component.

(h) *Listed facility.* A suitable facility listed with the housing referral office as available for DOD personnel which is not under restrictive sanctions and whose agent and/or owner has provided a non-discriminatory assurance.

(i) *Relief for the complainant.* Action taken by a commander for the benefit of a complainant if a discrimination complaint is substantiated.

(j) *Restrictive sanctions.* Action taken by a commander to preclude DOD personnel from entering into a new rental, lease or purchase arrangement with, or otherwise moving into, a housing facility, the agent of which has been found to have discriminated against DOD personnel. Restrictive sanctions are effective against the agent and the facility.

(k) *Verifiers.* Volunteers used by the commander during the course of a housing discrimination investigation to determine if, in fact, housing discrimination is being practiced by a facility or individual as alleged. Verifiers are not required to be prospective tenants.

MAURICE W. ROCHE,
Director, Correspondence and
Directives, OASD (Comptroller).

SEPTEMBER 20, 1973.

[FR Doc. 73-20422 Filed 9-24-73; 8:45 am]

Title 35—Panama Canal CHAPTER I—CANAL ZONE REGULATIONS PART 51—AIR NAVIGATION

General Traffic Circuit Rules

Effective September 25, 1973
§ 51.122 (c) and (d), Subpart B of Part 51 of Title 35, Code of Federal Regulations, is amended to read as follows:

§ 51.122 General traffic circuit rules.

(c) Aircraft entering the traffic circuit shall exercise caution and courtesy so as not to cause aircraft already in the circuit to deviate from their course. Aircraft shall enter for runway 35 downwind where Galeta Road intersects with Randolph Road; for runway 17, aircraft shall enter south of New France Field. Straight in approaches to either runway will not be permitted.

(d) Aircraft leaving the traffic circuit shall, when departing runway 35, proceed straight out to the Colon breakwater, and then make a 45° right turn;