the date of the communication; the means of communication; and a description of the communication in sufficient detail to convey adequately its substance.

(c) All records and transcripts prepared pursuant to paragraphs (a) and (b) of this section shall be deposited promptly together with any agreement resulting therefrom, with the Administrator, and shall be available to the Attorney General, the Federal Trade Commission, and the Department of State. Such records and transcripts shall be available for public inspection and copying to the extent set forth in Subpart D. Any person depositing material pursuant to this section shall indicate with particularity what portions, if any, the person believes are not subject to disclosure to the public pursuant to subpart D and the reasons for such belief.

(d) Any meeting between a potential participant and an official of FEA for the purpose of developing a voluntary agreement shall, if not otherwise required to be recorded pursuant to this section, be recorded by such official as provided in § 204.5.

Subpart C—Carrying Out of Voluntary Agreements and Developing and Carrying Out of Plans of Actions

§ 209.31 Purpose and scope.

This subpart establishes the standards and procedures by which persons engaged in the business of producing, transporting, refining, distributing, or storing petroleum products shall carry out voluntary agreements and develop and carry out plans of action which are required to implement the allocation and information provisions of the International Energy Program.

§ 209.32 Initiation of meetings.

(a) Except for meetings of bodies created by the International Energy Agency, any meeting among participants in a voluntary agreement pursuant to this subpart, for the purpose of carrying out such voluntary agreement or developing or carrying out a plan of action pursuant thereto, shall be initiated and chaired by a full-time Federal employee designated by the Administrator.

(b) Except as provided in paragraph (c) of this section, the Administrator shall provide notice of meetings held pursuant to this subpart, in writing, to the Attorney General, the Federal Trade Commission, and to the Speaker of the House and the President of the Senate for delivery to the appropriate committees of Congress. Except during an international energy supply emergency, notice shall also be provided to the public through publication in the FEDERAL REGISTER. Such notice shall identify the time, place, and agenda of the meeting. Notice in the FEDERAL REGISTER shall be published at least seven days prior to the date of the meeting unless emergency circumstances, IEP requirements or other unanticipated circumstances require the period to be shortened.

(c) During an international energy supply emergency, advance notice shall be given to the Attorney General, the Federal Trade Commission and to the Speaker of the House and the President of the Senate for delivery to the appropriate committees of Congress. Such notice may be telephonic or by such other means as practicable, and shall be confirmed in writing.

§ 209.33 Conduct of meetings.

(a) Subject to the provisions of paragraph (c) of this section, meetings held to carry out a voluntary agreement, or to develop or carry out a plan of action pursuant to this subpart, shall be open to all interested persons, subject to limitations of space. Interested persons desiring to attend meetings under this subpart may be required to advise the Administrator in advance.

(b) Interested persons permitted to attend meetings under this section may present data, views, and arguments orally and in writing, subject to such limitations with respect to the manner of presentation as the Administrator may impose.

(c) Meetings held pursuant to this subpart shall not be open to the public to the extent that the President or his delegate finds that disclosure of the proceedings beyond those authorized to attend would be detrimental to the foreign policy interests of the United States, and determines, in consultation with the Administrator, the Secretary of State, and the Attorney General, that a meeting shall not be open to interested persons or that attendance by interested persons shall be limited.

(d) The requirements of this section do not apply to meetings of bodies created by the International Energy Agency except that no participant in a voluntary agreement may attend any meeting of any such body held to carry out a voluntary agreement or to develop or to carry out a plan of action unless a full-time Federal employee is present.

§ 209.34 Maintenance of records.

(a) The Administrator or his delegate shall keep a verbatim transcript of any meeting held pursuant to this subpart except where (1) due to considerations of time or other overriding circumstances, the keeping of a verbatim transcript is not practicable, or (2) principal participants in the meeting are representatives of foreign governments. If any such record other than a verbatim transcript, is kept by a designee who is not a full-time Federal employee, that record shall be submitted to the full-time Federal employee in attendance at the meeting who shall review the record, promptly make any changes he deems necessary to make the record full and complete, and shall notify the designee of such changes.

(b) Participants shall keep a full and complete record of any communication (other than in a meeting held pursuant to this subpart) between or among themselves for the purpose of carrying out a voluntary agreement or developing or carrying out a plan of action under this subpart. The parties to a communication may agree among themselves who shall keep such record. Such record shall include the names of the parties to the communication and the businesses, if any, which they represent; the date of the communication; the means of communication; and a description of the communication in sufficient detail to convey adequately its substance.

(c) All records and transcripts prepared pursuant to paragraphs (a) and (b) of this section shall be deposited promptly together with any agreement resulting therefrom with the Administrator and shall be available to the Attorney General the Federal Trade Commission and the Department of State. Such records and transcripts shall be available for public inspection and copying to the extent set forth in Subpart D. Any person depositing materials pursuant to this section shall indicate with particularity what portions, if any, the person believes are not subject to disclosure to the public pursuant to Subpart D and the reasons for such belief.

(d) Any meeting between a participant and an official of FEA for the purpose of carrying out a voluntary agreement or developing or carrying out a plan of action shall, if not otherwise required to be recorded pursuant to this section, be recorded by such official as provided in § 204.5.

Subpart D—Availability of Information Relating to Meetings and Communications

§ 209.41 Availability of information relating to meetings and communications.

(a) Except as provided in paragraph (b) of this section, records or transcripts prepared pursuant to this subpart shall be available for public inspection and copying in accordance with section 552 of title 5, United States Code and Part 202 of this Title.

(b) Matter may be withheld from disclosure under section 552(b) of title 5 only on the grounds specified in:

(1) Section 552(b)(1), applicable to matter specifically required by Executive Order to be kept secret in the interest of the national defense or foreign policy. This section shall be interpreted to include matter protected under Executive Order No. 11652 of March 8, 1972, establishing categories and criteria for classification, as well as any other such orders dealing specifically with disclosure of IEP related materials;

(2) Section 552(b)(3), applicable to matter specifically exempted from disclosure by statute; and

(3) So much of section 552(b)(4) as relates to trade secrets.

[FR Doc. 76-4312 Filed 2-10-76;3:28 pm]

Title 20—Employees' Benefits

CHAPTER V—EMPLOYMENT AND TRAINING ADMINISTRATION, DEPARTMENT OF LABOR [1]

PART 625—DISASTER UNEMPLOYMENT ASSISTANCE

Amount of Compensation

On December 5, 1975, a document was published in the FEDERAL REGISTER (40 FR 56931) proposing to resolve a conflict between the regulations under the Disaster Relief Act of 1974 and Parts 94 and 95 of the regulations implementing the Comprehensive Employment and Training Act of 1973. Interested parties were given the opportunity to submit, not later than January 5, 1976, data, views or arguments regarding the amendment to resolve the conflict.

No unfavorable comments have been received, and the proposed amendment is hereby adopted with one change. The change is editorial in nature and does not change the substance of the amendment itself. The phrase "workmen's compensation" at § 625.9(b)(1)(vi) is changed to "workers' compensation" to conform to changes in the title of the Department of Labor office concerned with worker compensation programs.

The amendment is adopted with one change as set forth below.

Effective date: March 15, 1976.

Signed at Washington, D.C., on February 9, 1976.

BEN BURDETSKY,
Acting Assistant Secretary for Employment and Training.

§ 625.9 **Amount.**

* * * * *

(b) *Deductions*. The disaster unemployment assistance payable to an applicant for a week shall be reduced by:

(1) The amount of any of the following that an applicant has received for the week or would receive for the week if he filed a claim or application therefor and took all procedural steps necessary under the appropriate law or insurance policy:

(i) Regular unemployment compensation, additional unemployment compensation, extended unemployment compensation, and any other unemployment compensation under a State or Federal unemployment compensation law, or

(ii) A trade readjustment allowance under the Trade Expansion Act of 1962, or

(iii) Any compensation or insurance from any source for loss of wages due to illness or disability, or

(iv) A supplemental unemployment benefit pursuant to a collective bargaining agreement, or

(v) Private income protection insurance, or

(vi) Any workers' compensation by virtue of the death of the head of the household as the result of the major disaster in the major disaster area, prorated by weeks, if the applicant is within the provisions of § 625.8(a)(7).

* * * * *

(Secs. 302(a) and 601, Pub. L. 93-288, 88 Stat. 146, 163 (42 U.S.C. 5142(a), 5201); EO 11795, 39 FR 25939; delegation of authority from the Secretary of Housing and Urban Development to the Secretary of Labor, effective August 5, 1974, 39 FR 33020; and Secretary's Order 4-75, 40 FR 18515. Interpret and apply sec. 407 of the Disaster Relief Act of 1974 (42 U.S.C. 5177)).

[FR Doc.76-4343 Filed 2-12-76;8:45 am]

[1] See 40 FR 547766, Dec. 11, 1975.

PART 650—STANDARD FOR APPEALS PROMPTNESS — UNEMPLOYMENT COMPENSATION

Revision of Criteria

On May 5, 1975, notice of proposed rulemaking was published in the FEDERAL REGISTER (40 F.R. 19481) proposing to amend 20 CFR Part 650 to revise the criteria for promptness in connection with issuance of first level benefit appeals decisions by State unemployment compensation agencies for 1975 and subsequent years. The revised criteria remain higher than the criteria for 1974, but are lower than those previously set for 1975 and later years.

The proposed revision would reduce the percentage of first level benefit appeals decisions to be issued within 30 days from the date of appeal from 75 per cent to at least 60 per cent, and the percentage of decisions to be issued within 45 days from the date of appeal from 85 per cent to 80 per cent. Also proposed was deletion of 20 CFR 650.5(a) as obsolete, and revision of the citation of authority for 20 CFR Part 650.

All comments received with respect to the proposed revision were given due consideration, but the recommendations were not adopted for the following reasons:

1. Comments received from several sources criticized the proposed revision as a relaxation of federal requirements which would impede the prompt payment of unemployment benefits. Those sources expressed the view that the present appeals promptness standard is reasonable, and that it expresses an attainable goal since nine States had met the 1975 criteria at the end of 1974. One comment stated that 25 States were meeting the 1975 criteria by the end of 1974, but the correct number is nine, not 25.

The Department of Labor shares the objective of prompt payment of unemployment benefits when due, and the quickest disposition of appeals reasonably attainable to ensure that that objective is met. The proposed revision does not signify any relaxation of the Department's firm resolve to attain the greatest degree of promptness in the disposition of appeals that is administratively feasible. Improvement has taken place in almost every State since the standard was first adopted three years ago. The national averages for 1974 were more than twice as good as they were for 1972. This was accomplished through this Department's leadership, which the States supported vigorously both individually and collectively through the Interstate Conference of Employment Security Agencies. Even though the Department had hoped to achieve more, it is still the best record in the entire history of the unemployment compensation program.

The proposed revision will establish for 1975 and subsequent years criteria that are more vigorous than the 1974 criteria. When the standard was developed the Department could not have foreseen the appeals workload increases that the States would experience in 1975, and even in November 1974, when the proposed revision was developed, there was no realization of the full scope of the increases that were to come. The question to be faced in view of those increases is whether the States can be expected realistically to meet substantially more demanding criteria than those in effect for 1974. For the criteria to be effective in accomplishing the objective of the standard, they must be set at a level which demands the most that the States realistically can be expected to achieve. Criteria which reach beyond the point of the States' capacity to achieve would invite a large amount of noncompliance. This would undermine the validity of the standard as an instrument with an objective that is realistic and attainable, and could ultimately negate its effect as an enforceable standard.

The setting of effective criteria requires the exercise of the best informed judgments. To develop such judgments, the Department is engaged in continuous monitoring of the States' appeals performance. From this it has been determined what is realistic and attainable. Further, improvement in appeals promptness is not attainable merely by the issuance of a federal standard. Nor is improvement accomplished automatically through increased budget allocations. The leadtime required to recruit and train referees to the point of effective production is a serious handicap to quick response to sudden large increases in benefit appeals.

Although nine States have been able to meet the present criteria, this circumstance does not demonstrate that those criteria are reasonably attainable by the majority of the States. There are geographical and population differences among the States, differences in economic and employment patterns, and other differences which impact on appeals operations and procedures. These elements have been taken into account in setting the criteria in the proposed revision.

Despite the many problems involved in maintaining reasonable appeals promptness under the conditions which emerged late in 1974, the Department intends to continue to press hard in this area, and it is confident of the continued cooperation of the States in achieving the objective of the standard. As noted above, the proposed revision still sets criteria for 1975 and subsequent years that are higher than the 1974 criteria. This is progress, not retrogression. The result will be an improvement over 1974 performance, which was the best ever in the history of the unemployment compensation program.

In pursuing the objective of the standard the Department also will review the criteria; that reexamination is scheduled to take place no later than the latter part of calendar year 1977.

2. In another comment it was suggested that the proposed revision contain a maximum time period within which disposition of all appeals must occur; otherwise administrative laxity would be encouraged in at least 15 percent of the cases. Without a maximum time period, it is feared that the States would schedule first those cases which involve claimants who already have returned to work.

There are a number of uncontrollable factors involved in the appeals program that prevent the establishment of criteria that are rigid and inflexible. Among other things these factors include postponement and adjournment requests made for valid reasons, occasional sharp workload increases which the States do not have the resources to handle, and the leadtime required to recruit and train referees. Flexible criteria hold the greater promise of maintaining the steadily improving appeals promptness record of the States.

Rescheduling the cases of claimants who already have returned to work would not be advantageous to the State and would create processing delays, such as requests for postponements, which otherwise would not be made. It should be noted that training programs for appeals management staff have emphasized that scheduling and hearing appeals on a first in, first out basis is advantageous to a State agency.

3. The Department is urged to make exceptions and create exemptions from the proposed criteria so that States which face particular and unique problems will be better able to meet the criteria. This is not necessary or justified. The requirement of the standard is one of substantial compliance with the promptness criteria stated therein. When a State fails to meet the promptness criteria a determination must be made as to whether the State nonetheless had demonstrated the requisite substantial compliance. Such a determination requires an inquiry into the circumstances that have prevented the State from meeting the specified criteria. If the inquiry demonstrates that the State has achieved the greatest appeals promptness reasonably attainable in its circumstances, the State may be considered to be in substantial compliance. On the other hand, if a State fails to satisfy the criteria due to circumstances that it could have avoided by taking corrective action, and persists in such omissions, a failure of compliance is shown. For these reasons exceptions or exemptions are unnecessary.

Creating exceptions or exemptions from the promptness standard are unjustified because that would make it unnecessarily difficult to obtain overall improvements in appeals performance, and would be a serious departure from the objectives sought through the standard.

4. In another comment it was recommended that interstate appeals be excluded from the standard. This recommendation is rejected on the grounds that to apply separate promptness criteria to such appeals would increase the promptness of intrastate appeals at the expense of interstate appeals that even now reflect time lapse that is entirely too long.

5. Comments were received concerning a variety of problems in the appeals process and budgeting, without making any specific recommendations for a change in the proposed revision. While the comments are relevant, the responses to other comments given above appear to cover the points in these comments.

6. Comment was also received expressing an interest in participating in any hearing scheduled on the proposed revision. However, no hearings have been scheduled and none are contemplated.

I accordingly adopt the proposed revisions in 20 CFR Part 650 without change as set forth below.

Effective date: March 15, 1976.

Signed at Washington, D.C., on February 9, 1976.

BEN BURDETSKY,
Acting Assistant Secretary for Employment and Training.

Part 650 of Title 20 Code of Federal Regulations is amended as follows:

1. Section 650.4(b) is amended to read as follows:

§ 650.4 Review of State law and criteria for review of State compliance.

* * * * *

(b) A State will be deemed to comply substantially with the State law requirements set forth in § 650.3(a) with respect to first level appeals if, for the calendar year 1975 and ensuing years, the State has issued at least 60 percent of all first level benefit appeal decisions within 30 days of the date of appeal, and at least 80 percent of all first level benefit appeal decisions within 45 days. These computations will be derived from the State's regular reports required pursuant to the Employment Security Manual, Part III, Sections 4400–4450.[1]

* * * * *

2. Section 650.5 is amended by deleting paragraph (a), and the section as amended is revised to read as follows:

§ 650.5 Annual appeals performance plan.

No later than December 15, 1974, and the 15th of December of each ensuing year, each State shall submit an appeals performance plan showing how it will operate during the following calendar year so as to achieve or maintain the issuance of at least 60 percent of all first level benefit appeals decisions within 30 days of the date of appeal, and 80 percent within 45 days.

[1] This footnote remains unchanged.

3. In the interest of completeness and accuracy, the blanket authority for Part 650 is amended to read as follows:

AUTHORITY: Sec. 1102 of the Social Security Act, 42 U.S.C. 1302; Secretary's Order No. 4–75, dated April 16, 1975. Interpret and apply secs. 303(a)(1), 303(a)(3), and 303(b)(2) of the Social Security Act. (42 U.S.C. 503(a)(1), 503(a)(3), 503(b)(2)).

[FR Doc. 76-4342 Filed 2-12-76;8:45 am]

Title 26—Internal Revenue

CHAPTER I—INTERNAL REVENUE SERVICE, DEPARTMENT OF THE TREASURY

SUBCHAPTER A—INCOME TAX

[T.D. 7404]

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Extension of Period for Replacing Old Residence for Purposes of Nonrecognition of Gain Under Section 1034

By a notice of proposed rule making appearing in the FEDERAL REGISTER for Friday, November 14, 1975 (40 FR 53035), amendments to the Income Tax Regulations (26 CFR Part 1) under section 1034 of the Internal Revenue Code of 1954 (relating to the nonrecognition of gain upon the sale or exchange of a residence) were proposed. The purpose of the proposed amendments was to conform those regulations to the provisions of section 207 of the Tax Reduction Act of 1975 (89 Stat. 32) and section 6(a) of the Act of January 2, 1975 (Public Law 93–597, 88 Stat. 1953). After consideration of all such relevant matter as was presented by interested persons regarding the rules proposed, the amendments of the regulations as proposed are adopted by this document without change.

The amendments extend the time periods which are taken into consideration in determining whether a taxpayer who disposes of his principal residence after December 31, 1974, and acquires another principal residence shall defer the recognition of gain upon the sale or exchange of the former residence. The amendments also eliminate, for the period after June 30, 1973, the requirement that members of the U.S. Armed Forces serve during an induction period in order to qualify for special treatment under section 1034(h).

Under certain provisions of § 1.1034–1 (b), (c), (d), (g), and (h), the period within which the taxpayer must purchase and use a new principal residence in order to qualify for nonrecognition of gain upon the sale of his former principal residence begins 18 months prior to the date of the sale of the former residence and ends 18 months after that date. If the taxpayer constructs a new principal residence, gain will not be recognized if the construction begins not later than

18 months after the date of the sale of the former residence and the taxpayer uses the new residence within two years after that date. Only those construction costs which are attributable to the period beginning 18 months before the date of the sale and ending two years after the date of the sale are taken into account under § 1.1034–1(b)(7). The amendments also permit nonrecognition of gain on only one sale within an 18 month period.

For sales of old residences prior to January 1, 1975, each period of 18 months described above is one year, and each period of two years is 18 months.

ADOPTION OF AMENDMENTS TO THE REGULATIONS

On Friday, November 14, 1975, a notice of proposed rule making was published in the FEDERAL REGISTER (40 FR 53055) with respect to the amendments of the Income Tax Regulations (26 CFR Part 1) under section 1034 of the Internal Revenue Code of 1954 (relating to the nonrecognition of gain upon the sale or exchange of a residence). After consideration of all such relevant matter as was presented by interested persons regarding the rules proposed, the amendments of the regulations as proposed are hereby adopted.

(This Treasury decision is issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).)

[SEAL] DONALD C. ALEXANDER,
Commissioner of Internal Revenue.

Approved: February 5, 1976.

WILLIAM M. GOLDSTEIN,
Acting Assistant Secretary of the Treasury.

Paragraph 1. Section 1.1034 is amended by revising subsections (a), (c)(4) and (5), (d), and (h) of section 1034 and by revising the historical note. These amended provisions read as follows:

§ 1.1034 Statutory provisions; sale or exchange of residence.

SEC. 1034 *Sale or exchange of residence*—(a) *Non-recognition of gain.* If property (in this section called "old residence") used by the taxpayer as his principal residence is sold by him after December 31, 1953, and, within a period beginning 18 months before the date of such sale and ending 18 months after such date, property (in this section called "new residence") is purchased and used by the taxpayer as his principal residence, gain (if any) from such sale shall be recognized only to the extent that the taxpayer's adjusted sales price (as defined in subsection (b)) of the old residence exceeds the taxpayer's cost of purchasing the new residence.

* * * * *

(c) *Rules for application of section.* * * *

(4) If the taxpayer, during the period described in subsection (a), purchases more than one residence which is used by him as his principal residence at some time within 18 months after the date of the sale of the old residence, only the last of such residences so used by him after the date of such sale shall constitute the new residence.

(5) In the case of a new residence the construction of which was commenced by the taxpayer before the expiration of 18 months after the date of the sale of the old residence, the period specified in subsection (a), and the 18 months referred to in paragraph (4) of this subsection, shall be treated as including a period of 2 years beginning with the date of the sale of the old residence.

(d) *Limitation.* Subsection (a) shall not apply with respect to the sale of the taxpayer's residence if within 18 months before the date of such sale the taxpayer sold at a gain other property used by him as his principal residence, and any part of such gain was not recognized by reason of subsection (a) or section 112(n) of the Internal Revenue Code of 1939.

* * * * *

(h) *Members of Armed Forces.* The running of any period of time specified in subsection (a) or (c) (other than the 18 months referred to in subsection (c)(4)) shall be suspended during any time that the taxpayer (or his spouse if the old residence and the new residence are each used by the taxpayer and his spouse as their principal residence) serves on extended active duty with the Armed Forces of the United States after the date of the sale of the old residence except that any such period of time as so suspended shall not extend beyond the date 4 years after the date of the sale of the old residence. For purposes of this subsection, the term "extended active duty" means any period of active duty pursuant to a call or order to such duty for a period in excess of 90 days or for an indefinite period.

* * * * *

[Sec. 1034 as amended by sec. 46(b), Technical Amendments Act 1958 (72 Stat. 1642); sec. 206(b)(4), Rev. Act 1964 (78 Stat. 40); sec. 6(a), Act of Jan. 2, 1975 (Pub. Law 93–597, 88 Stat. 1953); sec. 207, Tax Reduction Act 1975 (89 Stat. 32)]

Par. 2. Section 1.1034–1 is amended by revising paragraphs (b)(7), (c)(1), (4)(ii) and (iii), (d)(1), (g)(1) and (4), and (h)(2)(ii). These amended provisions read as follows:

§ 1.1034–1 Sale or exchange of residence.

* * * * *

(b) *Definitions.* * * *

(7) "Cost of purchasing the new residence" means the total of all amounts which are attributable to the acquisition, construction, reconstruction, and improvements constituting capital expenditures, made during the period beginning 18 months (one year in the case of a sale of an old residence prior to January 1, 1975) before the date of sale of the old residence and ending either (i) 18 months (one year in the case of a sale of an old residence prior to January 1, 1975) after such date in the case of a new residence purchased but not constructed by the taxpayer, or (ii) two years (18 months in the case of a sale of an old residence prior to January 1, 1975) after such date in the case of a new residence the construction of which was commenced by the taxpayer before the expiration of 18 months (one year in the case of a sale of an old residence prior to January 1, 1975) after such date (section 1034 (a), (c)(2) and (c)(5); for detailed explanation, see paragraph (c)(4) of this section; for special rule applicable in some cases to husband and wife, see paragraph (f) of this section; see also paragraph (b)(9) of this section for definition of "purchase").

* * * * *

(c) *Rules for application of section 1034*—(1) *General rule; limitations on applicability.* Gain realized from the sale (after December 31, 1953) of an old residence will be recognized only to the extent that the taxpayer's adjusted sales price of the old residence exceeds the taxpayer's cost of purchasing the new residence, provided that the taxpayer either (i) within a period beginning 18 months (one year in the case of a sale of an old residence prior to January 1, 1975) before the date of such sale and ending 18 months (one year in the case of a sale of an old residence prior to January 1, 1975) after such date purchases property and uses it as his principal residence, or (ii) within a period beginning 18 months (one year in the case of a sale of an old residence prior to January 1, 1975) before the date of such sale and ending two years (18 months in the case of a sale of an old residence prior to January 1, 1975) after such date uses as his principal residence a new residence the construction of which was commenced by him at any time before the expiration of 18 months (one year in the case of a sale of an old residence prior to January 1, 1975) after the date of the sale of the old residence (section 1034(a) and (c)(5); for detailed explanation of use as "principal residence" see subparagraph (3) of this paragraph). The rule stated in the preceding sentence applies to a new residence purchased by the taxpayer before the date of sale of the old residence provided the new residence is still owned by him on such date (section 1034(c)(3)). Whether the construction of a new residence was commenced by the taxpayer before the expiration of 18 months (one year in the case of a sale of an old residence prior to January 1, 1975) after the date of the sale of the old residence will depend upon the facts and circumstances of each case. Section 1034 is not applicable to the sale of a residence if within the previous 18 months (previous year in the case of a sale of an old residence prior to January 1, 1975) the taxpayer made another sale of residential property on which gain was realized but not recognized (section 1034(d)). For further details concerning limitations on the application of section 1034, see paragraph (d) of this section.

* * * * *

(4) *Cost of purchasing new residence.* * * *

(ii) The taxpayer's cost of purchasing the new residence includes only so much of such cost as is attributable to acquisition, construction, reconstruction, or improvements made within the period of three years or 42 months (two years or 30 months in the case of a sale of an old residence prior to January 1, 1975), as the case may be, in which the purchase and use of the new residence must be made in order to have gain on the sale of the old residence not recognized under this section. Thus, if the construction of the new residence is begun three years before the date of sale of the old residence and completed on the date of sale of the old residence, only that portion of the cost which is attributable to the last 18 months (last year in the case of a sale of an old residence prior to January 1, 1975) of such construction constitutes the taxpayer's cost of purchasing the new residence, for purposes of section 1034. Furthermore, the taxpayer's cost of purchasing the new residence includes only such amounts as are properly chargeable to capital account rather than to current expense. As to what constitutes capital expenditures, see section 263.

(iii) The provisions of this subparagraph may be illustrated by the following example:

Example. M began the construction of a new residence on January 15, 1974, and completed it on October 14, 1974. The cost of $45,000 was incurred ratably over the 9-month period of construction. On December 14, 1975, M sold his old residence and realized a gain. In determining the extent to nized under section 1034, M's cost of constructing the new residence shall include only the $20,000 which was attributable to the June 15–October 14, 1974, period (4 months at $5,000). The $25,000 balance of the cost of constructing the new residence was not attributable to the period beginning 18 months before the date of the sale of the old residence and ending two years after such date and, under section 1034, is not properly a part of M's cost of constructing the new residence.

(d) *Limitations on application of section 1034.* (1) If a residence is purchased by the taxpayer prior to the date of the sale of the old residence, the purchased residence shall, in no event, be treated as a new residence if such purchased residence is sold or otherwise disposed of by him prior to the date of the sale of the old residence (section 1034(c)(3)). And, if the taxpayer, during the period within which the purchase and use of the new residence must be made in order to have any gain on the sale of the old residence not recognized under this section, purchases more than one property which is used by him as his principal residence during the 18 months (or two years in the case of the construction of the new residence) succeeding the date of the sale of the old residence, only the last of such properties shall be considered a new residence (section 1034(c)(4)). In the case of a sale of an old residence prior to January 1, 1975, the period of 18 months (or two years) referred to in the preceding sentence shall be one year (or 18 months). If within 18 months (one year in the case of a sale of an old residence prior to January 1, 1975) before the date of the sale of the old residence, the taxpayer sold other property used by him as his principal residence at a gain, and any part of such gain was not recognized under this section or section 112(n) of the Internal Revenue Code of 1939, this section shall not apply with respect to the sale of the old residence (section 1034(d)).

* * * * *

(g) *Members of Armed Forces.* (1) Section 1034(h) provides a special rule for members of the Armed Forces with respect to the period after the sale of the old residence within which the acquisition of a new residence may result in a non-recognition of gain on such sale. The running of the period of 18 months (one year in the case of a sale of an old residence prior to January 1, 1975) after the sale of the old residence in the case of the purchase of a new residence, or the period of two years (18 months in the case of a sale of an old residence prior to January 1, 1975) after such sale in the case of the construction of a new residence, is suspended during any time that the taxpayer serves on extended active duty with the Armed Forces of the United States. (This paragraph applies to time served on extended active duty prior to July 1, 1973, only if such extended active duty occurred during an induction period as defined in section 112(c)(5) as in effect prior to July 1, 1973.) However, in no event may such suspension extend for more than four years after the date of the sale of the old residence the period within which the purchase or construction of a new residence may result in a nonrecognition of gain. For example, if the taxpayer is on extended active duty with the Army from January 1, 1975, to June 30, 1976, and if he sold his old residence on January 10, 1975, the latest date on which the taxpayer may use a new residence constructed by him and have any part of the gain on the sale of his old residence not recognized under this section is June 30, 1978 (the date two years following the taxpayer's termination of active duty). However, if this taxpayer were on extended active duty with the Army from January 1, 1975, to December 31, 1978, the latest date on which he might use a new residence constructed by him and have any part of the gain on the sale of his old residence not recognized under this section would be January 10, 1979 (the date four years following the date of the sale of the old residence).

* * * * *

(4) The running of the period of 18 months (or two years) after the date of sale of the old residence referred to in section 1034(c)(4) and in paragraph (d) of this section is not suspended. The running of the 18-month period prior to the date of the sale of the old residence within which the new residence may be purchased in order to have gain on the sale of the old residence not recognized under this section is also not suspended. In the case of a sale of an old residence prior to January 1, 1975, the periods of 18 months (or two years) referred to in each of the two preceding sentences shall be one year (or 18 months).

* * * * *

(h) *Special rules for involuntary conversions.* * * *

(2) *Election to treat condemnation of personal residence as sale.* * * *

(ii) If the taxpayer elects to be governed by the provisions of section 1034, section 1033 will have no application. Thus, a taxpayer who elects under section 1034(i)(2) to treat the seizure, requisition, or condemnation of his principal residence (but not the destruction), or the sale or exchange of such residence under threat or imminence thereof, as a sale for the purposes of section 1034 must satisfy the requirements of section 1034 and this section. For example, under section 1034 a taxpayer generally must replace his old residence with a new residence which he uses as his principal residence, within a period beginning 18 months (one year in the case of a sale of an old residence prior to January 1, 1975) before the date of disposition of his old residence, and ending 18 months (one year in the case of a sale of an old residence prior to January 1, 1975) after such date. However, in the case of a new residence the construction of which was commenced by the taxpayer within such period, the replacement period shall not expire until 2 years (18 months in the case of a sale of an old residence prior to January 1, 1975) after the date of disposition of the old residence.

* * * * *

[FR Doc.76-4367 Filed 2-12-76;8:45 am]

SUBCHAPTER C—EMPLOYMENT TAXES

[T.D. 7405]

PART 33—TEMPORARY EMPLOYMENT TAX REGULATIONS UNDER 26 U.S.C. 3121(k), RELATING TO WAIVER OF EXEMPTION BY RELIGIOUS, CHARITABLE, AND CERTAIN OTHER ORGANIZATIONS

Temporary Rules Relating to Repayment of Interest in the Case of Certain Retroactive Elections of Social Security Coverage by Tax-Exempt Organizations

This document contains a temporary employment tax regulation (26 CFR Part 33) which will remain in force and effect until superseded by a permanent regulation. The purpose of this temporary regulation is to provide immediate guidance to organizations described in section 501(c)(3) of the Internal Revenue Code of 1954 electing, under section 3121(k) of the Code (relating to the waiver of exemption from social security taxes by religious, charitable, and certain other organizations), coverage for their employees under title II of the Social Security Act.

The regulation contains a rule which applies in those cases where a waiver certificate, which an organization described in section 501(c)(3) of the Code files in order to elect coverage for its employees under title II of the Social Security Act, is to be given retroactive effect. The rule provides that for a certificate making such an election of retroactive coverage to be considered filed with the Internal Revenue Service, the organization must first repay interest the organization received in connection with a claim for credit or refund of social security taxes in those cases where the claim was based upon the organization's exemption from paying such taxes. However, such interest must be repaid only to the extent it relates to any taxes for which the organization or its employees would be liable by reason of the waiver certificate. In the case of a waiver certificate that has been filed prior to the payment of such a refund to the organization, no credit or refund in respect of taxes for which the certificate waives the exemption is allowable.

If the interest due is repaid on or before the last day of the calendar month following the calendar quarter in which the certificate is furnished to the Internal Revenue Service, then the provision provides that the certificate shall be considered filed on the date it was originally furnished. If the repayment occurs after such day, the certificate shall be considered filed on the date of the repayment.

An amendment to the Employment Tax Regulations (26 CFR Part 31) under section 3121(k) of the Code is proposed in a notice of proposed rulemaking published in today's FEDERAL REGISTER (41 FR 6776). That proposed amendment, upon its promulgation as a Treasury decision, will supersede this temporary regulation.

Adoption of regulations. In order to prescribe a temporary regulation, which shall remain in force and effect until superseded by permanent regulations, relating to the waiver of exemption from social security taxes by religious, charitable, and certain other organizations, the following regulation is hereby adopted:

§ 33.1 Administrative provisions applicable when certificate waiving exemption has retroactive effect.

An organization described in section 501(c)(3) of the Internal Revenue Code of 1954 may file a waiver certificate pursuant to section 3121(k)(1)(A) of the Code and § 31.3121(k)-1 of Part 31 of this chapter (Employment Tax Regulations) certifying that it desires to have the insurance system established by title II of the Social Security Act extended to service performed by its employees. Section 3121(k)(1)(B)(iii) provides that such a certificate may be given the effect of providing for employees to be covered under title II of the Social Security Act for calendar quarters preceding the calendar quarter in which the certificate is filed. In cases where the waiver certificate is to be given such retroactive effect, the certificate shall not be considered filed with the Internal Revenue Service unless interest paid to the organization (or credited to its account) in connection with a claim for credit or refund of taxes, which claim was based upon the exemption from taxes the organization is waiving by such certificate, is repaid. The interest so paid must be repaid only to the extent such interest relates to any taxes for which the organization or its employees would be liable by reason of the waiver certificate. Furthermore, when a waiver certificate has been filed prior to the payment of a refund of taxes based upon the exemption from taxes the organization is waiving, no credit or refund in respect of the taxes for which the exemption has been waived shall be allowed. If repayment of the interest is made as required by this section, on or before the last day of the calendar month following the calendar quarter in which the certificate is furnished to the Internal Revenue Service, such certificate shall be considered to have been filed on the date it was originally furnished. If repayment occurs after that day, such certificate shall be considered to have been filed on the date of the repayment of the interest. References in this subparagraph to a waiver certificate refer also to any supplement to such a certificate.

Because of the need for immediate guidance with respect to the provisions contained in this Treasury decision, it is found impracticable to issue it with notice and public procedure thereon under subsection (b) of section 553 of Title 5 of the United States Code or subject to the effective date limitation of subsection (d) of that section.

(Sec. 7805 Internal Revenue Code of 1954 (68A Stat. 917 (26 U.S.C. 7805)))

DONALD C. ALEXANDER,
Commissioner of Internal Revenue.

Approved: February 10, 1976.

WILLIAM M. GOLDSTEIN,
Deputy Assistant Secretary of the Treasury.

[FR Doc.76-4456 Filed 2-12-76;8:45 am]

Title 31—Money and Finance: Treasury

SUBTITLE A—OFFICE OF THE SECRETARY OF THE TREASURY

PART 12—EQUAL OPPORUNITY IN EMPLOYMENT: CONTRACT COMPLIANCE

Subpart B—Hearing Rules for Sanction Proceedings

By notice of proposed rulemaking appearing in the FEDERAL REGISTER on October 22, 1975 (40 FR 49343), it was proposed that a new Part 12, Subpart B be added to Subtitle A of Title 31 of the Code of Federal Regulations dealing with hearing rules for sanction proceedings pursuant to Executive Order 11246. No comments were received on that notice of proposed rulemaking. The Office of Federal Contract Compliance Programs, U.S. Department of Labor, approved the proposed hearing rules for sanction proceedings by letter dated January 15, 1976.

The hearing rules will apply to determine whether a Department of the Treasury contractor is in compliance with 41 CFR Part 60 and 41 CFR Part 10-12. If after the issuance of a show cause notice the contractor does not within 30 days show cause why enforcement proceedings pursuant to Executive Order 11246 should not be instituted, the agency will issue a notice of proposed cancellation, termination, or ineligibility. The hearing rules will govern the procedures which thereby ensue. The hearing rules are modeled on the Department of Labor hearing rules contained at 41 CFR 60-1.26.

The Department of the Treasury plans to recodify and revise, at a later date, its regulations on equal opportunity in employment for contractors, now contained at 41 CFR Part 10-12, as 31 CFR Part 12, Subpart A. Therefore the hearing rules for sanction proceedings are being published as Subpart B.

The regulations are to be effective March 15, 1976.

Dated: February 6, 1976.

STEPHEN S. GARDNER,
Deputy Secretary.

Therefore, a new Part 12, Subpart B is added to Subtitle A of Title 31 of the Code of Federal Regulations to read as follows:

Subpart B—Hearing Rules of Sanction Proceedings

AUTHORITY: Executive Order 11246, as amended.

Subpart B—Hearing Rules for Sanction Proceedings

§ 12.101 Applicability of rules, waiver, modification.

(a) *Applicability of rules.* These rules of procedure supplement the provisions of 41 CFR 60-1.26(b). The rules govern the practice and procedure for hearings conducted with respect to the imposition of sanctions under sections 208(b), 209 (a)(5) and (6) of Executive Order No. 11246, as amended.

(b) *Waiver, modification.* Upon notice to all parties, the hearing examiner or the Under Secretary may, with respect to matters pending before him modify or waive any rule herein upon a determination that no party will be prejudiced and that the ends of justice will be served thereby.

§ 12.102 Definitions.

As used in these rules:

(a) "Department" means the Department of Treasury.

(b) "Director" means the Director of the Equal Opportunity Program, Department of the Treasury.

(c) "Notice" means, unless the context clearly indicates otherwise, the Notice of Proposed Cancellation, Termination or Ineligibility.

(d) "The order" means Executive Order 11246 of September 24, 1965 (30 F.R. 12319), as amended (32 F.R. 14303).

(e) "Party" means a respondent; the Director of the Equal Opportunity Program, Department of the Treasury; and any person or organization participating in a proceeding pursuant to § 15.12(a).

(f) "Respondent" means a person or organization against whom sanctions are proposed because of alleged violations of Executive Order 11246, and the rules, regulations, and orders thereunder.

(g) "Under Secretary" means Under Secretary of the Department of the Treasury.

§ 12.103 Computation of time.

In computing any period of time under these rules or in an order issued hereunder, the time begins with the day following the act, event, or default, and includes the last day of the period, unless it is a Saturday, Sunday, or legal holiday observed in the District of Columbia, in which event it includes the next following business day.

§ 12.104 Form.

Documents and pleadings filed pursuant to a proceeding herein shall be dated, the original signed in ink, shall show the docket description and title of the proceeding, and shall show the title, if any, and address of the signatory. Copies need not be signed, but the name of the person signing the original shall be reproduced.

§ 12.105 Filing; service.

(a) *Manner of service.* Service upon any party shall be made by the party filing the document or pleading by delivering a copy or mailing a copy to the last known address: *Provided, however,* That the notice of hearing shall be sent by registered mail, return receipt requested, pursuant to 41 CFR 60-1.26(b)(1).

(b) *Upon whom served.* All papers shall be served upon counsel of record and upon parties not represented by counsel.

(c) *Proof of service.* A certificate of the person serving the pleading or other document by personal delivery or by mailing, setting forth the manner of said service shall be prima facie proof of service.

(d) *Number of copies.* An original and two copies of documents shall be filed with the hearing examiner designated to hear the case. If no hearing examiner has been assigned, the original and two copies of the documents shall be filed with the Under Secretary.

§ 12.106 Notice of proposed cancellation, termination, or ineligibility.

(a) Actions shall be commenced under this part and 41 CFR 60-1.26(b)(2) by service of a written notice on the contractor or subcontractor against whom the Director seeks the imposition of sanctions. The notice shall indicate whether the Director proposes to request the Under Secretary to cancel or terminate, or cause to be canceled or terminated, in whole or in part, any one or more contracts or subcontracts or to declare the prime contractor or subcontractor ineligible for further contracts or subcontracts under section 209 of the order. The notice shall contain a concise jurisdictional statement, a short and plain statement of the matter furnishing a basis for the imposition of sanctions, an enumeration of the sanctions being proposed, and a citation of the provisions of the order or regulations pursuant to which the requested action may be taken.

(b) *Posting the Notice.* Immediately upon receipt of the Notice, the Respondent shall post it at the affected worksite in a place conspicuous to Respondent's employees.

§ 12.107 Answer.

(a) *Filing and service.* Within 14 days after receipt of the notice of proposed cancellation, termination, or ineligibility, Respondent shall file an answer and a hearing request with the hearing examiner or, if no hearing examiner has been designated, with the Under Secretary.

(b) *Contents; failure to file.* The answer shall admit or deny specifically, and in detail, matters set forth in each allegation of the notice, unless Respondent is without knowledge, in which case the answer shall so state, and the statement shall be deemed a denial. Matters not specifically denied shall be deemed admitted. Matters alleged as affirmative defenses shall be separately stated and numbered. Failure to file an answer shall constitute an admission of all facts recited in the notice.

(c) *Hearing request.* The request for a hearing shall be included as a separate paragraph of the answer.

§ 12.108 Amendments.

The Director may amend the notice once as a matter of course before an answer is filed, and Respondent may amend its answer once as a matter of course not later than 10 days after the filing of the original answer. Other amendments of the notice or of the answer to the notice shall be made only by leave of the hearing examiner. An amended notice shall be answered within 7 days of its service, or within the time for filing an answer to the original notice, whichever period is longer.

§ 12.109 Notice of hearing.

In response to Respondent's request for a hearing, a notice of hearing shall be served on the Respondent pursuant to 41 CFR 60-1.26(b)(1). Such notice shall contain the time, place, and nature of the hearing and the legal authority under which the proceedings are to be held.

§ 12.110 Motions; disposition of motions.

(a) *Motions.* Motions shall state the relief sought, the authority relied upon and the facts alleged, and shall be filed with the hearing examiner, or with the Under Secretary if no hearing examiner has been designated. If made before or after the hearing itself, these matters shall be in writing. If made at the hearing, they may be stated orally. Within 7 days after a written motioin is received, or such other time period as may be fixed, any party may file a response to a motion.

(b) *Disposition of motions.* The hearing examiner, or Under Secretary, may not grant a written motion prior to expiration of the time for filing responses thereto, except upon consent of the parties or following a hearing thereon, but may overrule or deny such motion without awaiting response: *Provided, however,* That prehearing conferences, hearings, and decisions need not be delayed pending disposition of motions. Rulings by the hearing examiner shall not be appealed prior to the transfer of the case to the Under Secretary, but shall be considered by the Under Secretary when the case is transferred to him for decision.

§ 12.111 Participation by interested persons.

(a)(1) To the extent that proceedings hereunder involve employment of persons covered by a collective bargaining agreement, and compliance may necessitate a revision of such agreement, any labor organization which is a signatory to the agreement shall have the right to participate as a party.

(2) Other persons or organizations shall have the right to participate as parties if the final decision of the Under Secretary could adversely affect them or the class they represent and such participation may contribute materially to the proper disposition of the proceedings.

(3) Any person or organization wishing to participate as a party under this paragraph shall file and serve upon the hearing examiner, or upon the Under Secretary, if no hearing examiner has been designated, and all parties a petition within 14 days after the commencement of the action. Such petition shall concisely state (i) petitioner's interest in the proceedings, (ii) who will appear for petitioner, (iii) the issues on which petitioner wishes to participate, and (iv) whether petitioner intends to present witnesses.

(4) The hearing examiner shall determine whether each petitioner has the requisite interest in the proceedings and shall permit or deny participation accordingly. Where petitions to participate as parties are made by individuals or groups with common interest, the hearing examiner may request all such petitioners to designate a single representa-

tive to represent all such petitioners: *Provided*, That the representative of a labor organization qualifying to participate under subparagraph (1) of this paragraph must be permitted to participate in the proceeding. The hearing examiner shall give each petitioner written notice of the decision on his petition; and 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 hearing examiner shall give written notice to each party of each petition granted.

(b) (1) Any other interested person or organization wishing to participate as amicus curiae shall file a petition before the commencement of the final hearing with the hearing examiner. Such petition shall concisely state (i) the petitioner's interest in the hearing, (ii) who will represent the petitioner, and (iii) the issues on which petitioner intends to present argument. The hearing examiner may grant the petition if he finds that the petitioner has a legitimate interest in the proceedings, and that such participation may contribute materially to the proper disposition of the issues. An amicus curiae is not a party but may participate as provided in this paragraph.

(2) An amicus curiae may present a brief oral statement at the hearing, at the point in the proceedings specified by the hearing examiner. He may submit a written statement of position to the hearing examiner prior to the beginning of a hearing, and shall serve a copy on each party. He may also submit a brief or written statement at such time as the parties submit briefs and exceptions, and shall serve a copy on each party.

§ 12.112 Admissions as to facts and documents.

Not later than 14 days prior to the date of the hearing, except for good cause shown, or not later than 14 days prior to such earlier date as the hearing examiner may order, 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 designated in the request (not less than 7 days, and not more than 10 days, after receipt of service thereof) the party to whom the request is directed serves upon the requesting party a sworn 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.

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

(a) After commencement of the action, 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 unprivileged documents, phonorecords, and other compilations which contain or may lead to relevant information 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 commencement of the action, any party may serve on any other party a request to permit entry upon designated property which may be relevant to the issues in the proceeding and which is 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 or area.

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

(d) The party upon whom the request is served shall respond within 10 days after receipt of 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 with respect to any objection or to other failure to respond.

§ 12.114 Depositions upon oral examination.

(a) *Depositions; notice of examination.* After commencement of the action, any party may take the testimony of any person, including a party, having personal or expert knowledge of the matters in issue, by deposition upon oral examination for the purposes of discovery and/or the perpetuation of testimony. A party desiring to take a deposition shall give reasonable notice in writing to every other party to the proceeding. The notice shall state the time and place for taking the deposition and the name and address of each person to be examined, if known, and if the name is not known, a general description sufficient to identify him or the particular class or group to which he belongs. The notice shall also set forth the categories of documents the witness is to bring with him to the deposition, if any. A copy of the notice shall be furnished to the person to be examined unless his name is unknown.

(b) *Production of witness; obligation of parties; objections.* It shall be the obligation of each party to produce for examination any person, along with such documents as may be requested, at the time and place, and on the date, set forth in the notice, if that party has control over such person. Each party shall be deemed to have control over its officers, agents, employees, and members. Depositions shall be held within the county in which the witness resides or works. The party or prospective witness may file with the hearing examiner, or with the Under Secretary, if no hearing examiner has been assigned, an objection within 7 days after the identity of such witness first becomes known, stating with particularity the reasons why the party cannot or ought not to produce a requested witness. The party serving the notice may move for an order with respect to such objection or failure to produce a witness. All errors or irregularities in compliance with the provisions of this section shall be deemed waived unless a motion to suppress the deposition or some part thereof is made with reasonable promptness after such defect is noted or, with due diligence, might have been ascertained.

(c) *Before whom taken; scope of examination; failure to answer.* Depositions may be taken before any officer authorized to administer oaths by the laws of the United States or of the place where the deposition is held. At the time and place specified in the notice, the officer designated to take the deposition shall permit each party to examine and cross-examine the witness under oath upon any unprivileged matter which is relevant to the subject matter of the proceeding, or which is reasonably calculated to lead to the production of relevant and otherwise admissible evidence. All objections to questions, except as to the form thereof, and all objections to evidence are reserved until the hearing. A refusal or failure on the part of any person under the control of a party to answer a question shall operate to create a presumption that the answer, if given, would be unfavorable to the controlling party, unless the question is subsequently ruled improper by the hearing examiner or the hearing examiner rules that there was valid justification for the witness' failure or refusal to answer the question: *Provided*, That the examining party shall note on the record during the deposition the question which the deponent has failed, or refused to answer, and state his intention to invoke the presumption if no answer is forthcoming.

(d) *Subscription; certification; filing.* The testimony shall be reduced to typewriting by the officer taking the deposition or under his direction, and shall be subscribed by the witness in the presence of the officer who shall attach his certificate stating that the witness was duly sworn by him and that the deposition is a true record of the testimony and exhibits given by the witness, and that said officer is not of counsel or attorney to any of the parties nor interested in the proceeding. If the deposition is not signed by the witness because he is ill, dead, cannot be found, or refuses to sign it, such fact shall be noted in the certificate of the officer and the deposition may then be used as fully as though signed. The officer shall immediately deliver any original copy of the transcript, together with his certificate, in person or by mail to the hearing examiner, or to the Under Secretary, if no hearing examiner has been assigned. Copies of the transcript and certificate shall be furnished to all persons desiring them, upon payment of reasonable charges thereof, unless distribution is restricted by order of the hearing examiner for good cause shown.

(e) *Rulings on admissibility; use of deposition.* Subject to the provisions of this section, 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. Any part or all of a deposition, so far as admissible in the discretion of the hearing examiner, may be used against any party who was present or represented at the taking of the deposition or who had reasonable notice thereof, in accordance with the following provisions:

(1) Any deposition may be used by any party for the purpose of contradicting or impeaching the testimony of the deponent as a witness.

(2) The deposition of a party or of anyone who at the time of taking the deposition was an officer, director, or managing agent, or was designated to testify on behalf of a public or private corporation, partnership, association, or governmental agency which is a party may be used by the adverse party for any purpose.

(3) The deposition of a witness, whether or not a party, may be used by any party for any purpose if the hearing examiner finds: (i) That the witness is dead; or (ii) that the witness is unable to attend or testify because of age, illness, infirmity, or imprisonment; or (iii) that the party offering the deposition has been unable to procure the attendance of the witness by notice; or (iv) upon application and notice, that such exceptional circumstances exist as to make it desirable to allow the deposition to be used.

(4) If only part of a deposition is introduced in evidence by a party, any party may introduce any other parts by way of rebuttal and otherwise.

(f) *Stipulations.* If the parties so stipulate in writing, depositions may be taken before any person at any time or place, upon any notice and in any manner, and when so taken may be used like other depositions.

§ 12.115 Designation.

Hearings shall be held before a hearing examiner designated by the Under Secretary. After service of an order designating a hearing examiner to preside, and until such examiner makes his decision, motions and petitions shall be submitted to him. In the case of the death, illness, disqualification, or unavailability of the designated hearing examiner, another hearing examiner may be designated to take his place.

§ 12.116 Authority and responsibilities.

The hearing examiner shall propose findings and conclusions to the Under Secretary on the basis of the record before him. In order to do so, he shall have the duty to conduct a fair hearing, to take all necessary action to avoid delay, and to maintain order. He shall have all powers necessary to those ends, including, but not 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 by consent of the parties or upon his own motion;

(b) Require parties to state their position with respect to the various issues in the proceeding;

(c) Require parties to produce for examination those relevant witnesses and documents under their control;

(d) Administer oaths;

(e) Rule on motions, and other procedural items on matters pending before him;

(f) Regulate the course of the hearing and conduct of participants therein;

(g) Examine and cross-examine witnesses, and introduce into the record documentary or other evidence;

(h) Receive, rule on, exclude or limit evidence, and limit lines of questioning or testimony which are irrelevant, immaterial or unduly repetitious;

(i) Fix time limits for submission of written documents in matters before him and extend any time limits established by this part upon a determination that no party will be prejudiced and that the ends of justice will be served thereby;

(j) Impose appropriate sanctions against any party or person failing to obey an order under these rules which may include:

(1) Excluding all testimony of an unresponsive or evasive witness, or determining that the answer of such witness, if given, would be unfavorable to the party having control over him; and

(2) Expelling any party or person from further participation in the hearing;

(k) Take official notice of any material fact not appearing in evidence in the record, which is among the traditional matters of judicial notice;

(l) Recommend whether the Respondent is in current violation of Executive Order 11246, as amended, and applicable rules, regulations, and orders, as well as the nature of whatever corrective action may be necessary to bring the Respondent into compliance with the equal employment opportunity clause;

(m) Recommend to the Under Secretary the adoption of a consent order agreed to by the parties in settlement of the issues in a proceeding; and

(n) Take any action authorized by these rules.

§ 12.117 Appearances.

(a) *Representation.* The parties or other persons or organizations participating pursuant to § 12.111 have the right to be represented by counsel.

(b) *Failure to appear.* In the event that a party appears at the hearing and no party appears of the opposing side, the party who is present shall have an election to present his evidence in whole or such portion thereof sufficient to make a prima facie case before the hearing examiner. Failure to appear at the hearing shall not be deemed to be a waiver of the right to be served with a copy of the hearing examiner's recommended decision and to file exceptions to it.

§ 12.118 Appearance of witnesses.

(a) A party wishing to procure the appearance at the hearing of any person having personal or expert knowledge of the matters in issue shall serve on the prospective witness a notice setting forth the time, date, and place at which he is to appear for the purpose of giving testimony. The notice shall also set forth the categories of documents the witness is to bring with him to the hearing, if any. A copy of the notice shall be filed with the hearing examiner and additional copies shall be served upon the opposing parties.

(b) It shall be the obligation of each party to produce for examination any person, along with such documents as may be requested, at the time and place, and on the date, set forth in the notice, if that party has control over such person. Each party shall be deemed to have control over its officers, agents, employees, and members. Due regard shall be given to the convenience of witnesses in scheduling their testimony so that they will be detained no longer than reasonably necessary.

(c) The party or prospective witness may file an objection within 7 days after the identity of such witness first becomes known, stating with particularity the reasons why the party cannot produce a requested witness. The party serving the notice may move for an order with respect to such objection or failure to produce a witness.

§ 12.119 Evidence; testimony.

Formal rules of evidence shall not apply, but rules or principles designed to assure production of the most probative evidence available shall be applied, as the hearing examiner directs. A witness shall be available for cross-examination, and, at the discretion of the hearing examiner, may be cross-examined without regard to the scope of direct examination as to any matter which is relevant and material to the proceeding. The hearing examiner may exclude evidence which is immaterial, irrelevant, or unduly repetitious.

§ 12.120 Objections; exceptions.

(a) *Objections.* If a party objects to the admission or rejection of any evidence or to the limitation of the scope of any examination or cross-examination or the failure to limit such scope, he shall state briefly the grounds for such objection. Rulings on all objections shall appear in the record. Only objections made before the hearing examiner may be relied upon subsequently in the proceedings.

(b) *Exceptions.* Formal exception to an adverse ruling is not required. Rulings by the hearing examiner shall not be appealed prior to the transfer of the case to the Under Secretary, but shall be considered by the Under Secretary upon filing exceptions to the hearing examiner's recommendations and conclusions.

§ 12.121 Offer of proof.

An offer of proof made in connection with an objection taken to any ruling of the hearing examiner excluding proffered oral testimoy shall consist of a statement of the substance of the evidence which the offeror contends would be adduced by such testimony; and, 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.

§ 12.122 Public documents.

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 documents 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.

§ 12.123 Ex parte communications.

The hearing examiner shall not consult any person, or party, on any fact in issue unless upon notice and opportuity for all parties to participate. No employee or agent of the Federal Government engaged in the investigation and prosecution of this case shall participate or advise in the rendering of the recommended or final decision.

§ 12.124 Oral argument.

Any party shall be entitled upon request to a reasonable period between the close of evidence and termination of the hearing for oral argument. Oral argument shall be included in the official transcript of the hearing.

§ 12.125 Official transcript.

The Department will designate the official reporter for all hearings. The official transcripts of testimony taken, together with any exhibits, briefs, or memoranda of law filed therewith, shall be filed with the hearing examiner. Transcripts of testimony may be obtained from the official reporter by the parties and the public at rates not to exceed the applicable rates fixed by the contract between the Department and the reporter unless distribution is limited by order of the hearing examiner for good cause shown. Upon notice to all parties, the hearing examiner may authorize such corrections to the transcript as are necessary to reflect accurately the testimony.

§ 12.126 Summary judgment.

(a) *For Director*. At any time after the expiration of 14 days from the commencement of the action or after service of a motion for summary judgment by the Respondent, the Director may move the hearing examiner with or without supporting affidavits for a summary judgment in his favor upon all claims or any part thereof.

(b) *For Respondent*. The Respondent may, at any time after commencement of the action, move the hearing examiner with or without supporting affidavits for a summary judgment in his favor as to all claims or any part thereof.

(c) *Other patries*. Any other party to a formal proceeding under this part may support or oppose motions for summary judgment made by the Director or Respondent, in accordance with this section, but may not move for a summary judgment in his own behalf.

(d) *Motion and proceedings thereon*. The motion for summary judgment shall be served upon all parties and filed with the hearing examiner or, if no hearing examiner has been designated, with the Under Secretary, at least 15 days before the time fixed for any hearing on the motion. The adverse party or parties may serve opposing affidavits prior to the day of any hearing on the motion. The judgment sought shall be rendered forthwith if the notice and answer, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. A summary judgment rendered for or against the Director or the Respondent shall constitute the hearing examiner's findings and recommendations to the Under Secretary on the issues involved. Hearings on motion made under this section shall be scheduled by the hearing examiner, or the Under Secretary.

(e) *Case not fully adjudicated on motion*. If on motion under this section judgment is not rendered upon the whole case for all the relief asked and a final hearing is necessary, the hearing examiner shall if practicable ascertain what material facts exist without substantial controversy and what material facts are actually and in good faith controverted. He shall thereupon make an order specifying the facts that appear without substantial controversy, including the extent to which relief is not in controversy, and directing such further proceedings as are just. At the hearing on the merits, the facts so specified shall be deemed established, and the final hearing shall be conducted accordingly.

(f) *Form of affidavits; further testimony; defense required*. Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith. The hearing examiner may permit affidavits to be supplemented or opposed by depositions or further affidavits. When a motion for summary judgment is made and supported as provided in this section, an adverse party may not rest upon the mere allegations or denials in his notice or answer, but his response, by affidavit or as otherwise provided in this section, must set forth specific facts showing there is a genuine issue for final hearing. If he does not so respond, summary judgment, if appropriate, shall be rendered against him.

(g) *When affidavits are unavailable*. Should it appear from the affidavits of a party opposing the motion that he cannot for the reasons stated present by affidavit facts essential to justify his opposition, the hearing examiner may refuse the application for summary judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or make such other orders as are just.

(h) *Affidavits made in bad faith*. Should it appear to the satisfaction of the hearing examiner at any time that any of the affidavits presented pursuant to this section are presented in bad faith or solely for the purpose of delay, the hearing examiner may make such orders and impose such sanctions as may be appropriate against the offending party.

§ 12.127 Proposed findings of fact and conclusions.

Within 20 days after receipt of the transcript of the testimony, each party and amicus may file a brief with the hearing examiner. Such briefs shall be served simultaneously on all parties and amici, and a certificate of service shall be furnished to the hearing examiner. Requests for additional time in which to file a brief shall be made to the hearing examiner, in writing, and copies shall be served simultaneously on the other parties. Requests for extensions shall be received not later than 3 days before the date such briefs are due. No reply brief may be filed except by special permission of the hearing examiner.

§ 12.128 Record for recommended decision.

The transcript of testimony, exhibits, and all papers, documents, and requests filed in the proceedings, including briefs, but except the correspondence section of the docket, shall constitute the record for decision.

§ 12.129 Recommended decision.

Within 20 days after the filing of briefs, or, if the parties elect not to file such documents, not more than 20 days after the close of the hearing, the hearing examiner shall recommend findings, conclusions, and a decision. These recommendations shall be certified, together with the record for recommended decision, to the Under Secretary for his decision. The recommended findings, conclusions, and decisions shall be served on all parties and amici to the proceeding.

§ 12.130 Exceptions to recommended decisions.

Within 14 days after receipt of the hearing examiner's recommended findings, conclusions, and decisions, any party may submit exceptions to said recommendation. These exceptions may be responded to by other parties within 10 days of their receipt by said parties. All exceptions and responses shall be filed with the Under Secretary, Service of such briefs or exceptions and responses thereto shall be made simultaneously on all parties to the proceeding, and a certificate of service shall be furnished to the Under Secretary. Requests to the Under Secretary for additional time in which to file exceptions and responses thereto shall be served simultaneously on other parties. Requests for extensions must be received no later than 3 days before the exceptions are due.

§ 12.131 **Record for Final Treasury Department Decision.**

The record for the Treasury Department final decision shall consist of the record for recommended decision, the rulings and recommended decision of the hearing examiner, and the exceptions and briefs filed subsequent to the hearing examiner's decision.

§ 12.132 **Final Treasury Department decision.**

After expiration of the time for filing briefs and exceptions, the Under Secretary or higher Treasury Department official shall make a decision for the Department on the basis of the record. This decision shall be final upon the approval of the Director, Office of Federal Contract Compliance, Department of Labor. A copy of the final Treasury Department decision shall be served on all parties and amici to the proceeding.

§ 12.133 **Submission of final Treasury Department decision to FOCC.**

The Under Secretary shall submit the proposed final Treasury Department decision to the Director, Office of Federal Contract Compliance, Department of Labor, for approval.

[FR Doc.76-4242 Filed 2-12-76;8:45 am]

Title 32A—National Defense, Appendix

CHAPTER XV—FEDERAL RESERVE SYSTEM

REG. V—LOAN GUARANTEES FOR DEFENSE PRODUCTION

Change of Guaranteeing Agency

1. Effective immediately, section 1 of Regulation V (Loan Guarantees for Defense Production) of the Board of Governors is amended by deleting "the Atomic Energy Commission" and substituting the phrase "the Nuclear Regulatory Commission, Energy Research and Development Administration."

2. The purpose of this amendment is to reflect the fact that effective October 11, 1974 the Atomic Energy Commission was abolished by the Energy Reorganization Act of 1974 (P.L. 93-438), and the Nuclear Regulatory Commission and the Energy Research and Development Administration were created in lieu thereof. The effect of this amendment is to substitute these two newly created agencies for the Atomic Energy Commission in the listing of agencies authorized to guarantee V-loans. This action is taken pursuant to the Board's authority under the Defense Production Act of 1950 and Executive Order No. 10480 of August 14, 1953, as amended.

3. The provisions of section 553 of Title 5, United States Code, relating to notice and public participation and to deferred effective dates were not followed in connection with the adoption of this action because the changes made by this revision are of a technical nature and are designed to conform this regulation with existing statutory authority, and because the Board of Governors found that following the procedures prescribed by such provisions would be unnecessary and would serve no useful purpose.

Board of Governors of the Federal Reserve System, February 4, 1976.

[SEAL] GRIFFITH L. GARWOOD,
Assistant Secretary of the Board.

[FR Doc.76-4294 Filed 2-12-76;8:45 am]

Title 39—Postal Service

CHAPTER I—U.S. POSTAL SERVICE

PART 257—PHILATELY

New Stamp Issues: First-Day Sale and First-Day Covers

● Purpose. The purposes of this document are to reflect changes in present policy to provide for issuance of stamps or other philatelic items at more than one office, to provide for philatelic cancellations at offices other than the official first-day post office, and to reflect the fact that first-day covers are dated to show the first day of issue. ●

Accordingly, effective immediately, in Title 39, Code of Federal Regulations, revise paragraphs (b) and (c)(1) of § 257.2 to read as follows:

§ 257.2 **New stamp issues.**

* * * * *

(b) *First-day sale.* A particular post office, post offices or other postal facility or facilities may be selected to have the exclusive sale of a new issue or new issues on its or their first day of sale. If such a selection is made, no other postal facilities may begin to sell the issue or issues until the following day. The Stamps Division may also authorize postal facilities to receive mail order requests for cancellations bearing the first date postmark, but not cancelled with a special die reading "First Day of Issue." These requests may only be honored if submitted within the time prescribed by the Stamps Division. For purposes of this section, the word "issue" shall mean postage stamp, postal card, stamped envelope, or aerogramme.

(c) *First-day covers*—(1) *Description.* A first day cover is an envelope, post card or other mailing piece bearing a new stamp or a new postal card, a new stamped envelope or a new aerogramme cancelled with a special die reading "First Day of Issue" and dated to show the first day of issue.

* * * * *

(39 U.S.C. 401, 404)

ROGER P. CRAIG,
Deputy General Counsel.

[FR Doc.76-4241 Filed 2-12-76;8:45 am]

Title 40—Protection of Environment

CHAPTER I—ENVIRONMENTAL PROTECTION AGENCY

SUBCHAPTER I—AIR PROGRAMS

[FRL 488-2]

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Revision to Connecticut Plan

On April 26, 1974 the regulation for review of Indirect Sources in the State of Connecticut was published as proposed rulemaking. These regulations were proposed to satisfy amendments to 40 CFR Part 51, designed primarily to expand the scope of review prior to construction or modification of facilities, buildings, or installations so as to require consideration of the air quality impact from pollutants arising from mobile source activity associated with such facilities, buildings, structures and installations.

To satisfy these new requirements, the State of Connecticut, after public hearings held on August 9, 10, 13, 14, and 15, 1973, revised the Connecticut "Regulations for the Abatement of Air Pollution, section 19-503-3, Permits for Construction and Operation," to provide for State review of impact on air quality from indirect sources. This implementation plan revision was submitted to the Environmental Protection Agency (EPA) on January 9, 1974.

Interested persons were given the opportunity to comment on this proposed revision within the 30 day public comment period from the date of proposal. Several comments were received, raising questions in the following areas: (a) appropriateness of the regulations, and (b) clarity of the regulations.

(a) Appropriateness of regulations. One comment received was that it was not appropriate to develop and implement an indirect source program until more planning was completed, such as establishment of nondegradation and maintenance plans. However, the Indirect Source Program is not dependent on these other programs. It is a separate means of controlling mobile source emissions which need not be deferred until other programs are instituted. Therefore, this argument is not relevant.

(b) Clarity of regulations. The comments in this area dealt with many aspects of the regulations indicating various parts of the regulation that were "too vague" or "ambiguous". On August 26, 1974 the State of Connecticut resubmitted its indirect source regulations to EPA following minor revisions to increase their clarity and insure compliance with EPA guidelines. In addition, the effective date of the regulations was changed from June 1, 1974 to October 1, 1974, and a section was added to require the applicant to certify that public notice has been given.

After a careful evaluation of the State's submittal, the Administrator has determined that the proposed revision meets the requirements of 40 CFR part 51 and section 110(a)(2)(A)-(H) of the Clean Air Act. Accordingly, it is approved and promulgated as a revision to the Connecticut implementation Plan for attainment and maintenance of national ambient air quality standards establishing regulations for the review of indirect sources for air pollution. Authority: Section 110(a) of the Clean Air Act, as amended, 42 U.S.C. 1857c-5(a).

Dated: February 10, 1976.

ALVIN L. ALM,
Acting Administrator.

Subpart H of Chapter I, Title 40, Part 52 of the Code of Federal Regulations is amended as follows: