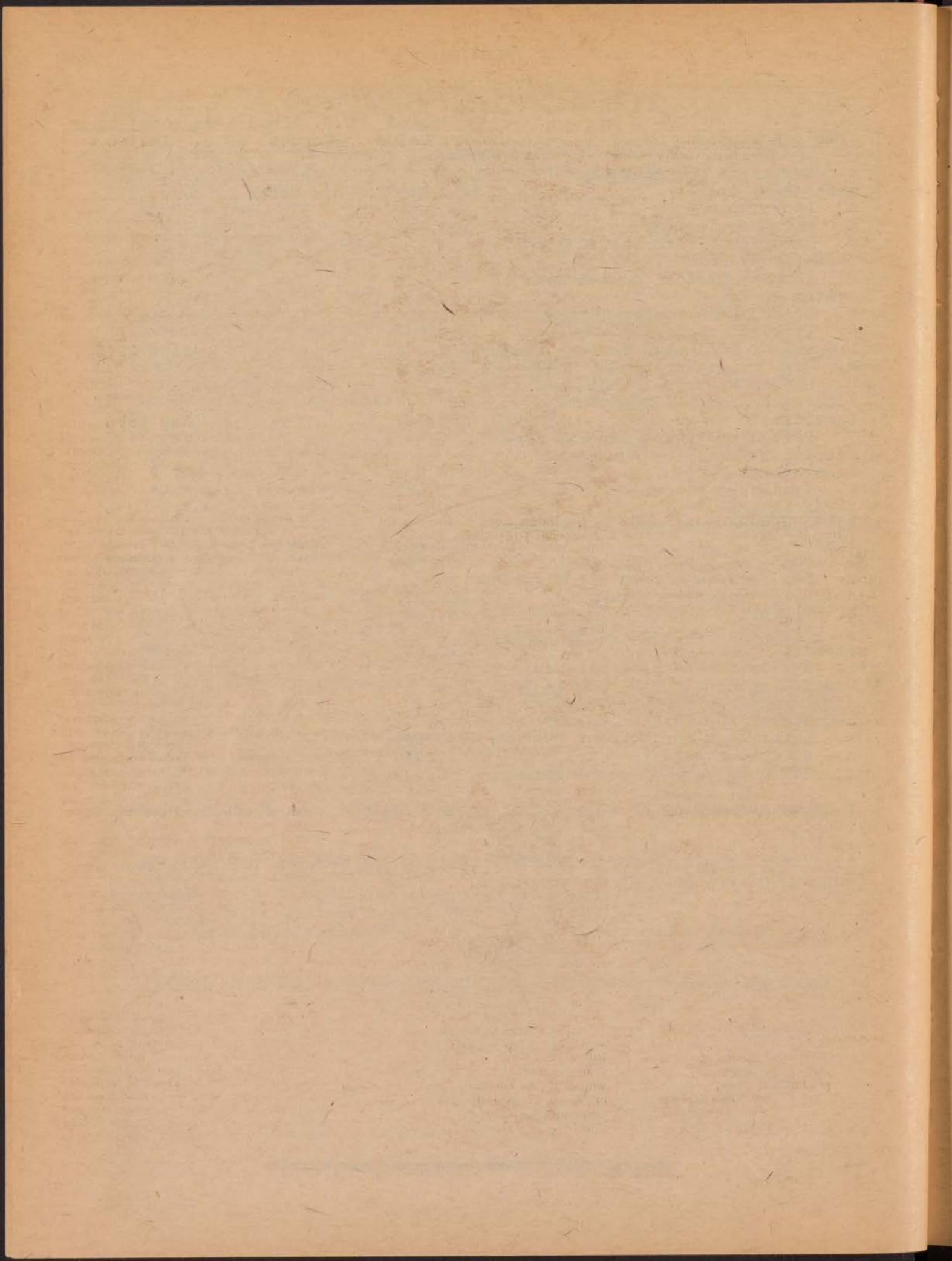


<u>Item Description</u>	<u>Estimated Dollar Value</u>	<u>U.S. Armed Forces</u>	<u>Date LOA expected to be Issued</u>
K. Aerospace Ground Equipment (AGE) Spares	\$450,000	Air Force	Aug 1976
L. Photo Spares	100,000	"	"
M. Film Requirement	100,000	"	"
N. Maverick Air-to-Ground Missile (AGM-65) Spares	50,000	"	"
O. Electro-Optical Guided Bomb System Spares	50,000	"	"
P. Guided Bomb System Spares	50,000	"	"
Q. Cartridge Activated Devices/ Propellant Activated Devices Items	150,000	"	Sept 1976
R. U.S. Origin Equipment (AGE)	3,580,000	"	"
S. Weapon Systems Technicians (Contract Engineer Technical Services)	500,000	"	Aug 1976
T. Precision Test Equipment for Precision Measuring Equipment Laboratory	400,000	"	"
U. Training	420,000	"	"
<u>NAVAL FORCES</u>			
A. Ordnance Equipment and Ammunition	4,000,000	Navy	"
*B. On-Line Crypto Equipment	785,000	"	Sept 1976
**C. 300 Sparrow Air-to-Air Missiles (AIM-7) - Long-lead Items	9,500,000	"	"
D. Training	1,164,000	"	Aug 1976
E. Ship/Maritime Patrol Aircraft Rebuild	720,000	"	"
*F. Explosive Ordnance Disposal/ Underwater Demolition Team Equipment (for Specific Air Services and Sensor Application Teams)	506,000	"	Sept 1976
G. Laboratory for Weapons Systems	340,000	"	Aug 1976
H. Equipment Repair	80,000	"	"
I. S2E Catalog and Documentation	5,000	"	"

* Items qualifying as significant combat equipment on the U.S. Munitions List.

** Items requiring congressional review under section 36(b) of Arms Export Control Act, as amended.

[FR Doc.76-26296 Filed 9-3-76;10:17 am]



rules and regulations

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each month.

Title 5—Administrative Personnel

CHAPTER I—CIVIL SERVICE COMMISSION

PART 213—EXCEPTED SERVICE

Department of Housing and Urban Development

Section 213.3384 is amended to reflect title changes in the following two positions: (1) From Special Assistant to the Assistant Secretary for Consumer Affairs and Regulatory Functions to Director, Office of Program Development and Evaluation; (2) from Deputy Assistant to the Secretary for Programs for the Elderly and Handicapped to Deputy Departmental Adviser for Elderly and Handicapped Policy.

Effective on September 7, 1976, §§ 213.3384(a) (38) and (a) (54) are amended as set out below:

§ 213.3384 Department of Housing and Urban Development.

(a) Office of the Secretary. * * *

(38) Two Special Assistants to the Assistant Secretary for Consumer Affairs and Regulatory Functions and one Director, Office of Program Development and Evaluation.

(54) One Deputy Departmental Adviser for Elderly and Handicapped Policy.

(5 U.S.C. 3301, 3302; E.O. 10577, 3 CFR 1954-1958 Comp. p. 218.)

UNITED STATES CIVIL SERVICE COMMISSION,
JAMES C. SPRY,
Executive Assistant to the Commissioners.

[FR Doc. 76-25994 Filed 9-3-76; 8:45 am]

PART 213—EXCEPTED SERVICE

Department of the Interior

Section 213.3312 is amended to show that one position of Assistant to the Secretary is excepted under Schedule C.

Effective on September 7, 1976, § 213.3312(a) (45) is added as set out below:

§ 213.3312 Department of the Interior.

(a) Office of the Secretary. * * *

(45) One Assistant to the Secretary.

(5 U.S.C. 3301, 3302; E.O. 10577, 3 CFR 1954-1958 Comp. p. 218.)

UNITED STATES CIVIL SERVICE COMMISSION,
JAMES C. SPRY,
Executive Assistant to the Commissioners.

[FR Doc. 76-25995 Filed 9-3-76; 8:45 am]

Title 8—Aliens and Nationality

CHAPTER I—IMMIGRATION AND NATURALIZATION SERVICE, DEPARTMENT OF JUSTICE

PART 212—DOCUMENTARY REQUIREMENTS; NONIMMIGRANTS; WAIVERS; ADMISSION OF CERTAIN INADMISSIBLE ALIENS; PAROLE

Exemption From Labor Certification Requirement

Reference is made to the Notice of Proposed Rule Making which was published in the FEDERAL REGISTER of March 10, 1976 (41 FR 10231) pursuant to section 553 of Title 5 of the United States Code (80 Stat. 383) in which there was set forth the proposed amendment to 8 CFR 212.8(b) (4) pertaining to the exemption of certain aliens from the labor certification requirement of section 212(a) (14) of the Immigration and Nationality Act, as amended (8 U.S.C. 1182(a) (14)). In the notice, it was proposed to amend the monetary investment requirement by increasing the amount of money required to be invested to \$50,000, and by further requiring that the alien beneficiary of the investor exemption would be the principal manager of an enterprise which would employ persons in the United States other than the alien, his spouse and children.

Several representations were received from the public in opposition to the proposed amendment and they have been carefully considered.

A number of representations maintained that promulgation of the proposed rule was contrary to the letter and spirit of section 212(a) (14) of the Immigration and Nationality Act (8 U.S.C. 1182(a) (14)); several representations contended that the amount proposed to be invested was far too high for the stated purpose, and would preclude all but the wealthiest aliens from qualifying for the exemption and coming to the United States to establish businesses; other representations criticized the requirement that the alien be the principal manager of the enterprise on the grounds it was unclear and could be interpreted to preclude formation of business partnerships and corporations; and finally a number of representations criticized the requirement that the enterprise employ persons in the United States other than the alien, his spouse and children, and the absence of a "savings clause" to apply to applications filed prior to the effective date of this amendment.

Implementation of the proposed rule would not be contrary to the provisions of section 212(a) (14) of the Immigration and Nationality Act (8 U.S.C. 1182(a) (14)). Section 212(a) (14) of the Act was

enacted to safeguard the American economy and labor market from job competition and from adverse working standards as a consequence of immigrant workers entering the labor market. There is no requirement in the statute that any nonpreference alien be exempted from the labor certification requirement of section 212(a) (14). Even though certain exemptions have been provided by regulation, it is the obligation of the Service, in permitting the exemptions, to ensure that they do not violate the intent of the labor certification requirement by permitting a situation to develop where the beneficiaries of such exemption provisions would in fact be in job competition with American workers. The stringent requirements of the investor exemption regulation have been prescribed in furtherance of this mandate.

It was proposed to increase the amount of the required capital investment because the present \$10,000 amount is no longer a substantial investment given the economic conditions and spiraling inflation recently experienced in this country. Further, the \$10,000 amount has been found to be susceptible to fraudulent schemes and as such, has provided a means whereby the requirements of the labor certification provision can be evaded. However, upon consideration of the representations, it has been decided to reduce the \$50,000 proposed investment amount to \$40,000. The latter amount is sufficient to insure adequate protection from fraudulent schemes and substantial enough to provide for reasonable expectation of business success of the enterprise in which the alien is making his investment, thus minimizing the likelihood that it might fail and place the alien in job competition with United States workers.

The proposed requirement that the alien be the principal manager of the enterprise has been modified to require that he be "a principal manager". This change will eliminate the lack of clarity pointed out in some representations, and remove any possible barrier to the formation of partnerships or corporations by alien investors. It will also ensure that the alien investor will have managerial prerogatives and responsibilities in the enterprise in which he is investing.

Some representations were critical of the provision in the proposed regulation which requires that the enterprise will employ persons in the United States other than the alien, his spouse and children. The proposed language of that provision has been modified to read that the enterprise will employ "a person or persons in the United States who are United States citizens or aliens lawfully ad-

mitted for permanent residence, exclusive of the alien, his spouse and children". This change has been made for clarification purposes only. No change is to be made in the basic requirement because the investor exemption was never intended to apply to an alien who was making an investment in an enterprise which would provide only a means of livelihood for himself and his family in competition with citizens and permanent resident aliens having similar investments in like enterprises in this country. The words "a person" have been added because the requirement as proposed could have been construed to preclude an enterprise employing only one person from qualifying. The requirement that the person or persons to be employed will be United States citizens or permanent resident aliens has been added in order to specify that the persons who will be employed by the alien in the enterprise are to be permanent members of the American labor forces.

The effective date of this regulation is October 7, 1976. Forms I-526 properly filed before the effective date shall be processed in accordance with this regulation as it existed prior to the effective date of this amendment.

In the light of the foregoing, the following amendment is hereby prescribed to 8 CFR 212.8(b)(4), and as amended the paragraph reads as follows:

§ 212.8 Certification requirement of section 212(a)(14).

(b) *Aliens not required to obtain labor certifications.* * * * (4) an alien who establishes on Form I-526 that he has invested, or is actively in the process of investing, capital totaling at least \$40,000 in an enterprise in the United States of which he will be a principal manager and that the enterprise will employ a person or persons in the United States who are United States citizens or aliens lawfully admitted for permanent residence, exclusive of the alien, his spouse and children. A copy of a document submitted in support of Form I-526 may be accepted though unaccompanied by the original, if the copy bears a certification by an attorney, typed or rubber stamped in the language set forth in § 204.2(f) of this chapter. However, the original document shall be submitted, if submittal is requested by the Service.

(Sec. 103, 66 Stat. 173; 8 U.S.C. 1103.)

The basis and purpose of this regulation is to increase the amount of money required to be invested by an alien seeking the investor exemption to a more realistic level considering the economic conditions in this country and to prevent the possibility of fraudulent schemes and insure that the investor exemption does not become a means of circumventing the normal labor certification procedure for skilled and unskilled labor set forth in section 212(a)(14) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(14)). The regulation also clarifies the requirement of the investor exemption regulation that the alien investor have managerial prerogatives and responsi-

bilities in the enterprise in which he is investing and that the enterprise to be established not provide only a livelihood for himself and his family in competition with citizens and permanent resident aliens having similar investments in like enterprises in this country.

Effective date: The amendment contained in this order shall become effective October 7, 1976.

Dated: August 31, 1976.

L. F. CHAPMAN, Jr.,
Commissioner of
Immigration and Naturalization.

[FR Doc. 76-25998 Filed 9-3-76; 8:45 am]

Title 10—Energy

CHAPTER III—ENERGY RESEARCH AND DEVELOPMENT ADMINISTRATION

PART 705—HEARING RULES FOR SANCTION PROCEEDINGS UNDER EXECUTIVE ORDER 11246 (NONDISCRIMINATION IN EMPLOYMENT BY GOVERNMENT CONTRACTORS)

Pursuant to the authority vested in the Administrator by section 105(a) of the Energy Reorganization Act of 1974, Pub. L. 93-438, and in accordance with Executive Order 11246 (Nondiscrimination in Employment by Government Contractors), and rules, regulations and orders thereunder, the following new Part 705, 10 CFR, entitled "Hearing Rules for Sanction Proceedings under Executive Order 11246 (Nondiscrimination in Employment by Government Contractors)" is published as a document subject to codification.

These procedural rules are applicable to proceedings for the imposition of sanctions under section 209(a)(5), and (6) of Executive Order 11246, for violation of that Executive Order and the rules, regulations, and orders thereunder.

Because this new Part 705 is a statement of ERDA procedures, the provisions of 5 U.S.C. 553 requiring advance notice of proposed rulemaking and opportunity for public participation do not apply.

These regulations have been submitted to and approved by the Director, Office of Federal Contract Compliance Programs, Department of Labor.

Although these regulations become effective on September 7, 1976, interested persons who desire to submit written comments or suggestions for consideration in connection with such regulation should send them on or before November 1, 1976, to the General Counsel, Energy Research and Development Administration, Washington, D.C. 20545.

Effective date: September 7, 1976.

JAMES L. LIVERMAN,
Assistant Administrator for
Environment and Safety.

A new Part 705 is added to Chapter III, Title 10 CFR to read as follows:

GENERAL INFORMATION

Sec.	Authority.
705.1	Scope of rules.
705.2	Waiver, modification.
705.3	Definitions.
705.4	

	APPEARANCE AND PRACTICE
Sec.	
705.5	Participation by party.
705.6	Participation by interested persons.

FORM AND FILING OF DOCUMENTS

705.7	Form.
705.8	Filing; service.

TIME

705.9	Computation.
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PREHEARING PROCEDURES

705.10	Notice of proposed cancellation, termination or ineligibility.
705.11	Answer to notice.
705.12	Notice of hearing.
705.13	Amendments.
705.14	Production of documents and things and entry upon land for inspection and other purposes.
705.15	Motions.
705.16	Disposition of motions.
705.17	Depositions upon oral examination.
705.18	Prehearing conference.

DESIGNATION AND RESPONSIBILITIES OF HEARING OFFICER

705.19	Designation.
705.20	Authority and responsibilities.

HEARING PROCEDURES

705.21	Evidentiary purpose.
705.22	Appearances.
705.23	Appearance of witnesses.
705.24	Evidence.
705.25	Testimony.
705.26	Exhibits.
705.27	Admissions as to facts and documents.
705.28	Objections.
705.29	Exceptions to rulings of hearing officer not necessary.
705.30	Official notice.
705.31	Offer of proof.
705.32	Interlocutory appeals.
705.33	Ex parte communications.

THE RECORD

705.34	Official transcript.
705.35	Record for decision.

POST HEARING PROCEDURES

705.36	Proposed findings of fact and conclusions.
705.37	Record for recommended decision.
705.38	Recommended decision.
705.39	Exceptions to recommended decisions.
705.40	Record.
705.41	Final decision.
705.42	Approval of Administrator's decision by Director, Office of Federal Contract Compliance Programs.

AUTHORITY: Pub. L. sec. 105(a), 93-483, 88 Stat. 1238, (42 U.S.C. 5815); E.O. 11246, sec. 209(a); 41 CFR 60-1.26(b).

GENERAL INFORMATION

§ 705.1 Authority.

These rules of procedures supplement, and are established pursuant to, the provisions of 41 CFR 60-1.26(b).

§ 705.2 Scope of rules.

These rules govern the practice and procedure for proceedings conducted by the Energy Research and Development Administration with respect to the imposition of sanctions under section 209(a)(5) and (6) of Executive Order 11246, for violations of Executive Order 11246, and rules, regulations, and orders thereunder.

§ 705.3 Waiver, modification.

Upon notice to all parties, the hearing officer, or the Administrator 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 thereby be served.

§ 705.4 Definitions.

(a) "Administration" means the Energy Research and Development Administration.

(b) "Administrator" means the Administrator of the Energy Research and Development Administration or his designee.

(c) "Director of OEO" means the Director of the Office of Equal Opportunity, Energy Research and Development Administration, who has been designated to prosecute all actions under this part and 41 CFR 60-1.26(b) in the name of the Administrator.

(d) "General Counsel" means the General Counsel of the Energy Research and Development Administration.

(e) "Hearing Officer" means a person designated by the Administrator to conduct hearings pursuant to section 208(b) of Executive Order 11246, as amended, and 41 CFR 60-1.26(b).

(f) "Party" means a respondent; the Director of the Office of Equal Opportunity, Energy Research and Development Administration, and any person or organization participating in a proceeding pursuant to § 705.6(a) of these rules.

(g) "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.

APPEARANCE AND PRACTICE

§ 705.5 Participation by a party.

A party may appear in person, or by counsel, and participate fully, pursuant to the procedures set forth in these rules, in any proceeding held pursuant to these rules.

§ 705.6 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 could directly and adversely affect them or the class they represent.

(3) Any person or organization wishing to participate as a party under this paragraph shall file and serve upon the hearing officer and all parties a petition within 14 days after the notice of hearing has been published in the FEDERAL REGISTER. Such petition shall concisely state: (i) Petitioner's interest in the proceeding, (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 officer shall promptly determine whether there are objections to the petition. He shall then determine whether each petitioner has the requisite interest in the proceedings, as defined in subparagraphs (1) and (2) of this paragraph, and shall permit or deny participation accordingly. Where petitions to participate as parties are made by individuals or groups with common interests, the hearing officer may request all such petitioners to designate a single representative, or he may recognize one or more of such petitioners to represent all such petitioners; provided that the representative of a labor organization qualifying to participate under subparagraph (1) of this paragraph must be permitted to participate as a party. The hearing officer shall give each petitioner written notice of the decision on his petition, and shall serve such notice on each party. 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.

(b) (1) Any other person or organization wishing to participate as amicus curiae shall file a petition before the commencement of the hearing. 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 officer shall grant the petition if he finds that the petitioner has a legitimate interest in the proceedings, and that such participation will not unduly delay the proceedings and may contribute materially to the proper disposition of the issues. The hearing officer shall give the petitioner written notice of his decision on the petition, and shall serve such notice on each party. If the petition is denied, the hearing officer shall briefly state the grounds for such denial.

(2) An amicus curiae is not a party but may participate as provided in this paragraph. An amicus curiae may present a brief, oral statement at the hearing at the point in the proceeding specified by the hearing officer. He may submit a written statement of position to the hearing officer 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.

FORM AND FILING OF DOCUMENTS

§ 705.7 Form.

Documents 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 indicate the party or amicus filing, and 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 indicated.

§ 705.8 Filing; service.

(a) *Manner of filing.* All documents submitted in a proceeding shall be filed, and served on all parties. The original

and three copies of each document shall be submitted for filing. Filings shall be made with the hearing clerk at the address stated in the notice, during regular business hours. With respect to exhibits and transcripts of testimony, only originals need be filed.

(b) *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(a) (1).

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

(d) *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.

TIME

§ 705.9 Computation.

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. When the period of time prescribed or allowed is less than 7 days, intermediate Saturdays, Sundays, and legal holidays shall be excluded from the computation.

PREHEARING PROCEDURES

§ 705.10 Notice of proposed cancellation, termination or ineligibility.

Proceedings are commenced by the mailing of a written notice of proposed cancellation, termination, or ineligibility to the last known address of the respondent by registered mail, return receipt requested. The notice signed by the Director of OEO, shall contain a concise jurisdictional statement, a short and plain statement of the matters furnishing a basis for the imposition of sanctions, an enumeration of the sanctions being requested, and a citation of the provisions of the order and regulations pursuant to which the requested action may be taken. The notice shall also indicate that respondent may request a hearing on the matters alleged.

§ 705.11 Answer to notice of proposed cancellation, termination or ineligibility.

(a) Within fourteen (14) days from receipt of the notice, respondent may file with the hearing officer, or if no hearing officer has been designated, with the Director of OEO, an answer to the notice and may request a hearing. The request for a hearing shall be included as a separate paragraph of the answer.

(b) The answer shall admit or deny specifically and in detail the 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 alleged as affirmative defenses shall be separately stated and numbered.

(c) If respondent fails to file an answer, request a hearing, or otherwise formally contest the allegations in the notice within the 14-day period following receipt of the notice, the matters alleged in the notice are deemed admitted and respondent's opportunity for hearing is deemed waived. The Director of OEO with the approval of the Director of the Office of Federal Contract Compliance Programs may then cancel, suspend or terminate any one or more contracts or subcontracts, or parts thereof, held by respondent, and/or enter an order declaring such contractor or subcontractor ineligible for further contracts, subcontracts, or extensions or other modification of existing contracts, until the contractor or subcontractor has satisfied the Secretary of Labor that it has established and will carry out personnel and employment policies and practices in compliance with the order.

§ 705.12 Notice of hearing.

In response to respondent's request for a hearing, a notice of hearing shall be sent to the respondent as provided in § 705.8(a). Such notice shall contain a statement describing the nature of the hearing and the legal authority under which the proceedings are to be held; and setting the time and place of the hearing, or indicating that the time and place will be set by subsequent notice issued by the hearing officer.

§ 705.13 Amendments.

The Administration may amend its notice of proposed cancellation, termination, or ineligibility 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 15 days after it is filed. Other amendments of the notice or of the answer to the notice shall be made only by leave of the hearing officer. An amended notice shall be answered within 10 days of its service, or within the time for filing an answer to the original notice, whichever period is longer, unless the hearing officer orders otherwise.

§ 705.14 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 7 days after the service of the request. The response shall state, with respect to each item that inspection and related activities will be permitted as requested, unless there are objections, in which case the reasons for each objection shall be stated. The party submitting the request may move for an order with respect to any objection or to other failure to respond.

§ 705.15 Motions.

Motions and petitions shall state the relief sought, the authority relied upon, and the facts alleged. If made before or after the hearing itself, these matters shall be in writing. If made at the hearing, they may be stated orally; but the hearing officer may require that they be reduced to writing and filed and served on all parties. Within 7 days after a written motion or petition is served, or such other time period as the hearing officer, or Administrator, may fix, any party may file a response to a motion or petition. An immediate oral response may be made to an oral motion.

§ 705.16 Disposition of motions.

The hearing officer may not grant a written motion or petition prior to expiration of the time for filing responses thereto, but may overrule or deny such motion or petition without awaiting response: *Provided, however*, That pre-hearing conferences, hearings, and decisions need not be delayed pending disposition of motions or petitions. Oral motions and petitions may be ruled on immediately. Rulings by the hearing officer shall not be appealed prior to the transfer of the case to the Administrator, but shall be considered by the Administrator when the case is transferred to him for decision. (See also § 705.32.)

§ 705.17 Depositions upon oral examinations.

(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 witnesses; 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 officer, or with the Administrator, if no hearing officer has been assigned, an objection within 3 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 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 officer of the hearing officer 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 type-writing 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, or 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 officer, or to the Administrator, if no hearing officer has been assigned. Copies of the transcript and certificate shall be furnished to all persons desiring them, upon payment of reasonable charges therefor, unless distribution is restricted by order of the hearing officer 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 reasons 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 officer, 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 officer 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.

§ 705.18 Prehearing conference.

(a) Within 14 days after the notice of hearing has been issued, the hearing officer shall establish a date for the prehearing conference to include all parties

and petitioners for status as a party whose petition has not yet been ruled on. Written notice of the prehearing conference shall be sent to all participants in the conference. At the prehearing conference the following matters shall be considered:

(1) Simplification and delineation of the issues to be heard;

(2) Stipulations, admissions of fact and of contents and authenticity of documents;

(3) Limitation of number of witnesses, particularly the avoidance of duplicate expert witnesses, and exchange of expert witness lists;

(4) Scheduling dates for the exchange of witness lists (except as provided in subparagraph (3) of this paragraph) and exhibits;

(5) Offers of settlement;

(6) Scheduling of such additional prehearing conferences as may be considered necessary; and

(7) Such other matters as may tend to expedite the disposition of the proceedings.

(b) The record shall show the matters disposed of by order and/or the matters disposed of by agreement in the prehearing conference. The subsequent course of the proceeding shall be controlled by such action.

DESIGNATION AND RESPONSIBILITIES OF HEARING OFFICER

§ 705.19 Designation.

Hearings shall be held before a hearing officer designated by the Administrator. After service of a notice designating a hearing officer to preside, and until such officer makes his decision as provided in § 705.38, motions and petitions shall be submitted to the hearing officer. In the case of the death, illness, disqualification, or unavailability of the designated hearing officer, another hearing officer may be designated to take his place.

§ 705.20 Authority and responsibilities.

The hearing officer shall propose findings and conclusions to the Administrator on the basis of the record before him. In order to do so, he shall have the duty to conduct a fair and impartial 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, including prehearing conferences, to settle, simplify, or fix the issues in a proceeding, or to consider other matters that may aid in the expeditious disposition of the proceeding.

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

(c) Direct the parties to exchange their evidentiary exhibits, witness lists, and a narrative summary of their expected testimony prior to the hearing. Where good cause exists, the parties should be afforded the right at any time to amend, by deletion or supplementa-

tion, their evidentiary exhibit and witness lists.

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

(e) Regulate the course of the hearing and conduct of counsel therein.

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

(g) Examine witnesses.

(h) Receive, rule on, exclude, or limit evidence at any stage of the proceeding.

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

(j) Take any action authorized by these rules.

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

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

(2) 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

(3) Expelling any party or person from further participation in the hearing.

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

(m) 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;

(n) Recommend to the Administrator the adoption of a consent order agreed to by the parties in settlement of the issues in a proceeding.

(o) Take any action authorized by these rules.

HEARING PROCEDURES

§ 705.21 Evidentiary purpose.

(a) The hearing is directed to receiving factual evidence and expert opinion testimony related to the issues in the proceeding. A hearing for the reception of evidence will be held only in case issues of fact must be resolved in order to determine whether respondent has failed to comply with one or more applicable requirements of Executive Order 11246, and rules, regulations, and orders thereunder.

(b) 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 of OEO may move the hearing examiner with or without supporting affidavits for a summary judgment in his favor upon all claims or any part thereof.

(c) 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.

(d) 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.

(e) In case it appears from respondent's answer to the notice of hearing, from his failure timely to answer, or from his admissions or stipulations, that there are no matters of material fact in dispute, the hearing officer may enter an order so finding, vacating the hearing date, and fixing the time for filing briefs under § 705.36. Thereafter the proceedings shall go to conclusion in accordance with §§ 705.36 through 705.42. Within 10 days of its issuance, an order vacating the hearing date may be appealed to the Administrator, and the Administrator shall affirm, modify, or set aside such order within 28 days thereafter.

§ 705.22 Appearances.

(a) *Representation.* The parties or other persons or organizations participating pursuant to § 705.6 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 for 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.

§ 705.23 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 officer 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 3 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.

§ 705.24 Evidence.

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

§ 705.25 Testimony.

Testimony shall be given orally by witnesses at the hearing, but may, in the discretion of the hearing officer, be prepared in writing and served on all parties to the hearing. A witness shall be available for cross-examination, and, at the discretion of the hearing officer, may be cross-examined without regard to the scope of direct examination as to any matter which is material to the proceeding.

§ 705.26 Exhibits.

Proposed exhibits shall be exchanged at a prehearing conference, or otherwise prior to the hearing, if the hearing officer so requires. Proposed exhibits not so exchanged may be denied admission as evidence. The authenticity of all proposed exhibits will be deemed admitted unless written objection thereto is filed, or unless good cause is shown for failure to file such written objection.

§ 705.27 Admissions as to facts and documents.

Not later than 15 days prior to the date of the hearing except for good cause shown, or not later than 15 days prior to such earlier date as the hearing officer 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 10 days after 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.

§ 705.28 Objections.

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

§ 705.29 Exceptions to rulings of hearing officer not necessary.

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

§ 705.30 Official notice.

Whenever a party offers a public document, or part thereof, in evidence, and such document, or part thereof, has been shown by the offeror to be reasonably available to the public, such document need not be produced or marked for identification, but may be offered for official notice as a public document item by specifying the document or relevant part thereof. Official notice may also be taken of other matters, at the discretion of the hearing officer: *Provided*, That where official notice is taken or requested to be taken of a fact not appearing in the evidence of record, any party, on timely request, shall be permitted to show the contrary.

§ 705.31 Offer of proof.

An offer of proof made in connection with an objection taken to any ruling of the hearing officer excluding proffered oral testimony shall consist of a statement of the substance of the evidence which counsel 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.

§ 705.32 Interlocutory appeals.

Appeals shall not be made of any ruling of the hearing officer except following the entire hearing and the hearing officer's recommended findings, conclusions, and decision.

§ 705.33 Ex parte communications.

The hearing officer shall not consult any person, or party, on any fact in issue unless upon notice and opportunity 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, except as witness or counsel in the proceeding.

THE RECORD

§ 705.34 Official transcript.

The Administrator will designate the official reporter for all hearings. The official transcripts of testimony and argument, together with any exhibits, briefs, or memoranda of law filed therewith, shall be filed with the hearing clerk. Transcripts 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 Administration and the reporter. Upon notice to all parties, the hearing officer may authorize such corrections to the transcript as are necessary to accurately reflect the testimony.

§ 705.35 Record for decision.

The transcript of testimony, exhibits, and all papers, documents, and requests filed in the proceedings, except the correspondence section of the docket, including rulings and the recommended

findings, conclusions, and decision, shall constitute the record for decision.

POST HEARING PROCEDURES

§ 705.36 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 officer. Such briefs shall be served simultaneously on all parties and amici, and a certificate of service shall be furnished to the hearing officer. Requests for additional time in which to file a brief shall be made to the hearing officer, 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 officer.

§ 705.37 Record for recommended decision.

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

§ 705.38 Recommended decision.

Within 30 days after the filing of briefs, or, if the parties elect not to file such documents, not more than 30 days after the close of the hearing, the hearing officer shall recommend findings, conclusions, and a decision. These recommendations shall be certified, together with the record for recommended decision, to the Administrator for his decision. The recommended findings, conclusions, and decisions shall be served on all parties and amici to the proceeding.

§ 705.39 Exceptions to recommended decisions.

Within 14 days after receipt of the hearing officer's recommended findings, conclusions, and decision, 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 Administrator. 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 Administrator. Requests to the Administrator for additional time in which to file exceptions and responses thereto shall be in writing and copies thereof shall be served simultaneously on other parties. Requests for extensions must be received no later than 3 days before the exceptions are due. Documents filed with the Administrator shall be addressed to the Administrator in care of the General Counsel.

§ 705.40 Record.

After expiration of the time for filing briefs and exceptions, the Administrator shall make a final decision on the basis of the record before him. The record shall consist of the record for recommended decision, the rulings and recom-

mended decision of the hearing officer, and the exceptions and briefs filed subsequent to the hearing officer's decision.

§ 705.41 Final decision.

After expiration of the time for filing, the Administrator shall make a final decision on the basis of the record for decision, and upon consideration of any exceptions and briefs filed subsequent to the hearing. A copy of the decision of the Administrator shall be served on all parties and amici to the proceeding.

§ 705.42 Approval of Administrator's decision by Director, Office of Federal Contract Compliance Programs.

No decision of the Administrator shall become final without the approval of the Director of the Office of Federal Contract Compliance Programs.

[FR Doc.76-25984 Filed 9-3-76;8:45 am]

Title 14—Aeronautics and Space

CHAPTER I—FEDERAL AVIATION ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

[Docket No. 76-SO-77; Amdt. 39-2709]

PART 39—AIRWORTHINESS DIRECTIVES

Piper Model PA-28-235, PA-32, and PA-32R Series Airplanes

There have been reports of internal fuel transfer in the fuel selector valves on certain PA-28-235, PA-32-260, PA-32-300 and PA-32R-300 airplanes that could result in fuel leakage or fuel mismanagement. Since this condition is likely to exist in other airplanes of the same type design, an airworthiness directive is being issued to require a fuel system check and fuel valve replacement, if necessary, on certain PA-28-235, PA-32-300, PA-32-260 and PA-32R-300 airplanes.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable and good cause exists for making this amendment effective in less than 30 days.

In consideration of the foregoing, and pursuant to the authority delegated to me by the Administrator (31 FR 13697), § 39.13 of Part 39 of the Federal Aviation Regulations is amended by adding the following new airworthiness directive:

PIPER AIRCRAFT CORPORATION. Applies to PA-28-235, serial numbers 28-10001 through 28-7610157, equipped with Airborne fuel valve 1-H65-2, Piper part number 492 259; PA-32-260 serial numbers 32-1 through 32-7600020 equipped with Airborne fuel valve Model 1-H65-2, Piper part number 492 259; PA-32-300 serial numbers 32-40000 through 32-7640109 equipped with Airborne fuel valve Model 1-H65-2, Piper part number 492 259; PA-32R-300 serial numbers 32R-7680001 through 32R-7680423 equipped with Airborne fuel valve Model 1-H65-3, Piper part number 492 262; certificated in all categories.

Compliance required within the next ten hours' time in service after the effective date of this AD, unless already accomplished.

To prevent fuel valve inner port leakage, accomplish the following:

- I. Perform the following checks:
 1. Fill all fuel tanks to capacity.
 2. Actuate the fuel selector valve quick drain handle a minimum of three (3) times. Insure that the handle is actuated through its full travel and release slowly each time.
 3. Start engine and run at a 1000 R.P.M. setting with electric fuel pump on.
 4. Place fuel selector valve in the OFF position.
 5. Continue to run the engine at 1000 R.P.M. until fuel has been exhausted and not to exceed the seven (7) minute duration.
- If fuel exhaustion occurs and the engine quits within the seven (7) minute running period, make an appropriate log book entry. The checks required by this AD may be performed by the pilot. For the requirements regarding the listing of compliance and method of compliance with this AD in the airplane's maintenance record, see FAR 91.173.
- II. If the engine continues to run for the full seven (7) minute period, replace the fuel selector valve with the appropriate serviceable fuel valve and repeat Paragraph I. An equivalent means of compliance with this AD must be approved by the Chief, Engineering and Manufacturing Branch, Federal Aviation Administration, Southern Region.

Piper Service Bulletin No. 519 also pertains to this same subject.

This amendment becomes effective September 10, 1976.

(Secs. 313(a), 601, 603, Federal Aviation Act of 1958, (49 U.S.C. 1354(a), 1421, 1423); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c).)

Issued in East Point, Ga., on August 24, 1976.

PHILLIP M. SWATEK,
Director, Southern Region.

[FR Doc.76-25996 Filed 9-3-76;8:45 am]

[Airspace Docket No. 75-EA-62]

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

Alteration of Pittsburgh Terminal Control Area

On March 15, 1976, a notice of proposed rulemaking (NPRM) was published in the FEDERAL REGISTER (41 FR 10915) stating that the Federal Aviation Administration (FAA) was considering an amendment to Part 71 of the Federal Aviation Regulations that would alter the Pittsburgh, Pa., Terminal Control Area (TCA) by redefining certain lateral boundaries and floor altitudes in the vicinity of Pittsburgh, Pa.

Interested persons were afforded an opportunity to participate in the proposed rulemaking through the submission of comments. Six comments were received. Three of the commenters interposed no objections to the proposal. One commenter did not object to the proposal but suggested that the airspace lying between the proposed east and south-east Area C extensions be included as a part of these proposed extensions. Another commenter believed the proposal would create more hazardous conditions between low flying jets and traffic operating in the Herron Airport traffic patterns. He stated that jets approach-