

The commenter objects to Customs citation of increasing administrative costs as a basis for increasing the penalty, especially in light of the President's policy of increasing the efficiency, rather than the cost, of Federal Government regulation. The commenter suggests that Customs efforts be directed toward reducing, rather than increasing, the cost of administering its regulations.

Customs agrees that it is essential to operate as efficiently as possible and to reduce the costs of administering its regulations wherever possible. Of course, reducing administrative costs during an inflationary period is very difficult. It is anticipated that there will be fewer violations of § 18.8(b)(1) because of the deterrent effect of the increased penalty. This will reduce Customs overall administrative costs of processing these cases. Of course, an improvement in the performance of carriers would be of great assistance in reducing Customs costs.

The commenter questions the validity of the study performed in the Houston, Texas, Customs Region which concluded that the cost of processing the simplest liquidated damages case is \$41.50. The commenter notes that the study was performed at a seaport, not at an airport, and claims Customs has not demonstrated that data collected at the seaport is representative of air cargo transportation. The commenter claims that Customs has not explained why the \$50 minimum to \$100 maximum penalty is necessary to cover average administrative costs (\$41.50) of less than those amounts.

Customs notes that its study was conducted at several seaports. However, because the forms and procedure for processing a § 18.8(b)(1) violation are the same at a seaport and an airport, Customs believes that the administrative costs would be similar. The new dollar amounts are necessary because the monetary penalty is intended to be a deterrent and not merely to recover administrative costs.

The commenter also discusses a matter relating to amending §§ 171.31 and 172.31, Customs Regulations (19 CFR 171.31, 172.31). This subject is outside the scope of this document but will be studied as a separate project.

Customs Forms

During the 90-day delayed effective date of this document, Customs Form 3587, "Carrier's Bond," Customs Form 3588, "Private Carrier's Bond," and Customs Form 3855, "Bond of Customs Cartman or Lighterman" will be revised by Customs Headquarters to conform to the amendments made in this document.

A bond rider will be prepared for each bond and distributed to Customs field personnel. The bond rider will be executed and attached to the Customs bonds already on file before the delayed effective date. The bond rider also would be attached to all applicable bonds that are executed and filed after the delayed effective date. Use of the rider would eliminate the need for printing new bond forms at this time. However, as supplies of these forms are exhausted, the public will be provided with the new forms containing the revised language.

Inapplicability of Regulatory Flexibility Act

This document is not subject to the provisions of sections 603 and 604 of title 5, United States Code (as added by section 3 of Pub. L. 96-354, the "Regulatory Flexibility Act") because it was the subject of a notice of proposed rulemaking issued before January 1, 1981, the effective date of the Act.

E.O. 12291

This document does not meet the criteria for a "major rule" as specified in section 1(b) of E.O. 12291. Accordingly, no regulatory impact analysis has been prepared.

Drafting Information

The principal author of this document was Charles D. Ressin, Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

Amendment to the Regulations

Part 18, Customs Regulations (19 CFR Part 18), is amended as set forth below.

William von Raab,
Commissioner of Customs.

John M. Walker, Jr.,
Assistant Secretary of the Treasury.

PART 18—TRANSPORTATION IN BOND AND MERCHANDISE IN TRANSIT

Sections 18.8(b)(1) and (c), Customs Regulations (19 CFR 18.8(b)(1), (c)), are revised to read as follows:

§ 18.8 Liability for shortage, irregular delivery, or nondelivery; penalties.

(b) Penalties imposed as liquidated damages under the carrier's bond for shortage, failure to deliver, or irregular delivery shall be as follows:

(1) In the case of shortage, failure to deliver, or delivery direct to the consignee or other person of any merchandise free of duty, a minimum of

\$50 and a maximum of \$100, in any one shipment, to be determined within the discretion of the district director.

(c) In addition to the penalties described in paragraph (b) of this section, the carrier shall pay any internal-revenue taxes, duties, or other taxes accruing to the United States on the missing merchandise, together with all costs, charges, and expenses caused by the failure to make the required transportation, report, and delivery.

(R.S. 251, as amended, and secs. 551, 623, 624, 46 Stat. 742, as amended, 759, as amended (19 U.S.C. 66, 1551, 1623, 1624))

[FR Doc. 82-1039 Filed 1-13-82; 8:45 am]

BILLING CODE 4820-02-M

19 CFR Part 101

[T.D. 82-15]

Customs Regulations Amendment Relating to the Field Organization of the Customs Service

AGENCY: Customs Service, Treasury.

ACTION: Final rule.

SUMMARY: This document changes the field organization of the Customs Service by modifying the description of the port limits of the recently consolidated Houston-Galveston, Texas, Customs port of entry to include territory lying between the corporate limits of both Houston and Galveston. The change is being made to connect Harris and Galveston Counties to form a continuous path from Houston to Galveston, which is necessary to complete the consolidated port of entry.

EFFECTIVE DATE: July 2, 1981.

FOR FURTHER INFORMATION CONTACT: Renee DeAtley, Office of Inspection, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229 (202-566-8157).

SUPPLEMENTARY INFORMATION:

Background

By T.D. 81-160, published in the Federal Register on June 2, 1981 (46 FR 29462), § 101.3, Customs Regulations (19 CFR 101.3), was amended among other things, to consolidate the Customs ports of entry of Houston and Galveston, Texas, into the single Houston-Galveston, Texas, Customs port of entry. In consolidating the two ports, Customs intended to establish one combined port of entry encompassing an area between Houston and Galveston and stated that the Houston-Galveston port limits would include all of the territory within the existing port limits

of Houston and Galveston. However, following publication of the document, Customs determined that the geographical description of the newly consolidated Houston-Galveston port of entry limits did not reflect accurately all of the land area which was to be encompassed by the merger. The notice failed to incorporate that area of Galveston County between Clear Lake and Clear Creek on the north, Texas City on the south, the Texas shore line on the east and the Brazoria/Galveston County border on the west. Because the ports must be connected physically, the description of the consolidated Customs port of entry needs to be modified to include the omitted area.

Accordingly, Customs has determined to amend § 101.3, Customs regulations (19 CFR 101.3), to make this change.

Change in the Customs Field Organization

Under the authority vested in the President by section 1 of the Act of August 1, 1914, 38 Stat. 623, as amended (19 U.S.C. 2), and delegated to the Secretary of the Treasury by Executive Order No. 10289, September 17, 1951 (3 CFR 1949-1953 Comp., Ch. II), and pursuant to authority provided by Treasury Department Order No. 101-5 (46 FR 9336), the description of the port limits of the consolidated Houston-Galveston, Texas, Customs port of entry is modified to include that area of Galveston County bounded by Clear Lake and Clear Creek on the north, Texas City on the south, the Texas shore line on the east and the Brazoria/Galveston County border on the west.

Amendment to the Customs Regulations § 101.3 [Amended]

To reflect this change, the list of Customs regions, districts, and ports of entry in § 101.3(b), Customs regulations (19 CFR 101.3(b)), is amended by substituting "The territory lying within the corporate limits of both Houston and Galveston, Texas, and the remaining territory in Harris and Galveston Counties, Texas (T.D. 81-160 and T.D. 81-15)." for "Houston-Galveston, Texas, including territory described in T.D. 54409 and Port Bolivar and Texas City (T.D. 81-160)" (46 FR 29464; June 2, 1981) in the list of ports of entry in the Houston-Galveston district.

Executive Order 12291

Because this will not result in a "major rule" as defined by section 1(b) of Executive Order 12291, the regulatory impact analysis and review prescribed by section 3 of the Executive Order is not required.

Regulatory Flexibility Act

Pursuant to the provisions of section 605(b) of the Regulatory Flexibility Act (Pub. L. 96-354, 5 U.S.C. 601 *et seq.*), the Secretary of the Treasury has determined that the regulation set forth in this document will not have a significant economic impact on a substantial number of small entities. Accordingly, the regulation is not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604. This determination has been made because the amendment merely is a technical change to connect Harris and Galveston Counties to complete the combined port of entry.

Inapplicability of Notice and Delayed Effective Date Provisions

Because the change does not alter materially the amendments made by T.D. 81-160, which were developed after public participation, and because the amendment merely is a technical change connecting Harris and Galveston Counties to complete the combined port of entry pursuant to 5 U.S.C. 553(b)(B), notice and public procedure thereon are found to be unnecessary. Because the combined port of entry already is in operation, pursuant to 5 U.S.C. 553(d)(3), a delayed effective date is not required.

Drafting Information

The principal author of this document was Lawrence P. Dunham, Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

Dated: December 15, 1981.

John M. Walker, Jr.,

Assistant Secretary of the Treasury.

[FR Doc. 82-1038 Filed 1-13-82; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF STATE

Bureau of Consular Affairs

22 CFR Part 42

[Departmental Regulation 108.793]

Visas: Documentation of Immigrants Under the Immigration and Nationality Act

CFR Correction

In Title 22, Code of Federal Regulations, revised as of April 1, 1981, in Part 42, § 42.1 appearing on page 181, the definition of "Accompanying" or "accompanied by" should read: "Accompanying" or "accompanied by" means, in addition to an alien in the physical company of a principal alien,

an alien who is issued an immigrant visa within 4 months of the date of issuance of a visa to the principal alien, within 4 months of the adjustment of status in the United States of the principal alien, or within four months from the date on which the principal alien personally appears and registers before a consular officer abroad for the express purpose of conferring alternate foreign state chargeability or, where applicable, immigrant status upon a spouse or child.

BILLING CODE 1505-02-M

NAVAJO AND HOPI INDIAN RELOCATION COMMISSION

25 CFR Part 700

Commission Operations and Relocation Procedures

AGENCY: Navajo and Hopi Indian Relocation Commission.

ACTION: Final rule.

SUMMARY: On March 9, 1981, the Commission published a proposed recodification, revision and expansion of existing regulations contained in 25 CFR Part 700. (45 FR 15720-15743). The existing regulations in a large part are a restatement of the applicable portions of the statutes. Experience gained from relocations completed to date, and the anticipation of the increased volume of relocations expected indicate the need for an expansion of regulations to contain more detailed procedures. The final rule revises, expands and assigns a new numbering system to the regulations. Many comments were received and analysed and action was taken as set forth below. The final rules, with the exception of § 700.183—Determination of Replacement Housing Payment, § 700.185—Differential Amount, § 700.143—Payments for Divorced or Separated Relocates and § 700.145—Payments to Estates are set forth below.

EFFECTIVE DATE: These rules and regulations will be effective January 14, 1982.

FOR FURTHER INFORMATION CONTACT: Paul M. Tessler, CFR Liaison Officer, Telephone No. (602) 779-3311, Extension 1376, FTS: 261-1376.

The principal author is William G. Lavell, General Counsel, Navajo and Hopi Indian Relocation Commission, P.O. Box KK, Flagstaff, Arizona, 86002, Telephone (602) 779-3311, Extension 1376, FTS: 261-1376.

SUPPLEMENTARY INFORMATION: Most of the comments received dealt with the proposed changes in § 700.183—

Determination of Replacement Housing Payment and § 700.185—Differential Amount. All such comments opposed the proposed change. Since the question underlying the proposed change is now pending before the General Accounting Office and since an opinion from that office is expected in the very near future, the Commission has decided to await such opinion before making a decision on whether or not to make any changes in these proposed regulations. Pending the resolution of this question the Commission will continue its present policy of adding appraisals to benefits.

Comments were also received on § 700.143—Payments For Divorced or Separated Relocates and § 700.145—Payments to Estates. The Commission considered these comments and certain revisions to these sections were made. However, the Commission believes it would be advisable to have further comment on these regulations before final adoption. For that reason, the Commission has forwarded the revised §§ 700.143 and 700.145 to the Federal Register for publication and further comment. Final action will be taken upon those regulations when such comment has been received and reviewed.

Those suggestions upon which action was taken are as follows:

1. *Section 700.15—Waiver of Rights by Owner.* Comment was received suggesting that the entire section on waiver of rights by owner be omitted. Subsections (b) and (c) were omitted since they deal primarily with procedures. It was felt that some statement concerning waiver should be provided in the regulations.

2. *Section 700.35—Applicant.* Comment was received suggesting that defining the applicant as a person who agrees to relocate pursuant to the regulations and the Act is asking them to agree to more than is necessary. Change was made so that the regulation now reads only that an applicant is a person who agrees to relocate as required by the Act.

3. *Section 700.57—Dependent.* Pursuant to comments received, this definition has been substantially rewritten to reflect that dependency may occur from one of several reasons.

4. *Section 700.59—Displaced Person.* This section has been substantially rewritten to more accurately reflect the provisions of the statute.

5. *Section 700.61—Fair Market Value.* This definition has been changed to remove the substantive determination of what is fair market value from the definition.

6. *Section 700.65—Farm Operation.* Pursuant to suggestion received the

terms "livestock" and "crops" have been added to the types of agricultural production which qualify as a farm operation.

7. *Section 700.113—Basic Acquisition Policies.* Subsections (b) and (d) of this section have been amended to provide that in the event of damage to the property after the original appraisal, which damage causes the latter appraisal to be of a lesser value, the owner of the improvements will receive the higher appraisal. The purpose of this is to put the burden of loss during the period from the original application to final relocation on the Commission. Concerning subsection (g)(2), the several appropriate legal proceedings referred to are stated.

8. *Section 700.117—Criteria for Appraisals.* This section has been revised to more accurately reflect the circumstances of these appraisals.

9. *Section 700.133—Notice of Displacement.* This section has been revised by eliminating the ninety (90) day limit within which the Commission is to issue a preliminary relocation notice.

10. *Section 700.135—Relocation Assistance Advisory Services.* Subsection (e) has been amended to state that assistance is terminated only after two years in the replacement dwelling. In addition, the ground of failure to reasonably cooperate with the relocation procedures has been eliminated as a reason for terminating services.

11. *Section 700.137—Notice to Vacate.* Subsection (b) has been amended by eliminating the thirty (30) day notice to vacate.

12. *Section 700.139—Referral for Action.* This section has been amended to provide that the names of persons who have not moved will be forwarded to both the Secretary of the Interior and the United States Attorney for the District of Arizona. It is anticipated that further action by the Secretary of the Interior will be required before action is taken by the United States Attorney.

13. *Section 700.141—Claims for Relocation Payments.* Subsection (b) has been amended by changing the time for filing from thirty (30) to sixty (60) days from the time a person occupies the replacement home.

14. *Section 700.181—Eligibility.* In subsection (a) the two year limitation clause has been omitted. While this appears in Section 15(b)(2) of the Act, as a practical matter it does not occur since the Commission does not pay directly to relocatees the amounts for habitations and improvements purchased under Section 15(a) of the Act. This money is

applied directly to the purchase of the replacement dwelling.

15. *Section 700.187—Limitations on Replacement Home Benefits.* This section has been changed to conform more closely to the statutory language for the responsibility of the Commission to provide decent, safe and sanitary replacement housing. Also, subsection (d) has been added stating that the Commission encourages the use of innovative energy and other technologies to achieve minimum monthly housing operating expenses.

16. *Section 700.3—Assurances with Respect to Acquisition and Displacement.* Subsection (b) has been amended by indicating that maximum quality in housing will be promoted. This was done pursuant to a suggestion and is for emphasis. It is not intended that there will not be some choice.

17. *Section 700.171—Fixed Payment for Moving Expenses—Nonresidential Move.* Subsection (b) has been amended to provide that gross receipts of \$1000 or net earnings of \$500 will be used instead of gross receipts of \$2000 and net earnings of \$1000 in determining eligibility for fixed payments. This was done pursuant to suggestion and in recognition of the fact that the economy on the reservation is substantially lower than the general economy.

Those comments on which no action was taken are as follows:

1. *Section 700.11—Manner of Notice.* Comment was received that relocatees are not getting adequate notice of general policy changes. In addition, it was suggested that all certification notices should be hand delivered. The Commission is preparing a public information program to more adequately inform relocatees of policy decisions. Concerning delivery of notices of certification it was decided that to require hand delivery in every instance would be impractical. However, the management manual will provide that hand delivery of such a certification notice is preferred where practical.

2. *Section 700.13—Waiver of Regulations.* A suggestion was made that a relocatee should be allowed to make an appeal at any time within the relocation program. The appeal time set in § 700.307 is thirty (30) days after receipt of notice of the decision.

3. *Section 700.41—Appraiser.* Comment was received that appraisers should not be employees of the Commission because it is not fair to the relocatee to have his property appraised and purchased by the same entity. Whether the appraiser is an employee or under contract, he is still paid by the Commission. It was further commented

that the appraiser should be Navajo so that cultural value of improvements and dwellings can be taken into account. Section 15(a) of the Act provides that the purchase price shall be the fair market value of habitations and improvements. The Commission has decided that the use of the term "fair market value" by the Congress does not allow the Commission to consider cultural and personal values in appraising improvements and habitations, except to the extent that cultural values may affect fair market value. An example would be that the dwelling of a medicineman may have more value than another dwelling of the same size and construction because it is used as the office or headquarters of the medicineman in the conduct of his profession. Such use would enhance its fair market value.

4. *Section 700.43—Assistance Payment.* Comment was received that people should receive \$5000 whether they relocate in the first year or the last year. This payment is controlled by Section 14(b) of the Act and the Commission has no discretion to change the terms of the Act.

5. *Section 700.53—Dwelling, Replacement.* Comments were received in connection with the various subsections as follows:

(b) It was suggested that this category should also include an existing dwelling that is encumbered by a mortgage. The definition as written would include this.

(c) Comment was received that person should be warned about flood plain potential but should be permitted to acquire a newly constructed home in the flood plain but not a resale dwelling. Under the proposed regulations as written, a person could get a flood plain variance for new construction but the Commission would not authorize purchase of a resale house in the flood plain.

(d) Comment was received that relocatees should be instructed on how to look for less expensive to operate housing of equal quality. This subject is covered in seminars which are given to relocatees prior to their acquisition of replacement dwellings. See also comments above in regard to Section 700.187(d).

6. *Section 700.55—Decent, Safe and Sanitary Dwellings.* Comment was received that housing should meet more than established minimum codes. This apparently comes from misunderstanding of the term minimum code. The standards set in this section for a decent, safe and sanitary dwelling are the highest in use in this area and represent a quality home. The minimum code is not used as a maximum standard

of construction but is a minimum standard that must be met before payment is made.

7. *Section 700.61—Fair Market Value.* Comment was received that the cultural purpose of the dwelling such as one used by a medicineman should be included in fair market value. See comments under § 700.41 above.

8. *Section 700.63—Family.* Comment was received that because of the limiting factors of the construction freeze, livestock reduction and other economic factors, more than one household may share a residence. This concept is already recognized in the administration of the program. More than one household may qualify for benefits even though they may be living within the same residence. It should be noted that this definition has been omitted since the term "family" is referred to in subsection (d) of § 700.69.

9. *Section 700.65—Farm Operation.* Comment was received questioning what meaning would be given to the phrase "contributing materially to the operators support." If the average annual gross receipts during the two taxable years prior to relocation were at least \$1000 or if the average annual net earning was at least \$500 during the same period, then it is considered that the farm operation contributed materially to the operators support. This is computed pursuant to § 700.171(b)(3). It should be noted that in cases where there is substantial hardship, this requirement can be waived.

10. *Section 700.69—Head of Household.* Comment was received concerning several subsections as follows:

(b)(3) Suggestion was made that the date of June 19, 1980 be removed and that a married couple whose marriage was in effect on the date of application now be eligible.

(b)(5) Suggestion was made that the date of November 12, 1975 be removed and that the determination should be made as of the date of application. In addition, the issue of people who are in the process of continuing education was raised.

The Commission reviewed all these suggestions and determined not to act on them.

11. *Section 700.71—Improvements.* It was suggested that this definition include water rights. This cannot be done since water rights are normally pertinent to the land and the land in these instances is owned by the Tribe. The improvements being paid for are those which the individual has made on the land. For instance, if a person has placed a diesel motor to run a water pump he could take the motor with him

or be compensated for it, but he would not be compensated for any right to the water not withdrawn.

12. *Section 700.79—Marriage.* Comment was received that we should not require the people to have lengthy court proceedings such as a tribal court proceeding to declare their marriages valid. The present wording requires only that the marriage be "recognized" by the law of the Tribe. That recognition does not require a court proceeding.

13. *Section 700.81—Monthly Housing Cost.* Comment was received that this term should include the cost of firewood and other fuels as well as insurance costs. The section has been amended to include insurance. The addition of firewood and other fuel is not necessary due to the definition of utility charges under § 700.105 which has been changed to include these items.

14. *Section 700.91 and § 700.93—Relocation Report and Relocation Plan.* Suggestion was made that the phrase "in consultation with those affected" be added after the word Commission. This was required by the Act and was done but the point is moot at this time since the Report and Plan has been submitted.

15. *Section 700.99—Salvage Value.* Comment was received that a displaced person and his/her family should have the right to salvage at his/her own removal expense before the Commission looks for other persons to salvage for fee. This is not appropriately a matter for definition but can be covered in the management manual.

16. *Section 700.101—Single Person.* Comment was received that divorced people should not be lumped together in one category with other single people since the terms are not synonymous. This comment is aimed primarily at values placed upon terms. The Commission is merely attempting to define a legal term and not expressing a view concerning values.

17. *Section 700.113-700.121—Basic Acquisition Policies and Appraisal Procedures.* Comments were received stating that cultural values should be taken into consideration in the appraisal process. This has been addressed under § 700.41 above. Additional comments regarding these sections were received as follows:

1. It was suggested that a relocatee should have the right to state his asking price and then negotiate. This is not the procedure set forth but the procedure does not preclude the relocatee from stating his asking price. However, this is not a negotiated purchase and the Commission is limited to paying the fair market value.

2. It was suggested that an advocate for the relocatee be present at his realty interviews. In essence, this is done at this time by having the advisory services worker assigned to the case at such interviews. However, this is more appropriately a subject for the management manual.

3. It was suggested that there should be a Navajo appraiser on the Commission payroll. There was one during the period of the original appraisals.

18. *Section 700.133—Notice of Displacement.* Comment was received that this notice should not be sent until the new land have been identified and there is a place for those affected by the partition line to be relocated. This comment would affect the time within which the notices would be sent. Comment was also received that the entire section should be eliminated since the notice is provocative and serves no real purpose. The Commission feels that such a notice does serve a purpose in that it advises people of the fact that the time within which relocation is to be made is running from July 8, 1981 (the date on which the Report and Plan became effective) and advises them concerning the availability of bonus money under Section 14(b) of the Act. It is planned that additional contact will be made with relocatees as new lands are acquired for the purpose of ascertaining their desires concerning residence on the new lands and what it is to be used for.

19. *Section 700.187—Utilization of Replacement Home Benefits.* Comment was received to the effect that this section be eliminated since it tends to reward the less successful and penalize the more successful. The example was given that a person who chose to reinvest livestock reduction payments in housing is penalized for doing so by not having the opportunity to relocate into housing reflecting this added investment. The person who chose to spend the livestock reduction payment on an automobile is rewarded by being granted the opportunity to relocate into new housing with full benefits. The Commission believes that the section as written gives recognition to the various kinds of situations that will be encountered. The Commission does not feel it should introject itself into how a person gets into those situations.

20. *Section 700.189—Expenditure of Replacement Home Benefit.* Comment was received on subsection (a)(3) to the effect that this section should include provisions for relocatees to use portions of their replacement home benefits to set up special accounts to be used to pay for utilities. The Commission has

determined that replacement home benefits cannot be used for utility accounts.

21. *Section 700.197—Basic Eligibility Requirements.* Comment was received that a denied applicant should be eligible for reimbursement of expenses that are incidental to the certification process. The Commission now reimburses for travel expenses in connection with an application. The Commission is not aware of any other expenses incidental to the certification process.

22. *Section 700.199—Incidental Expenses.* Comment was received that the Commission should not promise to pay legal costs and fees of persons who choose to challenge the relocation process. This comment was in regard to subsection (a)(1). The legal cost referred to in subsection (a)(1) are related only to the real estate transaction in connection with acquisition of a replacement dwelling.

(23) *Section 700.267(a).* It was suggested that an exception be made for people who legally represent the individual to whom the record pertains. It is not necessary to act on this suggestion since the provisions of § 700.267(a) already provide that another person can have access to the file with written consent of the individual to whom the record pertains.

24. *Section 700.271(b)(2).* It was suggested that requiring labeling of a Privacy Act inquiry under this section with "PRIVACY ACT INQUIRY" is unrealistic and that, therefore, this requirement should be deleted. The provision does not say that a request not so labeled will not be considered. Further, it is anticipated that Privacy Act requests received from people who come in would be drafted by staff in any event. The reason for the labeling is that certain willful violation of the Privacy Act carry criminal penalties. For that reason it is customary to require labeling of Privacy Act requests.

25. *Section 700.271(b).* It was suggested that a subpart (5) be added to provide that a relocatee is entitled to assistance of staff in gaining access to his/her records. This request, as worded, would be more appropriate under § 700.275. In any event it is not necessary to act on it since this can and should be covered in the Management Manual.

As of the date of publication of this final rule, the Office of Management and Budget has not approved the information collection requirements if any, related to these regulations. Notice of such approval will be published at a later date.

Accordingly, Part 700 of Title 25 of the Code of Federal Regulations is revised to read as follows:

PART 700—COMMISSION OPERATIONS AND RELOCATION PROCEDURES

Subpart A—General Policies and Instructions

Sec.	Purpose.
700.3	Assurances with respect to acquisition and displacement.
700.5	Superseding of regulations.
700.11	Manner of notice.
700.13	Waiver of regulations.
700.15	Waiver of rights by owner.

Definitions

700.31	Applicability of definitions.
700.33	Act.
700.35	Applicant.
700.37	Application for relocation assistance benefits and agreement to move.
700.39	Appraisal.
700.41	Appraiser.
700.43	Assistance payment.
700.45	Business.
700.47	Commission.
700.49	Certified eligible head of household.
700.51	Custodial parent.
700.53	Dwelling, replacement.
700.55	Decent, safe, and sanitary dwelling.
700.57	Dependent.
700.59	Displaced person.
700.61	Fair market value.
700.65	Farm operation.
700.67	Habitation.
700.69	Head of household.
700.71	Improvements.
700.77	Livestock.
700.79	Marriage.
700.81	Monthly housing cost.
700.83	Nonprofit organization.
700.85	Owner.
700.87	Person.
700.91	Relocation report.
700.93	Relocation plan.
700.95	Replacement housing funds.
700.97	Resident (or residency).
700.99	Salvage value.
700.101	Single person.
700.103	Uniform Act.
700.105	Utility charges.

Subpart B—Acquisition and Disposal of Habitation and/or Improvement

700.111	Applicability of acquisition requirements.
700.113	Basic acquisition policies.
700.115	Preliminary acquisition notice.
700.117	Criteria for appraisals.
700.119	Establishment of fair market value.
700.121	Statement of the basis for the determination of fair market value.
700.123	Expenses incidental to transfer of ownership to the Commission.
700.125	Disposal of property.

Subpart C—General Relocation Requirements

700.131	Purpose and applicability.
700.133	Notice of displacement.

- Sec.
- 700.135 Relocation assistance advisory services.
- 700.137 Notice to vacate.
- 700.139 Referral for action.
- 700.141 General requirements—claims for relocation payments.
- 700.147 Eligibility requirements.
- Subpart D—Moving and Related Expenses, Temporary Emergency Moves**
- 700.151 Eligibility.
- 700.153 Actual reasonable moving and related expenses—residential moves.
- 700.155 Expenses in searching for replacement dwelling—residential moves.
- 700.157 Actual reasonable moving and related expenses—nonresidential moves.
- 700.159 Payment for direct loss of personal property—nonresidential moves.
- 700.161 Substitute personal property—nonresidential moves.
- 700.163 Expenses in searching for replacement locations—nonresidential moves.
- 700.165 Ineligible moving and related expenses.
- 700.167 Moving and related expenses—fixed payment.
- 700.169 Fixed payment for moving expenses—residential move.
- 700.171 Fixed payment for moving expenses—nonresidential move.
- 700.173 Average net earnings of business or farm.
- 700.175 Temporary emergency moves.
- Subpart E—Replacement Housing Payments**
- 700.181 Eligibility.
- 700.187 Utilization of replacement home benefits.
- 700.189 Expenditure of replacement home benefits.
- Subpart F—Incidental Expenses**
- 700.195 General.
- 700.197 Basic Eligibility requirements.
- 700.199 Incidental expenses.
- Subpart G—Assistance Payments (Incentive Bonus)**
- 700.205 Eligibility requirements.
- Subpart H—Last Resort Replacement Housing**
- 700.209 Applicability.
- 700.211 Basic rights and rules.
- 700.213 Methods of providing replacement housing.
- Subpart I—Commission Operations**
- 700.219 General.
- Subpart J—Inspection of Records**
- 700.235 Purpose and scope.
- 700.237 Definitions.
- 700.239 Records available.
- 700.241 Requests for records.
- 700.243 Action on initial requests.
- 700.245 Time limits on processing of initial requests.
- 700.247 Appeals.
- 700.249 Action on appeals.
- 700.251 Fees.
- Subpart K—Privacy Act**
- 700.255 Purpose and scope.
- Sec.
- 700.257 Definitions.
- 700.259 Records subject to Privacy Act.
- 700.261 Standards for maintenance of records subject to the act.
- 700.263 Assuring integrity of records.
- 700.265 Conduct of employees.
- 700.267 Disclosure of records.
- 700.269 Accounting for disclosures.
- 700.271 Requests for notification of existence of records: Submission.
- 700.273 Request for notification of existence of record: Action on.
- 700.275 Requests for access to records.
- 700.277 Requests for access to records: Submission.
- 700.279 Request for access to records: Initial decision.
- 700.281 Request for notification of existence of records and for access to records: Appeals.
- 700.283 Request for access to records: Special situations.
- 700.285 Amendment of records.
- 700.287 Petitions for amendment: Submission and form.
- 700.289 Petitions for amendment: Processing and initial decision.
- 700.291 Petitions for amendment: Time limits for processing.
- 700.293 Petitions for amendment: Appeals.
- 700.295 Petitions for amendment: Action on appeals.
- 700.297 Statements of disagreement.
- Authority:** Pub. L. 93-531, 88 Stat. 1712 as amended by Pub. L. 96-305, 94 Stat. 929 (25 U.S.C. 640d).
- Subpart A—General Policies and Instructions**
- § 700.1 Purpose.**
- The purpose of this part is to implement provisions of the Act of December 22, 1974 (Pub. L. 93-531, 88 Stat. 1712 as amended by Pub. L. 96-305, 94 Stat. 929), hereinafter referred to as the Act, in accordance with the following objectives—
- (a) To insure that persons displaced as a result of the Act are treated fairly, consistently, and equitably so that these persons will not suffer the disproportionate adverse, social, economic, cultural and other impacts of relocation.
- (b) To set forth the regulations and procedures by which the Commission shall operate; and implement the provisions of the Act.
- (c) To establish standards consistent with those established in the implementation of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (84 Stat. 1894, 42 U.S.C. 4601 et. seq., Pub. L. 91-646), hereinafter referred to as the Uniform Act.
- (d) To insure that owners of habitations and other improvements to be acquired pursuant to the Act are treated fairly and consistently, to encourage and expedite acquisition by

agreements with such owners, to minimize litigation, relieve congestion in the courts and to promote public confidence in the Commission's relocation program.

(e) To facilitate development of a relocation plan according to the Act and carry out the directed relocation as promptly and fairly as possible, with a minimum of hardship and discomfort to the relocation, in accordance with the Act.

§ 700.3 Assurances with respect to acquisition and displacement.

The Commission will not approve any programs or projects which may result in the acquisition of habitations and/or improvements, or in the displacement of any person, until such time as written assurances are submitted to the Commission that such projects or programs are in accordance with the Act. It will—

(a) Assure that, within a reasonable period of time prior to displacement, adequate, decent, safe and sanitary replacement dwellings (defined at § 700.55) will be available to all certified eligible heads of households.

(b) Carry out relocation services in a manner that will promote maximum quality in housing.

(c) Inform affected persons of their rights under the policies and procedures set forth under the regulations in this part.

§ 700.5 Superseding of regulations.

These regulations supersede the regulations formerly appearing in this part. However, any acquisition of property or displacement of a person occurring prior to the effective date of these regulations shall continue to be governed by the regulations at 25 CFR Part 700 in effect at the time of the acquisition or displacement.

§ 700.11 Manner of notice.

Each notice which the Commission is required to provide under these regulations shall be personally served, receipt documented, or sent by certified or registered first-class mail, return receipt requested. Each notice shall be written in plain understandable language. Recipients who notify the Commission that they are unable to read and understand the notice will be provided with appropriate translation and counseling. Each notice shall indicate the name and telephone number of a person who may be contacted for answers to questions or other needed help.

§ 700.13 Waiver of regulations.

(a) Any time limit specified for the filing of a claim or an appeal under the regulations in this part may, on a case by case basis, be extended by the Commission.

(b) The Commission may waive any requirement of these regulations in this part if such requirement is not required by law and if the Commission finds such waiver or exception to be in the best interest of individual Indian applicants, the Commission, and the United States. Any request for a Commission waiver shall be submitted in writing to the Commission and shall be justified on a case by case basis.

§ 700.15 Waiver of rights by owner.

Nothing in these regulations shall prevent a fully informed applicant from voluntarily waiving any of his/her rights under the regulations in this part. A waiver of rights shall in no way constitute an exemption from the requirement to relocate pursuant to the Act.

Definitions**§ 700.31 Applicability of definitions.**

Except where otherwise noted, the definitions appearing in this Subpart A apply to the regulations in this part.

§ 700.33 Act (The Act).

(a) The Act. The Act is Pub. L. 93-531, (88 Stat. 1712, 25 U.S.C. 640d.) as amended by Pub. L. 96-305 (94 Stat. 929).

§ 700.35 Applicant.

A person who applies for relocation assistance benefits and agrees to relocate as required by the Act.

§ 700.37 Application for relocation assistance benefits and agreement to move.

The application for relocation assistance benefits and agreement to move is Commission Form #69-R0001, completion of which is used for establishing the date upon which a person shall be deemed to have a contract with the Commission to relocate pursuant to Section 14(b) of the Act.

§ 700.39 Appraisal.

The appraisal is an estimate of the fair market value which is placed on the habitation and other improvements owned by a relocatee.

§ 700.41 Appraiser.

An appraiser is a person appointed or hired by the Commission to make an appraisal of the habitation and other improvements on the land owned by the relocatees. All compensation for the

appraiser shall be paid by the Commission.

§ 700.43 Assistance payment.

An assistance payment is the additional payment made to the certified eligible head of household pursuant to Section 14(b) of the Act. This term is synonymous with "incentive bonus".

§ 700.45 Business.

The term business means any lawful activity, except a nonprofit organization or a farm operation, that is—

(a) Conducted primarily for the purchase, sale, lease and/or rental of personal and/or real property, and/or for the manufacture, processing, and/or marketing of products, commodities, and/or any other personal property; or

(b) Conducted primarily for the sale of services to the public; or

(c) Solely for the purpose of Subpart D of this part, conducted primarily for outdoor advertising display purposes, when the display(s) must be moved as a result of the Act.

§ 700.47 Commission.

The Navajo and Hopi Indian Relocation Commission is that entity established pursuant to 25 U.S.C. 640d-11 (Section 12(a) of the Act).

§ 700.49 Certified eligible head of household.

A certified eligible head of household is a person who has received notice from the Commission that he/she has been certified as eligible to receive certain relocation assistance benefits.

§ 700.51 Custodial parent.

A custodial parent is a person who has the immediate personal care, charge, and control of a minor child who resides in his/her household, or a person who fills the parental role but who is not necessarily blood-related.

§ 700.53 Dwelling, replacement.

The term replacement dwelling means a dwelling selected by the head of a household as a replacement dwelling that meets the criteria of this section. A replacement dwelling is a dwelling that:

(a) Is decent, safe, and sanitary as described in § 700.55.

(b) May include existing dwellings for resale, new construction, modular homes, mobile homes, mutual self-help housing or other federally assisted housing programs.

(c) Is in an area not subjected to unreasonable adverse environmental conditions from either natural or man-made sources and in an area not generally less desirable than that of the acquired dwelling with respect to public

utilities, public and commercial facilities, and schools.

(d) Is available at a purchase price within the ability-to-pay of the displaced person. A replacement dwelling shall be considered within the ability-to-pay of the displaced person if, after he receives a replacement housing payment and any available housing assistance payments, his new monthly housing cost (defined at § 700.81) for the replacement dwelling does not exceed twenty-five percent (25%) of the monthly gross income of all adult members of the household, including supplemental income payments received from public agencies. If the person's monthly income pattern is irregular, the Commission shall base its determination of average gross monthly income on the period of time, actual and/or projected, that most fairly and equitably represents the person's ability-to-pay.

(e) Is actually available to the displaced person on the private market, other federally-sponsored housing projects, tribal-sponsored housing projects and/or Commission-sponsored housing projects.

§ 700.55 Decent, safe, and sanitary dwelling.

(a) *General.* The term decent, safe, and sanitary dwelling means a dwelling which—

(1) Meets applicable federal, state and local housing and occupancy codes; including but not limited to the Uniform Building Code, National Electrical Code, ICBO Plumbing Code, the Uniform Mechanical Code, HUD Minimum Property Standards, and HUD Mobile Home Construction and Safety Standards (24 CFR Part 3280).

(2) Is structurally sound, clean, weathertight and in good repair and has adequate living space and number of rooms.

(3) Has an adequate and safe electrical wiring system for lighting and other electrical services where economically feasible.

(4) Meets the requirements of the HUD lead-based paint regulations (24 CFR Part 35) issued under the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4831 et seq.);

(5) In the case of a physically handicapped person, is free of any architectural barriers. To the extent that standards prescribed by the American National Standards Institute, Inc., in publication ANSI A117.1-1961 (R 1971), are pertinent, this provision will be considered met if it meets those standards;

(6) Has heating as required by climatic conditions;

(7) Has habitable sleeping area that is adequately ventilated and sufficient to accommodate the occupants;

(8) Has a separate well-lighted and ventilated bathroom, affording privacy to the user, that contains a sink and bathtub or shower stall, properly connected to hot and cold water, and a flush toilet, all in good working order and properly connected to a sewage drainage system; and

(9) In the case of new construction or modular housing, complies with the energy performance standards for new buildings set forth by the U.S. Department of Energy.

(10) The Commission may waive paragraphs (a) (3) or (8) of this section on a case-by-case basis if it is determined that it is in the best interest of the individual relocatee to do so.

§ 700.57 Dependent.

A dependent is a person who either derives more than one-half of his/her support from another or is under the custody, control and care of another. In instances where there are conflicting claims for the dependent status of a person in more than one household, the household of the person having custody, control and care shall be determined to be the household wherein the person is a dependent.

§ 700.59 Displaced person.

Displaced person means a member of the Hopi Tribe residing within the area partitioned to the Navajo Tribe or a member of the Navajo Tribe residing within the area partitioned to the Hopi Tribe who must be relocated pursuant to the Act. This term is synonymous with the term "relocatee".

§ 700.61 Fair market value.

Fair market value shall mean the value placed on the habitation and improvements owned by each head of household as determined pursuant to §§ 700.117 through 700.121.

§ 700.65 Farm operation.

Farm operation means any activity conducted for the production of one or more agricultural products or commodities including livestock, crops and timber for sale or home use, and customarily producing such products or commodities in sufficient quantity to be capable of contributing materially to the operator's support as determined in § 700.171(b)(3).

§ 700.67 Habitation.

The term habitation means the dwelling(s) of each household required to relocate under the term of the Act.

§ 700.69 Head of household.

(a) *Head of Household.* The head of household is:

(1) The individual who exercises control over, or makes decisions for, the other household members based upon a legal or moral obligation to do so and who is determined by the Commission to represent the household in all matters relating to the Commission; or

(2) The individual who exercises control or makes decisions for the other household members based upon the consensus of the other household members to do so and who is determined by the Commission to represent the household; or

(3) The individual determined by the Commission to represent the household in all matters relating to the Commission.

(b) *Household.* A household is:

(1) A group of people who are residing together and are related by blood, marriage, or court order; or

(2) One or more persons who are residing together in a single place of abode of which one household member has maintained continuous residency therein prior to and since December 22, 1974; or

(3) A married couple whose marriage was in effect as of June 19, 1980, or who would qualify for Relocation Benefits as a household under any other definition in this section; or

(4) A person who is a custodial parent and is actually maintaining and supporting himself/herself and his/her dependents; or

(5) A single person who has actually maintained and supported himself/herself on and since November 12, 1975; or

(6) Such other situations or relationships which are determined by the Commission to qualify as a household pursuant to the Act.

(c) *Household Status and Size.* Household status and size shall be initially determined by the facts existing on the date of certification of eligibility for relocation assistance benefits. Final determination of household status and size shall be made prior to referral of the case to the Commission's Real Estate Services Department.

(d) The term family is synonymous with household.

§ 700.71 Improvements.

Improvements are structures and attached fixtures to the land owned by a member of a household required to relocate under the terms of the Act, in addition to the habitation which improvements cannot readily be moved without substantial damage, or whose

movement would require unreasonable cost.

§ 700.77 Livestock.

The term livestock shall mean all domesticated animals of every type owned by the displaced person.

§ 700.79 Marriage.

Marriage is a legally recorded marriage or a traditional commitment between a man or woman recognized by the law of the Hopi Tribe or the Navajo Tribe.

§ 700.81 Monthly housing cost.

(a) *General.* The term monthly housing cost for a replacement dwelling purchased by a certified eligible head of household is the average monthly cost for all mortgage payments, real property taxes, reasonable utility charges, and insurance.

(b) *Computation of monthly housing cost for replacement dwelling.* A person's monthly housing cost for a replacement dwelling shall be a projected amount that includes one-twelfth of the estimated reasonable annual cost for utility charges.

§ 700.83 Nonprofit organization.

The term nonprofit organization means a corporation, individual, or other public or private entity that is engaged in a lawful business, professional, or instructional activity on a nonprofit basis and that has established its nonprofit status under applicable Federal, State, or Tribal law.

§ 700.85 Owner.

The term owner means the person who holds any interest in habitations and improvements to be acquired by the Commission pursuant to Section 15(a) of the Act, which the Commission determines warrants consideration of ownership.

§ 700.87 Person.

The term person means any individual, partnership, corporation, or association.

§ 700.91 Relocation report.

The relocation report shall be the report prepared by the Commission and submitted to Congress pursuant to Section 13(a) of the Act.

§ 700.93 Relocation plan.

The relocation plan shall be the plan prepared by the Commission and submitted to Congress pursuant to Section 13(c) of the Act.

§ 700.95 Replacement housing funds.

Replacement housing funds means those funds authorized to be

appropriated pursuant to Section 25(a)(1) of the Act.

§ 700.97 Resident (or residency).

(a) Residency is established by fulfilling either of the following criteria.

- (1) Current occupancy.
- (2) Maintenance of substantial recurring contacts with an identifiable homesite although the individual is temporarily away for any of the following reasons:

- (i) Employment, and seeking employment.
 - (ii) Education or job training.
 - (iii) Medical.
 - (iv) Military (active duty in the military service).
 - (v) Unavailability of Housing.
 - (vi) Incarceration.
- (b) Any one or more of the following criteria may be considered in establishing whether or not there have been substantial recurring contacts:

- (1) Ownership of livestock.
- (2) Ownership of improvements.
- (3) Grazing Permits.
- (4) Livestock sales receipts.
- (5) Homesite Leases.
- (6) Public Health Records.
- (7) Medical and Hospital records, including those of Medicinemen.
- (8) Trading Post Records.
- (9) School Records.
- (10) Military Records.
- (11) Employment Records.
- (12) Mailing address records.
- (13) Banking Records.
- (14) Drivers License Records.
- (15) Voting Records—Tribal and County.
- (16) Home ownership or rental off the Disputed Area.
- (17) B.I.A. Census Data.
- (18) Certification from Chapter Officials—Not required.
- (19) Certification of Residency.
- (20) Certification by Relocatee.
- (21) Information obtained by Certification Field Investigation.
- (22) Social Security Administration.
- (23) Marital Records.
- (24) Court Records.
- (25) Records of Birth.
- (26) Joint Use Area Roster.
- (27) Any other relevant data.

§ 700.99 Salvage value.

Salvage value means the probable sale price of an item, if offered for sale on the condition that it will be removed from the property at the buyer's expense, allowing a reasonable period of time to find a person buying with knowledge of the uses and purposes for which it is adaptable and capable of being used, including separate use of serviceable components and scrap when there is no reasonable prospect of sale except on that basis.

§ 700.101 Single person.

A single person is a widow, widower, unmarried or divorced person.

§ 700.103 Uniform Act.

The term Uniform Act means the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (84 Stat. 1894; 42 U.S.C. 4601 et seq.; Pub. L. 91-646).

§ 700.105 Utility charges.

Utility charges means the cost for heat, lighting, hot water, electricity, natural gas, butane, propane, wood, coal or other fuels water, sewer and trash removal.

Subpart B—Acquisition and Disposal of Habitations and/or Improvements

§ 700.111 Applicability of acquisition requirements.

General. The requirements of this Subpart B apply to all Commission acquisition of habitations and/or improvements that occur on or after the effective date of these regulations.

§ 700.113 Basic acquisition policies.

(a) *Appraisal and invitation to owner.* Before the initiation of negotiations, the Commission shall have the habitations and/or improvements appraised to its satisfaction and will attempt to assure that the owner or his designated representative is contacted in advance of the appraisal(s) and given an opportunity to accompany each appraiser during the appraiser's inspection of the property.

(b) *Determination and offer of fair market value.* Before the initiation of negotiations, the Commission shall establish an amount which it believes is fair market value for improvements. This amount shall be based on a current appraisal at the time negotiations commence for the relocation contract between the NHIIRC and the relocatee. The appraisal will be adjusted according to the Boeckh Building Cost Modifier for time or any physical changes in the improvements. If any changes are necessary the appraisal will be corrected to reflect a current dollar value. The amount of the current appraisal will be offered as just compensation for the improvements acquired, except as provided in paragraph (d) below. A copy of the initial appraisal will be sent to the owner as soon as possible after the appraisal program is completed.

(c) *Basic negotiation procedures.* The Commission will attempt to meet with the owner or his/her representative to discuss its offer to purchase his/her property including the basis for the determination of fair market value and

explain acquisition policies and procedures, including payment of incidental expenses. The owner shall be given reasonable opportunity to present material which he/she believes is relevant to determining the value of the property and to suggest modification in the proposed terms and conditions of the purchase. The Commission shall consider the owner's presentation.

(d) If the condition of the property indicates the need for a new appraisal or if a significant delay has occurred since the time of the latest appraisal of the property, the Commission shall have the appraisal updated or obtain a new appraisal. If a new appraisal is for a lesser value than the previous appraisal and said lesser value is due to damage done to the property during the time between the two appraisals, and such damage was not caused by the owner of the improvement, the owner shall be entitled to the higher appraisal value.

(f) *Objection to determination of fair market value.* If the owner objects to the Commission's determination of fair market value, the owner may request a hearing pursuant to the Commission's Hearing and Administrative Review procedures;

(g) *Payment before taking possession.* Before requiring an owner to surrender possession of his habitations and/or improvements, the Commission shall—

(1) Apply the agreed purchase price towards the acquisition price of the replacement dwelling or;

(2) Deposit with the court in an appropriate proceeding, such as divorce or probate, for the benefit of the owner, an amount not less than the Commission's determination of fair market value for the property or the court award of compensation for the property up to the maximum benefit allowed under the then existing replacement housing benefit.

§ 700.115 Preliminary acquisition notice.

As soon as feasible in the acquisition process, the Commission shall issue a preliminary acquisition notice to the owner. The notice shall—

(a) Inform the owner of the Commission's interest in acquiring his/her habitations and/or improvements.

(b) Explain that such preliminary acquisition notice is not a notice to vacate and that it does not establish eligibility for relocation payments or other relocation assistance under these regulations.

§ 700.117 Criteria for appraisals.

(a) *Appraisal standards.* The Commission's appraisals shall be based upon nationally recognized appraisal

standards and techniques to the extent that such principles are consistent with the concepts of value that the Commission may establish.

(b) *Documentation.* Appraisal reports must contain sufficient documentation, including supporting valuation data and the appraiser's analyses of that data, to demonstrate the reasonableness of the appraiser's opinion(s) of value.

(c) *Conflict of interest.* No appraiser shall have any interest, direct or indirect, in the habitations and/or improvements which he appraises for the Commission that would in any way conflict with his performance of the appraisal.

§ 700.119 Establishment of fair market value.

(a) *General.* The Commission shall establish the amount of fair market value to be offered to the owner for the habitations and/or improvements. Such amount shall not be less than—

(1) The appraiser's recommendations as to the fair market value of the habitations and/or improvements; or

(2) The fair market value estimate set forth in the agency's approved appraisal, if the property is valued at \$2,000 or less.

(b) *Owner retention of improvements.* If the owner of a habitation and/or improvement is permitted to retain it for removal off-site, the amount determined to be just compensation for the interest in habitations and/or improvements to be acquired from him shall not be less than the amount determined by subtracting the salvage value of the improvements he retains for off-site removal from the amount determined to be fair market value for his entire interest in the habitation and improvement. Retention of improvements by the owner shall not change, alter or abrogate the requirement of the Act that the owner must move from land partitioned to the tribe of which he/she is not a member.

§ 700.121 Statement of the basis for the determination of fair market value.

At the time of the initiation of negotiations to acquire the habitations and/or improvements, the Commission shall furnish the owner, along with the initial written purchase offer, a written statement of the basis for the determination of fair market value. To the extent permitted by the Commission, the statement shall include the following—

(a) A description and location identification of the habitations and/or improvements to be acquired.

(b) An inventory identifying the buildings, structures, fixtures, and other improvements, including appurtenant

removable building equipment, which are considered to be part of the habitations and/or improvements for which the offer of fair market value is made.

(c) A recital of the amount of the offer and a declaration that such amount—

(1) Is the full amount believed by the Commission to be just compensation for the property and is not less than the fair market value of the property as determined on the basis of the appraisal(s);

(2) Does not reflect any relocation payments or other relocation assistance which the owner is entitled to receive.

(d) If only a portion of a habitation and/or improvement is to be acquired, an apportionment of the total estimated just compensation for the partial acquisition will be made. In the event that the Commission determines that partial acquisitions are necessary, all portions so acquired will be acquired simultaneously.

§ 700.123 Expenses incidental to transfer of ownership to the Commission.

Eligible costs. The Commission shall reimburse the owner for reasonable expenses he/she necessarily incurred incidental to the transfer of habitations and/or improvements to the Commission. The Commission is not required to pay costs solely required to perfect the owner's interest in the habitations and/or improvements.

§ 700.125 Disposal of property.

Property acquired by the Commission pursuant to the Act shall be disposed of in one of the following manners:

(a) If the Commission determines that the property acquired constitutes a substantial risk to public health and safety, the Commission may remove or destroy the property.

(b) The Commission may transfer the property acquired by gratuitous conveyance to the tribe exercising jurisdiction over the area. Notice of such transfer shall be in writing and shall be completed within sixty (60) days from the finalization of all property acquisition procedures, unless the tribe notifies the Commission in writing within that time that the property transfer is refused. In the event of a refusal by the tribe, the Commission shall remove the property.

Subpart C—General Relocation Requirements

§ 700.131 Purpose and applicability.

This subpart prescribes general requirements governing the provision of relocation payments and other relocation assistance under the regulations in this part. The relocation

requirements of the regulations in this part apply to the relocation of any displaced person.

§ 700.133 Notice of displacement.

After the Commission's Relocation Report and Plan is in effect pursuant to the Act, the Commission shall issue a preliminary relocation notice to each person identified by the Commission as potentially subject to relocation. This notice shall—

(a) Be published in a newspaper of general circulation in the area of the former Joint Use Area at least two times, and shall be sent to each Chapter House on the former Joint Use Area for posting.

(b) Inform the person that he/she will be required to relocate permanently in the future unless the person has applied for and is determined to be eligible for a Life Estate.

(c) Generally describe the relocation assistance program for which the person may become eligible, including the maximum allowable dollar amounts and basic conditions of eligibility for the payments.

§ 700.135 Relocation assistance advisory services.

(a) *General.* The Commission may carry out a relocation assistance advisory program which offers the services described in paragraph (b) of this section. If the Commission determines that a person occupying habitations and/or improvements adjacent to the habitations and/or improvements acquired pursuant to the Act is caused substantial social, economic cultural or other injury because of such acquisition, it may offer such services to such person.

(b) *Services to be provided.* The advisory program will include such measures, facilities, and services as may be necessary or appropriate in order to—

(1) Personally interview where possible each certified eligible head of household to determine his/her relocation needs and preferences, and explain to him/her the relocation payments and other assistance for which he/she may be eligible, the related eligibility requirements, and the procedures for obtaining such payments and assistance;

(2) Provide current and continuing information on the availability, purchase prices, and rental costs of replacement dwellings and commercial and farm properties and locations, as the case may be.

(3) Assure that replacement dwellings are available to all certified eligible heads of households.

(4) Assist any persons displaced from a business or farm operation to obtain and become established in a suitable replacement location;

(5) Supply persons to be displaced with appropriate information concerning Tribal, Federal, State or local housing programs, disaster loans and other programs administered by the Small Business Administration, and other Federal or State programs offering assistance to persons to be displaced;

(6) Endeavor to minimize the adverse social, economic, cultural and other hardships and impacts of relocation on persons involved in adjusting to such relocation.

(c) *Coordination of relocation activities.* The Commission shall, to the maximum extent feasible, coordinate its relocation assistance advisory services activities with existing local, state, federal and Tribal agencies to the extent necessary to enable it to carry out its program. Referrals of displaced persons for services to existing services providers will be utilized whenever possible.

(d) *Policy.* The Commission shall continue to provide assistance to a family, individual, business concern, non-profit organization, or farm operation until relocation has been achieved unless section § 700.139 becomes applicable.

(e) *Reasons for Terminating Assistance.* In general, the circumstances under which the Commission's relocation obligations cease are the following:

(1) Two years have elapsed since the family or individual has moved to a decent, safe and sanitary replacement dwelling and has received all assistance payments to which entitled.

(2) All reasonable efforts to trace a family or individual have failed.

(3) The family or individual on his/her own initiative moves to substandard housing and has refused reasonable offers of additional assistance in moving to a decent, safe and sanitary replacement dwelling.

(4) The business concern, farm operation, or non-profit organization has received all assistance and payments to which it is entitled, and has either been successfully relocated or ceased operations.

(5) Other relevant reasons as determined by the Commission.

§ 700.137 Notice to vacate.

(a) *General.* Persons identified by the Commission as potentially subject to relocation who have not applied for relocation assistance shall be contacted by the Commission as soon as practicable following the fourth year

after the effective date of the relocation plan. At such time, the Commission shall—

(1) Request that the head of household choose an available area for relocation, and contract with the Commission for relocation; and

(2) Offer the relocatee suitable housing; and

(3) Offer to purchase from the head of household the habitation and improvements; and

(4) Offer provisions for the head of household and his family to be moved (e.g., moving expenses, etc.).

(b) If a person identified pursuant to § 700.137(a) fails or refuses to move after the actions outlined in this section are taken by the Commission, the Commission will issue a ninety day notice stating the date by which the person will be required to vacate the area partitioned to the Tribe of which he is not a member which date shall be five years after the date of approval of the Report and Plan by the Congress.

(c) Upon expiration of the time period provided and upon failure or refusal of the person to move, the Commission may exercise the referral for action proceedings outlined in § 700.139.

§ 700.139 Referral for action.

Upon the expiration of all notice periods and upon the failure or refusal of any relocatees to make timely arrangements to move, the Commission shall forward the names and addresses of such relocatees to the Secretary of the Interior and to the U.S. Attorney for the District of Arizona for such action as they deem appropriate. The Commission will assure the availability of relocation assistance to which the relocatees may be entitled.

§ 700.141 General requirements—claims for relocation payments.

(a) *Documentation.* Any claim for a relocation payment under Subparts D, E, F, G, or H of this part shall be submitted to the Commission on the appropriate Commission form and supported by such documentation as may reasonably be required by the Commission to demonstrate expenses incurred, such as bills and receipts.

(b) *Time for filing.* All claims for a relocation payment shall be filed with the Commission within sixty (60) days after the family occupies the replacement home unless this time period is extended by the Commission.

(c) *Direct payment of claim.* Relocation payments shall be made in accordance with the terms of the Relocation contracts and are not subject to claims of creditors or assignments.

§ 700.147 Eligibility requirements.

(a) To be eligible as a displaced person for benefits provided for under the Act, and these regulations a person must meet one of the following conditions:

(1) The person must be a resident in the area partitioned to the tribe of which he is not a member; or

(2) The person was a resident in the Joint Use Area but moved from there between December 22, 1974, and August 30, 1978; or

(3) The person was a resident of an area which was partitioned to a tribe of which he is not a member but moved therefrom after August 30, 1978.

(b) Moves described in paragraphs (a) (ii) and (a) (iii) of this section are presumed to have been made pursuant to the Act.

(c) Eligibility for certain benefits is further restricted by Sections 14(c) and 15(c) of the Act.

Subpart D—Moving and Related Expenses, Temporary Emergency Moves

§ 700.151 Eligibility.

(a) *General.* All certified eligible heads of household are eligible for moving and related expenses as prescribed in this subpart. A certified eligible head of household who lives on his/her business or farm property may be eligible for both a payment as a dwelling occupant and a payment with respect to the business or farm operation.

(b) *Least costly approach.* The amount of payment for an eligible expense under this subpart shall not exceed the least costly method, as determined by the Commission, of accomplishing the objective of the payment without causing undue hardship to the certified eligible heads of household.

(c) *Prior Approval.* Written approval of the Commission must be obtained for all moving and search expenses in this subpart. Such approval shall be obtained by each certified eligible head of household prior to incurring any expense from the real estate specialist to whom the case is assigned. If prior approval and the amount thereof is not obtained from the Commission, the Commission thereafter will determine:

(1) Whether the travel was required and the expenses reasonable and;

(2) The amount of reimbursement to be paid, if any.

§ 700.153 Actual reasonable moving and related expenses—residential moves.

Subject to the limitations contained in this subpart, a certified eligible head of

household is entitled to actual reasonable expenses for—

(a) Transportation computed at prevailing federal per diem and mileage allowance schedules, meals and lodging away from home required by the Commission.

(b) Transportation computed at prevailing federal per diem and mileage allowance schedules of the household and personal property from the acquired site to the replacement site.

(c) Packing, crating, unpacking and uncrating of the personal property.

(d) Disconnecting, dismantling, removing, reassembling and reinstalling relocated household appliances, and other personal property;

(e) Storage of the personal property, not to exceed one year unless extended by the Commission.

(f) Insurance of the personal property in connection with the move and necessary storage; and

(g) Other moving related expenses that are not listed as ineligible under § 700.165, as the Commission determines to be reasonable and necessary.

§ 700.155 Expenses in searching for replacement dwelling—residential move.

(a) A certified eligible head of household is entitled to actual reasonable expenses incurred in the search for a replacement dwelling.

(b) Transportation, meals and lodging when required to be away from home by the Commission, computed at prevailing federal per diem and mileage allowance schedules.

§ 700.157 Actual reasonable moving and related expenses—nonresidential moves.

(a) *Eligible costs.* Subject to the limitations of § 700.151(c) a certified eligible business, farm operation or nonprofit organization is entitled to payment for actual reasonable expenses for:

(1) Transportation of personal property from the acquired site to the replacement site.

(2) Packing, crating, unpacking, and uncrating the personal property.

(3) Disconnecting, dismantling, removing, reassembling and installing relocated and substitute machinery, equipment, and other personal property. This includes connection to utilities available nearby and modifications necessary to adapt such property to the replacement structure or to the utilities or to adapt the utilities to the personal property;

(4) Storage of the personal property;

(5) Insurance of personal property in connection with the move and necessary storage;

(6) Any license, permit or certification required by the displaced person, to the extent such cost is (i) necessary to its reestablishment at the replacement location and (ii) does not exceed either the cost for one year or for the remaining useful life of the existing license, permit, or certification, whichever is less;

(7) Professional services, including architect's, attorney's and engineer's fees, and consultant's charges, necessary for (i) planning the move of the personal property, (ii) moving the personal property, or (iii) installing the relocation personal property at the replacement location.

(8) Relettering signs and printing replacement stationery made obsolete as a result of the move;

(9) Actual direct loss of personal property;

(10) Purchase of substitute personal property;

(11) Searching for a replacement location;

(12) Other moving-related expenses that are not listed as ineligible under § 700.165.

(b) *Self-move.* If the displaced person self-moves his business, farm operation, or nonprofit organization, the Commission may approve a payment for his moving expenses in an amount not to exceed the lowest acceptable bid or estimate obtained by the Commission, without submission of documentation of moving expenses actually incurred.

(c) *Notification to Commission and inspection.* To be eligible for a payment under this section, the displaced person shall permit the Commission to make reasonable and timely inspections of the personal property at the displacement and replacement sites.

§ 700.159 Payment for direct loss of personal property—nonresidential moves.

(a) *General.* A certified eligible business is entitled to payment for actual direct loss of an item of tangible personal property incurred as a result of moving or discontinuing his business, farm operation, or nonprofit organization. The payment shall consist of the reasonable costs incurred in attempting to sell the item plus the less of—

(1) The fair market value of the item for continued use at the acquired site, less the proceeds from its sale. (When payment for property loss is claimed for goods held for sale, the fair market value shall be based on the cost of the goods to the business, not the potential selling price); or

(2) The estimated cost of moving the item, but with no allowance for storage. (If the business, farm operation or

nonprofit organization is discontinued, the estimated cost shall be based on a moving distance of 50 (fifty) miles.)

(b) *Advertising sign.* The amount of a payment for direct loss of an advertising sign, which is personal property, shall be the lesser of—

(1) The depreciated reproduction cost of the sign as determined by the Commission, less the proceeds from its sale; or

(2) The estimated cost of moving the sign.

(c) *Sales effort.* To be eligible for payment for direct loss of personal property, the claimant must make good faith effort to sell the personal property, unless the Commission determines that no such effort is necessary.

(d) *Transfer of ownership.* To be eligible for payment for direct loss of personal property, the claimant shall transfer to the Commission ownership of the unsold personal property.

§ 700.161 Substitute personal property—nonresidential moves.

(a) *General.* If an item of personal property, which is used as part of a business, farm operation or nonprofit organization, is not moved but is promptly replaced with a comparable substitute item at the replacement site, the displaced person is entitled to payment of the lesser of—

(1) The cost of the substitute item, including installation cost at the replacement site, minus any proceeds from the sale or trade-in of the replaced item, if any; or

(2) The estimated cost of moving the replaced item, based on the lowest acceptable bid or estimate obtained by the Commission for eligible moving and related expenses, but with no allowance for storage.

(b) *Transfer of ownership.* To be eligible for a payment under this section, the claimant shall transfer to the Commission ownership of the personal property that has not been sold or traded in.

§ 700.163 Expenses in searching for replacement location—nonresidential moves.

A displaced business, farm or nonprofit organization is entitled to an amount not to exceed \$500 (five-hundred dollars), as determined by the Commission, for actual reasonable expenses incurred in searching for a replacement location, including—

(a) Transportation computed at prevailing federal per diem and mileage allowance schedules; meals and lodging away from home;

- (b) Time spent searching, based on reasonable earnings;
- (c) Fees paid to a real estate agent or broker to locate a replacement site.

§ 700.165 Ineligible moving and related expenses.

A displaced person is not entitled to payment for—

- (a) The cost of moving any structure or other improvement in which the displaced person reserved ownership; or
- (b) Interest on a loan to cover moving expenses; or
- (c) Loss of goodwill; or
- (d) Loss of profits; or
- (e) Loss of trained employees; or
- (f) Physical changes at replacement location of business, farm or nonprofit organization, except as provided at § 700.157; or
- (g) Any additional expense of a business, farm, or nonprofit organization incurred because of operating in a new location.

§ 700.167 Moving and related expenses—Fixed payment.

A displaced person (other than an outdoor advertising display business who is eligible for a payment for his actual moving and related expenses under Subpart D of these regulations) is entitled to receive a fixed payment in lieu of a payment for such actual moving and related expenses.

§ 700.169 Fixed payment for moving expenses—residential moves.

The fixed payment for moving and related expenses of a certified eligible head of household from a dwelling consists of—

- (a) A moving expense allowance not to exceed \$300 (three hundred dollars).
- (b) A dislocation allowance of \$200 (two hundred dollars).

§ 700.171 Fixed payment for moving expenses—nonresidential moves.

(a) *General.* The fixed payment for moving and related expenses of a displaced business or farm operation that meets applicable requirements under this section is an amount equal to its average annual net earnings as computed in accordance with § 700.173, but not less than \$2,500 nor more than \$10,000. A nonprofit organization which meets the applicable requirements under this section is entitled to a payment of \$2,500.

(b) *Business.* A business qualifies for payment under this section if the Commission determines that—

- (1) The business cannot be relocated without a substantial loss of its existing patronage.
- (2) The business is not part of a commercial enterprise having another

establishment, which is not being acquired by the Commission, and which is under the same ownership and engaged in the same or similar business activities. For purposes of this rule, no remaining business facility which had average annual gross receipts of less than \$1,000 and average annual net earnings of less than \$500, during the two taxable years prior to displacement, shall be considered "another establishment"; and

(3) The business had (i) average annual gross receipts of at least \$1,000 during the two taxable years prior to displacement, or (ii) average annual net earnings of at least \$500 as determined in accordance with § 700.173. However, the Commission may waive this test in any case in which it determines that its use would cause a substantial hardship.

(c) *Determining number of businesses acquired.* In determining whether two or more legal entities, all of which have been acquired, constitute a single business, which is entitled to only one fixed payment, all pertinent factors shall be considered, including the extent to which—

- (1) The same premises and equipment are shared;
- (2) Substantially identical or interrelated business functions are carried out and business and financial affairs are commingled;
- (3) The entities are held out to the public, and to those customarily dealing with them, as one business, and
- (4) The same person or closely related persons own, control or manage the affairs of the entities.

(d) *Farm operation.* A farm operation qualifies for a payment under this section if the Commission determines that it meets the criteria set forth in § 700.171(b)(3). In the case of a partial acquisition, the fixed payment shall be made only if the Commission determines that—

- (1) The part acquired was a farm operation before the acquisition; or
- (2) The partial acquisition caused the operator to be displaced from the farm operation; or
- (3) The partial acquisition caused a substantial change in the nature of the farm operation.

(e) *Nonprofit organization.* A nonprofit organization qualifies for a \$2,500 payment under this section, if the Commission determines that it—

- (1) Cannot be relocated without a substantial loss of existing patronage (membership and clientele). A nonprofit organization is assumed to meet this test, unless the Commission demonstrates otherwise; and
- (2) Is not part of an enterprise having at least one other establishment engaged

in the same or similar activity which is not being acquired by the Commission.

§ 700.173 Average net earnings of business or farm.

(a) *Computing net earnings.* For purposes of this subpart, the average annual net earnings of a business or farm operation is one-half of its net earnings before Federal, State and local income taxes, during the two taxable years immediately prior to the taxable year in which it was displaced. However, if the business or farm was not in operation for the full two taxable years prior to displacement, net earnings shall be computed on the basis of the actual period of operation on the acquired site, projected to an annual rate. Also, average annual net earnings may be based upon a different period of time when the Commission determines it to be more equitable. Net earnings include any compensation obtained from the business or farm operation by its owner, his spouse, or dependents.

(b) *Documentation.* A displaced person who elects to receive a fixed payment in lieu of actual expenses incurred in moving his business or farm shall furnish the Commission proof of his net earnings through income tax returns, certified financial statements or other reasonable evidence.

§ 700.175 Temporary emergency moves.

(a) *General.* An eligible household may be granted temporary relocation resources, at the Commission's discretion, provided:

- (1) That the move is for a limited time period not to exceed 12 months unless extended by the Commission.
- (2) That permanent relocation resources are not available at the time of displacement.
- (3) Prior approval of the Commission is obtained.

(4) That a Relocation Contract providing for permanent relocation has been executed.

(5) The head of household actually remained domiciled on lands partitioned to the tribe of which he is not a member as of December 22, 1974, and continuously thereafter.

(6) The head of household shall vacate all improvements owned by him on lands partitioned to the tribe of which he is not a member and shall transfer title to said improvements to the Commission.

Temporary relocation shall in no way diminish the responsibility of the Commission to offer relocation assistance and services designed to achieve permanent and suitable facilities.

(b) *Conditions Under Which Move to Temporary Housing Accommodations May Be Approved.* The move of a family or individual into temporary housing accommodations may be approved by the Commission only if the following conditions are met.

(1) The move will be undertaken because:

(i) It is necessary because of an emergency as determined by the Commission; or

(ii) The individual or family is subject to conditions hazardous to his or his family's health or safety.

(2) The temporary housing is decent, safe, and sanitary.

(3) The Commission shall have determined that within twelve (12) months of the date of the temporary move, replacement housing meeting Commission-approved standards will be available for occupancy by the persons temporarily rehoused.

(4) Prior to the move, the Commission shall provide in writing assurance to each head of household that:

(i) Replacement housing will be available at the earliest possible time but in any event no later than twelve (12) months from the date of the move to temporary housing.

(ii) Replacement housing will be made available on a priority basis, to the individual or family who has been temporarily rehoused.

(iii) The move to temporary rehousing will not, in any way, affect a claimant's eligibility for a replacement housing payment nor deprive him of the same choice or replacement housing units that would have been made available had the temporary move not been made.

(iv) The Commission will pay all costs in connection with the move to temporary housing, including any increased housing costs.

(c) *Agency Documentation.* To request Commission approval for a temporary move of a family, the following information shall be submitted to the Commission (additional information may be required on a case-by-case basis):

(1) An explanation of the necessity for the temporary move, based upon the criteria set forth by the Commission.

(2) The estimated duration of the temporary occupancy.

(3) In the case of the family or individual, (i) a copy of the written assurance which will be provided to the person explaining his rights and the continuing obligation of the agency to provide relocation assistance, and (ii) evidence that the family or individual agrees to make the temporary move.

(d) *Costs in Connection With Temporary Move.* (1) *Costs Included.*

Costs included in a temporary move may cover the following:

(i) Actual reasonable moving costs and related expenses for the move to temporary accommodations.

(ii) For the family or individual moved from a rental unit the difference, if any, between the rental cost of the dwelling vacated and the rental cost of the temporary unit.

(iii) For a homeowner who retains ownership of his dwelling the reasonable cost of renting the temporary dwelling.

(iv) For a homeowner whose dwelling has been acquired the difference, if any, between his housing costs for the acquired dwelling and the rental cost of the temporary unit.

(2) *Costs Not a Replacement Home Benefit.* Costs in connection with a move to temporary accommodations are not to be considered as relocation payments under the Act. (See paragraph (e) of this section.)

(e) *Distinguishing Between Cost of Temporary Move and Relocation Payment.* The costs of a temporary move, as described in the foregoing subparagraphs, are not to be considered as all or a part of the relocation payment to which a displaced person is entitled under the Act. Thus, when a family is moved to temporary accommodations, a relocation payment is *not* made and the election or choice of type of payments that would ordinarily be made upon displacement must be delayed until the final move is made. When the move out of temporary accommodations is made, the displaced person shall receive the full relocation payments to which he/she is entitled pursuant to Commission regulations.

Subpart E—Replacement Housing Payments

§ 700.181 Eligibility.

(a) *Basic eligibility requirements.* A certified eligible head of household who established his/her residency requirements in the area partitioned to the tribe of which he/she is not a member, is eligible for the replacement housing payment specified at § 700.183(a).

(b) *Other rules and requirements.* A payment under this Subpart E is subject to the other applicable rules and requirements of these regulations.

§ 700.187 Utilization of replacement home benefits.

The Commission shall assure that all eligible heads of household receive a decent, safe and sanitary replacement dwelling in the following manner:

(a) If the eligible head of household owns no dwelling other than that on the

area from which he or she must move pursuant to the Act, the Commission will make funds available to the head of household as provided in these regulations for the acquisition of a replacement home in one of the following manners:

(1) Purchase of an existing home, by the head of household.

(2) Construction of a home by the head of household.

(3) Participation or purchase by the head of household in a mutual help housing or other home ownership project under the U.S. Housing Act of 1937 (50 Stat. 888, as amended; 42 U.S.C. 1401) or in any other federally assisted housing program.

(b) If the eligible head of household owns or is buying or building a home in an area other than the area from which he or she must move pursuant to the Act, the Commission will expend relocation benefits in one of the following manners:

(1) If the home is decent, safe, and sanitary, but is encumbered by a mortgage, such mortgage existing as of the effective date of these regulations, the Commission will expend replacement housing benefits up to the maximum then existing benefit to accelerate to the maximum extent possible the achievement by that household of debt-free home ownership.

(2) If the home is owned free and clear but does not meet Commission decent, safe, and sanitary standards, the Commission will, at its discretion, either:

(i) Expend replacement home benefits for improvements to assure the home meets decent, safe, and sanitary standards, or

(ii) Expend replacement home benefits for the acquisition of a replacement dwelling as if the eligible head of household or spouse did not own a home as in paragraph (a) of this section.

(3) If the home is neither owned free and clear nor decent, safe, and sanitary, the Commission will, at its discretion, either:

(i) Expend replacement home benefits for improvements to assure that the home meets decent, safe, and sanitary standards, and to accelerate to the maximum extent possible the achievement of debt-free home ownership, or

(ii) Expend replacement home benefits for the acquisition of a replacement dwelling as if the eligible head of household or spouse did not own a home as in paragraph (a) of this section.

(4) If the home is decent, safe, and sanitary, and is owned free and clear,

no replacement home benefits will be paid.

(c) Home improvements shall include the following: General repairs, painting and texturing, fencing—including corrals, landscaping, grading, room additions, re-modeling, roofing, insulating, repair or improvements to the water, sewerage, cooling, heating, or electrical systems, storage buildings, energy conservation measures, and other home improvements as determined and defined by the Commission.

(d) In implementing these regulations the Commission will encourage the use of innovative energy or other technologies in order to achieve the minimum monthly housing cost feasible for each replacement house.

§ 700.189 Expenditure of replacement home benefits.

Replacement home benefits shall be expended or obligated in full at or before the time of original acquisition except as stated below. It is not anticipated that such exceptions would be common and each such instance shall be reviewed and a determination will be made by the Certification Officer.

(a) Under unusual circumstances such as: Unknown (latent) defects in the replacement dwellings, significant change of circumstances and extreme hardship, benefits may be expended after the time of original acquisition up to the existing maximum replacement home benefit.

(b) All replacement home benefits shall be expended not later than one (1) year after the date of payment of the incentive bonus, except under unusual circumstances as stated above, up to the statutory maximum.

(c) Replacement home benefits shall not be expended for maintenance except under unusual circumstances as stated above, up to the statutory maximum.

(d) For purposes of this paragraph, the time of original acquisition shall be defined as the date of execution of the Commission's relocation contract.

Subpart F—Incidental Expenses

§ 700.195 General.

Incidental expenses are those reasonable expenses, as determined by the Commission, to be incidental to the purchase of the replacement dwelling, but not prepaid.

§ 700.197 Basic eligibility requirements.

A certified eligible head of household is eligible for reimbursement of expenses that are incidental to the purchase of a replacement dwelling, as provided in § 700.199 hereof.

§ 700.199 Incidental expenses.

(a) *Eligible costs.* Subject to the limitations in paragraphs (b) and (c) of this section, the incidental expenses to be paid are those actually incurred by the displaced person incident to the purchase of the replacement dwelling, including—

- (1) Legal, closing, and related costs, including those for title search, preparing conveyance instruments, notary fees, preparing plats, recording fees; and title insurance;
 - (2) Lender, FHA or VA appraisal fees;
 - (3) FHA or VA application fee;
 - (4) Certification of structural soundness when required by the lender;
 - (5) Credit report;
 - (6) Owner's and mortgagee's evidence or assurance of title;
 - (7) Escrow agent's fee;
 - (8) State revenue or documentary stamps, sales or transfer taxes;
 - (9) Such administrative costs as are necessary to secure and acquire homesite leases and/or allotments on tribal lands. These costs may include survey fees, appropriate tribal fees and other conveyance instruments as may be appropriate;
 - (10) Costs, such as advertising charges, incurred incident to the purchase of the improvements owned by the head of household.
 - (11) Cost related to fee inspector's inspections of the replacement dwelling.
 - (12) Such other costs as the Commission determines to be incidental to the purchase.
- (b) Truth in lending charge. Any expense, which is determined to be part of the debt service or finance charge under 15 U.S.C. 131-1641 and Regulation Z (12 CFR Part 226) issued thereunder by the Board of Governors of the Federal Reserve System, is not eligible for reimbursement as an incidental expense.

Subpart G—Assistance Payments (Incentive Bonus)

§ 700.205 Eligibility requirements.

A certified eligible head of household is eligible for the assistance payment pursuant to Section 14(b) of the Act.

(a) *Amount of Payment.* The amount of payment shall be computed in accordance with the schedule provided for in Section 14(b) of the Act.

(b) *Date for Determination of Amount of Assistance Payment.* The date of completion and filing with the Commission of the Application for Relocation Assistance and Agreement to Relocate shall be the date used for determination of the amount of the assistance payment.

(c) *Time of Payment.* Assistance payments provided for in this section shall only be paid upon actual occupancy of the replacement dwelling and vacation of the acquired habitation and/or improvement, if any, in the area partitioned to the Tribe of which he/she is not a member.

Subpart H—Last Resort Replacement Housing

§ 700.209 Applicability.

The provisions of this subpart apply only when the Commission determines that, unless it acts under the provisions of this subpart, there is a reasonable likelihood that replacement dwelling(s) will not be available on a timely basis to person(s) to be displaced.

§ 700.211 Basic rights and rules.

The provisions of this subpart do not deprive any displaced person of any rights described elsewhere in these regulations. The Commission may meet its obligation to provide persons with reasonable opportunities to relocate to a replacement dwelling by offering such opportunities developed or to be developed under this subpart.

§ 700.213 Methods of providing last resort replacement housing.

(a) *General.* The methods of providing last resort housing include, but are not limited to—

- (1) Rehabilitation of, and/or additions to, an existing replacement dwelling;
- (2) A replacement housing payment in excess of the limits set forth in Subpart E and F of this part or the provision of direct Commission mortgage financing;
- (3) The construction of a new replacement dwelling;
- (4) The relocation and, if necessary, rehabilitation of a replacement dwelling;
- (5) The purchase of land and/or a replacement dwelling by the Commission and subsequent sale or lease to, or exchange with, a displaced person; and
- (6) The removal of barriers to the handicapped as may be necessary.

Subpart I—Commission Operations

§ 700.219 General.

(a) The operation of the Commission shall be governed by a Management Manual passed, amended or repealed by a majority of the Commission at any regular or special meeting. The Management Manual is the prescribed medium for publication of policies, procedures and instructions which are necessary to facilitate the day-to-day operations and administration of the Commission.

(b) *Meetings.* The Commission shall hold a regular monthly meeting on the first Friday of each month at a time and place designated by public notice unless said Friday falls on a legal holiday, in that event, the meeting shall begin on the next regular workday. The monthly meeting may continue for as many days thereafter as is necessary to complete the regular affairs of the Commission, and may be recessed from time to time and reconvened at times designated by the Chairperson.

(c) *Special public meetings.* May be called by any Commissioner with ten (10) working days written notice given to the other Commissioners. Written notice may be waived by a release bearing the signatures of all three Commissioners.

(d) *Executive Session.* During a regular or special meeting, any Commissioner may request an Executive Session for purposes of personnel and administrative matters.

(e) *Compliance With Other Laws and Regulations.* As a federal agency, the Commission will conduct its activities in conformance with applicable federal statutes and administrative procedures.

Subpart J—Inspection of Records

§ 700.235 Purpose and scope.

(a) This subpart contains the regulations of the Commission implementing the requirement of subsection (a)(3) of the Freedom of Information Act, 5 U.S.C. 552(a)(3), which provides that the Commission "upon any request for records which (1) Reasonably describes such records and (2) is made in accordance with published rules stating the time, place, fees (if any), and procedures to be followed, shall make the records promptly available to any person." This subpart describes the procedures by which records may be obtained from the Commission. The procedures in this subpart are not applicable to requests for records published in the *Federal Register* or opinions in the adjudication of cases, statements of policy and interpretations and administrative staff manuals which have been published or made available under Subpart "A" of this part.

§ 700.237 Definitions.

Act. As used in this subpart, "Act" means the "Freedom of Information Act," 5 U.S.C. 552.

§ 700.239 Records available.

(a) *Commission policy.* It is the policy of the Commission to make the records of the Commission available to the public to the greatest extent possible, in

keeping with the spirit of the Freedom of Information Act.

(b) *Statutory disclosure requirement.*

The Freedom of Information Act requires that the Commission, on a request from a member of the public to inspect or copy records made in accordance with the procedures in this subpart, shall promptly make the records available.

(c) *Statutory exemptions.* The Act exempts nine categories of records from this disclosure requirement. The Act provides that disclosure is not required of matters that are:

(1) Specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and in fact properly classified pursuant to such Executive Order;

(2) Related solely to the internal personnel rules and practices of an agency;

(3) Specifically exempt from disclosure by statute;

(4) Trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) Inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency;

(6) Personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(7) Investigatory records compiled for law enforcement purposes, but only to the extent that production of such records would (i) interfere with enforcement proceedings; (ii) deprive a person of a right to a fair trial or an impartial adjudication, (iii) constitute an unwarranted invasion of personal privacy, (iv) disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source, (v) disclose investigative techniques and procedures, or (vi) endanger the life or physical safety of law enforcement personnel;

(8) Contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or

(9) Geological and geophysical information and data, including maps, concerning wells.

(d) *Decisions on requests.* It is the policy of the Commission to withhold

information falling within an exemption only if (1) disclosure is prohibited by statute or Executive Order or (2) sound grounds exist for invocation of the exemption.

(e) *Deletion of portions of records.* If a requested record contains material within an exemption together with material not within an exemption and it is determined under the regulations in this subpart to withhold the exempt material, any reasonably segregable nonexempt material shall be separated from the exempt material.

(f) *Creation of records.* This subpart applies only to records which exist at the time a request for records is made. Records are not required to be created in response to a request by combining or compiling selected items from the files or by preparing a new computer program, nor are records required to be created to provide the requester with such data as proportions, percentages, frequency distributions, trends, or comparisons.

(g) *Records of concern to other departments and agencies.* (1) If the release of a record would be of concern to both the Commission and another Federal agency, the record will be made available by the Commission only if the interest of the Commission is the primary interest. If the Commission's interest is not the primary interest, the requester shall be referred in writing to the agency having the primary interest. The Commission has the primary interest in a record if the record was developed pursuant to Commission regulations, directives, or request even though the record originated outside of the Commission.

(2) If the release of a record in which the Commission has a primary interest would be of substantial concern to another agency, the official processing the request, should, if administratively feasible and appropriate, consult with that agency before releasing the record.

(h) *Records obtained from the public.* If a requested record was obtained by the Commission from a person or entity outside of the Government, the official responsible for processing the request shall, when it is administratively feasible to do so, seek the views of that person or entity on whether the record should be released before making a decision on the request.

§ 700.241 Request for records.

(a) *Submission of requests.* A request to inspect or copy records shall be made to the installation where the records are located. If the records are located at more than one installation or if the specific location of the records is not

known to the person wishing to inspect or copy the records, he may direct his request to the head of the appropriate bureau, or the bureau's chief public information officer, if any.

(b) *Form of request.* (1) Requests invoking the Freedom of Information Act shall be in writing.

(2)(i) A request must reasonably describe the records requested. A request reasonably describes the records requested if it will enable an employee of the Commission familiar with the subject area of the request to locate the record with a reasonable amount of effort. If such information is available, the request should identify the subject matter of the record, the date when it was made, the place where it was made, and the person or office that made it, the present custodian of the record, and any other information which will assist in location of the requested records. If the request involves a matter known by the requester to be in litigation, the request should also state the case name and court hearing the case.

(ii) If the description of a record sought is insufficient to allow identification and location of the record, the response denying the request on this ground shall so state and, to the extent possible, indicate what additional descriptive information, if any, would assist in location of the record.

(3) A request shall state the maximum amount of fees which the requester is willing to pay. Requesters are notified that under § 700.251, the failure to state willingness to pay fees as high as are anticipated by the Commission will delay running of the time limit and delay processing of the request, if the responsible official anticipates that the fees chargeable may exceed \$25.00.

(4)(i) To insure expeditious handling, requests shall be prominently marked, both on the envelope and on the face of the request, with the legend "FREEDOM OF INFORMATION REQUEST." The failure of a request to bear such a legend will not disqualify a request from processing under the procedures in this subpart if the request otherwise meets the requirements of this section. A request not bearing the legend "FREEDOM OF INFORMATION REQUEST" will not, however, be deemed to have been received for purposes of the running of the time limit set out in § 700.245 until it has been identified by bureau personnel as a Freedom of Information request and marked by them with this legend.

(ii) Commission personnel identifying a communication from the public not bearing the legend "FREEDOM OF INFORMATION REQUEST" as a

request otherwise meeting the requirements of this section shall immediately (A) mark the communication with the legend "FREEDOM OF INFORMATION REQUEST," (B) date the request to reflect the date on which it was identified, and (C) take steps to assure proper processing of the request under the procedures in this subpart.

(d) *Categorical requests.* (1) A request for all records falling within a reasonably specific category shall be regarded as conforming to the statutory requirement that records be reasonably described if (i) it can be determined which particular records are covered by the request and (ii) the records can be searched for, collected and produced without unduly burdening or interfering with Commission operations because of the staff time consumed or the resulting disruption of the files.

(2) If a categorical request is determined under paragraph (d)(1) of this section not to reasonably describe the records requested, the response denying the request on that ground shall specify the reasons why and shall extend to the requester an opportunity to confer with knowledgeable Commission personnel in an attempt to reduce the request to manageable proportions by reformulation and by agreeing on an orderly procedure for the production of the records.

§ 700.243 Action on initial request.

(a) *Granting of requests.* (1) A requested record shall be made available if (i) the record is not exempt from disclosure or (ii) the record is exempt from disclosure, but its withholding is neither required by statute or Executive order nor supported by sound grounds.

(b) *Form of grant.* (1) When a requested record has been determined to be available, the official processing the request shall immediately notify the person requesting the record as to where and when the record is available for inspection or as the case may be, where and when copies will be available. If fees are due under § 700.251, the responsible official shall also state the amount or, if the exact amount cannot be determined, the approximate amount of fees due.

(2) If the record was obtained by the Commission from a person or entity outside of the Government, the responsible official shall, when it is administratively feasible to do so, notify that person or entity that the record has been made available.

(c) *Denial of requests.* (1) A request for a record may be denied only if it is determined that (i) the record is exempt

from disclosure and (ii) that withholding of the record is required by statute or Executive order or supported by sound grounds.

(2) A request to inspect or copy a record shall be denied only by the Freedom of Information Act Officer or by an official whom the Executive Director has in writing designated.

(d) *Form of denial.* A reply denying a request shall be in writing and shall include:

(1) A reference to the specific exemption or exemptions under the Freedom of Information Act authorizing the withholding of the record;

(2) The sound ground for withholding;

(3) A listing of the names and titles or positions of each person responsible for the denial;

(4) A statement that the denial may be appealed to the Commission pursuant to § 700.247 and that such appeal must be in writing and be received by this official within twenty (20) days (Saturdays, Sundays, and public legal holidays excepted) after the date of the denial, in the case of the denial of an entire request, or within twenty (20) days (Saturdays, Sundays, and public legal holidays excepted) of records being made available, in the case of a partial denial, by writing to the Freedom of Information Act Officer, Navajo-Hopi Indian Relocation Commission, P.O. Box KK, Flagstaff, Arizona 86002.

(e) *Exception.* The requirements of paragraphs (c), (d), and (e) of this section do not apply to requests denied under § 2.14 on the ground that the request did not reasonably describe the records requested or to requests for records which do not exist.

(f) *Filing of denials.* Copies of all replies denying, in whole or part, a request for a record which are issued under this section of § 700.243 shall be promptly submitted by the Freedom of Information Act Officer, denials to the Executive Director and the Commission's legal counsel.

§ 700.245 Time limits on processing of initial requests.

(a) *Basic limit.* Requests for records shall be processed promptly. A determination whether to grant or deny a request shall be made within no more than ten (10) days (excepting Saturdays, Sundays, and legal public holidays) after receipt of a request. This determination shall be communicated immediately to the requester.

(b) *Running of basic time limit.* For purposes of paragraph (a) of this section, the time limit commences to run when a request is received at the Commission's office in Flagstaff, Arizona.

(c) *Extensions of time.* In the following unusual circumstances, the time limit for acting upon an initial request may be extended to the extent reasonably necessary to the proper processing of the particular request, but in no case may the time limit be extended for more than ten (10) working days:

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

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

(3) The need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of the agency having substantial subject-matter interest therein.

(d) *Authority to make extensions.* (1) An extension of time under paragraph (c) of this section may be made only by the Freedom of Information Act Officer or such higher authority as the Commission has in writing designated.

(2) The person requesting the records shall be notified in writing of the extension. The written notice shall state the reason for the extension and the date on which a determination on the request is expected to be dispatched.

(3) The Freedom of Information Act Officer shall be responsible for promptly furnishing copies of such notices to the Executive Director and the Commission's legal counsel.

(e) *Treatment of delay as denial.* (1) If no determination has been reached at the end of the ten (10) day period for deciding an initial request, or the last extension thereof, the requester may deem his request denied and may exercise a right of appeal in accordance with the provisions of § 700.247.

(2) When no determination can be reached within the applicable time limit, the responsible official shall nevertheless continue to process the request. On expiration of the time limit, the responsible official shall inform the requester of the reason for the delay, of the date on which a determination may be expected to be dispatched, and of his right to treat the delay as a denial for purposes of appeal to the Commission in accordance with § 700.247. The requester may be asked to consider delaying use of his right to appeal until the date on which the determination is expected to be dispatched. If the requester so agrees, he is deemed not to have treated the failure to respond

within the applicable time limit as a denial for purposes of the running of the twenty (20) working-day appeal period set out in § 700.247. If a determination of the request is not issued by the new agreed upon date, or if the request is denied in whole or part, the requester will have available his full right of appeal under § 700.247, including the entire twenty (20) working-day period for filing of the appeal.

§ 700.247 Appeals.

(a) *Right of appeal.* Where a request for records has been denied, in whole or part, the person submitting the request may appeal the denial to the Commission.

(b) *Time for appeal.* An appeal must be received no later than twenty (20) days (Saturdays, Sundays, and public legal holidays excepted) after the date of the initial denial, in the case of a denial of an entire request, or twenty (20) days (Saturdays, Sundays, and public legal holidays excepted) after records have been made available, in the case of a partial denial.

(c) *Form of appeal.* (1) An appeal shall be initiated by filing a written notice of appeal. The notice shall be accompanied by copies of the original request and the initial denial and should, in order to expedite the appellate process and give the requester an opportunity to present his arguments, contain a brief statement of the reasons why the requester believes the initial denial to have been in error.

(2) The appeal shall be addressed to Freedom of Information Act Officer, Navajo-Hopi Indian Relocation Commission, P.O. Box KK, Flagstaff, Arizona 86002.

(3)(i) Both the envelope containing the notice of appeal and the face of the notice shall bear the legend "FREEDOM OF INFORMATION APPEAL". The failure of an appeal to bear such a legend will not disqualify an appeal from processing under § 2.18 if the appeal otherwise meets the requirements of this section. An appeal not bearing the legend "FREEDOM OF INFORMATION APPEAL" will not, however, be deemed to have been received for purposes of the running of the time limit set out in § 700.249 until it has been identified by Commission personnel as a Freedom of Information appeal and marked by them with this legend.

(ii) Commission personnel identifying a communication from the public not bearing the legend "FREEDOM OF INFORMATION APPEAL" as an appeal otherwise meeting the requirements of this section shall immediately (A) mark the communication with the legend

"FREEDOM OF INFORMATION APPEAL," (B) date the appeal to reflect the date on which it was identified, and (C) take steps to assure proper processing of the appeal under the procedures in this subpart.

(4) The Freedom of Information Act Officer shall be responsible for promptly furnishing copies of such notices to the Executive Director and the Commission's legal counsel.

§ 700.249 Action on appeals.

(a) *Authority.* Appeals from initial denials of requests for records shall be decided for the Commission by the Executive Director after consultation with the Commission's legal counsel.

(b) *Time limit.* A final determination on any appeal shall be made within twenty (20) days (excepting Saturdays, Sundays, and public legal holidays) after receipt of the appeal.

(c) *Extensions of time.* (1) If the time limit for responding to the initial request for a record was not extended under the provisions of § 700.245 or was extended for fewer than ten (10) working days, the time for processing of the appeal may be extended by the Executive Director to the extent reasonably necessary to the proper processing of the appeal, but in no event may the extension, when taken together with any extension made during processing of the initial request, result in an aggregate extension with respect to any one request of more than ten (10) working days. The time for processing of an appeal may be extended only if one or more of the unusual circumstances listed in § 700.245(c) requires an extension.

(2) The Executive Director shall, in writing, advise the appellant of the reasons for the extension and the date on which a final determination of the appeal is expected to be dispatched.

(3) If no determination on the appeal has been reached at the end of the twenty (20) working-day period for deciding an appeal, or the last extension thereof, the requester is deemed to have exhausted his administrative remedies, giving rise to a right of review in a district court of the United States as specified in 5 U.S.C. 552(a)(4). When no determination can be reached within the applicable time limit, the appeal will nevertheless continue to be processed. On expiration of the time limit, the requester shall be informed of the reason for the delay, of the date on which a determination may be expected to be dispatched, and of his right to seek judicial review. The requester may be asked to consider delaying resort to his right to judicial review until the date on

which the determination on his appeal is expected to be dispatched.

(d) *Form of decision.* The final determination on an appeal shall be in writing and shall state the basis for the determination. If the determination is to release the requested records or portions thereof, the Freedom of Information Act Officer shall immediately make the records available or instruct the appropriate bureau official to make them immediately available. If the determination upholds in whole or part the initial denial of a request for records, the determination shall advise the requester of his right to obtain judicial review in the United States District Court for the district in which the withheld records are located, or in which the requester resides or has his principal place of business or in the United States District Court for the District of Columbia, and shall set forth the names and titles or positions of each person responsible for the denial.

(e) *Distribution of copies.* Copies of final determinations issued by the Commission shall be provided to the Commission's legal counsel.

§ 700.251 Fees.

(a) *Services for which fees may be charged.* (1) Unless waived pursuant to the provisions of paragraph (c) of this section, user fees shall be charged for document search and duplication costs incurred in responding to requests for records. User fees also shall be charged for the formal certification of verification attached to authenticated copies of records under the seal of the Commission.

(2) Unless waived or reduced pursuant to paragraph (c) of this section, user fees shall be charged in accordance with the schedule of charges contained in the Commission's Management Manual.

(b) *Services for which fees may not be charged.* No fee may be charged for any services required by the Freedom of Information Act to be performed in responding to a request for records other than those services for which fees may be charged under paragraph (a) of this section. Services for which no fees may be charged include, but are not limited to, (1) examining requested records to determine whether they are exempt from mandatory disclosure or whether, even if exempt, they should nevertheless be made available in whole or part, (2) deleting exempt matter from records so that the remaining portions of the records may be made available, (3) monitoring a requester's inspection of agency records made available to him for inspection, and (4) resolving legal and policy issues affecting access to requested records.

(c) *Waiver or reduction of fees.* (1) Fees otherwise chargeable for document search and duplication costs incurred in responding to requests for records may be waived or reduced, as appropriate, if the official making the records available determines that furnishing the records can be considered as primarily benefiting the public as opposed to the requester.

(2) Fees otherwise applicable for document research and duplication costs incurred in responding to requests may be waived and not charged if the request involves:

(i) Furnishing unauthenticated copies of any documents reproduced for gratuitous distribution;

(ii) Furnishing one copy of a personal document (e.g., a birth certificate) to a person who has been required to furnish it for retention by the Commission;

(iii) Furnishing one copy of the transcript of a hearing before a hearing officer in a grievance or similar proceeding to the employee for whom the hearing was held.

(3) Fees otherwise chargeable for document search and duplication costs incurred in responding to requests may be waived or reduced if the cost of collecting the fee would exceed the amount of the fee or if the request involves:

(i) Furnishing records to press, radio and television representatives for dissemination through the media to the general public;

(ii) Furnishing records to donors with respect to their gifts;

(iii) Furnishing records to individuals or private non-profit organizations having an official voluntary or cooperative relationship with the Commission to assist the individual or organization in its work with the Commission;

(iv) Furnishing records to state, local and tribal governments and public international organizations when to do so without charge is an appropriate courtesy, or when the recipient is carrying on a function related to that of the Commission and to do so will help to accomplish the work of the Commission;

(v) Furnishing records when to do so saves costs and yields income equal to the direct cost of providing the records (e.g., where the Commission's fee for the service would be included in a billing against the Commission);

(vi) Furnishing records when to do so is in conformance with generally established business custom (e.g., furnishing personal reference data to prospective employers of former Commission employees);

(vii) Furnishing one copy of a record in order to assist the requester to obtain

financial benefits to which he is entitled (e.g., veterans or their dependents, employees with Government employee compensation claims or persons insured by the Government).

(d) *Notice of anticipated fees and prepayment.* (1) Where it is anticipated that fees chargeable under this section may amount to more than \$25.00 and the requester has not indicated in advance his willingness to pay fees as high as are anticipated, the request shall be deemed not to have been received for purposes of the time limits established by § 700.245 until the requester is advised of the fees which are anticipated and has agreed to pay these fees. Advice to requesters with respect to anticipated fees shall be provided promptly.

(2) The appropriate cases, advance payment of fees may be required before requested records are made available to the requester.

(3) A notice of anticipated fees or notice of request for advance payment shall extend an offer to the requester to confer with appropriate personnel in an attempt to reformulate the request in a manner which will reduce the anticipated fees and meet the needs of the requester.

(e) *Form of payment.* Payment of fees shall be made by check or money order payable to the Navajo-Hopi Indian Relocation Commission. The term "United States or the initials 'U.S.'" shall not be included on the check or money order. Where appropriate, the official responsible for handling a request may require that payment by check be made in the form of a certified check.

Subpart K—Privacy Act

§ 700.255 Purpose and scope.

This subpart contains the regulations of the Navajo and Hopi Indian Relocation Commission implementing Section 3 of the Privacy Act.

§ 700.257 Definitions.

(a) *Act.* As used in this subpart, "Act" means Section 3 of the Privacy Act, 5 U.S.C. 552a.

(b) *Individual.* As used in this subpart, "individual" means a citizen of the United States or an alien lawfully admitted for permanent residence.

(c) *Maintain.* As used in this subpart, the term "maintain" includes maintain, collect, use or disseminate.

(d) *Record.* As used in this subpart, "record" means any item, collection, or grouping of information about an individual that is maintained by the Commission including, but not limited to, education, financial transactions, medical history, and criminal or

employment history and that contains the individual's name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print, or a photograph.

(e) *System of records.* As used in this subpart, "System of records" means a group of any records under the control of the Commission from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual.

(f) *Medical records.* As used in this subpart, "medical records" means records which relate to the identification, prevention, cure or alleviation of any disease, illness or injury including psychological disorders, alcoholism and drug addiction.

(g) *Civil Service Commission personnel records.* As used in this subpart, "Civil Service Commission personnel records" means records maintained for the Civil Service Commission by the Commission and used for personnel management programs or processes such as staffing, employee development, retirement, and grievances and appeals.

(h) *Statistical records.* As used in this subpart, "statistical records" means records in a system of records maintained for statistical research or reporting purposes only and not used in whole or in part in making any determination about an identifiable individual.

(i) *Routine use.* As used in this subpart, "routine use" means a use of a record for a purpose which is compatible with the purpose for which it was collected.

(j) *System notice.* As used in this subpart, "system notice" means the notice describing a system of records required by 5 U.S.C. 552a(e)(4) to be published annually in the Federal Register.

(k) *System manager.* As used in this subpart, "system manager" means the official designated in a system notice as having administrative responsibility for a system of records.

(l) *Commission Privacy Act Officer.* As used in the subpart, "Commission Privacy Act Officer" means the official in the Commission charged with responsibility for assisting the Commission in carrying out the functions which he is assigned in this subpart and for coordinating the activities of the divisions of the Commission in carrying out the functions which they are assigned in this subpart.

§ 700.259 Records subject to Privacy Act.

The Privacy Act applies to all "records" as that term is defined in § 700.257(d), which the Commission maintains in a "system of records," as that term is defined in § 700.257(e).

§ 700.261 Standards for maintenance of records subject to the Act.

(a) *Content of records.* Records subject to the Privacy Act shall contain only such information about an individual as is relevant and necessary to accomplish a purpose of the agency required to be accomplished by statute or Executive Order of the President.

(b) *Standards of accuracy.* Records subject to the Privacy Act which are used in making any determination about any individual shall be maintained with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to assure fairness to the individual in making the determination.

(c) *Collection of information.* (1) Information which may be used in making determination about an individual's rights, benefits, and privileges under Federal programs shall, to the greatest extent practicable, be collected directly from that individual.

(2) In deciding whether collection of information from an individual, as opposed to a third party source, is practicable, the following factors, among others may be considered:

(i) Whether the nature of the information sought is such that it can only be obtained from a third party;

(ii) Whether the cost of collecting the information from the individual is unreasonable when compared with the cost of collecting it from a third party;

(iii) Whether there is a risk that information collected from third parties if inaccurate, could result in an adverse determination to the individual concerned;

(iv) Whether the information, if supplied by the individual, would have to be verified by a third party; or

(v) Whether provisions can be made for verification, by the individual, of information collected from third parties.

(d) *Advice to individual concerning uses of information.* (1) Each individual who is asked to supply information about himself which will be added to a system of records shall be informed of the basis for requesting the information, how it may be used, and what the consequences, if any, are of not supplying the information.

(2) At a minimum, the notice to the individual must state:

(i) The authority (whether granted by statute or Executive Order of the President) which authorizes the solicitation of the information and

whether disclosure of such information is mandatory or voluntary;

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

(iii) The routine uses which may be made of the information; and

(iv) The effects on him, if any, of not providing all or any part of the requested information.

(3)(i) When information is collected on a standard form, the notice to the individual shall be on the form or on a tear-off sheet attached to the form or on a separate sheet, whichever is most practical.

(ii) When information is collected by an interviewer, the interviewer shall provide the individual with a written notice which the individual may retain. If the interview is conducted by telephone, however, the interviewer may summarize the notice for the individual and need not provide a copy to the individual unless the individual requests that a copy be mailed to him.

(iii) An individual may be asked to acknowledge, in writing, that he has been afforded the notice required by this section.

(e) *Records concerning activity protected by the First Amendment.* No record may be maintained describing how any individual exercises rights guaranteed by the First Amendment to the Constitution unless (1) expressly authorized by statute or by the individual about whom the record is maintained or (2) pertinent to and within the scope of an authorized law enforcement activity.

§ 700.263 Assuring integrity of records.

(a) *Statutory requirement.* The Privacy Act requires that records subject to the Act be maintained with appropriate administrative, technical and physical safeguards to insure the security and confidentiality of records and to protect against any anticipated threats or hazards to their security or integrity which could result in substantial harm, embarrassment, inconvenience, or unfairness to any individual on whom information is maintained, 5 U.S.C. 552a(e)(10).

(b) *Records maintained in manual form.* When maintained in manual form, records subject to the Privacy Act shall be maintained, at a minimum, subject to the following safeguards, or safeguards affording comparable protection:

(1) Areas in which the records are maintained or regularly used shall be posted with an appropriate warning stating that access to the records is limited to authorized persons. The warning shall also summarize the

requirements of § 700.265 and state that the Privacy Act contains a criminal penalty for the unauthorized disclosure of records to which it applies.

(2) During working hours, (i) the area in which the records are maintained or regularly used shall be occupied by authorized personnel or (ii) access to the records shall be restricted by their storage in locked metal file cabinets or a locked room.

(3) During non-working hours, access to the records shall be restricted by their storage in locked metal file cabinets or a locked room.

(c) *Records maintained in computerized form.* When maintained in computerized form, records subject to the Privacy Act shall be maintained, at a minimum, subject to safeguards based on those recommended in the National Bureau of Standards booklet "Computer Security Guidelines for Implementing the Privacy Act of 1974" (May 30, 1975), and any supplements thereto, which are adequate and appropriate to assuring the integrity of records in the system.

(d) *Civil Service Commission personnel records.* A system of records made up of Civil Service Commission personnel records shall be maintained under the security requirements set out in 5 CFR 293.108.

§ 700.265 Conduct of employees.

(a) *Handling of records subject to the Act.* Employees whose duties require handling of records subject to the Privacy Act shall, at all times, take care to protect the integrity, security and confidentiality of these records.

(b) *Disclosure of records.* No employee of the Commission may disclose records subject to the Privacy Act unless disclosure is permitted under § 700.267 or is to the individual to whom the record pertains.

(c) *Alteration of records.* No employee of the Commission may alter or destroy a record subject to the Privacy Act unless (1) such alteration or destruction is properly undertaken in the course of the employee's regular duties or (2) such alteration or destruction is required by a decision under §§ 700.287-700.295 or the decision of a court of competent jurisdiction.

§ 700.267 Disclosure of records.

(a) *Prohibition of disclosure.* No record contained in a system of records may be disclosed by any means of communication to any person, or to another agency, except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains.

(b) *General exceptions.* The prohibition contained in paragraph (a) of

this section does not apply where disclosure of the record would be:

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

(2) Required by the Freedom of Information Act, 5 U.S.C. 522.

(c) *Specific exceptions.* The prohibition contained in paragraph (a) does not apply where disclosure of the record would be:

(1) For a routine use as defined in § 700.257(i) which has been described in a systems notice published in the *Federal Register*;

(2) To the Bureau of the Census for purposes of planning or carrying out a census or survey or related activity pursuant to the provisions of title 13, United States Code.

(3) To a recipient who has provided the System Manager responsible for the system in which the record is maintained with advance adequate written assurance that the record will be used solely as a statistical research or reporting record, and the record is to be transferred in a form that is not individually identifiable;

(4) To the National Archives of the United States as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, or for evaluation by the Administrator of General Services or his designee to determine whether the record has such value;

(5) To another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if the head of the agency or instrumentality has made a written request to the Department specifying the particular portion desired and the law enforcement activity for which the record is sought;

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

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

(8) To the Comptroller General, or any of his authorized representatives, in the course of the performance of the duties of the General Accounting Office; or

(9) Pursuant to the order of a court of competent jurisdiction.

(d) *Reviewing records prior to disclosure.* (1) Prior to any disclosure of a record about an individual, unless disclosure is required by the Freedom of Information Act, reasonable efforts shall be made to assure that the records are accurate, complete, timely and relevant for agency purposes.

(2) When a record is disclosed in connection with a Freedom of Information request made under Subpart B of this part and it is appropriate and administratively feasible to do so, the requester shall be informed of any information known to the Commission indicating that the record may not be fully accurate, complete, or timely.

§ 700.269 Accounting for disclosures.

(a) *Maintenance of an accounting.* (1) Where a record is disclosed to any person, or to another agency, under any of the specific exceptions provided by § 700.267(c), an accounting shall be made.

(2) The accounting shall record (i) the date, nature, and purpose of each disclosure of a record to any person or to another agency and (ii) the name and address of the person or agency to whom the disclosure was made.

(3) Accountings prepared under this section shall be maintained for at least five years or the life of the record, whichever is longer, after the disclosure for which the accounting is made.

(b) *Access to accountings.* (1) Except for accountings of disclosures made under § 700.267(c)(5), accountings of all disclosures of a record shall be made available to the individual to whom the record relates at his request.

(2) An individual desiring access to accountings of disclosures of a record pertaining to him shall submit his request by following the procedures of § 700.277.

(c) *Notification of disclosure.* When a record is disclosed pursuant to § 700.267(c)(9) as the result of the order of a court of competent jurisdiction, reasonable efforts shall be made to notify the individual to whom the record pertains as soon as the order becomes a matter of public record.

§ 700.271 Request for notification of existence of records: Submission.

(a) *Submission of requests.* (1)(i) An individual desiring to determine under the Privacy Act whether a system of records contains records pertaining to him shall address his inquiry to the system manager having responsibility for the system unless the system notice describing the system prescribes or permits submission to some other official or officials.

(ii) If a system notice describing a system requires that an individual contact more than two officials concerning the existence of records in the system, an individual desiring to determine whether the system contains records pertaining to him may contact the system manager for assistance in determining which official is most likely to be in possession of records pertaining to that individual.

(2) If an individual desires to determine whether records pertaining to him are maintained in two or more systems, he shall make a separate inquiry concerning each system.

(b) *Form of request.* (1) An inquiry to determine whether a system of records contains records pertaining to an individual shall be in writing.

(2) To insure expeditious handling, the request shall be prominently marked, both on the envelope and on the face of the request, with the legend "PRIVACY ACT INQUIRY."

(3) The request shall state that the individual is seeking information concerning records pertaining to himself and shall supply such additional identifying information, if any, as is called for in the system notice describing the system.

(4) If an individual has reason to believe that information pertaining to him or her may be filed under a name other than the name he or she is currently using (e.g., a maiden name), he or she shall include this information in the request.

§ 700.273 Request for notification of existence of records: Action on.

(a) *Decisions on Request.* (1) An individual inquiring to determine whether a system of records contains records pertaining to him shall be advised within ten (10) days (excepting Saturdays, Sundays and legal public holidays) whether or not the system does contain records pertaining to him unless (i) the records were compiled in reasonable anticipation of a civil action or proceeding or (ii) the system of records is one which has been excepted from the notification provisions of the Privacy Act by rulemaking.

(2) If the records were compiled in reasonable anticipation of a civil action or proceeding or the system of records is one which has been excepted from the notification provisions of the Privacy Act by rulemaking, the individual will be promptly notified that his is not entitled to notification of whether the system contains records pertaining to him.

(b) *Authority to deny requests.* A decision to deny a request for notification of the existence of records

shall be made by the Privacy Act Officer.

(c) *Form of decision.* (1) No particular form is required for a decision informing an individual whether or not a system of records contains records pertaining to him.

(2) A decision declining to inform an individual whether or not a system of records contains records pertaining to him shall be in writing and shall state the basis for denial of the request and shall advise the individual that he may appeal the declination to the Executive Director pursuant to § 700.285 by writing to the Privacy Act Officer, Navajo and Hopi Indian Relocation Commission, P.O. Box KK, Flagstaff, Arizona 86002, and that the appeal must be received by this official within twenty (20) days (Saturdays, Sundays and public legal holidays excepted) of the date of the decision.

§ 700.275 Requests for access to records.

The Privacy Act permits an individual, upon his request, to gain access to his record or to any information pertaining to him which is contained in a system and to review the record and have a copy made of all or any portion thereof in a form comprehensive to him, 5 U.S.C. 552a(d)(1). A request for access shall be submitted in accordance with the procedures in this subpart.

§ 700.277 Requests for access to records: Submission.

(a) *Submission of requests.* (1) Requests for access to records shall be submitted to the system manager having responsibility for the system in which the records are maintained unless the system notice describing the system prescribes or permits submission to some other official or officials.

(2) If an individual desires access to records maintained in two or more separate systems, he shall submit a separate request for access to the records in each system.

(b) *Form of request.* (1) A request for access to records subject to the Privacy Act shall be in writing.

(2) To insure expeditious handling, the request shall be prominently marked, both on the envelope and on the face of the request, with the legend "PRIVACY ACT REQUEST FOR ACCESS."

(3) The request shall specify whether the requester seeks all of the records contained in the system which relate to him or only some portion thereof. If the requester seeks only a portion of the records which relate to him, the request shall reasonably describe the specific records sought.

(4) If the requester seeks to have copies of the requested records made,

the request shall state the maximum amount of copying fees which the requester is willing to pay. A request which does not state the amount of fees the requester is willing to pay will be treated as a request to inspect the requested records. Requesters are further notified that under § 700.279(d) the failure to state willingness to pay fees as high as are anticipated by the Commission will delay processing of a request.

(5) The request shall supply such identifying information, if any, as is called for in the system notice describing the system.

(6) Requests failing to meet the requirements of this paragraph shall be returned to the requester with a written notice advising the request of the deficiency in the request.

§ 700.279 Requests for access to records: Initial decision.

(a) *Decisions on requests.* A request made under this subpart for access to a record shall be granted promptly unless (1) the record was compiled in reasonable anticipation of a civil action or proceeding or (2) the record is contained in a system of records which has been excepted from the access provisions of the Privacy Act by rulemaking.

(b) *Authority to deny requests.* A decision to deny a request for access under this subpart shall be made by the Privacy Act Officer.

(c) *Form of decision.* (1) No particular form is required for a decision granting access to a record. The decision shall, however, advise the individual requesting the record as to where and when the record is available for inspection or, as the case may be, where and when copies will be available. If fees are due under § 700.279(d), the individual requesting the record shall also be notified of the amount of fees due or, if the exact amount has not been determined, the approximate amount of fees due.

(2) A decision denying a request for access, in whole or part, shall be in writing and shall state the basis for denial of the request. The decision shall also contain a statement that the denial may be appealed to the Executive Director pursuant to § 700.281 by writing to Privacy Act Officer, Navajo and Hopi Indian Relocation Commission, P.O. Box KK, Flagstaff, Arizona 86002, and that the appeal must be received by this official within twenty (20) days (Saturdays, Sundays and public legal holidays excepted) of the date of the decision.

(d) *Fees.* (1) No fees may be charged for the cost of searching for or reviewing a record in response to a request made under § 700.271.

(2) Fees for copying a record in response to a request made under § 700.271 shall be charged in accordance with the schedule of charges contained in the Commission's Management Manual, unless the official responsible for processing the request determines that, in his/her opinion, reduction or waiver of fees is appropriate.

(3) Where it is anticipated that fees chargeable in connection with a request will exceed the amount the person submitting the request has indicated he/she is willing to pay, the official processing the request shall notify the requester and shall not complete processing of the request until the requester has agreed, in writing, to pay fees as high as are anticipated.

§ 700.281 Requests for notification of existence of records and for access to records: Appeals.

(a) *Right of appeal.* If an individual has been notified that he/she is not entitled to notification of whether a system of records contains records pertaining to him or has been denied access, in whole or part, to a requested record that individual may appeal to the Executive Director.

(b) *Time for appeal.* (1) An appeal must be received by the Privacy Act Officer no later than twenty (20) days (Saturdays, Sundays and public legal holidays excepted) after the date of the initial decision on a request.

(2) The Executive Director may, for good cause shown, extend the time for submission of an appeal if a written request for additional time is received within twenty (20) days (Saturdays, Sundays and public legal holidays excepted) of the date of the initial decision of the request.

(c) *Form of appeal.* (1) An appeal shall be in writing and shall attach copies of the initial request and the decision on the request.

(2) The appeal shall contain a brief statement of the reasons why the appellant believes the decision on the initial request to have been in error.

(3) The appeal shall be addressed to Privacy Act Officer, Navajo and Hopi Indian Relocation Commission, Box KK, Flagstaff, Arizona 86002.

(d) *Action on appeals.* (1) Appeals from decisions on initial requests made pursuant to §§ 700.273 and 700.277 shall be decided for the Commission by the Executive Director after consultation with the Commission's legal counsel.

(2) The decision on an appeal shall be in writing and shall state the basis for the decision.

§ 700.283 Requests for access to records: Special situations.

(a) *Medical records.* (1) Medical records shall be disclosed to the individual to whom they pertain unless it is determined, in consultation with a medical doctor, that disclosure should be made to a medical doctor of the individual's choosing.

(2) If it is determined that disclosure of medical records directly to the individual to whom they pertain could have an adverse effect on that individual, the individual may designate a medical doctor to receive the records and the records will be disclosed to that doctor.

(b) *Inspection in presence of third party.* (1) An individual wishing to inspect records pertaining to him which have been opened for his inspection may, during the inspection, be accompanied by a person of his own choosing.

(2) When such a procedure is deemed appropriate, the individual to whom the records pertain may be required to furnish a written statement authorizing discussion of his record in the accompanying person's presence.

§ 700.285 Amendment of records.

The Privacy Act permits an individual to request amendment of a record pertaining to him if he believes the record is not accurate, relevant, timely or complete, 5 U.S.C. 552a(d)(2). A request for amendment of a record shall be submitted in accordance with the procedures in this subpart.

§ 700.287 Petitions for amendment: Submission and form.

(a) *Submission of petitions for amendment.* (1) A request for amendment of a record shall be submitted to the system manager for the system of records containing the record unless the system notice describing the system prescribes or permits submission to a different official or officials. If an individual wishes to request amendment of records located in more than one system, a separate petition must be submitted to each system manager.

(2) A petition for amendment of a record may be submitted only if the individual submitting the petition has previously requested and been granted access to the record and has inspected or been given a copy of the record.

(b) *Form of petition.* (1) A petition for amendment shall be in writing and shall specifically identify the record whose amendment is sought.

(2) The petition shall state, in detail, the reasons why the petitioner believes the record, or the portion thereof objectionable to him, is not accurate, relevant, timely or complete. Copies of documents or evidence relied upon in support of these reasons shall be submitted with the petition.

(3) The petition shall state, specifically and in detail, the changes sought in the record. If the changes involve rewriting of the record or portions thereof or involve adding new language to the record, the petition shall propose specific language to implement the changes.

§ 700.289 Petitions for amendment: Processing and initial decision.

(a) *Decisions on petitions.* In reviewing a record in response to a petition for amendment, the accuracy, relevance, timeliness and completeness of the record shall be assessed against the criteria set out in § 700.261. In addition, personnel records shall be assessed against the criteria for determining record quality published in the Federal Personnel Manual and the Commission Manual addition thereto.

(b) *Authority to decide.* An initial decision on a petition for amendment may be made only by the Privacy Act Officer.

(c) *Acknowledgement of receipt.* Unless processing of a petition is completed within ten (10) days (Saturdays, Sundays and public legal holidays excepted), the receipt of the petition for amendment shall be acknowledged in writing by the system manager to whom it is directed.

(d) *Inadequate petitions.* (1) If a petition does not meet the requirements of § 700.287, the petitioner shall be so advised and shall be told what additional information must be submitted to meet the requirements of § 700.287.

(2) If the petitioner fails to submit the additional information within a reasonable time, his petition may be rejected. The rejection shall be in writing and shall meet the requirements of paragraph (e) of this section.

(e) *Form of decision.* (1) A decision on a petition for amendment shall be in writing and shall state concisely the basis for the decision.

(2) If the petitioned for amendment is rejected, in whole or part, the decision shall advise the petitioner that the rejection may be appealed to the Executive Director by writing to the Privacy Act Officer, Navajo and Hopi Indian Relocation Commission, Box KK, Flagstaff, Arizona 86002, and that the appeal must be received by this official

within twenty (20) days (Saturdays, Sundays and public legal holidays excepted) of the date of the decision.

(f) Implementation of initial decision.

If a petitioned for amendment is accepted, in whole or part, the appropriate Commission Division maintaining the record shall:

- (1) Correct the record accordingly and,
- (2) Where an accounting of disclosures has been made pursuant to § 700.269 advise all previous recipients of the record that the correction was made and the substance of the correction.

§ 700.291 Petitions for amendments: Time limits for processing.

(a) *Acknowledgement of receipt.* The acknowledgement of receipt of a petition required by § 700.289(c) shall be dispatched not later than ten (10) days (Saturdays, Sundays and public legal holidays excepted) after receipt of the petition by the system manager responsible for the system containing the challenged record, unless a decision on the petition has been previously dispatched.

(b) *Decision on petition.* A petition for amendment shall be processed promptly. A determination whether to accept or reject the petitioned for amendment shall be made within no more than thirty (30) days (Saturdays, Sundays, and public legal holidays excepted) after receipt of the petition by the system manager responsible for the system containing the challenged record.

(c) *Suspension of time limit.* The thirty (30) day time limit for a decision on a petition shall be suspended if it is necessary to notify the petitioner, pursuant to § 700.289(d) that additional information in support of the petition is required. Running of the thirty (30) day time limit shall resume on receipt of the additional information by the system manager responsible for the system containing the challenged record.

(d) *Extensions of time.* (1) The thirty (30) day time limit for a decision on a petition may be extended if the official responsible for making a decision on the petition determines that an extension is necessary for one of the following reasons:

- (i) A decision on the petition requires analysis of voluminous record or records;
- (ii) Some or all of the challenged records must be collected from facilities other than the facility at which the official responsible for making the decision is located.

(2) If the official responsible for making a decision on the petition determines that an extension is necessary, he shall promptly inform the

petitioner of the extension and the date on which a decision is expected to be dispatched.

§ 700.293 Petitions for amendment: Appeals.

(a) *Right of appeal.* Where a petitioned-for amendment has been rejected, in whole or part, the individual submitting the petition may appeal the denial to the Executive Director.

(b) *Time for appeal.* (1) An appeal must be received no later than twenty (20) days (Saturdays, Sundays and public legal holidays excepted) after the date of the decision on a petition.

(2) The Executive Director may, for good cause shown, extend the time for submission of an appeal if a written request for additional time is received within twenty (20) days (Saturdays, Sundays and public legal holidays excepted) of the date of the decision on a petition.

(c) *Form of appeal.* (1) An appeal shall be in writing and shall attach copies of the initial petition and the decision on that petition.

(2) The appeal shall contain a brief statement of the reasons why the appellant believes the decision on the petition to have been in error.

(3) The appeal shall be addressed to Privacy Act Officer, Navajo and Hopi Indian Relocation Commission, Box KK, Flagstaff, Arizona 86002.

§ 700.295 Petitions for amendment: Action on appeals.

(a) *Authority.* Appeals from decisions on initial petitions for amendment shall be decided for the Commission by the Executive Director after consultation with the Commission's legal counsel unless the record challenged by the initial petition is a Civil Service Commission personnel record maintained for the Commission by the Navajo and Hopi Indian Relocation Commission. Appeals from decisions on initial petitions requesting amendment of Civil Service Commission records maintained for the Commission by the Navajo and Hopi Indian Relocation Commission shall be transmitted by the Executive Director, for decision.

(b) *Time limit.* (1) A final determination on any appeal shall be made within thirty (30) days (Saturdays, Sundays and legal public holidays excepted) after receipt of the appeal.

(2) The thirty (30) day period for decision on an appeal may be extended, for good cause shown, by the Commission. If the thirty (30) day period is extended, the individual submitting the appeal shall be notified of the extension and of the date on which a

determination on the appeal is expected to be dispatched.

(c) *Form of decision.* (1) The final determination on an appeal shall be in writing and shall state the basis for the determination.

(2) If the determination upholds, in whole or part, the initial decision rejecting the petitioned for amendment, the determination shall also advise the individual submitting the appeal:

(i) Of his or her right to file a concise statement of the reasons for disagreeing with the decision of the agency;

(ii) Of the procedure established by § 700.297 for the filing of the statement of disagreement;

(iii) That the statement which is filed will be made available to anyone to whom the record is subsequently disclosed together with, at the discretion of the Commission, a brief statement by the Commission summarizing its reasons for refusing to amend the record;

(iv) That prior recipients of the challenged record will be provided a copy of any statement of dispute to the extent that an accounting of disclosure was maintained; and

(v) Of his or her right to seek judicial review of the Commission's refusal to amend the record.

(3) If the determination reverses, in whole or in part, the initial decision rejecting the petitioned for amendment, the system manager responsible for the system containing the challenged record shall be directed to:

(i) Amend the challenged record accordingly; and

(ii) If an accounting of disclosure has been made, advise all previous recipients of the record which was amended of the amendment and its substance.

§ 700.297 Statements of disagreement.

(a) *Filing of statements.* If the determination of the Executive Director under § 700.295 rejects in whole or part, a petitioned for amendment, the individual submitting the petition may file with the system manager for the system containing the challenged record, a concise written statement setting forth the reasons for his disagreement with the determination of the Department.

(b) *Disclosure of statements.* In any disclosure of a record containing information about which an individual has filed a statement of disagreement under this section occurring after the filing of the statement, the disputed portion of the record will be clearly noted and the recipient shall be provided copies of the statement of disagreement. If appropriate, a concise statement of the reasons of the

Commission for not making the requested amendments may also be provided to recipient.

Roger Lewis,
Chairman.

[FR Doc. 82-801 Filed 1-13-82; 8:45 am]

BILLING CODE 6820-BB-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 230

Removal of Part; Credit Unions Serving DoD Personnel

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: The Office of the Secretary of Defense has cancelled the source document of 32 CFR Part 230, "Credit Unions Serving DoD Personnel." This action removes this Part from the CFR since it is no longer valid.

EFFECTIVE DATE: December 23, 1981.

FOR FURTHER INFORMATION CONTACT: Ms. Peggy Wright, Office of the Deputy Assistant Secretary of Defense (Management Systems), OASD (Comptroller), Washington, D.C. 20301. Telephone: 202-697-8281.

SUPPLEMENTARY INFORMATION: 32 CFR Part 230 represents DoD Directive 1000.10, subject as above, which was reissued December 23, 1981. Copies may be obtained by writing to U.S. Naval Publications and Forms Center, 5801 Tabor Avenue, Philadelphia, PA 19120, attention Code 301.

PART 230—[REMOVED]

Therefore Part 230 of Title 32 is removed.

M. S. Healy,

OSD Federal Register Liaison Officer,
Department of Defense,

January 11, 1982.

[FR Doc. 82-881 Filed 1-13-82; 8:45 am]

BILLING CODE 3810-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-6-FRL-2016-8]

Arkansas; Prevention of Significant Deterioration Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This notice approves the State of Arkansas' request of April 23,

1981, to revise its State Implementation Plan (SIP) to incorporate by reference the Federal Prevention of Significant Deterioration of Air Quality (PSD) Regulations. This approval will permit Arkansas to carry out all aspects of PSD review.

EFFECTIVE DATE: February 16, 1982.

ADDRESSES: Incorporation by reference material is available for inspection during normal business hours at the following locations:

The Office of the Federal Register, 1100 L Street NW., Washington, D.C., Rm. 8401

Environmental Protection Agency,
Public Information Reference Unit,
EPA Library, 401 "M" Street SW.,
Washington, D.C., Rm. 2922.

FOR FURTHER INFORMATION CONTACT: Air Branch, Air and Waste Management Division, Environmental Protection Agency, Region 6, 1201 Elm Street, Dallas, Texas 75270, (214) 767-1518 or (FIS) 729-1518.

SUPPLEMENTARY INFORMATION: In the September 10, 1981 Federal Register (46 FR 45157), the Acting Regional Administrator proposed approval of Arkansas' SIP revision to EPA's PSD regulations. No adverse comments were received in response to this notice of proposed rulemaking.

Some subparts of 40 CFR 52.21 were not included in this incorporation and one subpart was expanded in its requirements (See the September 10, 1981, notice for details). Additionally, Section 4(d) of the Arkansas Regulation provides that references in 40 CFR 52.21 to the "Administrator" "shall be deemed to mean the Department of Pollution Control and Ecology, unless the context plainly dictates otherwise." EPA would like to clarify the subparts of 40 CFR 52.21 in which the Administrator will retain responsibility:

- (1) Exclusion from increment consumption: (f)(1)(v), (f)(3) and (f)(4)(i).
- (2) Redesignation: (g)(1), (g)(2), (g)(4), (g)(5), and (g)(6).
- (3) Air Quality Models: (l)(2).
- (4) Sources impacting Federal Class I areas—additional requirements: (p)(1) and (p)(2).

The above clarification language was provided to the State agency. No adverse comments were received about its inclusion in the final rulemaking.

Action: EPA has reviewed the submitted material and found it to meet present EPA requirements. Therefore, EPA is today approving the Arkansas submittal as satisfying the requirements of an acceptable plan for implementing PSD.

Under Section 307(b)(1) of the Clean Air Act, judicial review of this final

rulemaking is available only by the filing of a petition for review in the United States Court of Appeals for the appropriate circuit within 60 days of today.

Under section 307(b)(2) of the Clean Air Act, the requirements which are the subject of today's notice may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This proposed action is not major because it imposes no new burden on sources since it only approves a State action.

Pursuant to the provision of 5 U.S.C. 605(b) I hereby certify that this proposed action will not have a significant economic impact on a substantial number of small entities. The action will only approve State actions and will not impose any new regulatory requirements. See 46 FR 8709, January 27, 1981 for additional justification.

Note.—Incorporation by reference of the State Implementation Plan for the State of Arkansas was approved by the Director of the Federal Register on July 1, 1981.

(Secs. 110 and 161 *et seq.* of the Clean Air Act, as amended (42 U.S.C. 7410 and 7471 *et seq.*))

Dated: January 6, 1982.

Anne M. Gorsuch,
Administrator.

PART 52—APPROVAL AND PROMULGATION OF STATE IMPLEMENTATION PLANS

Part 52 of Chapter 1, Title 40 of the Code of Federal Regulations is revised to read as follows:

Subpart E—Arkansas

1. Section 52.170 is amended by adding new paragraph (c)(15) to read as follows:

§ 52.170 Identification of plan.

* * * * *

(c) * * *

(15) On April 23, 1981, the Governor submitted revisions to the plan to incorporate Federal Prevention of Significant Deterioration (PSD) Regulations 40 CFR 52.21 by reference.

2. Section 52.181 is revised to read as follows:

§ 52.181 Significant deterioration of air quality.

(a) The Arkansas plan, as submitted, is approved as meeting the