

# Memorandum



Subject

Creation of an Office of Investigative Agency Policies

Date

October 26, 1993

To

Philip B. Heymann  
Deputy Attorney General

From

Walter Dellinger  
Assistant Attorney General  
Office of Legal Counsel

Pursuant to your request of October 22, 1993, this memorandum outlines the sources of authority available to the Attorney General to create the position of Director for Investigative Agency Policies and an office to support that position. We also briefly discuss other instances in which the Attorney General has created a new office within the Department, in the absence of legislation establishing the office. We summarize the procedure to be followed in establishing such a new office, and we discuss whether the head of an investigatory agency would be placed in an impermissible position of conflict if he or she were also charged with serving as the Director of the Office of Investigative Agency Policies (OIAP).

We are basing our conclusions regarding the lawfulness of this proposal on the attached outline (tab 1) transmitted to our office, and on the public statement of the Attorney General that the first Director she will appoint from among the investigative agency heads who are appointed by the President and confirmed by the Senate will be the Director of the Federal Bureau of Investigation (FBI). Under the proposed implementation plan, the Director for OIAP would coordinate the efforts of all criminal investigative agencies of the Department in areas of overlapping jurisdiction, most particularly in areas relating to drug trafficking. The Director would be charged with creating a more effective law enforcement structure and eliminating waste and duplication, including in the Director's own agency, the FBI.

We conclude that the Attorney General has the authority to create the new office and that the Director of the FBI may assume the additional duty of serving as the Director of OIAP.

Pursuant to 28 C.F.R. § 0.25, this office will review for form and legality any Attorney General Order or regulation implementing the proposal; as the proposal becomes more specific, this office may have additional comments and legal advice.

## I. AUTHORITY

The Attorney General has ample statutory authority to establish the OIAP within the Department without further legislation.

5 U.S.C. §§ 301-302. Pursuant to 5 U.S.C. § 301, the Attorney General, like other Cabinet heads, may prescribe regulations for "the government of [her] department" and "the distribution and performance of its business." Congress has also granted the heads of agencies the authority to delegate to subordinate officials the authority vested by law in the agency head to take final action in matters pertaining to the employment, direction, and general administration of personnel in her agency. 5 U.S.C. § 302.

28 U.S.C. §§ 509-510. Congress specifically granted broad powers to the Attorney General, vesting in her virtually all the functions within the Department, 28 U.S.C. § 509, and authorizing her to delegate any of her authorities. 28 U.S.C. § 510. Section 510 provides that the Attorney General "may from time to time make such provisions as he considers appropriate authorizing the performance by any other officer, employee, or agency of the Department of Justice of any function of the Attorney General."

Reorganization Plans. To the extent that the new office is created to coordinate investigations and other functions regarding the nation's drug laws, the Attorney General has yet another source of authority flowing from reorganization plans submitted by previous Presidents to Congress, plans that are now public laws.<sup>1</sup> In permitting Reorganization Plan No. 1 of 1968 to become law, Congress acquiesced in giving the Attorney General broad powers to organize the Department of Justice so as to best enforce the nation's drug laws. Reorganization Plan No. 1 of 1968 transferred to the Department from the Department of the Treasury ("Treasury") and the Department of Health, Education, and Welfare ("HEW") certain responsibilities relating to narcotics and other drugs. Section 5 of that Reorganization Plan provided:

The Attorney General may from time to time make such provisions as he shall deem appropriate authorizing the performance of

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<sup>1</sup> Under previous versions of the Reorganization Act, 5 U.S.C. §§ 901-912, reorganization plans were submitted by the President, and subject to legislative vetoes; thus Congress approved the reorganization plans, but did so pursuant to an unconstitutional procedure. INS v. Chadha, 462 U.S. 919 (1983).

any of the functions transferred to him by the provisions of this reorganization plan by any officer, employee, or organizational entity of the Department of Justice.

82 Stat. 1367, reprinted in 5 U.S.C. app. at 96 (1988).

Section 1 of Reorganization Plan No. 2 of 1973, 87 Stat. 1091, as amended by Pub. Law No. 93-253, reprinted in 5 U.S.C. app. at 133 (1988), transferred additional drug enforcement powers from Treasury to the Department, and established the Drug Enforcement Administration (DEA). By consenting to this plan, Congress authorized the Attorney General to

make such provisions as he shall deem appropriate authorizing the performance of any of the functions transferred to him by the provisions of this Reorganization Plan.

Section 6, id. at 134. The plan further authorizes the Attorney General, acting through the Administrator of the DEA and "such other officials of the Department of Justice as he may designate," to provide for the coordination of all drug law enforcement functions vested in the Attorney General

so as to assure maximum cooperation between and among the Administration, the Federal Bureau of Investigation, and other units of the Department involved in the performance of these and related functions.

Sec. 7 (emphasis added).<sup>2</sup>

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<sup>2</sup> Congress has recently signaled its support for coordinating and streamlining drug investigations. The Senate Appropriations Committee in its report on the fiscal year 1994 appropriations bill stated under its section for the FBI:

In particular, the Committee urges the Attorney General and other policy officials of the Department of Justice [DOJ] to review with precision the drug law enforcement operations of the Department with the result being the elimination of duplication of effort in the war on drugs. The Committee urges that the first efficiencies be sought in elimination of redundant overhead and support infrastructure.

Report No. 105, 103d Cong., 1st Sess. 28 (1993).

Under these broad statutory mandates, the Attorney General may, without further legislation, delegate and transfer to a newly created Office of Investigative Agency Policies the authority to coordinate and consolidate the overlapping functions of criminal investigatory agencies, including the DEA, FBI, the United States Marshals Service and the Immigration and Naturalization Service.

## II. PRECEDENT

The Attorney General has created new organizations on numerous occasions in the absence of specific legislation establishing these offices; indeed, the structure of the Department is largely a creation of orders by the Attorney General. Samples of regulations establishing various offices and memoranda relating to the establishment of new offices within the Department are attached at tab 2. The following are examples of such administrative actions:

A. The Office of International Programs, established by the authority of 5 U.S.C. § 301; 28 U.S.C. §§ 509-510, and 28 U.S.C. §§ 515-519, pursuant to Attorney General Order 1606-92, and codified in the Code of Federal Regulations at 28 C.F.R. § 0.26 (57 Fed. Reg. 32438, July 22, 1992).

B. Office of Intelligence Policy and Review, established by virtue of the authority vested in the Attorney General by 28 U.S.C. §§ 509 and 510, and 5 U.S.C. § 301, pursuant to Attorney General Order Nos. 875-80, 960-81, codified at 28 C.F.R. § 0.33a-c (45 Fed. Reg. 13729, March 3, 1980; 46 Fed. Reg. 52343, October 27, 1981).

C. Office of the Pardon Attorney, duties conferred on the Attorney General by the authority of Article II, sec. 2 of the United States Constitution, and the authority of the President as chief executive, and delegated to the Pardon Attorney from the Attorney General pursuant to 28 U.S.C. §§ 509-510 and 5 U.S.C. § 301 pursuant to Attorney General Order No. 1012-83, codified at 28 C.F.R. §§ 1.1 - 1.10 (48 Fed. Reg. 22290, May 18, 1983).

D. Establishment of an Office of Administrative Procedure, Memorandum for the Attorney General, December 29, 1955, relying on the authority of 5 U.S.C. § 306 (since repealed).

E. Appointment of a Special Counsel, Memorandum for the Attorney General, March 16, 1992, finding the authority to make such an appointment pursuant to 5 U.S.C. § 301, and 28 U.S.C. §§ 509-510, 543.

### III. PROCEDURE

The Attorney General may establish the new office pursuant to an Attorney General Order. The OIAP's duties, structure, and authority should then be set forth in a regulation, to be included in 28 C.F.R. Part 0. If the reporting requirements for any other unit are to be changed, or their authority is in any way limited or modified by the creation of OIAP, amendments should be made in the Code of Federal Regulations.

In addition, the creation of a new, separate office (that is, one that is not created within an established office, such as the Office of the Attorney General or the Office of the Deputy Attorney General), that is not contemplated as a temporary task force-type office, will necessitate the modification of the Department's organization chart to reflect the new office. See 5 U.S.C. § 552(a)(1)(A), (B), (E).<sup>3</sup>

Before issuing any order establishing a new office, however, appropriate notice must be given to Congress and the Office of Management and Budget. Congress' Appropriations Committees must be given 15 days notice of the creation of any new program; the elimination of any program, project, or activity; relocation of offices or employees; or reorganizations. Section 606, Departments of Commerce, Justice & State, the Judiciary, and Related Agencies Appropriations Act of 1993, Pub. Law No. 102-395, 106 Stat. 1828, 1873 (1992). This notice requirement would apply to the creation of OIAP, pursuant to Department of Justice Order 1000.2A, October 19, 1983, which provides that the Department shall notify the Office of Management and Budget and the Congress, in writing, of approved "Organization and Function Changes."

### IV. DUAL OFFICE-HOLDING

The Director of OIAP will as an initial matter be the Director of the FBI and will thereafter be chosen from among the heads of agencies to be coordinated and reviewed by the Director of OIAP. Accordingly, the question arises as to whether there is a possible conflict between the duties of the two offices. For the reasons set forth below, we find that there is no actual conflict.

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<sup>3</sup> The Freedom of Information Act requires that each agency separately publish in the Federal Register amendments to descriptions of central organizations, and statements of the methods by which an agency's functions are channeled.

No Constitutional or Statutory Bar. As a threshold matter, the Incompatibility Clause of the Constitution, U.S. Const., Art. I, § 6, cl. 2, forbids Members of Congress from holding any office under the United States, but neither this clause, nor any other constitutional provision, bars Executive Branch officials from holding two offices. Moreover, no statute precludes a government official from holding two positions, so long as the official receives compensation only from one, as is contemplated here. 5 U.S.C. § 5533. Indeed, the repeal in 1964 of earlier legislation directed against dual office-holding, coupled with the enactment of the prohibition on dual compensation, impliedly permits the holding of two offices at the same time.

No Substantive Conflict. Conflict of interest principles under the ethics rules do not preclude an individual from heading the FBI and serving as the Director of the OIAP. That the Director of OIAP may sometimes be called upon to view the current operations of the FBI with an eye to streamlining them does not create an impermissible conflict for the new Director. Government ethics rules provide that employees owe their duty to the government and its citizens, 5 C.F.R. § 2635.101(a), not to the particular bureaucratic interests of their agency. Moreover, under 28 C.F.R. § 0.130(c), the head of each organizational unit within the Department "shall perform such special assignments as may from time to time be made to him by the Attorney General." The Attorney General's assignment adds to the Director's duties to the public, but sets up no conflict between the Director's public duties and private interests.

Incompatibility Doctrine. The common law doctrine of incompatibility precludes a person from holding two offices if public policy would make it improper for the person to perform both functions, such as when the functions of the offices are inconsistent with each other. See Crosthwaite v. United States, 30 Ct. Cl. 301, 308 (Ct. Cl. 1895), rev'd on other grounds, 168 U.S. 375 (1897); Lopez v. Martorell, 59 F.2d 176, 178 (1st Cir. 1932); 22 Op. Att'y. Gen. 237, 238 (1898). The doctrine has been stated in various ways, sometimes tautologically, but usually states that offices that are incompatible "are such as bear a special relation to each other; one being subordinate to and interfering with the other so as, in the language of Coke, to induce the presumption that they cannot be executed with impartiality and honesty." 3 McQuillin, The Law on Municipal Corporations § 12.67 (1982).

Holding two directorships, over both the FBI and the OIAP, does not violate the incompatibility doctrine. Because the Attorney General clearly has the statutory authority to assign the functions to be given to the new head of the OIAP, and because there are no inconsistent statutory requirements for the two positions that would preclude the holding of both offices, the common law doctrine does not forbid the holding of both

offices simultaneously. A more difficult question would be presented if Congress established one office to have authority over the another (an issue that we need not resolve here). The establishment of OIAP undermines no required statutory check.

As discussed above, the Attorney General has broad statutory authority to assign the tasks of the Department to any Departmental official. The functions assigned to the Director of the FBI under current regulations, 28 C.F.R. § 0.85, include 14 separate functions. There is no reason why he cannot be assigned yet another. The Attorney General has the authority to assign the duties that will be carried out by the OIAP to the FBI Director in his capacity as Director of the FBI, or assigning the duties to him in a separate capacity. It is of no legal significance that he will be carrying out the tasks of the Director of the OIAP as head of a separate office.

Similarly, we see no legal impediment to authorizing the Director of the FBI, as the new head of the OIAP, to take actions that may restrict or streamline the activities of another agency, such as the DEA. That structure does not violate the incompatibility doctrine, and the reallocation of any supervisory power is within the scope of the Attorney General's authority.<sup>4</sup>

We have located no case or opinion decided under the incompatibility doctrine that would limit the Director of the FBI from holding an additional post charged with creating the most effective structure for combatting drugs. Finding no incompatibility in this case accords with prior opinions of this office. To name just a few:

\* The Office of Legal Counsel opined on March 1, 1988 that an individual could serve simultaneously as the Executive Secretary to the National Security Council and as Special Assistant to the President for matters concerning national security affairs. This office found that the "official interests" of the positions were not in conflict, nor was "one

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<sup>4</sup> The Attorney General may change the reporting requirements of the Administrator of the DEA and change his scope of authority, as set forth in 28 C.F.R. §§ 0.100-0.102. If she chooses to expand the authority of the Office of Investigative Agency Policies, and restrict the authority of the DEA, that is her prerogative, under 5 U.S.C. §§ 301-302 and 28 U.S.C. §§ 509-510.

office designed by Congress to operate as a check on the other."<sup>5</sup>

\* The Office of Legal Counsel also held that a White House staff member may serve as Director of the White House Conference on Productivity, finding that the "functions are not inconsistent: both offices involve assisting the President in carrying out his duties; and neither is formally subordinate to the other."<sup>6</sup>

\* Similarly, this office found that Sargent Shriver could simultaneously hold the offices of Director of the Peace Corps and Director of the Office of Economic Opportunity.<sup>7</sup>

\* This office also approved a dual appointment as Assistant Secretary of Health, Education and Welfare, and Commissioner of Education.<sup>8</sup>

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<sup>5</sup> Memorandum for Arnold Intrater, General Counsel, Office of White House Administration, from John O. McGinnis, Deputy Assistant Attorney General, Office of Legal Counsel, at 3-4.

<sup>6</sup> Memorandum for Fred F. Fielding, Counsel to the President, from Ralph W. Tarr, Deputy Assistant Attorney General, Office of Legal Counsel, August 22, 1983, at 4. Even if the FBI were "formally subordinate" to the OIAP, it would not create a conflict unless a statute required such subordination and independence.

<sup>7</sup> Memorandum to Myer Feldman, Special Counsel to the President, from Norbert A. Schlei, Assistant Attorney General, Office of Legal Counsel, August 19, 1964.

<sup>8</sup> "The basic principle is that there is no longer any prohibition against dual office-holding. It seems to us that it is not material how the dual tenure comes about, whether by successive appointments by and with the advice and consent of the Senate, by interim designation, or by concurrent nomination and appointment." Memorandum for John D. Ehrlichman, Counsel to the President, from William H. Rehnquist, Assistant Attorney General, Office of Legal Counsel, February 13, 1969, at 2.

Likewise, the Office found no incompatibility if the same person were to be legally appointed to positions of (a) Special Representative for Trade Negotiations and (b) Executive Director of the Council of International Economic Policy. Memorandum for the Honorable George P. Williams, Associate Counsel to the President, from Leon Ulman, Acting Assistant Attorney General, Office of Legal Counsel, June 24, 1974.



We have located only two opinions in which this Office declined to approve a dual appointment. Both arose in circumstances factually distinct from this situation. Most recently, we opined that the Assistant Attorney General for the Criminal Division should not simultaneously serve as the Associate Attorney General.<sup>9</sup> However, both of those offices were authorized by statute and the Assistant Attorney General for the Criminal Division reported to the Associate Attorney General.<sup>10</sup> Without determining whether, in fact, the incompatibility doctrine precluded holding both offices, this office opined that if a court were to apply the common law incompatibility doctrine and rule that the individual could not hold both offices simultaneously, and that he had vacated his position with the Criminal Division when he was confirmed as associate, any wiretaps he had authorized might be declared invalid and prosecutions endangered. We further suggested that if the Assistant Attorney General were to serve as Associate Attorney General simultaneously, he should designate those acts taken as Assistant that would ordinarily be reviewed by the Associate, such as decisions to indict or issue subpoenas to reporters, and either have a principal deputy make the decision in the first instance, or have it reviewed by the Deputy Attorney General.<sup>11</sup>

We are unaware of any comparable situation with regard to the review authority to be granted to the head of the OIAP, such that evidence obtained through wiretaps or other investigative methods, or indictments would be endangered. It also bears noting that the opinion concerning the Associate Attorney General did not address the Attorney General's authority to vest two offices in the same person; indeed, it assumed that the Assistant Attorney General could serve as the Associate Attorney General. The opinion simply advised that certain actions be taken by

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<sup>9</sup> Memorandum to Edward C. Schmults, Deputy Attorney General, from Theodore B. Olson, Assistant Attorney General, Office of Legal Counsel, June 14, 1983.

<sup>10</sup> Attorney General Order No. 945-81, 46 Fed. Reg. 29798 (June 3, 1981).

<sup>11</sup> The earlier opinion, 1 Op. O.L.C. 28 (1977), found that a person should not serve as the Deputy Executive Director of the Council on International Economic Policy and its Acting Executive Director, as well as Chairman of the Council of Economic Advisors. That opinion was likewise based on a concern that the official would be required to review his own actions taken in another capacity. Because that opinion did not fully analyze when review of one's own or one's agency's acts ripen into incompatibility, it offers little guidance in this situation.

another person to avoid any possible claims by criminal defendants.

CONCLUSION

For the foregoing reasons, the Attorney General may establish the new office as set forth in the proposal transmitted to the Office of Legal Counsel. .

(10-22-93, 3:30 p.m.)

OUTLINE OF PROPOSED ORDER CREATING THE OFFICE OF  
DIRECTOR FOR INVESTIGATIVE AGENCY POLICIES

**Overall Goal**

To coordinate the efforts of all criminal investigative agencies of the Department of Justice in areas of overlapping jurisdiction, most particularly in investigations of drug trafficking, fugitive apprehension, violence, and related areas by creating a more effective law enforcement structure and eliminating waste and duplication.

**Objectives**

1. Create a new position with the responsibility to take all steps necessary to improve cooperation among Justice Department criminal investigative agencies and eliminate the duplication associated with current investigative efforts.
2. Improve the ability of all criminal investigative agencies in the Department of Justice to deal with matters under their jurisdiction.
3. Maintain a highly skilled and specialized single mission agency focused on drug trafficking.
4. Maintain the roles and responsibilities of the pertinent components of the Department of Justice, including the Criminal Division, and of the United States Attorneys in developing strategies and priorities for the investigation and prosecution of violations of federal criminal law.

**Structure**

The position of Director for Investigative Agency Policies will be created by the Attorney General. The Director, who shall be chosen from among those investigative agency heads who are appointed by the President and confirmed by the Senate, shall be appointed by the Attorney General to serve at the pleasure of the Attorney General. The Director shall be supported by a staff consisting of senior personnel detailed from the FBI, DEA, USMS, INS, and the Criminal Division. The staff shall be nominated by the agencies, subject to the approval of the Director.

## Functions of the Director

For all criminal investigative activities within the jurisdiction of the Department of Justice that affect in a substantial way areas of overlapping law enforcement responsibilities, the Director shall be delegated authority to determine and establish, subject to the review of the Attorney General and the Deputy Attorney General, the following:

1. Specific steps to enhance the coordination of all Department of Justice investigative agency activities both within the United States and abroad;
2. Uniform investigative guidelines for Department of Justice investigative agencies;
3. Procedures, structures and mechanisms for coordinating the collection and dissemination of intelligence;
4. Procedures and policies with respect to procurement, including communications and computer systems;
5. Coordination of all automation systems;
6. Plans to ensure the effective deployment of investigative task forces;
7. Procedures for coordinating the apprehension of fugitives; and
8. Programs for coordinating training.

In addition to these specific responsibilities, the Director will be a continuing and central source of advice to the Attorney General and the Deputy Attorney General on all investigative policies, procedures and activities which warrant uniform treatment or coordination among the Department's criminal investigative agencies as well as the budgetary requests and resources for these agencies.

(2) *Secondary liability.* The terminal operator is secondarily liable for tax imposed under section 4081(a)(1)(ii) if it permits an unregistered owner of gasoline to remove the gasoline at its terminal rack. However, the terminal operator may rely on the rules of Notice 87-83, 1987-2 C.B. 393, to avoid such liability.

(d) *Reliance on previously issued guidance.* Taxpayers may rely on guidance previously published by the Internal Revenue Service under sections 4081 and 4082 to the extent the guidance is not inconsistent with sections 4081 and 4082 (as amended by the Revenue Reconciliation Act of 1990). The relevant guidance includes Notice 87-83, 1987-2 C.B. 393, Notice 88-16, 1988-1 C.B. 482, Notice 88-109, 1988-2 C.B. 446, Notice 89-101, 1989-2 C.B. 435, and Rev. Rul. 88-70, 1988-2 C.B. 338

(e) *Conditions for refunds of gasoline tax under section 4081(e)—(1) Conditions to allowance of refund.* A claim for refund of tax imposed by section 4081 with respect to gasoline is allowed under section 4081(e) and this section only if—

(i) A tax imposed by section 4081 with respect to the gasoline was paid to the government and not credited or refunded (the "first tax");

(ii) After imposition of the first tax, another tax was imposed by section 4081 with respect to the same gasoline and was also paid to the government (the "second tax"); and

(iii) The person that paid the second tax to the government has filed a timely claim for refund that contains the information required under paragraph (d)(2) of this section.

(2) *Form and content of refund claim.* The claim for refund under section 4081(e) shall be made by the person that paid the second tax. The claim must be made on Form 843, Claim for Refund and Request for Abatement (or such other form as the Commissioner may designate), in accordance with the instructions on the form. Each claim for a refund under this section must contain the following information with respect to the gasoline covered by the claim:

(i) The volume and type of gasoline.

(ii) The name, address, employer identification number, and registration number of the first taxpayer.

(iii) The date on which the claimant bought the gasoline.

(iv) The location at which the claimant bought the gasoline.

(v) The date on which the claimant incurred the tax liability to which the claim relates.

(3) *Time for filing claim.* A claim for refund under section 4081(e) may be filed any time after the claimant has

filed the return of the second tax and before the end of the period prescribed by section 6511 for the filing of a claim for a refund.

(f) *Effective date.* This section is effective after June 30, 1991, and before January 1, 1993, except that paragraph (e) of this section applies to any refund relating to a first tax imposed before January 1, 1993.

Par. 3. The authority citation for part 602 continues to read as follows:

Authority: 26 CFR 7805.

Par. 4. Section 602.101(c) is amended by removing the entries in the table for §§ 48.4081-1, 48.4081-2, 48.4082-1, 48.4083-1, 48.4083-2, and 48.4084-1 and adding the following entries in the table to read as follows:

§ 602.101 OMB control numbers.

(c) \* \* \*

CFR part or section where identified and described	Current OMB control number
48.4081-2(c)(3) .....	1545-1270
48.4081-3(d)(2)(ii) .....	1545-1270
48.4081-3(e)(2)(ii) .....	1545-1270
48.4081-3(f)(2)(ii) .....	1545-1270
48.4081-4(b)(2)(ii) .....	1545-1270
48.4081-4(b)(3)(ii) .....	1545-1270
48.4081-4(c) .....	1545-1270
48.4081-6(c)(1)(ii) .....	1545-1270
48.4081-7 .....	1545-1270
48.4081-9 .....	1545-1270

Shirley D. Peterson,  
Commissioner of Internal Revenue.

Approved:

Fred T. Goldberg, Jr.,  
Assistant Secretary of the Treasury.

[FR Doc. 92-16561 Filed 7-21-92; 8:45 am]

BILLING CODE 4830-01-M

**DEPARTMENT OF JUSTICE**

**Office of the Attorney General**

**28 CFR Part 0**

[AG Order No. 1606-92]

**Establishment of the Office of International Programs**

**AGENCY:** Department of Justice.

**ACTION:** Final rule.

**SUMMARY:** This order will amend the Department of Justice organization regulations to replace the Office of International Affairs with the Office of International Programs. Establishment of this new Office will increase efficiency within the Department. This order will provide the public with an

accessible list of the duties of the Director of the Office of International Programs. This order will amend the Code of Federal Regulations in order to reflect accurately the Department's internal management structure.

**EFFECTIVE DATE:** July 22, 1992.

**FOR FURTHER INFORMATION CONTACT:** Drew C. Arena, Director, Office of International Programs, U.S. Department of Justice, Washington, DC 20530, telephone (202) 514-8672.

**SUPPLEMENTARY INFORMATION:** This order pertains to a matter of internal Department management, 5 U.S.C. 553(b)(A). It does not have a significant economic impact on a substantial number of small entities, 5 U.S.C. 605(b). It is not a major rule within the meaning of or subject to Executive Order 12291.

**List of Subjects in 28 CFR Part 0**

Authority delegations (Government agencies), Government employees, Organization and functions (Government agencies), Whistleblowing.

Accordingly, by virtue of the authority vested in me as Attorney General by 5 U.S.C. 301 and 28 U.S.C. 509, 510, part 0 of title 28 of the Code of Federal Regulations is amended as follows:

1. The authority citation for part 0 continues to read as follows:

Authority: 5 U.S.C. 301; 28 U.S.C. 509, 510; 515-519.

**§ 0.1 [Amended]**

2. Part 0, subpart A, § 0.1 is amended by removing from the list under "Offices" the title "Office of International Affairs" and by adding in its place the title "Office of International Programs".

3. Subpart E-1 of part 0 is revised to read as follows:

**Subpart E-1—Office of International Programs**

**§ 0.26 Organization.**

There shall be within the Office of the Deputy Attorney General an Office of International Programs.

(a) *Director.* The Office of International Programs shall be headed by a Director appointed by the Attorney General.

(b) *Functions.* The Director of the Office of International Programs shall discharge the following duties:

(1) Coordinate all proposals for the Department of Justice, or Department of Justice personnel, to provide foreign countries with training or technical assistance in the fields of law enforcement, administration of justice, legislation, and economic reform and

democratic institution-building initiatives.

(2) Assist the Deputy Attorney General in coordinating the activities of the International Criminal Investigative Training Assistance Program and in coordinating responses to requests for international training and technical assistance submitted to the INTERPOL-U.S. National Central Bureau and other Department of Justice units.

(3) Serve as the focal point, on behalf of the Deputy Attorney General, for administrative matters involving international activities, including overseas staffing, of all Department of Justice units.

(4) Coordinate arrangements and preparations for contacts by the Attorney General and Deputy Attorney General with officials of foreign governments, foreign non-governmental organizations, and international organizations.

(5) As required, advise the Deputy Attorney General on matters relating to non-operational foreign travel by Department of Justice personnel.

(6) Serve as a primary liaison with the Department of State, with other appropriate federal, state and local agencies, and with appropriate non-governmental institutions, regarding training and technical assistance to foreign countries in the fields of law enforcement, administration of justice, legislation, and economic reform and democratic institution-building initiatives.

(7) Review and coordinate all planned and ongoing training and technical assistance activities in the fields of law enforcement, administration of justice, legislation, and economic reform and democratic institution-building initiatives by Department of Justice personnel in foreign countries.

(8) As needed, facilitate logistical arrangements for Department of Justice personnel to engage in approved training and technical assistance activities in the fields of law enforcement, administration of justice, legislation, and economic reform and democratic institution-building initiatives in foreign countries.

(9) Coordinate Department of Justice views on proposals for entities outside the Department, including international organizations, to conduct training and technical assistance activities in the fields of law enforcement, administration of justice, legislation, and economic reform and democratic institution-building initiatives in or for foreign countries.

(10) Serve as a focal point, on behalf of the Deputy Attorney General, for resolution, within the Department of

Justice, of issues regarding international policy.

(11) Coordinate, on behalf of the Deputy Attorney General, legislation relevant to Department of Justice training and technical assistance activities in or for foreign countries.

(12) Perform such other duties and functions as may be specially assigned by the Deputy Attorney General.

(c) *Relationship with other Departmental units.* The Office of International Programs shall:

(1) Maintain continual liaison with interested components of the Department on international matters.

(2) Develop and administer effective mechanisms to ensure thorough consideration, by interested components of the Department, of all proposals for international training and technical assistance by Department personnel.

(d) *Redelegation of authority.* The Director is authorized to redelegate to any subordinate member of the Office of International Programs any of the authority, functions or duties vested in the Director by this subpart.

Dated: July 10, 1992.

George J. Terwilliger III,  
Acting Attorney General.  
[FR Doc. 92-17065 Filed 7-21-92; 8:45 am]  
BILLING CODE 4410-01-M

## DEPARTMENT OF COMMERCE

### Patent and Trademark Office

#### 37 CFR Part 1

[Docket No. 910246-2140]

RIN 0651-AA43

#### Changes in Patent and Trademark Assignment Practice

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Final Rule; correction.

**SUMMARY:** The Patent and Trademark Office (Office) amended the rules of practice regarding assignments in patent and trademark cases to improve and clarify the rules, to codify changes in practice and to consolidate the rules into a new Part 3 directed to assignments. In the final assignment rules a fee change promulgated in January, 1992 was inadvertently omitted from the § 1.17(i)(1) listing.

**EFFECTIVE DATE:** September 4, 1992.

**FOR FURTHER INFORMATION CONTACT:** Jeffrey V. Nase by telephone at (703) 305-9282 or by mail marked to his attention and addressed to Commissioner of Patents and

Trademarks, Box DAC, Washington, DC 20231.

**SUPPLEMENTARY INFORMATION:** The amended assignment rules first appeared in a notice of proposed rulemaking published in the Federal Register on May 10, 1991, at 56 FR 21641, and the Patent and Trademark Office "Official Gazette" of June 4, 1991, at 1127 O.G. 8-16. The final rules appeared in the Federal Register on July 6, 1992, at 57 FR 29834. Between the time the proposed and final rules were published, 37 CFR § 1.97(d) was amended; effective March 16, 1992, by a final rule which appeared in the Federal Register of January 17, 1992, 57 FR 2021, relating to the duty of disclosure. The amendment provided for a new petition fee which was referenced in 37 CFR § 1.17, patent application processing fees. The reproduction of § 1.17 in the final assignment rule package neglected to add the reference to the new petition fee under § 1.97(d).

Section 1.17(i)(1) is reproduced in its entirety to include the reference to § 1.97(d) which was inadvertently omitted. The amount of the fee for considering an information disclosure statement is not affected by this rule change.

#### List of Subjects in 37 CFR Part 1

Administrative practice and procedure, Courts, Freedom of information, Inventions and patents.

For the reasons set out in the preamble and pursuant to the authority contained in 35 U.S.C. 6, part 1 of title 37 of the Code of Federal Regulations has been amended as set forth below.

#### PART 1—RULES OF PRACTICE IN PATENT CASES

1. The authority citation for 37 CFR part 1 would continue to read as follows:

Authority: 35 U.S.C. 6, unless otherwise noted.

2. Section 1.17 is amended by revising paragraph (i)(1) to read as follows:

#### § 1.17 Patent application processing fees.

(i)(1) For filing a petition to the Commissioner under a section of this part listed below which refers to this paragraph—\$130.00.

§ 1.12—for access to an assignment record

§ 1.14—for access to an application

§ 1.53—to accord a filing date

§ 1.55—for entry of late priority papers

§ 1.60—to accord a filing date

## DEPARTMENT OF JUSTICE

## 28 CFR Part 0

[Order No. 875-80]

## Attorney General Order on the Establishment of the Office of Intelligence Policy and Review

AGENCY: Department of Justice.

ACTION: Final rule.

**SUMMARY:** This order establishes the Office of Intelligence Policy and Review in the Department of Justice. In recent years several organizational units within the Department have become increasingly active in legal and policy matters related to the intelligence community. This order is intended to consolidate several Departmental intelligence functions within the new Office of Intelligence Policy and Review. The purposes of this consolidation are to facilitate the development of Departmental policy on intelligence matters and to enhance the Department's capability to provide legal advice to the Attorney General, the several organizational units of the Department, and the executive agencies, on the development, interpretation, and application of statutes, regulations and procedures in regard to intelligence activities of the United States.

EFFECTIVE DATE: October 1, 1979.

## FOR FURTHER INFORMATION CONTACT:

A. R. Cinquegrana, Deputy Counsel for Intelligence Policy, Washington, D.C. 20530 (202-633-3712).

By virtue of the authority vested in me by 28 U.S.C. 509 and 510 and 5 U.S.C. 301, chapter 1 of title 28, Code of Federal Regulations, is hereby amended to add:

## Subpart F-1—Office of Intelligence Policy and Review

## § 0.33a Organization.

The Office of Intelligence Policy and Review shall be headed by a Counsel for Intelligence Policy, appointed by the Attorney General. The Counsel shall be subject to the general supervision and direction of the Attorney General, and, whenever appropriate, the direction of the Deputy Attorney General.

## § 0.33b Functions.

The Counsel for Intelligence Policy shall:

(a) Advise and assist the Attorney General in carrying out his responsibilities under Executive Order 12036, "United States Intelligence Activities;"

(b) Serve as the Department representative to the National Foreign Intelligence Board;

(c) Oversee the development, coordination and implementation of Department policy with regard to intelligence, counterintelligence and national security matters;

(d) Participate in the development, implementation and review of United States intelligence policies, including procedures for the conduct of intelligence and counterintelligence activities;

(e) Evaluate Departmental activities and existing and proposed domestic and foreign intelligence and counterintelligence activities to determine their consistency with United States intelligence policies and law;

(f) Formulate policy alternatives and recommend action by the Department and other executive agencies in achieving lawful United States intelligence and counterintelligence objectives;

(g) Analyze and interpret current statutes, Executive orders, guidelines, and other directives pertaining to domestic security, foreign intelligence and counterintelligence activities; and

(h) Review and comment upon proposed statutes, guidelines, and other directives with regard to intelligence activities; and, in conjunction with the Office of Legal Counsel, review and comment upon the form and legality of proposed Executive Orders that touch upon matters related to the function of this Office;

(i) Supervise the preparation of certifications and applications for orders under the Foreign Intelligence Surveillance Act and the representation of the United States before the United States Foreign Intelligence Surveillance Court;

(j) Recommend action by the Department of Justice with regard to applications for foreign intelligence and counterintelligence electronic surveillances, as well as for other investigative activities by executive branch agencies;

(k) Monitor intelligence and counterintelligence activities by executive branch agencies to insure conformity with Department objectives;

(l) Prepare periodic and special intelligence reports describing and evaluating domestic and foreign intelligence and counterintelligence activities and assessing trends or changes in these activities;

(m) Provide a quality control review for all outgoing intelligence and counterintelligence reports;

(n) Supervise the preparation of the Office's submission for the annual budget; and

(o) Perform other duties pertaining to intelligence activities as may be assigned by the Attorney General or Deputy Attorney General.

## § 0.33c Relationship to Other Departmental Units.

(a) Internal security functions at § 0.61 shall continue to be the responsibility of the Assistant Attorney General in charge of the Criminal Division.

(b) The Assistant Attorney General for Administration shall be responsible for providing advice relating to basic Department policy for security and shall direct all Department security programs assigned at § 0.75(p).

(c) Responsibility for conducting criminal investigations shall continue to rest with the head of the Departmental investigative or prosecutive unit having jurisdiction over the subject matter.

(d) Responsibility for conducting intelligence activities shall continue to rest with the head of the Departmental unit having jurisdiction over the subject matter.

(e) In rendering legal opinions, the Counsel for Intelligence Policy shall consult with the Office of Legal Counsel whenever the Counsel determines (i) that a question raises significant implications for activities of the government other than intelligence activities, or (ii) that other facts or circumstances make such consultation appropriate.

Dated: February 20, 1980.

Benjamin R. Civiletti,  
Attorney General.

[FR Doc. 80-6534 Filed 2-25-80; 8:45 am]

BILLING CODE 4410-01-M

## ENVIRONMENTAL PROTECTION AGENCY

[FRL 1423-4]

## 40 CFR Part 52

## Approval of Revision of the District of Columbia Implementation Plan

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

**SUMMARY:** This notice announces the Administrator's approval of a revision of the District of Columbia's Implementation Plan which would provide more realistic visible emission standards, provide more specific test procedures for testing stationary sources, and provide more appropriate criminal penalties. The revision is applicable to Sections 8-2702 (Definition Changes), 8-2708 (Performance Testing), 8-2713 (Visible Emissions), 8-2718 (Emissions Testing), 8-2728 (Penalties) of the District's Air Quality Control Regulations (Regulation No: 72-12); and Section 8-812(a)(5) (Penalties) of the District of Columbia Air Quality Control Act.

EFFECTIVE DATE: March 3, 1980.

**ADDRESSES:** Copies of the revision and the accompanying support documents are available for inspection during normal business hours at the following offices:

U.S. Environmental Protection Agency, Air Programs Branch, Curtis Building, 6th & Walnut Streets, Philadelphia, Pennsylvania 19106, Attn: Patricia Sheridan.

provisions of 5 U.S.C. 553, good cause is found for making this final rule effective less than 30 days after publication of this document in the Federal Register.

**List of Subject in 9 CFR Part 166**

African swine fever, Animal diseases, Foot-and-mouth disease, Garbage, Hogs, Hog cholera, Swine vesicular disease, Vesicular exanthema of swine.

**PART 166—SWINE HEALTH PROTECTION**

Accordingly, 9 CFR Part 166, is amended as follows:

1. In § 166.1, the following definition is added in alphabetical order:

**§ 166.1 Definitions in alphabetical order.**

*Rendered product.* Waste material derived in whole or in part from the meat of any animal (including fish and poultry) or other animal material, and other refuse of any character whatsoever that has been associated with any such material, resulting from the handling, preparation, cooking or consumption of food that has been ground and heated to a minimum temperature of 230° F. to make products such as, but not limited to, animal, poultry, or fish protein meal, grease or tallow.

2. In § 166.2, paragraph (a) is revised to read:

**§ 166.2 General restrictions.**

(a) No person shall feed or permit the feeding of garbage to swine, except for rendered products, unless it is treated to kill disease organisms, pursuant to the regulations, at a facility operated by a person holding a valid license for the treatment of garbage.

3. In § 166.10, a new sentence is added at the end of paragraph (a) to read:

**§ 166.10 Licensing.**

(a) \* \* \* Producers of only rendered products are so exempted from the requirements of this paragraph in States which do not have primary enforcement responsibility.

(Sec. 511, Pub. L. 96-592, 94 Stat. 3451 (7 U.S.C. 3802); secs. 4, 5, 9, 12, Pub. L. 96-468, 94 Stat. 2223 (7 U.S.C. 3803, 3804, 3808, 3811) 7 CFR 2.17, 2.51, and 371.2(d))

Done at Washington, D.C., this 12th day of May, 1983

William E. Ketter,  
Acting Deputy Administrator, Veterinary Services.

FR Doc. 83-13361 Filed 5-17-83; 8:45 am] BILLING CODE 3410-34-M

**DEPARTMENT OF JUSTICE**

Office of the Attorney General

**28 CFR Part 0**

[Order No. 1012-83]

Office of the Pardon Attorney

AGENCY: Office of the Attorney General, Justice.

ACTION: Final rule.

**SUMMARY:** Present regulations require the Pardon Attorney to submit all recommendations in clemency cases to the Attorney General. This order delegates to the Pardon Attorney those functions vested in the Attorney General under 28 CFR 1.1 through 1.8 inclusive, but directs that the Pardon Attorney submit recommendations to the President through the Associate Attorney General.

**EFFECTIVE DATE:** May 6, 1983.

**FOR FURTHER INFORMATION CONTACT:** David C. Stephenson, Acting Pardon Attorney, Office of the Pardon Attorney, Department of Justice, Washington, D.C. 20503 (301-492-5910).

**List of Subjects in 28 CFR Part 0 Clemency.**

By virtue of the authority vested in me by 28 U.S.C. 509, 510 and 5 U.S.C. 301, Subpart G of Part 0 of Chapter I of Title 28, Code of Federal Regulations, is amended by revising §§ 0.35 and 0.36 as follows:

**§ 0.35 General functions; delegation of authority.**

Under the general supervision of the Attorney General and the direction of the Associate Attorney General, the following-described matters are assigned to, and shall be conducted, handled or supervised by, the Pardon Attorney but subject to the limitation contained in section 0.36 of this Chapter.

(a) Exercise of the powers and performance of the functions vested in the Attorney General by § 1.1 through 1.8 inclusive of this Chapter.

(b) Performance of such other duties as may be assigned by the Attorney General or the Associate Attorney General.

**§ 0.36 Recommendations.**

The Pardon Attorney shall submit all recommendations in clemency cases through the Associate Attorney General and the Associate Attorney General shall exercise such discretion and authority as is appropriate and necessary for the handling and transmittal of such recommendations to the President.

Dated: May 6, 1983.  
William French Smith,  
Attorney General.  
[FR Doc. 83-13360 Filed 5-17-83; 8:45 am]  
BILLING CODE 4410-01-M

**28 CFR Part 1**

[Order No. 1011-83]

**Rules Governing Petitions for Executive Clemency**

AGENCY: Office of the Attorney General, Justice

ACTION: Final rule.

**SUMMARY:** The regulations governing petitions for Executive clemency describe the procedures involved in petitioning the President for Executive clemency and the responsibility of the Attorney General in investigating each applicant for clemency and advising the President as to the proper disposition of each application. This order simplifies and updates the present regulations, authorizes the Attorney General to delegate his responsibility in clemency matters, lengthens the eligibility waiting period for pardon applicants to a minimum of five years, with a minimum of seven required for more serious crimes, increases the categories of crimes requiring the longer eligibility waiting period, and broadens the discretionary authority to release clemency records in the public interest. Finally, the order adds a new section which describes the nature and effect of the regulations.

**EFFECTIVE DATE:** May 5, 1983.

**FOR FURTHER INFORMATION CONTACT:** David C. Stephenson, Acting Pardon Attorney, Office of the Pardon Attorney, Department of Justice, Washington, D.C. 20503 (301-492-5910).

**List of Subjects in 28 CFR Part 1**

**Clemency.**

With the approval of the President, acting in conformity with his authority as Chief Executive and Article II, Section 2, United States Constitution, and by virtue of the authority vested in me by 28 U.S.C. 509, 510 and 5 U.S.C. 301, Part 1 of Chapter I of Title 28 of the Code of Federal Regulations is revised to read as follows:

**PART 1—EXECUTIVE CLEMENCY**

- Sec.
- 1.1 Submission of petition; form to be used; contents of petition.
  - 1.2 Eligibility for filing petition for pardon.
  - 1.3 Eligibility for filing petition for commutation of sentence.