CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, D.C. 20013–7127. Written comments should be submitted by August 6, 1997.

Carol D. Shull,

Keeper of the National Register.

ARIZONA

Yavapai County

South Prescott Townsite, (Prescott MRA), Roughly bounded by Alarcon, Montezuma, Union, and Leroux Sts., Prescott, 97000859

ARKANSAS

Benton County

Cooper, Mildred B., Memorial Chapel and Office (Architecture of E. Fay Jones MPS), 504 Memorial Dr., Bella Vista, 97000855

Cleburne County

Shaheen—Goodfellow Weekend Cottage, (Architecture of E. Fay Jones MPS), 704 Stony Ridge, Eden Isle, 97000854

St. Francis County

Edmondson House (Architecture of E. Fay Jones MPS), Ridgewood Ln., Forrest City, 97000856

Washington County

Reed House (Architecture of E. Fay Jones), Address Restricted, Hogeye, 97000857

FLORIDA

Dade County

Sears, Roebuck and Company Department Store, 1300 Biscayne Blvd., Miami, 84003903

Lake County

Duncan, Harry C., House, 426 Lake Dora Dr., Tavarcs, 97000860

Polk County

Lake Wales Historic Residental District, Roughly bounded by the Seaboard Airline RR grade, CSX RR tracks, E. Polk Ave., S. and N. Lake Shore Blvds., Lake Wales, 97000858

GEORGIA

Baldwin County

Fowler Apartments, 430 W. McIntosh St., Milledgeville, 97000861

Chattooga County

Sardis Baptist Church, GA 114, Jct. of GA 114 and Sardis Church Rd., Chattoogaville, 97000862

IDAHO

Bonneville County

Eleventh Street Historic District, Roughly bounded by S. Boulevard, 13th, 10th, and 9th Sts., S. Emerson and S. Lee Aves., Idaho Falls, 97000863

ILLINOIS

Cook County

Washington School, 7970 Washington Blvd., River Forest, 97000864

KENTUCKY

Campbell County

Sauer, August, House, 832 Central Ave., Newport, 97000873

Hardin County

Elizabethtown City Cemetery, E. Dixie Ave. Jct. of E. Dixie Ave. and Crestwood St., Elizabethtown vicinity, 97000872

Hart County

Battle of Munfordville, Roughly bounded by Green R., US 31, Rowletts, and L and N RR tracks, Munfordville, 97000866

Hopkins County

Darby House, The, 301 W. Arcadia Ave., Dawson Springs, 97000871

McLean County

Battle of Sacramento Battlefield, Jct. of KY 81 and KY 85, Sacramento vicinity, 97000875

Oldham County

Clifton, 4801 Greenhaven Ln., Goshen vicinity, 97000874

Owen County

Byrns Landing, Old Landing Rd., Owenton vicinity, 97000865

Hardin, Enos, Farm, Jct. of Rock Rd. and Kentucky R., Owenton vicinity, 97000868

Monterey Grade School, 9725 US 127 S, Owenton vicinity, 97000869

Monterey Historic District, Roughly bounded by US 127, High, Hillcrest, and Taylor Sts., Monterey, 97000867

Cedar Baptist Church, Old 1040 Claxon Ridge Rd., Owenton vicinity, 97000870

LOUISIANA

St. Martin Parish

Fontenette—Bienvenu House, 201 N. Main St., St. Martinville, 97000876

MASSACHUSETTS

Hampshire County

North Hatfield Historic District, Roughly along West St. and Depot Rd. Between I–91 and MA 10, Hatfield, 97000879

Middlesex County

Peirce, Edward, House—Henderson House of Northeastern University, 99 Westcliff Rd., Weston, 97000880

Suffolk County

Newton, Edward B., School, 45 Pauline St., Winthrop, 97000878

MICHIGAN

Keweenaw County

Johns Hotel, Washington Harbor, on Barnum Island, Isle Royale National Park, 97000877

NEBRASKA

Otoe County

Nebraska City Burlington Depot, Jct. of 6th and Corso Sts., Nebraska City, 97000881

OREGON

Malheur County

Birch Creek Ranch Historic Rural Landscape, Owyhee R., jct. with Birch Cr. and Gaging Stn., Jordan Valley vicinity, 97000882

TENNESSEE

Robertson County

Walton—Wiggins Farm (Historic Family Farms in Middle Tennessee MPS), 4020 Woodrow Wilson Rd., Springfield vicinity, 97000883

TEXAS

El Paso County

El Paso County Water Improvement District No. 1, Starting at the jct. of US 80 and US 85, along TX 20 to Alamo Alto, El Paso vicinity, 97000885

A Proposed Move is hereby made for the following Properties:

MICHIGAN

Wayne County

Elwood Bar, 2100 Woodward Ave., Detroit, 85001074

Century Building and Little Theatre, 58—62 E. Columbia, Detroit, 85000993

In order to assist in the preservation of historic properties the 15-day period has been waived for the Elwood Bar, and Century Building and Little Theater.

[FR Doc. 97–19210 Filed 7–17–97; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF JUSTICE

[Order No. 2096–97]

Office of the Attorney General; Memorandum of Guidance on Implementation of the Litigation Reforms of Executive Order No. 12988

AGENCY: Department of Justice.

ACTION: Notice with request for comments.

SUMMARY: This memorandum implements those provisions of Executive Order No. 12988 (the ''Order'') that govern the conduct of civil litigation with the United States Government, including the methods by which attorneys for the government conduct discovery, seek sanctions, and attempt to settle cases. The Order authorizes the Attorney General to issue guidelines carrying out the Order's provisions on civil and administrative litigation. The Order revoked Executive Order No. 12778 (October 23, 1991) and became effective May 6, 1996. These interim guidelines supersede guidelines issued under Executive Order No. 12778 (58 FR 6015, January 25, 1993). The Attorney General requests comments from federal agencies so that final guidelines may be drafted in light of the

agencies' experience in implementing Executive Order No. 12988.

EFFECTIVE DATE: These interim guidelines are effective on July 22, 1997. Comments are requested from federal agencies on or before October 20, 1997.

ADDRESSES: Comments should be sent to Colonel Richard D. Rosen, Civil Division, Department of Justice, 950 Pennsylvania Avenue, NW., Washington, DC 20530.

FOR FURTHER INFORMATION CONTACT: Colonel Richard D. Rosen, Civil Division, Department of Justice, 950 Pennsylvania Avenue, NW., Washington, DC 20530, (202) 616–0929.

SUPPLEMENTARY INFORMATION: Executive Order No. 12988 (61 FR 4729, February 7, 1996), which President Clinton signed on February 5, 1996, is intended to ''facilitate the just and efficient resolution of civil claims involving the United States Government.'' 61 FR 4729. The Order mandates, *inter alia*, reforms in the methods by which attorneys for the government conduct discovery, seek sanctions, and attempt to settle cases. Revoking Executive Order No. 12778 (56 FR 55195, October 25, 1991), these reforms apply to litigation begun on or after May 6, 1996.

The Order requires agencies to implement civil justice reforms applicable to each agency's civil litigation. Sections 5(a), 5(b), and 8(c) authorize the Attorney General to coordinate efforts by federal agencies to implement the litigation process reforms, to promulgate guidelines to promote just and efficient civil litigation and administrative adjudications, and to issue further guidance as to the scope of the Order. Final guidelines will be most useful, however, if they incorporate comments from federal agencies and their litigation counsel after they have had experience in applying Executive Order No. 12988. That experience will offer a valuable basis for deciding how the final guidelines can best refine implementation of the Order.

These guidelines provide interim direction for implementing the Order. They supersede the guidelines issued under Executive Order No. 12778. See 58 FR 6015 (January 25, 1993). Executive Order No. 12988 differs from Executive Order 12778 in a number of important respects, each of which is reflected in the new guidelines. For example, in contrast to Executive Order No. 12778, Executive Order No. 12988 does not include sections on ''core'' discovery, expert witnesses, and fee shifting. In addition, Executive Order No. 12988 enhances the section dealing with alternative dispute resolution, including lifting the prohibition against binding arbitration.

Agencies and their litigation counsel are requested to provide comments concerning their experience in carrying out the new Order and their recommendations for revising this interim guidance. Moreover, since this interim guidance incorporates, where applicable, the civil litigation guidelines implemented under Executive Order No. 12778, agencies and their litigation counsel should also consider their experience under those portions of Executive Order No. 12778 and its guidelines when developing their comments.

Agencies should note in particular the requirements imposed by both Executive Order No. 12988 and Executive Order No. 12778 concerning the designation of persons within each agency to act on litigation documents and sanctions motions. First, each agency must establish ''a coordinated procedure''—including review by a ''senior lawyer''—for the conduct of document discovery undertaken by that agency in litigation to determine that it meets the substantive criteria of the Order. Executive Order No. 12988, § 1(d)(1); see also Executive Order No. 12778, § 1(d)(2). Second, to implement the Order, each agency must designate a ''sanctions officer'' to review sanctions motions filed either by or against the government. Executive Order No. 12988, § 1(e)(2); see also Executive Order No. 12778, § 1(f)(2); see generally Fed. R. Civ. P. 11(c), 37(a)(4). The Attorney General recommends that each agency designate a specific individual to serve as the agency coordinator for implementation of Executive Order. No. 12988. Details regarding this designation and other guidelines are contained in this memorandum.

Although the Department is authorized to issue guidelines on administrative adjudications under sections 4 (b)–(d) of the Order, it is not presently planning to do so. If such guidelines become necessary or appropriate in the future, the Department may issue them at that time.

By virtue of the authority vested in me by law, including Executive Order No. 12988, I hereby issue the following memorandum:

Department of Justice Memorandum of Guidance on Implementation of the Litigation Reforms of Executive Order No. 12988

Introduction

Executive Order No. 12988 (the ''Order''), which President Clinton signed on February 5, 1996, is intended to ''facilitate the just and efficient resolution of civil claims involving the United States Government.'' 61 FR 4729 (February 7, 1996). The Order mandates *inter alia,* reforms in the methods by which attorneys for the government conduct discovery, seek sanctions, and attempt to settle cases. The Order applies to litigation begun on or after May 6, 1996, and supersedes guidelines (58 FR 6015, January 25, 1993) promulgated under Executive Order No. 12778 (56 FR 55195, October 25, 1991).

The Order authorizes the Attorney General to issue guidelines carrying out the Order's provisions on civil and administrative litigation. Final guidelines can most usefully be issued, however, if they incorporate comments from agencies after they have had experience in applying the Order. That experience will offer valuable insight into how the final guidelines can best implement the Order.

Therefore, this memorandum provides interim guidelines for implementing the Order's provisions governing the conduct of civil litigation by the United States Government. Agencies are requested to provide comments on or before October 20, 1997 concerning their experience in carrying out the Order and their recommendations for revising this interim guidance. In developing comments, agencies should also consider, where appropriate, their experience under Executive Order No. 12778 and its implementing civil litigation guidelines. Comments should be sent to Colonel Richard D. Rosen, who has been designated the Justice Department's coordinator for implementing the Order. Each agency should designate its own coordinator for implementing the Order.

Pre-filing Notice of a Complaint

[Section 1(a)]

The objective of section 1(a) of the Order is to ensure that a reasonable effort is made to notify prospective disputants of the government's intent to sue, and to provide disputants with an opportunity to settle the dispute without litigation. ''Disputants'' means persons from whom relief is to be sought by the government in a contemplated civil action.

Section 1(a) requires that either the agency or litigation counsel notify each disputant of the government's contemplated action, unless an exception to the notice requirement (set forth in section 8(b) of the Order) applies.

Under section 1(a), a reasonable effort to notify disputants and to attempt to

achieve a settlement may be made either by the referring agency in administrative or conciliation processes or by litigation counsel. For example, many debt collection cases, tax cases, and non-monetary disputes are the subject of extensive agency efforts to notify the other party or parties and to resolve the dispute before litigation. If the referring agency has provided notice, it should supply documentation of the notice to litigation counsel. Such efforts by the agency may satisfy the requirements of section 1(a). In those cases, litigation counsel need not repeat the notice, although litigation counsel should consider whether additional notice may be productive (for example, if a substantial period has elapsed since the prior notice).

The section requires a ''reasonable'' effort to provide notification and to attempt to achieve a settlement. The timing, content, and means of a ''reasonable'' effort depend upon the particular circumstances. Litigation counsel normally has the discretion to determine which is reasonable under the circumstances of each case. Unless notice is not required because one of the exceptions set forth in section 8(b) of the order applies, however, complete failure to make an effort is not ''reasonable.''

If pre-complaint settlement efforts by government counsel require information in the possession of disputants, litigation counsel or client agency counsel may request such information from such disputants before or during settlement efforts. If disputants refuse, or fail, to provide such information upon request within a reasonable time, government counsel shall have no further obligation to attempt to settle the case before filing suit.

Executive Order No. 12988 expressly exempts from the notice provision: (1) Actions to seize or forfeit assets subject to forfeiture or actions to seize property; (2) bankruptcy, insolvency, conservatorship, receivership, or liquidation proceedings; (3) cases in which assets that are the subject of the action or that would satisfy the judgment are subject to flight, dissipation, or destruction; (4) cases in which the disputant is subject to flight; (5) cases in which litigation counsel determines that ''exigent circumstances'' make providing notice impractical or that such notice would otherwise defeat the purpose of the litigation, such as actions seeking temporary restraining orders or preliminary injunctions; and (6) those limited classes of cases where the Attorney General determines that providing notice would defeat the purposes of the litigation.

''Exigent circumstances'' include, but are not limited to, statute of limitations or laches concerns, prior dealings with the same party suggesting that notice would be futile, attempts by the disputant to avoid service or to hide or dissipate assets, and cases where immediate action—such as injunctive relief—is required to prevent imminent and irreparable harm so as to preclude notice and discussion before filing.

The Attorney General delegates to the Assistant Attorneys General her authority under section 8(b) to exclude classes or types of cases from the notice provision.

The Department of Justice retains authority to approve or disapprove settlements proposed by the client agency or litigation counsel consistent with existing law, guidelines, and delegations. The Order confers no litigating or settlement authority on agencies beyond any authority existing under law or provided for by an explicit agreement with the Department.

Settlement Conferences

[Section 1(b)]

Section 1(b) of the Order requires litigation counsel to evaluate the possibilities of settlement as soon as adequate information is available to permit an accurate evaluation of the government's litigation position. Thereafter, litigation counsel has a continuous obligation to evaluate settlement possibilities and to initiate a settlement conference when settlement discussions are appropriate.

Under section 1(b), litigation counsel shall evaluate settlement possibilities at the outset of the litigation. Litigation counsel shall thereafter, and throughout the course of the litigation, make reasonable efforts to settle the litigation, including by offering to participate in, or moving the court for, a settlement conference. Litigation counsel should determine, however, the most appropriate timing for a settlement conference consistent with the goal of promoting just and efficient resolution of civil claims by avoiding unnecessary delay and cost. To that end, and in keeping with section 1(f) of the Order (''Improved Use of Litigation Resources''), early filing of motions that may resolve the litigation is encouraged. In those cases, litigation counsel may initiate settlement conference efforts after resolution of dispositive motions, thereby avoiding the cost and delay associated with an unnecessary settlement conference.

Before any settlement conference, litigation counsel should consult both with the client agency and with his or her supervisor regarding appropriate terms of settlement. At the conference, litigation counsel should clearly state the terms upon which litigation counsel is prepared to recommend that the government conclude the litigation, but normally should not be expected to have the authority to bind the government finally. See Fed. R. Civ. Proc. 16(c) advisory committee's note (''[p]articularly in litigation in which government agencies * * * are involved, there may be no one with on-the-spot settlement authority, and the most that should be expected is access to a person who would have a major role in submitting a recommendation to the body or board with ultimate decision-making responsibility''). Some courts, however, by local rule or by order, may require that persons with full settlement authority be present at settlement conferences. Nothing in the Order should be construed to relieve litigation counsel or agencies of their obligation to comply with such a requirement. See Executive Order No. 12988, § 9.

Final settlement authority is governed by regulations and may be exercised only by the officials designated in those regulations. The Order does not change regulations governing final settlement authority.

The Order does not constrain the government's discretion to determine which government counsel will represent the government at a settlement conference. Normally, a trial attorney assigned to the case will attend on behalf of the United States. Section 1(b) does not permit settlement of litigation on terms that are not in the interest of the government; while ''reasonable efforts'' to settle are required, no unreasonable concession or offer should be extended. The section also does not countenance evasion of established agency procedures for development of litigation positions.

Alternative Methods of Resolving the Dispute in Litigation

[Section 1(c)]

Section 1(c) of the Order encourages prompt and fair settlement of disputes. Section 1(c)(1) states: ''Whenever feasible, claims should be resolved through informal discussions, negotiations, and settlements rather than through utilization of any formal court proceeding. Where the benefits of alternative dispute resolution (''ADR'') may be derived, and after consultation with the agency referring the matter,

litigation counsel should suggest the use of an appropriate ADR technique to the parties.''

The Order recognizes that ADR is another tool to resolve disputes, subject to any applicable approval process. Specifically, ADR can be used to: expedite negotiations and hence settlement, obtain better settlements for the government, and obtain settlements in cases that would otherwise not settle. Moreover, ADR can be employed to resolve the issues underlying the dispute in the litigation and thus resolve future cases. ADR can also serve as an effective case management tool. ADR can help streamline discovery or be used to obtain discovery. It can also eliminate or narrow issues. Above all, however, ADR allows the parties and the government to fashion their own procedures for resolving disputes and their own resolutions of these disputes—creative resolutions beyond what courts can offer. In some cases, courts may even be able to dictate the use of alternative procedures in an attempt to resolve disputes without trial. See generally Fed. R. Civ. P. 16(c)(9) and note.

When considering ADR, litigation counsel should confer with his or her supervisor and with the referring agency; litigation counsel may also wish to confer with Senior Counsel for ADR at the Department of Justice. As with settlement conferences, litigation counsel should consider ADR as soon as adequate information is available to evaluate the litigation and settlement, as well as throughout the course of the litigation. Counsel may consider the full panoply of alternative procedures, including binding arbitration, when contemplating ADR. When considering binding arbitration, litigation counsel should consult their supervisors, the affected agency or agencies, and any applicable guidance on binding arbitration as may hereafter be promulgated. The Order's encouragement of the use of ADR does not, of course, authorize litigation counsel to agree to resolve a dispute in any manner or on any terms not in the interest of the United States.

Section 9 of the Administrative Dispute Resolution Act of 1996, Pub. L. No. 104–320, 110 Stat. 3879, 3872 (the ''Act''), permanently reauthorized the Administrative Dispute Resolution Act of 1990. Section 8(c) of the Act requires agencies to promulgate, ''in consultation with the Attorney General,'' guidelines on the appropriate use of binding arbitration to resolve *administrative* disputes. Nothing in these Civil Litigation guidelines are intended to affect or modify agency responsibilities under the Act or the agency's implementing guidelines.

The costs associated with ADR, such as the neutral arbitrator's fee and related expenses, may be payable as ordinary costs of litigation out of general litigation funds, out of funds designated for ADR, or out of funds provided by the agency, as appropriate.

Review of Proposed Document Requests

[Section 1(d)(1)]

Under section 1(d)(1) of the order, litigation counsel shall pursue document discovery only after complying with review procedures designed to ensure that the proposed document discovery is reasonable under the circumstances of the litigation.

When an agency's attorneys act as litigation counsel, the agency must establish a coordinated procedure for the conduct and review of document discovery, including review by a senior lawyer, before service or filing of any request for document discovery. The senior lawyer is to determine whether the proposed discovery meets the substantive criteria of section 1(d)(1). Each agency must designate senior lawyers to perform this review function. While the Order does not mandate a particular title, level, or grade of senior lawyer, the persons designated should have both substantial experience in document discovery and supervisory authority. If not already designated, such designations should be made forthwith. If a designated senior lawyer is personally preparing the document discovery, further oversight is not necessary.

The designated senior lawyer reviewing document discovery proposals is to determine whether the requests are cumulative or duplicative, unreasonable, oppressive, or unduly burdensome or expensive, taking into account the requirements of the litigation, the amount in controversy, the importance of the issues at stake in the litigation, and whether the documents can be obtained in a manner that is more convenient, less burdensome, or less expensive to the government or opposing parties than pursuit of the documentary discovery as proposed.

In conducting this review of document requests, the senior lawyer is entitled to rely in good faith upon factual representations of agency counsel and the trial attorney. Review by a senior lawyer should not deter the pursuit of reasonable document discovery in accord with the procedures established in the Order.

Discovery Motions

[Section 1(d)(2)]

Pursuant to section 1(d)(2) of the order, litigation counsel shall not ask the court to resolve a discovery dispute or impose sanctions for discovery abuses unless he or she first attempts to resolve the dispute with opposing counsel or *pro se* parties. If litigation counsel files a discovery motion, he or she must represent in the motion that pre-motion efforts at resolution were unsuccessful or impractical. See Fed. R. Civ. P. 26 (c), 37(a)(2)(A). Litigation counsel, however, should not compromise a discovery dispute unless the terms of the compromise are reasonable.

Sanctions Motions

[Section 1(e)]

Where appropriate, litigation counsel shall take steps to seen sanctions against opposing counsel and opposing parties for improper or abusive litigation practices, subject to the procedures set forth in section 1(e) of the Order regarding agency review of proposed motions for sanctions. See, e.g., Fed. R. Civ. P. 11(c), 37(a)(4). Before filing a motion for sanctions, litigation counsel should normally attempt to resolve disputes with opposing counsel. Sanctions motions should not be used as vehicles to intimidate or coerce counsel when the dispute can be resolved on a reasonable basis.

To implement section 1(e)(2) of the Order, each agency with attorneys acting as litigation counsel must designate a ''sanctions officer'' to review motions for sanctions that litigation counsel prepare for filing, as well as motions for sanctions filed against litigation counsel, the United States, its agencies, or its officers. The section requires that the sanctions officer or his or her designee ''shall be a senior supervisory attorney within the agency, and shall be licensed to practice law before a State court, courts of the District of Columbia, or courts of any territory or Commonwealth of the United States.'' The sanctions officer or his or her designee should be a senior lawyer with substantial litigation experience and supervisory authority. By way of illustration, rather than limitation, a Senior Executive Service level attorney with substantial litigation experience should satisfy these criteria.

Persons acting as sanctions officers within each agency should be designated specifically by title or name. If not already designated, agencies with attorneys acting as litigation counsel shall designate sanctions officers

forthwith. Cabinet or subcabinet officers, such as Assistant Attorneys General or Assistant Secretaries, officials or equivalent rank, the United States Attorneys are authorized to designate sanctions officers meeting the criteria of this Memorandum.

Improved Use of Litigation Resources

[Section 1(f)]

Litigation counsel must use efficient case management techniques and make reasonable efforts to expedite civil litigation, as set forth in section 1(f) of the Order. Litigation counsel must move for summary judgment where appropriate to resolve litigation or narrow the issues to be tried. This rule is not intended to suggest, however, that summary judgment should be sought prematurely in a manner that will permit opposing counsel to defeat summary judgment.

Litigation counsel are also to make reasonable efforts to stipulate to facts that are not in dispute, and must move for early trial dates where practicable. Referring agencies should identify facts not in dispute and inform litigation counsel of the lack of dispute and the basis for concluding that there is no factual dispute, as soon as it is feasible to do so. Litigation counsel should seek agreement to fact stipulations as early as practicable, taking into account the progress of discovery and their sound judgment as to the most appropriate and efficient timing for such stipulations.

At reasonable intervals, litigation counsel shall review and revise submissions to the court to ensure that they are accurate and that they reflect any narrowing of issues resulting from discovery or otherwise, and shall apprise the court and all counsel accordingly. Litigation counsel also should make an effort, where appropriate, to involve the court early in case management and issue-focusing. This effort may include apprising the court, during conferences under Federal Rule of Civil Procedure 16, of core issues and contemplated methods of resolution, such as settlement, ADR, stipulation, dispositive motion, or trial. Counsel must consistently review and revise pleadings and other filings to ensure that unmeritorious threshold defenses and jurisdictional arguments that result in unnecessary delay are not raised, bearing in mind counsels obligation to bring defects in jurisdiction to the court's attention.

These requirements are not intended to suggest that litigation counsel should concede facts or issues as to which there is reasonable dispute or uncertainty, or which cannot be corroborated.

Principles to Promote Just and Efficient Administrative Adjudications

[Section 4]

Section 4 of the Order requires agencies to implement the recommendations of the Administrative Conference of the United States, entitled ''Case Management as a Tool for Improving Agency Adjudication'' (1 CFR § 305.86–7 (1991)), to the extent reasonable and practicable and not in conflict with any other provision of the Order. Proceedings within the ambit of section 4 are adjudications before a presiding officer or official, including, but not limited to, an administrative law judge.

The Order does not impose the requirements of section 1 on such agency proceedings; however, applying the relevant provisions of section 1 would have a salutary effect and would be in concert with the reforms required by the Order. Agencies are encouraged to extend the application of section 1 to administrative adjudications where appropriate (for example, where an evidentiary hearing is required by law and where, in litigation counsel's best judgment, such extension is reasonable and practicable).

In addition, agencies are to review their administrative adjudicatory processes and develop specific procedures to reduce delay in decision-making, facilitate self-representation where appropriate, expand non-lawyer counseling and representation where appropriate, and invest maximum discretion in fact-finding officers to encourage appropriate settlement of claims as early as possible. Agencies also shall review their administrative adjudicatory processes to identify any bias on the part of decision-makers that results in injustice to persons who appear before agency administrative adjudicatory tribunals; regularly train fact-finders, administrative law judges, and other decision-makers to eliminate bias; and establish appropriate mechanisms to receive and resolve complaints of bias.

Agencies should develop effective and simple methods—including through use of electronic technology–to educate the public about agency benefits and claims policies and procedures.

Although no specific guidelines are being issued at this time for section 4, they may be issued in the future if they become necessary or appropriate.

Exceptions to the Executive Order

The Order does not apply either to criminal matters or to proceedings in foreign courts, and shall not be construed to require or authorize litigation counsel or any agency to act contrary to applicable law. Sections 8(a) and 9. Attorneys for the federal government are directed to follow the requirements of the Order unless compliance would be contrary to the Federal Rules of Civil Procedure, Tax Court Rules of Practice and Procedure, federal or state law, other applicable rules of practice or procedure, or court order. Section 9.

The Order defines the term ''agency'' as the term ''executive agency'' is defined in 5 U.S.C. § 105. Section 6(a). Thus, agencies and litigation counsel, including private attorneys representing the government, are subject to the provisions of the Order, even where the agency is considered ''independent'' for other purposes. The President has the authority to supervise and guide the exercise of core executive functions such as litigation by government agencies.

The Order does not compel or authorize disclosure of privileged information or any other information the disclosure of which is prohibited by law. Section 10. The Order and these guidelines are solely intended to improve the internal management of the executive branch. Neither the Order nor these guidelines should be construed to create any right or benefit, substantive or procedural, enforceable against the United States, its agencies, its officers, or any other person. Further, neither the order nor these guidelines shall be construed to create any right to judicial review of the compliance or noncompliance of the United States, its agencies, its officers, or any other person with either the Order or these guidelines. Finally, nothing in the Order or these guidelines shall be construed to obligate the United States to accept a particular settlement or resolution of a dispute, to alter its standards for accepting settlements, to forego seeking a consent decree or other relief, or to alter any existing delegation of settlement or litigating authority. Section 7.

Dated: July 16, 1997.

Janet Reno,

Attorney General.

[FR Doc. 97–19232 Filed 7–21–97; 8:45 am]

BILLING CODE 4410–12–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Departmental policy, 28 C.F.R. § 50.7, notice is hereby