1 November 1977

MEMORANDUM FOR THE RECORD

STATINTL FROM : [redacted]
Acting Chief, Records Administration Branch

On 31 October, the undersigned was advised that on 25 October, Mr. Shaw, Senate Select Committee on Intelligence, visited with Mr. Thomas Wadlow, NARS, seeking advice concerning the review of Intelligence agencies' records withheld for destruction pending the approval of the SSCI. According to the source, this meeting was the subject of a memo, dated 26 October, to the Archivist of the United States from Mr. Wadlow. It is to be noted here that since the information was presented to the undersigned in a rapid fire verbal fashion, the undersigned could only note a few of the points of the meeting. According to the source, Mr. Shaw indicated that he plans to review Agency requests for disposition, and demonstrated a mistaken impression that NARS supervises all such dispositions. He further indicated that he plans to have the 17 Committee Senators review pending Agency requests to vote on individual dispositions. Mr. Shaw is scheduled to meet again with Mr. Wadlow upon the latters return to duty on or about the first week in November.

Attached is a xerox copy of an article that appeared in the October 27, 1977 edition of "The Nation." The source indicated that this article would be of interest to us since it could present problems. The actual xerox copy was obtained by RAB from the library.

STATINT [redacted]

Attachment
As stated

barrage," as it was called in Cuba, which ITT laid down to clear the way for a telephone rate increase in 1957—an increase for which Batista was later awarded a gold telephone, now on view in Havana's Museum of the Revolution. And there are the requests for compensation by various American hotels, some of which the Cubans believe to be properties of the Mafia. The Cubans are going to be understandably reluctant to compensate such claimants.

Even if Cuba wanted to satisfy American claims, could it pay anything? Certainly it cannot pay much. The Cuban economy is just stumbling ahead; the island's GNP per capita is as stagnant now as it was in the 1950s. Cuba has a debt of almost $6 billion to the USSR; virtually everything on the island is rationed. The mainstay of Castro's economy—still the sugar industry—is currently producing, thanks to droughts, spare parts shortages and mismanagement, at levels established a half-century ago, during the salad days of American capitalism. There is not much fat to share out.

Moreover, the Cubans have declared of late that they intend to maintain the current nature of their trading patterns. Thus, the American traders will have to struggle for their share of the 35 percent which is allocated to Western Europe and Japan. This determination to maintain two-thirds of its trading relations with the Socialist bloc would seem not only to limit the possibility of compensation through trade, but also limit the broader American objective, which is to gain a measure of influence in Cuba in order to moderate its policies on human rights and aid to African revolutionaries.

If Cuba will not or cannot pay, there remain several possibilities. The Carter administration might decide it was in the broader national interest to favor the traders and outflank the claimsmen by ending the embargo and opening trade without preconditions. But if it did so, Cuban goods would likely be attached by angry claimsmen as soon as they reached America. It has happened in the past when Cuban sugar, ships and aircraft were impounded by local court orders.

The real hope of the claimsmen seems to be that, in one way or the other, the Congress can be persuaded to compensate them in order to assure normalization of relations with Cuba. The chief counsel for the JCCCC, Samuel McIlwain, has suggested that, if Congress agrees to pay Castro any counterclaims for the Bay of Pigs or CIA-sponsored raids, these sums should be set aside to pay U.S. claimants. Or perhaps Congress might agree to pay back rent on the Guantánamo base, on the understanding that this money would go, via some equitable formula, to the claimsmen.

But one senses that the Congressmen, their hackles raised by the proposed Panama settlement, will not be quick to do anything that might be interpreted as surrendering, even indirectly, to Fidel. The likelihood is that the competing demands of the claimsmen and the traders will contribute powerfully to a paralysis of U.S.-Cuban relations that may last for another decade. □

BUREAUCRATS ABOVE THE LAW

Double-Entry Intelligence Files

ATHAN THEOHARIS

Historians and archivists will welcome the Final Report of the National Study Commission on Records and Documents of Federal Officials (really two reports, one from the majority and one an alternate). Both versions affirm what has been in some question—not least because of Richard Nixon's acquisitive instincts—that the papers of all federal officials (not only Presidents but bureaucrats, members of Congress and judges) are public property and must be held available for scrutiny by the public. But having made this vitally important finding, the Study Commission evidently felt that the bulk of its task was done. It cites the Federal Records Act of 1950, which obliges the head of each federal agency to "make and preserve records containing adequate and proper documentation of the organization, functions, policies, decisions, procedures and essential transactions of the agency . . . ," and notes that, to insure compliance with such requirements, the Code of Federal Regulations of 1976 stipulates that "With particular regard to the formulation of basic Government policy, Federal officials are responsible for incorporating in the records of their agencies all essential information on their major actions." The two reports agree that these statutes, together with the Freedom of Information Act, provide sufficient guarantees for the preservation of, and access to, such records, within reasonable bounds of confidentiality and the safeguarding of national security.

This optimism I find unwarranted, in view of recently acquired knowledge about the separate records-keeping and document-destruction practices of government agencies, and particularly the intelligence agencies. When devising multiple filing systems and document-destruction procedures, intelligence bureaucrats have in the past fully recognized that their agencies' reputations and thus

Athan Theoharis, professor of American history at Marquette University, is the author of Seeds of Repression: Harry S. Truman and the Origins of McCarthyism *(Quadrangle Books) and* The Yalta Myths: An Issue in American Politics, 1945-55 *(University of Missouri Press). He is completing a study of internal security policy in the years 1936 to 1976, tentatively called* On the Road to 1984.

authority could be damaged should "sensitive" documents of a certain kind ever be publicly disclosed. Despite the assurance of confidentiality provided by "national security" classifications, these officials devised filing procedures that separated extremely sensitive from other "national security" classified documents. This system had a double objective: to permit the prompt destruction of these sensitive documents without leaving behind any clue that such documents had ever existed. Moreover, although some of these record-keeping practices were established before, and others after, the 1950 Act, the legislative requirements that adequate records be created and preserved were deliberately ignored.

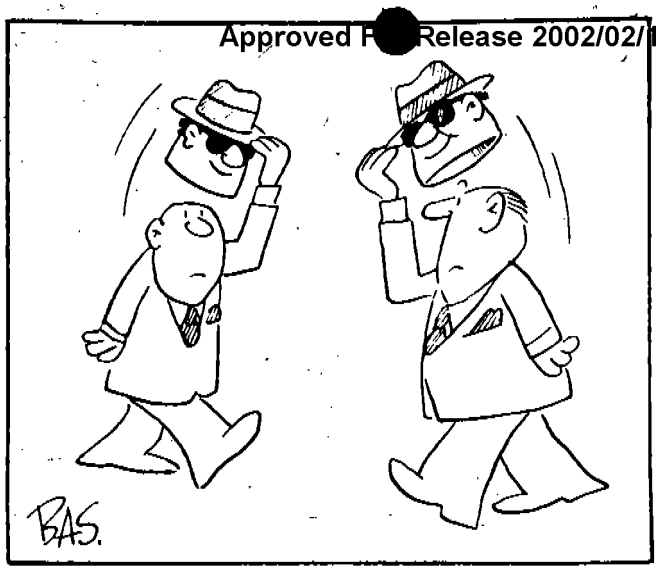
Apparently, the National Archives personnel responsible for reviewing agency documents before permitting their destruction had been unaware of these procedures intended to avoid public knowledge of illegal activities. For, on March 26, 1976, the appraiser in the Records Disposition Division of the National Archives' Office of Federal Records Centers who had responsibility for FBI documents authorized (and the archivist subsequently signed) the destruction of *"Closed* files of the Federal Bureau of Investigation *containing investigative reports, inter- and intro-office communications, related evidence* . . . collected or received during the course of public business in accordance with the FBI investigative mandate." (Emphasis added.) Thus, extensive files were destroyed without the responsible Archives personnel ascertaining their historical and public importance. The limited number of personnel (ten) in this Archives Division explains why such voluminous files could not be reviewed. Yet the National Archives has not requested money to hire additional staff for the purpose.

In memorandums of April 11, 1940, November 15, 1941, March 1, 1942, January 16, 1943, March 9, 1943 and November 9, 1944, FBI Director J. Edgar Hoover advised bureau officials (both those in Washington and Special Agents in Charge of field offices) how to prepare for submission to headquarters memorandums that were not to be retained and filed in the FBI's general files. These communications were to be typed on pink paper (later blue) the better to keep them separate from white-paper memorandums which, on receipt by Washington, would be given a serial number for filing purposes. In part, Hoover's reason for setting up this color code had been to reduce paper work. A deeper purpose, however, was to enable FBI field offices to convey sensitive information in writing to the FBI Director or Washington headquarters without running the danger that a retrievable record would thereby be created. His April 11, 1940 memorandum identified documents to be destroyed as including those "written merely for informative purposes, which need not be retained for permanent filing." The March 1, 1942 instruction more specifically identified these as including memorandums "prepared solely for the benefit of the Director and other officials and eventually to be returned to the dictator [of the memorandum] to be destroyed, or retained in the Director's office."

In 1942 the bureau instituted a "Do Not File" procedure for all field-office requests for authorization to conduct break-ins, along with the documents that formally approved these requests. Such papers were not to be given serial numbers, nor to be filed under the appropriate case or caption category. Whenever Hoover or his headquarters staff deemed it advisable to destroy them, they could vanish without a trace. An internal bureau memorandum of July 19, 1966, from William Sullivan to Cartha De Loach (both men at the time were assistants to the Director) describes in detail the Do Not File procedure. To prevent excessive recourse to break-ins—which Sullivan characterized as "clearly illegal"—and to make sure that sufficient care was taken to prevent their discovery, prior written authorization from the Director or assistant director was required for all such crimes. Under normal procedures, of course, this would create a retrievable record, and the Do Not File device was invented to avoid that hazard. In September 1975 Congressional testimony, former FBI Assistant Director Charles Brennan conceded that this was indeed one purpose of the Do Not File procedure. It would also enable the bureau to comply with court disclosure orders, since witnesses could affirm that a search of FBI records had been made and no evidence uncovered of illegal government activities.

The recent discovery of this separate file keeping raises additional questions about the FBI's way with its records. In the course of reviewing the "Official-Confidential" files formerly retained by Hoover in his personal office, the staff of the Senate Select Committee on Intelligence Activities came across the Sullivan-to-De Loach memorandum mentioned above. Mark Gitenstein, the staff counsel who made this find, then noticed that a caption, "PF," had been crossed out in the upper-right-hand corner and the notation added that, in November 1971, the document had been transferred to Hoover's Official-Confidential files. Further investigation established, first, that "PF" stood for Hoover's "Personal Files"; second, that this document, along with seven other documents, had been transferred from the "B" entry in the Personal Files ("B" for "Black Bag" jobs or break-ins) to Hoover's Official-Confidential files and, third, that shortly after his death in May 1972, Hoover's Personal Files had been sent to his home. There, following Hoover's instructions but allegedly after first reviewing the voluminous Personal Files to insure that they contained no official documents, the FBI Director's personal secretary, Helen Gandy, destroyed them. In her December 1975 testimony, Ms. Gandy maintained that she had found no other official documents.

Given the decidedly official character of the Do Not File memorandum (the seven other items remain classified, but assuredly Hoover in 1971 considered them official), we confront the not very credible possibility that the only alphabetical entry in Hoover's Personal Files to contain official documents had been the letter "B." The process by which documents were selected for transfer and destruction prevents us from knowing whether the requirements of the 1950 Act and the 1976 Code were actually met.



Tachydromos (Greece)

Obviously, a Do Not File procedure allows those concerned to deny knowledge of the extent and nature of recognizably illegal or "sensitive" activities, and other recent disclosures suggest that such separate filing procedures were not confined to break-ins. Thus, Sullivan's 1969 reports from Paris to Washington headquarters on his surveillance of nationally syndicated columnist Joseph Kraft were sent under the Do Not File procedure. In addition, despite Atty. Gen. Nicholas Katzenbach's 1966 requirement that all requests for authority to wiretap be submitted in writing and the names of those subject to such surveillances be included in a special file (an ELSUR Index), the wiretap records of the seventeen individuals (White House and National Security Council aides and reporters) tapped between 1969 and 1971, allegedly to uncover the source or sources of national security leaks, were not placed in this Index or filed with other FBI "national security" wiretap records. (Nor were the 1972 wiretap records on Charles Radford, a lower-level military aide suspected of having leaked National Security Council documents to the Joint Chiefs of Staff, included in the ELSUR Index or filed with other FBI "national security" taps. And FBI reports on its surveillance of Anna Chennault in October/November 1968 were "protected and secured" to insure that they would not be discovered and thereby affect that year's Presidential race.) Accordingly, when Sullivan told Asst. Atty. Gen. Robert Mardian in July 1971 that Hoover might use these taps to blackmail the President, Mardian, after consulting with Nixon, transferred the tap records from the FBI to the safe of White House aide John Ehrlichman. Because they were not listed originally in the ELSUR Index, there was no record either that these files had been transferred or that the wiretaps had been carried out.

In another area, when Congress in September 1971, repealed the emergency detention title of the McCarran Internal Security Act of 1950, Hoover asked Atty. Gen. John Mitchell how to handle the policy documents of the Justice Department's independently established, broader—and illegal—detention program. On February 19, 1972, Mardian advised Hoover to destroy these materials. Furthermore, upon concluding the study that resulted in the Huston plan of intelligence procedure (known as the Huston Plan), Hoover in June 1970 advised other intelligence officials who had participated to destroy this plan's working copies.

During the pretrial hearings in the Judith Coplon case, the FBI's extensive and illegal use of wiretapping was revealed because Federal District Judge Albert Reeves ruled that certain FBI reports be submitted as evidence. Hoover then devised yet another filing procedure. In Bureau Bulletin No. 34 of July 8, 1949, he ordered that "facts and information which are considered of a nature not expedient to disseminate or would cause embarrassment to the bureau, if distributed" were henceforth to be omitted from agent reports, but detailed in the administrative pages that accompanied these reports. Normally, agents employed administrative pages to highlight investigative findings or to outline future investigative efforts. Because those pages could be kept separate from the reports, Hoover's order would allow the FBI to conduct questionable or illegal activities, and profit from their findings without risking disclosure during trial proceedings or even without responsible Justice Department officials ever learning of them.

This need to prevent discovery of illegal FBI investigative activities had also led Hoover on October 19, 1949 to advise all Special Agents in Charge how to hide the fact that the bureau was conducting an extensive "security index" program. It predated passage of the McCarran Internal Security Act and was partially based on a secret directive of August 3, 1948 from Atty. Gen. Tom Clark. The FBI, however, began to compile additional indexes—a Communist Index, a "Detcom (Communist Detention) program" and a "Comsab (Communist Saboteurs) program"—without the Attorney General's direction or knowledge. To guard against discovery of this program by the press and the Congress—as well as to prevent the Attorney General from discovering the bureau's independent extension of his authorization—Hoover advised SACs: "No mention must be made in any investigative report relating to the classifications of top functionaries and key figures, nor to the Detcom or Comsab programs, nor to the security index or the Communist Index. These investigative procedures and administrative aids are confidential and should not be known to any outside agency."

Then, when the FBI after February 1958, began to receive copies of letters illegally obtained through the agency's closely guarded mail cover/intercept program in New York City, similar filing procedures were set down, as described in a November 26, 1962 memorandum. Copies of intercepted mail were to be destroyed (if of no value) or filed in a secure area, separate from other FBI files. Such copies were also not to be included in the subject's case file, although a cross-reference would permit retrieval. When significant information found in this intercepted mail was sent on to FBI field offices or other divisions, it was to be paraphrased to disguise the source. Agents in Charge of this project in New York were specifically warned not to disseminate the obtained information outside the bureau and not to cite it in any investigative report.

Are there other FBI files? Obviously, this question cannot be answered definitively. When interviewed by David Wise, author of *The Police State*, William Sullivan claimed that John Mohr (then an FBI assistant director) had removed "very mysterious files" from Hoover's office after the FBI Director's death. These were "very sensitive and explosive files," Sullivan maintained, and not all of them were located by Atty. Gen. Edward Levi when he found "164 such files in the Justice Department."

Nor were these separate filing procedures and the attendant document destruction confined to the FBI. The CIA's drug program documents were destroyed in January 1973. Also, during the September 1975 Congressional testimony, CIA Director William Colby affirmed that the agency's record-keeping practices made it impossible to reconstruct past CIA activities involving the production and retention of highly poisonous toxins: "Only a very limited documentation of activities took place"; the desire for compartmentation involving sensitive matters "reduced the amount of record keeping."

In 1969, the National Security Agency devised similar filing and destruction procedures. In 1967, the NSA had begun to intercept the international electronic communications of targeted American citizens and organizations. The NSA had the equipment necessary to intercept all electronic messages, and could isolate particularly desired messages according to pre-selected names or code words. To exploit this capability, the CIA and the FBI provided the NSA with a so-called Watch List of individuals or organizations whose messages were to be intercepted. Informal document transmittal and separate filing methods were then devised. Being perfectly aware that such interception was illegal, NSA officials in 1969 worked out procedures to hide the existence of the activity and their involvement in it. Reports produced through this eavesdropping were given no serial numbers, were not filed with other NSA reports, were hand-delivered only to those officials having knowledge of the program, and were distributed "For Background Use Only." Agencies receiving the material were directed either to destroy it or return it to the NSA within two weeks.

Are these separate file-keeping and destruction procedures merely aberrational practices that have now been abandoned? Unfortunately, in the absence of proof to the contrary we must assume that they may be continuing or might be resumed. It is unlikely that before 1975 responsible, informed citizens would have accused the intelligence agencies of such practices, and if they had, few Americans would have taken them seriously. Furthermore, recent testimony under oath by intelligence officers and their responses to document requests during the first intensive Congressional inquiry into the practices of the intelligence community have raised additional questions about the intelligence agencies' file-keeping practices.

Thus in 1975, FBI Director Clarence Kelley during a press conference, senior FBI officials testifying before Congress, and FBI memorandums responding to specific inquiries of the Senate Select Committee all affirmed that FBI break-ins during domestic security investigations had ceased in 1966, and that the exact number of such past FBI break-ins could not be provided because, thanks to the Do Not File procedure, written records did not exist. In 1976, however, in response to a court order involving a damage suit brought against the government by the Socialist Workers Party, the FBI not only produced break-in documents but these documents disclosed that FBI domestic security break-ins continued after 1966 and as late as July 1976.

In addition, William Colby testified in September 1975 that the CIA could not be fully responsive to the Senate Select Committee's queries concerning the CIA's drug programs and specifically its toxin program. Not only had documents concerning the CIA's general drug programs been destroyed in January 1973, but the agency's desire for compartmentation of sensitive materials had "reduced [the] amount of record keeping" and thus there had been "only a very limited documentation of [the] activities [which] took place." But in July 1977, contradicting Colby's assertions, CIA Director Stansfield Turner advised the Senate Select Committee that documents pertaining to the CIA's past drug program had been discovered after "extraordinary and extensive search efforts." These, Turner reported, had been found in retired archives filed under financial accounts. The newly discovered documents showed that CIA drug testing on American citizens had been more extensive than had been disclosed in 1975.

The file-keeping procedures, and their underlying intent to prevent public/Congressional knowledge of questionable or patently illegal activities, challenge the assumptions underlying the National Study Commission recommendations. Existing law and regulations do not appear adequate to guarantee retention of public papers, thus assuring that the Freedom of Information Act will give access to the full record of federal agency practices. The problem is more complex and thorny than the commission recognized. Perhaps the preservation and access to such papers cannot be insured. But the attempt should nevertheless be made, and a number of additional safeguards are required. First, the Congress should enact legislation specifically forbidding the maintenance of separate files and requiring federal officials to create a unitary and complete filing system. Heavy fines and criminal penalties should be provided for noncompliance. Second, an oversight committee should be created to insure that more dual, triple or even more elaborate systems do not continue, will not be devised, or if devised cannot remain undetected. An independent board of archivists, journalists and historians might well be created to provide this oversight. It must have subpoena powers and complete authority to inspect agency filing systems. Third, and perhaps this would be less a procedural change than a political awakening, cold-war secrecy and national security assumptions must be critically reassessed.

The intelligence agencies' record-keeping practices in the recent past show their bureaucrats to have felt themselves above the law. Rather than being bound to respect legal or constitutional limitations, these officials decided that the law could be safely circumvented, first by ex-

ploiting popular and Congressional tolerance for secrecy, and then by devising elaborate filing procedures to prevent discovery. What is needed for a return to government by law, and not by men, is to create safeguards against the tendency of intelligence agency officials to decide for themselves, and secretly, what national policy shall be. Central to this is the need to reaffirm the people's "right to know" as much about national security as it does about economic policy. Otherwise the recommendations offered in both National Study Commission reports could prove to be cosmetic, and that is not what their proponents intended. □

BEHIND THE BERLIN WALL

SOCIALISM WITH A GERMAN FACE

JONATHAN STEELE

East Germany was on the front page of *The New York Times* on September 24. It was a rare occurrence, caused this time by the news that a stream of dissident writers, musicians and theatre people is flowing out of the country. The spate of expulsions—some forced, others merely encouraged—began with Wolf Biermann, the unorthodox Marxist singer-poet who was refused permission to return from a trip to West Germany last autumn.

The government of the German Democratic Republic was at first surprised when scores of other intellectuals protested the exclusion of Biermann. It briefly detained a few of them, put some under house arrest, but left the majority alone until it decided that they too would be better out of the country. In the last ten months the cultural migration has included more than twenty intellectuals. The facts reported in the Western media were true; the events are sad. Western newsmen covering the Belgrade review conference on European Security and Cooperation this month (it opened on October 3) now have a new peg on which to hang legitimate stories about repression in Eastern Europe.

Yet there is also something sorrowful about the inability or unwillingness of most Westerners writing about Eastern Europe to go beyond the clichés. How many reports of the recent exodus from the GDR have contrasted the situation with the position of intellectuals in the Soviet Union or Czechoslovakia? In those countries expulsion is a mild form of punishment, when compared with the more usual practice of imprisonment, or internal exile with no chance to pursue one's work. In East Germany an exit visa has become the most common punishment, at least for prominent intellectual dissidents. For those brought up on an ideological diet in which the GDR was always described as the most authoritarian state in Communist Europe this may seem an aberration. Those who remember that East Germany was the only East European state in which the Stalinist purges of the early 1950s produced no executions, may see it as just a mild case of history repeating itself.

No country has had a poorer image abroad than East Germany—the "other Germany" as it has been patronizingly called. The hideous Berlin Wall fixed itself deep in most people's minds as the symbol of a new German brutalism. More than that, it was taken as a symbol of illegitimacy. Here was graphic and deadly proof that the GDR is a bastard state. For two decades the West tried to wish East Germany away. The attempt failed, and the Helsinki Conference of 1975—precursor of this month's meeting in Belgrade—became the coming-out party for the East German leadership. By an accident of the French diplomatic alphabet, Erich Honecker found himself sitting between Chancellor Helmut Schmidt and President Ford. Nothing could have been more ironic than that the East German party leader should be flanked by the heads of government of the two countries which had done more than any others to prevent the GDR's coming into being.

Although the Western boycott was the most aggravating international issue for the GDR, its relations with its allies in Eastern Europe were not without problems. To be sure, it was integrated into the Warsaw Pact and Comecon, but its companions in those bodies were a long time getting over the feeling that the GDR was an artificial state.

In short, East Germany had to gain legitimacy in the eyes of its friends as well as its enemies. During the first postwar years Stalin saw the country primarily as a strategic buffer for the Soviet Union and a source of reparations payments; the interests of the small minority of Communists in the Soviet Zone of Germany took second place. Three times, first under Stalin, then under Malenkov and Beria, and finally under Khrushchev, the USSR toyed with the idea of withdrawing from the country in return for the neutralization of the whole of Germany. Although the Russians hoped, at least in the period just after the war, that a neutral Germany would be leftward-leaning, they were more concerned to insure that its foreign policy was safe than that its political system was Communist. In 1955, to the chagrin of the East German leadership, the Soviet Union recognized the Federal Republic without demanding a diplomatic *quid pro quo* for the GDR. It was not until 1974, almost exactly a year after the GDR's entry into the United Nations, that reciprocity came and the United States recognized East Germany.

Jonathan Steele, Washington correspondent for the Manchester Guardian, *was formerly its East European correspondent. His book,* Inside East Germany: The State That Came in from the Cold, *was published by Urizen Books on October 3.*

waterbodies and infestations at the plant were possible in the future.

The Bulletin also asked licensees to describe their methods for preventing and detecting any future fouling at their plants. A combination of chlorination, heat treatment, flushing, backflushing and the installation of strainers were the preventative actions taken by most of the affected plants. Many of them routinely inspect the intake canal, the pump discharge strainers and the main condenser, cleaning them out as needed. Detection methods included surveillance programs comprised of visual inspections and measurements of flow, differential pressure, and temperature at various system locations. These actions by the licensees can be expected to have varying degrees of effectiveness depending on the frequency with which they are performed and the severity of the infestation present at and around the plant.

IE Bulletin 81–03 addressed fouling by Asiatic clams and musseles only. Therefore, most plants discussed only these two species in their responses. Some plants however, mentioned the presence of other fouling organisms such as other species of clams, oysters, barnacles, tubeworms and algae to name a few. In addition, a number of plants reported problems caused by mud and silt. In some cases, they claimed this to be a bigger problem at the plant than marine fouling.

In July 1981, NRC issued IE Information Notice 81–21, "Potential Loss of Direct Access to Ultimate Heat Sink". The Notice described the loss of the normal decay heat removal system at Brunswick. It also emphasized the need for licensees to initiate appropriate actions, as described in IE Bulletin 81–03, for any marine organisms that could cause fouling at their plant.

A case study entitled "Report on Service Water System Flow Blockages by Bivalve Mollusks at Arkansas Nuclear One and Brunswick", was issued by the NRC's Office for Analysis and Evaluation of Operational Data in February 1982.

The NRC's Office of Nuclear Reactor Regulation (NRR) is conducting a generic study of service water system malfunctions. This study is being assisted through the Special Studies program at the Oak Ridge National Laboratory (ORNL). In the program, ORNL will investigate licensee event reports (LERs) from January 1979 through June 1981 on the partial or complete loss of service water systems and organize these results systematically. From this collection of events, ORNL will evaluate the safety significance of service water malfunctions and provide their recommendations for any corrective measures that they believe may be needed. NRR will attempt to correlate specific plant design features, surveillance programs and preventative measures with the magnitude and types of service water problems reported in LERs and the responses to IE Bulletin 81–03. Based on the results of this study, corrective actions will be recommended in order to improve the reliability of service water systems.

In addition to the service water study, NRR is reviewing the design of baffle plates in "U" tube heat exchangers similar to those used at Brunswick. This review is to determine if a generic problem exists and if the design is appropriate for the given application.

Future reports on the findings and investigations will be made, as appropriate, in the quarterly Report to Congress on Abnormal Occurrences (NUREG–0900 series.)

Dated at Washington, D.C. this 13th day of May 1982.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 82–13654 Filed 5–18–82; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF MANAGEMENT AND BUDGET

Privacy Act of 1974; Revised Supplemental Guidance for Conducting Matching Programs

May 14, 1982.

AGENCY: Office of Management and Budget.

ACTION: Issuance of Revised Guidance for Conducting Computerized Matching Programs

SUMMARY: This document revises and updates guidance to the agencies on conducting automated matching programs originally issued on March 30, 1979.

EFFECTIVE DATE: May 11, 1982.

FOR FURTHER INFORMATION CONTACT: Robert N. Veeder, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3235, New Executive Office Building, Washington, D.C. 20502; telephone (202) 395–4814.

SUPPLEMENTARY INFORMATION: The Guidelines were originally issued on March 30, 1979 (44 FR 23138). After evaluating agencies experiences operating under those Guidelines and considering comments from agencies and concerned groups such as the President's Council on Integrity and Efficiency in Government, OMB concluded that a revision was in order. Accordingly, the Guidelines were revised to clarify the language and to simplify, where possible, the administrative and procedural requirements.

The Revised Guidelines were signed by the Director of OMB on May 11, 1982, and became effective on that date. Their text is set forth below.

Brenda A. Mayberry,

Acting Budget and Management Officer.

May 11, 1982.

Memorandum for the Executive Departments and Establishments

From: David A. Stockman, Director.

Subject: Revised Supplemental Guidance for Conducting Matching Programs.

I am attaching a copy of our revised Guidelines on conducting computerized matching programs. This revision updates and simplifies earlier guidance issued on March 30, 1979. It is effective immediately.

The revision is the result of our evaluation of agencies' operating experiences under the original Guidelines. The new Guidelines incorporate many agency recommendations for clarifications and changes. In addition, they greatly simplify the notice and reporting requirements of the earlier version.

Direct comments or questions on these Guidelines to OMB's Office of Information and Regulatory Affairs.

Matching Guidelines

1. *Purpose*—These Guidelines supplement and should be used in conjunction with the "OMB Guidelines on the Administration of the Privacy Act of 1974," issued on July 1, 1975 and supplemented on November 21, 1975. They replace earlier guidance on conducting computerized matching programs issued on March 30, 1979. They are intended to help agencies relate the procedural requirements of the Privacy Act to the operational requirements of computerized matching. They are designed to address the concerns expressed by the Congress in the Privacy Act of 1974 that "the increasing use of computers and sophisticated information technology, while essential to the efficient operations of the Government, has greatly magnified the harm to individual privacy that can occur from any collection, maintenance, use, or dissemination of personal information." These Guidelines do not authorize activities which are not permitted by law; nor do they prohibit activities expressly required to be performed by law. Complying with these Guidelines, however, does not relieve a Federal agency of the obligation to comply with the provisions of the Privacy Act,

would be observed even after hours of running without cooling water; and (2) generally, surveillance testing is of such a short duration that no noticeable seal degradation would occur even if cooling flow were necessary for sustained operation. Since pumps required during the post-LOCA recirculation are generally located outside primary containment (in the auxiliary building) degraded pump seals would result in the leakage of radioactively contaminated water outside containment.

Similarly, pumps provided with bearing lube oil coolers could be susceptible to flow blockages due to fouling organisms or the accumulation of corrosion products or silt deposits. Flow blockages in these coolers could also go unnoticed during surveillance testing unless the cooling water flow was monitored. This could result in premature bearing failure when the pumps are needed to run for an extended period of time, e.g., following a LOCA.

The safety concern identified by these events is the possible degradation of the heat transfer capabilities of redundant safety systems to the point where system function is lost. Preventive measures and methods of detecting gradual degradation have been inadequate in certain areas to preclude the occurence. The above postulated events involve a common cause failure mode that can affect redundant systems. Aquatic organisms, mud silt and corrosion products have been the main source of flow blockage in the coolant piping system and associated heat exchangers where events have occurred.

Cause or Causes—A variety of causes lead to the events reported in Table 1. At Arkansas Nuclear One, the first event discovered September 3, 1980, the growth of Asiatic clams was unanticipated in the design and appropriate operational control features were not provided. The design and operational control features that did exist were inadequate to prevent the buildup of mud, silt, and corrosion products from becoming a major problem.

The second event at Arkansas Nuclear One, Unit 2 on January 14, 1982 assumes additional significance as compared to the other described events since it indicates that (1) although the corrective actions taken to prevent buildup of marine organisms may not be totally effective, the increased frequency of surveillance implemented as a result of the previous event allowed the licensee to detect the claim intrusion in its early stages,[1] and (2) the rate of accumulation of the organisms can be rapid. During the surveillance test, the flow dropped from 1800 gpm to approximately 600 gpm over a five minute interval, indicating a sizeable blockage. About six buckets of clams were removed. The event remains under investigation. The licensee is studying the service water piping to identify for inspection any portions of piping that may be conductive to Asiatic clam growth, and other long-term preventative measures; this study is planned to be complete prior to the refueling outage scheduled for October 1983.

At Rancho Seco, the corrosion occurred because the heads were cast steel. A corrosion resistant coating such as epoxy or copper/nickel cladding would have prevented the problem. Existing surveillance testing procedures, however, were also deficient in that the safety-related heat exchanger performance was not verified under appropriate accident conditions.

At Brunswick, the chlorination program, which was part of the program to control the growth of marine organisms, was stopped for approximately 14 months due to potential operational problems and environmental effects. Although operational and administrative controls were inadequate at Arkansas Nuclear One and Brunswick to detect early signs of the problem, the plants were shutdown when the technical specification limits could no longer be met. As previously discussed, the incident at Brunswick has the most safety significance of the incidents described in this report. Unit 1, which was shutdown on April 17, 1981 to begin a scheduled maintenance outage, experienced a total loss of the residual heat removal system on April 25, 1981. In order to provide residual heat removal capacity during the plant shutdown, an alternate cooling flow path had to be established. Because of the problems found on the Unit 1 RHR heat exchangers, the similar heat exchangers in the operating Unit 2 were examined. For RHR heat exchanger 2A, a higher than normal differential pressure at design flow was discovered; however, the baffle plate was not displaced. The baffle plate was found displaced for RHR heat exchanger 2B. Therefore, Unit 2 was shutdown using heat exchanger 2A at reduced capacity. After the unit was in cold shutdown, and alternate cooling flow path was established (as in Unit 1 described above) and the heat exchangers were taken out of service of repair.

At San Onofre, the growth of gooseneck barnacles was attributed to the termination of a heat treatment procedure that controls their growth. The treatment was terminated during a protracted plant shutdown of 14 months. The system problems were noted during routine operational checks.

At Pilgrim, the mussels apparently grew in the Salt Service Water System even though a back flusing and cleanout program was instituted to control their growth. Routine surveillance indicated a continuing problem due to decreasing heat transfer capabilities.

In general, the causes of the incidents above related to an inadequate surveillance and monitoring of the heat exchanger performance characteristics such as flow rates, fouling factors, heat transfer coefficients, etc.

Actions Taken To Prevent Recurrence

Licensees—The licensees of Arkansas Nuclear One, Rancho Seco, Brunswick, San Onofre Unit 1 and Pilgrim have cleaned and flushed the affected cooling water systems. The licensees have also committed to improving design features and detection techniques which are intended to preclude the development of significant fouling of safety-related cooling systems in the future.

NRC—The NRC conducted special inspections regarding the events at the facilities noted above. In addition, on April 10, 1981 the NRC's Office of Inspection and Enforcement issued IE Bulletin 81-03, "Flow Blockage of Cooling Water to Safety System Components by *Corbicula* sp. (Asiatic Clam) and *Mytilus* sp. (Mussel)". The Bulletin requested licensees to determine whether either species was present in the vicinity of their station and the extent of any fouling these organisms may have caused in fire protection or safety-related systems. The responses to the Bulletin have been received from all of the operating plants. The responses received represent 48 sites. Of these, 21 sites reported positive findings either in the plant or in the source or receiving waterbody. Eight sites have seen some evidence of Asiatic Clams in the plant and six sites have seen evidence of mussels in the plant. This has ranged from occasional findings of a few shell fragments in the main condenser to major infestations. An additional seven sites have reported that while Asiatic clams were not yet present in the plant, they were present in either source or receiving

[1] Inspection of other safety-related coolers showed only traces of Asiatic clams with no significant accumulation.

including any provisions not cited in these Guidelines.

2. *Scope*—These guidelines apply to all agencies subject to the Privacy Act of 1974 (5 U.S.C. 552a), and to all matching programs:

a. Performed by a Federal agency, whether the personal records used in the match are Federal or non-Federal.

b. For which a Federal agency discloses any personal records for use in a matching program performed by any other Federal agency or any non-Federal organization.

3. *Effective Date*—These guidelines are effective on their date of issuance—May 11, 1982.

4. *Definitions*—For the purposes of these Guidelines:

a. All the terms defined in the Privacy Act of 1974 apply.

b. A "personal record" means any information pertaining to an individual that is stored in an automated system of records, e.g., a data base which contains information about individuals that is retrieved by name or some other personal identifier.

c. A "matching program" is a procedure in which a computer is used to compare two or more automated systems of records or a system of records with a set of non-Federal records to find individuals who are common to more than one system or set. The procedure includes all of the steps associated with the match, including obtaining the records to be matched, actual use of the computer, administrative and investigative action on the hits, and disposition of the personal records maintained in connection with the match. It should be noted that a single matching program may involve several matches among a number of participants.

Matching Programs do not include the following:

(1) Matches which do not compare a substantial number of records, e.g., comparison of the Department of Education's Defaulted Student Loan data base with the Office of Personnel Management's Federal Employee data base would be covered; comparison of six individual student loan defaultees with the OPM file would not be covered.

(2) Checks on specific individuals to verify data in an application for benefits done reasonably soon after the application is received.

(3) Checks on specific individuals based on information which raises questions about an individual's eligibility for benefits or payments done reasonably soon after the information is received.

(4) Matches done to produce aggregate statistical data without any personal identifiers.

(5) Matches done to support any research or statistical project where the specific data are not to be used to make decisions about the rights, benefits, or privileges of specific individuals.

(6) Matches done by an agency using its own records.

d. A "matching agency" is the Federal agency which actually performs the match.

e. A "source agency" is the Federal agency which discloses records from a system of records to be used in the match. Note that in some circumstances, a source agency may be the instigator and ultimate beneficiary of the matching program, as when an agency lacking computer resources uses another agency to perform the match. The disclosure of records to the matching agency and any subsequent disclosure of "hits" (by either the matching or the source agencies) must be done in accordance with the provisions of paragraph (b) of the Privacy Act.

f. A "hit" is the identification, through a matching program, of a specific individual.

5. *Guidelines for Agencies Participating in Matching Programs*—Agencies should acquire and disclose matching records and conduct matching programs in accordance with the provisions of this section and the Privacy Act.

a. Disclosing Personal Records for Matching Programs

(1) To Another Federal Agency—source agencies are responsible for determining whether or not to disclose personal records from their systems and for making sure they meet the necessary Privacy Act disclosure provisions when they do. Among the factors source agencies should consider are:

(a) Legal authority for the match;

(b) Purpose and description of the match;

(c) Description of the records to be matched;

(d) Whether the record subjects have consented to the match; or whether disclosure of records for the match would be compatible with the purpose for which the records were originally collected, i.e., whether disclosure under a "routine use" would be appropriate; whether the soliciting agency is seeking the records for a legitimate law enforcement activity—whichever is appropriate; or any other provision of the Privacy Act under which disclosure may be made;

(e) Description of additional information which may be subsequently disclosed in relation to "hits";

(f) Subsequent actions expected of the source (e.g., verification of the identity of the "hits" or follow-up with individuals who are "hits").

(g) Safeguards to be afforded the records involved, including disposition.

If the agency is satisfied that disclosure of the records would not violate its responsibilities under the Privacy Act, it may proceed to make the disclosure to the matching agency. It should ensure that only the minimum information necessary to conduct the match is provided. If disclosure is to be made pursuant to a "routine use" (Section (b)(3) of the Privacy Act), it should ensure that the system of records contains such a use, or it should publish a routine use notice in the **Federal Register**. The agency should also be sure to maintain an accounting of the disclosures pursuant to section (c) of the Privacy Act.

(2) To a Non-Federal Entity—Prior to disclosing records to a non-Federal entity for a matching program to be carried out by that entity, a source agency should, in addition to all of the considerations in 5a(1) above, also make reasonable efforts, pursuant to section (e)(6) of the Privacy Act, to "assure that such records are accurate, complete, timely, and relevant for agency purposes."

b. Written Agreements—Prior to disclosing to either a Federal or non-Federal entity, the source agency should require the matching entity to agree in writing to certain conditions governing the use of the matching file, e.g.: That the matching file will remain the property of the source agency and be returned at the end of the matching program (or destroyed as appropriate); that the file will be used and accessed only to match the file(s) previously agreed to; that it will not be used to extract information concerning "non-hit" individuals for any purpose; and that it will not be duplicated or disseminated within or outside the matching agency unless authorized in writing by the source agency.

c. Performing Matching Programs—

(1) Matching agencies should maintain reasonable administrative, technical and physical security safeguards on all files involved in the matching program.

(2) Matching agencies should insure that they have appropriate systems of records including those containing "hits," and that such systems and any routine uses have been appropriately noticed in the **Federal Register** and reported to OMB and the Congress as appropriate.

d. Disposition of Records—

(1) Matching agencies will return or destroy source matching files (by mutual agreement) immediately after the match.

(2) Records relating to hits will be kept only so long as an investigation, either criminal or administrative, is active and will be disposed of in accordance with the requirements of the Privacy Act and the Federal Records Schedule.

e. Publication Requirements—

(1) Agencies, prior to disclosing records outside the agency, will publish appropriate "routine use" notices in the **Federal Register**, if necessary.

(2) If the matching program will result in the creation of a new or the substantial alteration of an existing system of records, the agency involved should publish the appropriate **Federal Register** notice and submit the requisite report to OMB and the Congress pursuant to OMB Circular No. A–108.

f. Reporting Requirements—

(1) As close to the initiation of the matching program as possible, matching agencies shall publish in the **Federal Register** a brief public notice describing the matching program. The notice should include:

(a) The legal authority under which the match is being conducted;

(b) A description of the matching program including whether the program is one time or continuing, the organizations involved, the purpose(s) for which the program is being conducted, and the procedures to be used in matching and following up on the "hits";

(c) A complete description of the personal records to be matched, including the source(s), system of records identifying data, date(s) and page number(s) of the most recent **Federal Register** full text publication where appropriate;

(d) The projected start and ending dates of the program;

(e) The security safeguards to be used to protect against unauthorized access or disclosure of the personal records; and

(f) Plans for disposition of the source records and "hits."

Agencies should send a copy of this notice to the Congress and to the Office of Management and Budget at the same time it is sent to the Federal Register.

(2) Agencies should report new or altered systems of records as described in e (2) above as necessary.

(3) Agencies should also be prepared to report on matching programs pursuant to the reporting requirements of either the Privacy Act or the Paperwork Reduction Act. Reports will be solicited by the Office of Information and Regulatory Affairs and will focus on both the protection of individual privacy and the government's effective use of information technology. Reporting instructions will be disseminated to the agencies as part of either the reports required by section (p) of the Privacy Act or section 3514 of Pub. L. 96–511.

g. Use of Contractors—Matching programs should, as far as practicable, be conducted "in-house" by Federal agencies using agency personnel, rather than by contract. When contractors are used, however,

(1) The matching agency should, consistent with subsection (m) of the Privacy Act, cause the requirements of that Act to be applied to the contractor's performance of the matching program. The contract should include the Privacy Act clause required by FPR Amdt. 155, 41 CFR 1–1.337–5;

(2) The terms of the contract should include appropriate privacy and security provisions consistent with policies, regulations, standards and guidelines issued by OMB, GSA, and the Department of Commerce;

(3) The terms of the contrct should preclude the contractor from using, disclosing, copying, or retaining records associated with the matching program for the contractor's own use;

(4) Contractor personnel involved in the matching program should be made explicitly aware of their obligations under the Act, and of these guidelines, agency rules and any special safeguards in relation to each specific match performed.

(5) Any disclosures of records by the agency to the contractor should be made pursuant to a "routine use" (Section (b)(3) of 5 U.S.C. 552a).

6. *Implementation and oversight*— the Office of Management and Budget will oversee the implementation of these Guidelines and shall interpret and advise upon agency proposals and actions within their scope, consistent with section 6 of the Privacy Act.

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SECURITIES AND EXCHANGE COMMISSION

Midwest Stock Exchange, Inc.; Applications for Unlisted Trading Privileges and of Opportunity for Hearing

May 12, 1982.

The above named national securites exchange has filed applications with the Securities and Exchange Commission pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder, for unlisted trading privileges in the following stocks:

Anacomp Incorporated
Common Stock, $1 Par Value (File No. 7–6214)

Cullinane Database Systems Incorporated
Common Stock, $.10 Par Value (File No. 7–6215)

Hitachi Limited
American Depositary Shares, 50 Yen Par Value (File No. 7–6216)

Kaiser Cement Corporation (Delaware)
Common Stock, $1 Par Value (File No. 7–6217)

L&N Housing Corporation
Common Stock, $.50 Par Value (File No. 7–6218)

L. E. Myers Company Group
Common Stock, $1 Par Value (File No. 7–6219)

Southmark Corporation (Georgia)
Common Stock, $1 Par Value (File No. 7–622)

These securities are listed and registered on one or more other national securities exchanges and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before June 3, 1982 written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 82-13498 Filed 5-18-82; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-18722; File No. SR-MSRB-82-5]

Municipal Securities Rulemaking Board; Self-Regulatory Organizations; Proposed Rule Change

Proposed Rule changes by Municipal Securities Rulemaking Board, relating to calculations. Comments requested on or before June 9, 1982.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on April 27, 1982, the Municipal Securities Rulemaking Board filed with