expenses, and related advances of funds, subject to the restrictions in the succeeding paragraphs of this order and pursuant to implementing regulations in Department of the Treasury Directives Manual Chapter TD 70, Section 02, as amended, and IRM 1763, Travel Handbook:

Deputy Commissioner.
Assistant to the Commissioner (Public Affairs).
Assistant to the Commissioner (Equal Opportunity).
Taxpayer Ombudsman.
Assistant Commissioners.
Chief Counsel.
Division Directors.
Director of International Operations.
Director, National Computer Center.
Fiscal Management Officer.
Regional Commissioners.
Regional Inspectors.
District Directors.
Service Center Directors.
Director, Data Center.

2. This delegation does not include the authority to agree to the payment of moving expenses by an office other than the gaining office in transfers between the Internal Revenue Service and another agency, department, bureau of the Department of the Treasury, etc.

3. This delegation does not include the authority to approve a period of service of less than two years, or to accept separation, without penalty, from service before the end of a year of service, with respect to employees serving outside the conterminous (contiguous 48 States and the District of Columbia) United States under circumstances requiring two years of service.

4. No redelegation of the above authority may be made except that:

(1) Regional Commissioners may redelegate, but not lower than to Branch Chiefs in the Regional Office.

(2) District Directors, Service Center Directors, and the Director, Data Center, may redelegate but not lower than to Division Chiefs. In streamlined districts this authority may not be redelegated below the District Director.

(3) The Chief Counsel may redelegate to a level not lower than Assistant Director, Administrative Services Division in the National Office or the District Counsel in the field.

5. The Director of International Operations and the Regional Commissioner, Western Region, may make determinations and authorizations in cases under their jurisdiction with respect to the transportation and emergency storage of privately-owned motor vehicles of Service employees appointed or transferred to posts of duty other than those located in the conterminous United States. The Fiscal Management Officer may make such determinations and authorizations with respect to all other Service employees appointed or transferred to posts of duty outside the conterminous United States. This authority may not be redelegated.

6. Except as provided in paragraph 7, the Regional Commissioners, Assistant Commissioners, Assistants to the Commissioner, Assistants to the Commissioner (Public Affairs) and (Equal Opportunity), the Taxpayer Ombudsman, and Chief Counsel may make determinations and authorizations in cases under their jurisdiction with respect to the payment of travel and transportation of new appointees to the first post of duty of positions designated shortage category by the Office of Personnel Management. This authority may be redelegated only to District Directors and to Division Directors in the National Office. The Chief Counsel may redelegate to a level not lower than Assistant Director, Administrative Services Division in the National Office.

7. Assistant Commissioners, Assistants to the Commissioner (Public Affairs) and (Equal Opportunity), the Taxpayer Ombudsman, and Chief Counsel are authorized to pay travel and transportation to first post of duty for clerical positions specified herein. Authorized officials will pay up to maximum amounts of $300 for recruits from within the conterminous United States and up to maximum amounts of $500 for recruits from outside the conterminous United States to occupy Clerk-Stenographer, GS-312-3/4/5 and Clerk-Typists, GS-322-2/3/4 positions in the National Office. Exceptions to these amounts may be requested on a case-by-case basis. This authority may be redelegated no lower than Division Directors or equivalent level supervisory position reporting directly to an Assistant Commissioner. Assistants to the Commissioner (Public Affairs) and (Equal Opportunity), and the Taxpayer Ombudsman may not redelegate this authority. The Chief Counsel may redelegate to a level not lower than Assistant Director, Administrative Services Division in the National Office.

8. Delegation Order No. 19 (Rev. 7), issued October 31, 1979, is superseded.

William E. Williams,

Acting Commissioner.

[FR Doc. 80-16849 Filed 6-2-80; 8:45 am]

BILLING CODE 4830-01-M

VETERANS ADMINISTRATION

Clinical Services Addition, Veterans Administration Medical Center, Albuquerque, N. Mex.; Finding of No Significant Impact

The Veterans Administration (VA) has assessed the potential impacts that may occur as a result of the construction of a Clinical Addition/Nursing and Bed Building at the Veterans Administration Medical Center (VAMC) at Albuquerque, New Mexico.

The clinical services part of the bed building is planned to be about 209,499 gross square feet comprised of a basement plus four floors. The nursing bed section is estimated for 269,544 gross square feet comprised of a basement plus six floors. The total cost of construction, demolition and air conditioning will be in the range of 100 million dollars.

Development of the project would have impacts on the natural and human environments as it affects surface runoff, erosion, traffic circulation and parking, landscaping and visual impressions. Additionally, construction noise, fumes, dust and disruption of vehicular and pedestrian circulation will occur during construction.

Mitigating actions include: Onsite noise abatement measures; soil erosion and sedimentation controls; control of dust and fumes; planning to transplant existing small landscape material and additional landscaping, and compatible design.

The Environmental Assessment has been performed in accordance with the requirements of the National Environmental Policy Act Regulations, §§ 1501.3 and 1508.9, Title 40, Code of Federal Regulations. A "Finding of No Significant Impact" has been reached based on the information presented in this assessment.

The assessment is being placed for public examination at the Veterans Administration, Washington, D.C. Persons wishing to examine a copy of the document may do so at the following office: Mr. Willard Sitler, P.E., Director, Office of Environmental Affairs (004A), Room 1027A, Veterans Administration, 810 Vermont Avenue, NW., Washington, D.C. 20420, (202-389-2526). Questions or requests for single copies of the Environmental Assessment may be addressed to the above office.

Dated: May 22, 1980.

By direction of the Administrator.

Maury S. Crallé, Jr.,

Associate Deputy Administrator.

[FR Doc. 80-16753 Filed 6-2-80; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 45, No. 103
Tuesday, June 3, 1980

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONTENTS

1

FEDERAL COMMUNICATIONS COMMISSION.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 2 p.m., Wednesday, June 4, 1980.

PLACE: Room 856, 1919 M Street NW., Washington, D.C.

STATUS: Special Closed Commission Meeting following the Special Open meeting which commences at 2 p.m.

CHANGES IN THE MEETING: Additional items to be considered:

Agenda, Item Number, and Subject

Hearing—1—Draft Order in the RKO General, Inc. (WOR-TV), New York, New York, comparative renewal proceeding (Docket Nos. 19991-2).

Hearing—2—Draft Order in the RKO General, Inc. (KHJ-TV), Los Angeles, California, comparative renewal proceeding (Docket NOs. 16679-80).

Hearing—3—Drat Decision in the RKO General, Inc. (WNAC-TV), Boston Massachusetts, comparative renewal proceeding (Docket Nos. 18759-18761).

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Addition information concerning this meeting may be obtained from Edward Dooley, FCC Public Affairs Office, telephone (202) 254-7674.

Issued: May 30, 1980.

[S-1083-80 Filed 5-30-80; 3:10 pm]

BILLING CODE 6712-01-M

2

FEDERAL HOME LOAN BANK BOARD.

TIME AND DATE: 9:30 a.m., June 6, 1980.

PLACE: 1700 G Street, N.W., Chairman's Conference Room, fifth floor, Washington, D.C.

STATUS: Open meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Marshall (202-377-6677).

MATTERS TO BE CONSIDERED:

To Be Considered Concurrently: Application for Limited Facility—First Federal Savings and Loan Association of DeFuniak Springs, DeFuniak Springs, Florida AND Permission to Organize a New Federal Association—Russell A. Cole, Jr., et al., Bonifay, Florida.

Travel Authorization—Federal Savings and Loan Advisory Council Agenda Committee Members.

No. 354, May 30, 1980.

[S-1079-80 Filed 5-30-80; 2:52 pm]

BILLING CODE 6720-01-M

3

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION.

May 29, 1980.

TIME AND DATE: 10 a.m., Monday, June 2, 1980.

PLACE: Room 600, 1730 K Street NW., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. *Victor McCoy* v. *Crescent Coal Co.*, PIKE 77-71 (issues include timeliness of petition for review and propriety of default for failure to fully comply with prehearing requirements in circumstances of this case.)

2. *Secretary of Labor, MSHA* v. *Island Creek Coal Co.*, BARB 76-298-P, IBMA 77-27 (issues include appropriateness of amount of penalty assessed.)

3. *Secretary of Labor, MSHA* v. *C.C.C. Pompey Coal Co., Inc.*, PIKE 79-125-P (issues include whether operator violated 30 CFR § 75.400.)

It was determined by a unanimous vote of Commissioners that Commission business required that a meeting be held on these items and that no earlier announcement of the meeting was possible.

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen, 202-653-5632.

[S-1082-80 Filed 5-30-80; 3:09 pm]

BILLING CODE 6820-12-M

4

FOREIGN CLAIMS SETTLEMENT COMMISSION

[FCSC Meeting Notice No. 5-80]

Announcement in Regard to Commission Meetings and Hearings.

The Foreign Claims Settlement Commission, pursuant to its regulations (45 CFR Part 504), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of open meetings and oral hearings for the transaction of Commission business and other matters specified, as follows:

Date, Time, and Subject Matter

Wednesday, June 4, 1980, 10:30 a.m.—Canceled.

Wednesday, June 11, 1980, 10:30 a.m.—Canceled.

Wednesday, June 18, 1980, 10:30 a.m.—Canceled.

Wednesday, June 25, 1980, 10:30 a.m.—Canceled.

Subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

All meetings are held at the Foreign Claims Settlement Commission, 1111 20th Street, N.W.; Washington, D.C. Requests for information, or advance notices of intention to observe a meeting, may be directed to: Executive Director, Foreign Claims Settlement Commission, 1111 20th Street, N.W., Washington, D.C. 20579. Telephone: (202) 653-6155.

Dated at Washington, D.C., on May 28, 1980.

Francis T. Masterson,

Executive Director

[S-1080-80 Filed 5-30-80; 3:05 pm]

BILLING CODE 6770-01-M

5

[USITC SE-80-32]

INTERNATIONAL TRADE COMMISSION.

TIME AND DATE: 10 a.m., Thursday, June 12, 1980.

PLACE: Room 117, 701 E Street, N.W., Washington, D.C. 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda.
2. Minutes.
3. Ratifications.

4. Petitions and complaints, if necessary:
a. Shell brim hats (Docket No. 655).
5. Nonquota cheese from the EC (Inv. 701-TA-52 through -60 [Final])—briefing and vote.
6. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary (202) 523-0161.

[S-1077-80 Filed 5-30-80; 1:59 pm]

BILLING CODE 7020-02-M

6

NATIONAL CREDIT UNION ADMINISTRATION.

Notice of meeting to be held with less than 7 days advance notice.

TIME AND DATE: 11 a.m., Friday, May 30, 1980.

PLACE: 1776 G Street NW., Washington, D.C., seventh floor board room.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Consideration of Changes in the Restrictions on Dividend Rates Payable on Share Certificates.

The National Credit Union Administration notified interested parties by telephone of the time and place of the meeting as soon as the majority of the members of the Board voted to hold the meeting.

CONTACT PERSON FOR MORE INFORMATION: Rosemary Brady, Secretary of the Board, telephone (202) 357-1100.

[S-1078-80 Filed 5-30-80; 2:14 pm]

BILLING CODE 7535-01-M

7

[NM-80-23]

NATIONAL TRANSPORTATION SAFETY BOARD.

TIME AND DATE: 9 a.m., Tuesday, June 10, 1980.

PLACE: NTSB Board Room, National Transportation Safety Board, 800 Independence Avenue, S.W., Washington, D.C. 20594.

STATUS: The first five items will be open to the public; the sixth item will be closed under Exemption 10 of the Government in the Sunshine Act.

MATTERS TO BE CONSIDERED:

1. *Pipeline Accident Report*—Columbia Gas of Virginia, Inc., Natural Gas Explosion and Fire, Stanardsville, Virginia, October 24, 1979, and *Recommendations* to the American Gas Association, the Research and Special Programs Administration of the U.S. Department of Transportation, and the Columbia Gas of Virginia, Inc.
2. *Marine Accident Report*—Collision of Spanish freighter M/V POLA DE LENA with two Mississippi River Ferry Boats and Gretna Ferry Landing, February 3, 1979, and *Recommendation* to the U.S. Coast Guard.
3. *Aircraft Accident Report*—Butler Aircraft, Inc., Douglas DC-7, N4SW, Klamath Falls, Oregon, September 14, 1979.
4. *Letter* to the Materials Transportation Bureau, U.S. Department of Transportation, re NPRM Dkt. HM-164, highway routing of radioactive materials.
5. *Briefing* on the status of hazardous materials safety objective—Shipper Involvement in Hazardous Materials Transportation.
6. *Opinion and Order*—Petition of Byrom, Dkt. SM-2319; disposition of Administrator's appeal.

CONTACT PERSON FOR MORE INFORMATION: Sharon Flemming, 202-462-6022.

May 30, 1980.

[S-1085-80 Filed 5-30-80; 3:17 pm]

BILLING CODE 4910-58-M

8

NUCLEAR REGULATORY COMMISSION.

TIME AND DATE: June 4, 5, and 6, 1980.

PLACE: Commissioners' Conference room, 1717 H Street N.W., Washington D.C.

STATUS: Open/closed.

MATTERS TO BE CONSIDERED:

Wednesday, June 4:

10 a.m.

Discussion of Action Plan Policy Statement (approximately 2 hours, Open/closed status to be determined).

Thursday, June 5:

10 a.m.

Discussion of TMI Venting (Approximately 2 hours, public meeting).

2 p.m.

1. Affrimation Session (approxable 10 minutes, public meeting).
a. Standards for Content of Technical Specifications.
b. Proposed Rulemaking on Reactor Siting (postponed from May 29).
c. Cochran FOIA Appeals.
2. Time Reserved for Discussion and Vote on Affirmation Items (If required) (approximately fifteen minutes, public meeting).
3. Discussion of Management-Organization and Internal Personnel Matters (approximately 1½ hours closed—Exemption 2 & 6)(rescheduled from May 28).

Friday, June 6, room 1046:

1:30 p.m.

ACRS Meeting on Siting Evaluation Policy (appoximately 45 minutes, public meeting) (NRC Commissioners to attend).

CONTACT PERSON FOR MORE INFORMATION: Walter Magee (202) 634-1410.

AUTOMATIC TELEPHONE ANSWERING SERVICE FOR SCHEDULE UPDATE: (202) 634-1498.

Those planning to attend a meeting should reverify the status on the day of the meeting.

Roger M. Tweed,
Office of the Secretary.

[S-1081-80 Filed 5-30-80; 3:06 pm]

BILLING CODE 7590-01-M

9

SECURITIES AND EXCHANGE COMMISSION.

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meeting during the week of June 2, 1980, in Room 825, 500 North Capitol Street, Washington, D.C.

An open meeting will be held on Monday, June 2, 1980, at 2 p.m.

The Commission will meet with members of the Financial Accounting Standards Board with respect to conceptual framework and other matters. For further information, please contact Clarence Staubs (202) 272-2133.

At time changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: George Yearsich at (202) 272-2178.

May 30, 1980.

[S-1084-80 Filed 5-30-80; 3:14 pm]

BILLING CODE 8010-01-M

10

U.S. RAILROAD RETIREMENT BOARD.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Vol. 45, No. 105, p. 36258, Thursday, May 29, 1980.

TIME AND DATE: 9 a.m., June 5, 1980.

PLACE: Board's meting room, eighth floor, headquarters building, 844 Rush Street, Chicago, Illinois 60611.

CHANGE IN THE MEETING: Additional item to be considered at the portion of the meeting which will be closed to the public:

(C) Appeal from referee's denial of widow's insurance annuity, Opal Ragsdale.

CONTACT PERSON FOR MORE INFORMATION: R. F. Butler, Secretary of the Board, COM No. 312-751-4920, FTS No. 387-4920.

[S-1076-80 Filed 5-30-80; 12:23 pm]

BILLING CODE 7905-01-M

federal register

Tuesday
June 3, 1980

Part II

Office of Personnel Management

Improving Government Regulations; Semiannual Agenda of Regulations

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Ch. I

Improving Government Regulations; Semiannual Agenda of Regulations

AGENCY: Office of Personnel Management.

ACTION: Semiannual Agenda of Regulations.

SUMMARY: The following Office of Personnel Management regulations are scheduled for review or development during the 6-month period from July 1, 1980, through December 31, 1980. As a service to users, we have also included a compilation of significant regulations published from December 1, 1979, through May 31, 1980. (Excepted service appointing authorities are not included.)

FOR FURTHER INFORMATION CONTACT: Beverly M. Jones, Issuance System Office, Office of Planning and Evaluation, 202-254-7086.

Office of Personnel Management.

Beverly M. Jones,
Issuance System Manager.

Part 1 of Semiannual Agenda

[Regulations issued from Nov 1, 1979 through May 20, 1980]

5 CFR Part and title	Date of publication	Type of action	Effective or comment date
315—Career and career-conditional employment; Presidential Management Interns, conversion	Nov 2, 1979	Final rule	Dec. 3, 1979.
315—Technical amendments (redesignated sections)	Nov 2, 1979	Final rule	Nov 2, 1979.
733—Political participation by Federal employees in local elections in Stafford County, VA	Nov 2, 1979	Final rule	Nov 2, 1979
177—Administrative claims under the Federal Tort Claims Act	Nov 9, 1979	Final rule	Dec. 10, 1979
293 and 297—Privacy Act, personnel records	Nov 9, 1979	Final rule	Dec. 10, 1979
351—Reduction in Force, retention preference	Nov 9, 1979	Final rule	Dec. 10, 1979
531—Superior qualifications appointments under the Intergovernmental Personnel Act.	Nov 9, 1979	Proposed rule	Jan. 8, 1980 (comments).
315—Career and career-conditional employment; conversion to competitive appointments for mentally and severely physically handicapped	Nov. 20, 1979	Final rule	Dec. 20, 1979.
213 and 338—Employment in the excepted service; qualification requirements for children of civil service employees.	Nov. 20, 1979	Final rule	Nov. 15, 1979.
110—Posting OPM regulations in Federal agencies	Nov 27, 1979	Final rule	Dec 27, 1979
620—Alternative work schedules experiments	Nov 30, 1979	Final rule	Dec. 31, 1979 through Mar 28, 1982.
890—Retired Federal Employees Health Benefits Plans	Nov 30, 1979	Final rule	Dec. 31, 1979.
Improving Government regulations, semiannual agenda	Dec. 4, 1979	Proposed rule	
Notice; proposed Navy demonstration project on pay, performance appraisal, and position classification.	Dec 4, 1979	Notice	Feb. 4, 1980 (comments)
871—Optional life insurance, cancellation of declination for Postal Service employees.	Dec. 7, 1979	Final rule	June 2, 1979.
213—Excepted service; identical or temporary Schedule C appointing authority for positions during Presidential transition, department or agency head change, or new department or agency creation.	Dec 7, 1979	Proposed rule	Feb. 7, 1980 (comments)
737—Post Employment conflict of interest under the Ethics in Government Act; interim designation of senior employees.	Dec. 14, 1979	Interim rule	Effective: Dec. 14, 1979 Comments: Jan. 4, 1980.
212, 213, 214, and 317—Appointment, reassignment, transfer, and development in the SES, competitive and excepted service exclusion	Dec. 21, 1979	Interim rule	Effective: Dec. 21, 1979
Notice of adoption of official seal	Dec. 21, 1979	Notice	Dec. 21, 1979
733—Political participation by Federal Employees in local elections in Manassas, VA.	Dec. 28, 1979	Proposed rule	Feb. 26, 1980 (comments).
351—Reduction in force; retention preference	Dec. 28, 1979	Proposed rule	Feb. 26, 1980 (comments)
771—Agency administrative grievance system	Dec. 31, 1979	Final rule	Dec. 31, 1979.
175—National security information program implementation; mandatory review of classified documents.	Jan. 4, 1980	Final rule	Jan. 4, 1980
334—Temporary assignment of employees between Federal agencies and State governments, etc	Jan. 4, 1980	Final rule	Feb. 4, 1980.
831—Retirement, law enforcement officers and firefighters	Jan. 4, 1980	Final rule	Feb. 4, 1980
335, 351, 432, 752, and 771—Term promotions for positions of a project nature and in specialized fields.	Jan. 4, 1980	Proposed rule	Mar 4, 1980. (comments).
831—Retirement: law enforcement officer and firefighter "experience" qualification determination	Jan. 4, 1980	Proposed rule	Mar 4, 1980 (comments).
630—Absence and leave, exception for SES appointees	Jan. 8, 1980	Final rule	Jan. 13, 1980.
540—Merit pay system	Jan. 8, 1980.	Final rule	Jan. 8, 1980.
733—Political participation by Federal employees in local elections; exception for Manassas, VA	Jan. 8, 1980	Final rule	Jan. 8, 1980.
410—Training, use of Government or non-Government facilities (OMB A-76 implementation)	Jan. 11, 1980	Proposed rule	Jan. 8, 1980.
Notice List of career reserved and all other authorized SES positions.	Jan. 18, 1980	Notice	
Notice List of SES executives in noncareer positions prior to conversion who received a career appointment.	Jan. 18, 1980	Notice	
2, 4, 5—Civil Service rules revised by E.O. 12107	Jan 22, 1980	Final rule	Jan. 3, 1979
733—Political participation by Federal employees in local elections; revocaton of exception for Shrewsbury Twp., NJ	Jan. 25, 1980	Proposed rule	Mar 25, 1980 (comments).
410—Training, constraints on non-Government training	Jan. 25, 1980	Proposed rule	Mar 25, 1980 (comments).
737—Post Employment Conflict of Interest	Feb. 1, 1980	Final rule	Mar 3, 1980
550—Pay Administration, back pay	Feb 1, 1980	Proposed rule	Apr 1, 1980 (comments).
351—Reduction in Force, using performance appraisal as a RIF retention factor	Feb. 5, 1980	Proposed rule	Apr 7, 1980 (comments).
737—Post Employment conflict of interest; designation of senior employees	Feb. 8, 1980	Interim rule	Effective: Feb. 8, 1980 (comments: Feb. 20, 1980).
317—Senior Executive Service; appointment, reassignment, transfer and development	Feb. 8, 1980	Final rule	Mar. 10, 1980.
351—Reduction in Force, retention preference; less than full-time employment programs	Feb. 8, 1980	Proposed rule	Apr. 8, 1980 (comments).
Notice—Proposed Navy demonstration project on pay, performance appraisal, and position classification, comment date extended	Feb. 8, 1980	Notice	Feb. 29, 1980 (comments).
Notice—Combined Federal Campaign fundraising manual; proposed revisions	Feb. 12, 1980	Notice	Mar. 3, 1980 (comments).
315—Career and career-conditional employment; Canal Zone merit system.	Feb. 15, 1980	Final rule	Dec. 30, 1980.

Part 1 of Semiannual Agenda—Continued

[Regulations issued from Nov 1, 1979 through May 20, 1980]

5 CFR Part and title	Date of publication	Type of action	Effective or comment date
213—Excepted service, appointing authority for SES candidate development programs	Feb 19, 1980	Final rule	Feb 6, 1980.
890—Federal employees health benefits; medically underserved areas.	Feb 26, 1980	Interim rule	Jan. 1, 1980.
432—Reduction in grade and removal based on unacceptable performance	Feb 29, 1980	Final rule	Feb 29, 1980.
Notice—Extension of time limit for comments on proposed changes to Combined Federal Campaign fundraising manual	Feb 29, 1980	Notice	Mar 24, 1980
733—Political participation by Federal employees in local elections; designations of Manassas Park, VA, as exception.	Mar 4, 1980	Final rule	Mar 4, 1980.
Notice—List of SES career reserved and all other authorized service positions.	Mar 4, 1980	Notice	
831—Retirement; apportionment from civil service retirement benefits	Mar 7, 1980	Final rule	Apr 7, 1980.
Notice—Annual review of advisory committees under Federal Advisory Committee Act.	Mar 11, 1980	Notice	Apr 1, 1980 (comments).
620—Alternative Work Schedules experiment; Final Master Plan revoked from 5 CFR.	Mar 14, 1980	Final rule	Apr. 14, 1980.
213—Excepted service appointing authority for individuals severely disadvantaged due to psychiatric disability	Mar 14, 1980	Final rule	Feb. 27, 1980.
831—Retirement, exclusion from coverage of annuitants on temporary Presidential appointments.	Mar 14, 1980	Proposed rule	May 13, 1980 (comments).
213—Excepted service appointing authority for career-related work-study programs, Federal Junior Fellowship Program, and SSA pilot career-related work-study program.	Mar 18, 1980	Final rule	Feb. 2, 1979.
337 and 410—Examining system, and training; grade and pay retention provisions.	Mar 21, 1980	Final rule	Apr. 21, 1980.
734—Executive personnel financial disclosure requirements under the Ethics in Government Act.	Mar 25, 1980	Proposed rule	Mar. 27, 1980 (comments).
831—Retirement; disclosure of retirement information under the Privacy Act	Apr 4, 1980	Proposed rule	Mar 3, 1980 (comments)
831, 870, 871, 890, and 891—Retirement, life insurance and health benefits programs, reconsideration procedures.	Apr 8, 1980	Final rule	May 8, 1980.
335, 351, 432, 752, and 771—Term promotions for positions of project nature and in specialized fields.	Apr 11, 1980	Final rule	May 12, 1980.
831—Retirement, exclusion of certain SES appointees	Apr 11, 1980	Final rule	May 12, 1980.
410—Training; prohibition of use of appropriated funds for training in non-Government facilities advocating overthrow of Government by force or violence	Apr 11, 1980	Proposed rule	June 10, 1980 (comments).
Notice—Revision of Combined Federal Campaign fundraising manual.	Apr 11, 1980	Notice	Apr 11, 1980.
213—Excepted service appointing authority for identical or temporary Schedule C appointments to positions during Presidential transition, department or agency head changes, or new department or agency creation.	Apr 18, 1980	Final rule	Apr. 18, 1980.
Notice—Approval of Navy demonstration project on pay, performance appraisal, and position classification.	Apr 18, 1980	Notice	Apr 9, 1980 (approval date), July 10, 1980 (implementation date)
531—Pay administration for General Schedule apointments under the Intergovernmental Personnel Act	Apr 25, 1980	Final rule	May 27, 1980
733—Political participation by Federal employees in local elections; revocation of exemption for Shrewsbury, Twp., NJ	Apr 25, 1980	Final rule	May 27, 1980.
351—Reduction in Force, retention preference for supervisory or managerial employees in probationary period.	Apr 29, 1980	Final rule	May 29, 1980.
300—Employment, Uniform Guidelines for Employee Selection Procedures, additional Q's and A's.	May 2, 1980	Final rule	May 2, 1980.
351—Reduction in force, use of performance appraisal systems for determining retention preference	May 2, 1980	Final rule	May 2, 1980.
412—Executive Development, SES candidate development programs	May 2, 1980	Proposed rule	July 1, 1980.
891—Retired Federal employees health benefits programs, increase of Government contribution.	May 9, 1980	Final rule	Jan. 1, 1980
351—Reduction in force, clarification of tansfer of function provisions	May 13, 1980	Proposed rule	July 14, 1980 (comments).
532—Prevailing rate systems	May 13, 1980	Proposed rule	July 14, 1970 (comments).
550—Pay Administration (General), allotment of pay by civilian employees.	May 13, 1980	Proposed rule	July 14, 1980 (comments).
351—Reduction in Force; retention standing of employees receiving military retired pay	May 20, 1980	Proposed rule	July 21, 1980.

Part 2 of Semiannual Agenda

[Regulations scheduled for review or development, June 1, through Dec. 31, 1980]

CFR or other authority	Title	Brief description	Knowledgeable official
5 CFR Parts 1 through 9	Civil Service Rules	In conjunction with an extensive revision of E.O. 9830 on Federal Personnel Administration, the Civil Service Rules will be eliminated as a separate body of regulation. Provisions of the Rules which must be retained will be incorporated in the revised Executive order or in civil service regulations. The regulatory changes should be accomplished within the next six months.	Anne Kirby, (202) 632-6077.
5 CFR Part 214	Senior Executive Service	Final regulations on definitions of types of appointments and coverage under the Senior Executive Service. (August 1980).	Neal Harwood, (202) 632-6820.
5 CFR Part 290	Civilian Personnel Reporting	Proposed new part will be developed to reflect revisions to those portions of E.O. 9830 prescribing regulations pertaining to civilian personnel and employment information to be reported by agencies to OPM. Target date is December 31, 1980.	Stan Suser, (202) 632-6739.

Part 2 of Semiannual Agenda—Continued

[Regulations scheduled for review or development, June 1, through Dec 31, 1980]

CFR or other authority	Title	Brief description	Knowledgeable official
5 CFR Part 293	Personnel Records and Files	Input from agencies is still being received and the proposed new subpart D dealing with the Employee Performance Folder will be proposed after June 1980.	William H. Lynch, (202) 254-9790, (202) 254-9793
C CFR Part 297	Protection of Privacy in Personnel Records.	Administrative changes are necessary as a result of changes to the numerical designation of several of the Office's Privacy Act systems of records for which exemptions have been claimed.	William H. Lynch, (202) 254-9790, (202) 254-9793
5 CFR Part 305	Executive Assignment System	Revision of existing regulations to reflect changes in the Executive Assignment System resulting from the establishment of the Senior Executive Service as well as proposals to revise E.O. 9830 (2/24/47) and to eliminate the Civil Service Rules. (December 1980).	Ann Ugelow, (202) 632-6820.
5 CFR Part 307	Veterans Readjustment Appointments	Transfer of existing regs to Part 720	Marv Kossman, (202) 254-3058.
5 CFR Part 315	Career and Career Conditional Employment	Final rules on noncompetitive appointment of former Peace Corps personnel (early summer 1980).	Maribeth Zankowski, (202) 632-6817.
5 CFR 316.302	Term Employment	Transfer of existing regs on term appointments for veterans to Part 720	Marv Kossman, (202) 254-3058.
5 CFR 316.402	Temporary Limited Employment	Transfer of existing regs on temporary limited appointments for veterans to Part 720	Marv Kossman, (202) 254-3058.
5 CFR Part 317, Subpart F	Limited Emergency and Limited Term Appointments.	Final regulations on the authorization and utilization of Limited Emergency and Limited Term appointments under the Senior Executive Service. (August 1980).	Neal Harwood, (202) 632-6820.
5 CFR Part 317, Subpart G	Reinstatement to Career Appointment	Proposed regulations to cover reinstatement to a career SES appointment following: (a) a voluntary separation form SES, or (b) a Presidential appointment. (September 1980).	Ann Ugelow, (202) 632-6820.
5 CFR Part 317, Subpart H	Career Appointees: Retention of SES provisions following a Presidential appointment.	Proposed regulations to implement 5 U.S.C. 3392(c) regarding the right of career SES appointees to retain certain SES provisions while serving under a Presidential appointment, by and with the consent of the Senate. (August 1980).	Jack Vincent, (202) 632-6820.
5 CFR 330.504	Recruitment, Selection and Placement	Proposed rules on movement restriction on part-time employees employed under the direct hire program; to be published in June, 1980	Ellen S. Russell, (202) 632-6817
5 CFR Part 334	Temporary assignment of employees between Federal agencies and State governments, etc.	Proposed rulemaking on procedures for providing merit pay for IPA mobility assignees.	Ardrey Harris, (202) 632-5373.
5 CFR Part 351	Reduction in Force	Proposed rules on the effect of receipt of military retired pay on retention preference published in May 1980. Final rules will be published by September 1, 1980.	Ted Dow or Tom Glennon, (202) 632-4422.
5 CFR Part 351	Reduction in Force	Proposed rules to clarify transfer of function provision published May 13, 1970. Final rules to be published before September 1, 1980.	Ted Dow or Tom Glennon, (202) 632-4422.
5 CFR Part 351	Reduction in Force	Proposed rules to clarify reemployment priority list establishment and maintenance to be published in June 1980. Final rules to be published before September 1, 1980.	Ted Dow or Tom Glennon, (202) 632-4422.
5 CFR Part 351	Reduction in Force	Proposed rules on clarification and revision of competitive levels for new managers and supervisors, merit pay employees, and other-than-full-time employees to be published in June 1980; final rules to be published by September 1, 1980.	Ted Dow or Tom Glennon, (202) 632-4422.
5 CFR Part 351	Reduction in Force	Final rules to clarify assignment rights of full-time employees to other-than-full-time positions to be published in June 1980.	Ted Dow or Tom Glennon, (202) 632-4422.
5 CFR 352.801	Reemployment Rights	Proposed rules on reemployment rights for certain personnel serving with the American Institute of Taiwan to be published in June 1980.	Maribeth Zankowski, (202) 632-6817.
5 CFR Part 359, Subpart J	Reduction in Force in the Senior Executive Service.	Regulations to establish procedures for taking reduction-in-force actions in the Senior Executive Service and to establish an appeal right to the Merit Systems Protection Board. Final regulations to be published by the end of 1980.	Neal Harwood, (202) 632-6820.
5 CFR 410.302	Training; Selection and Assignment of Trainees.	Revised regulations governing selections for training leading to promotions or other employment decisions. Final regulations by August 31, 1980.	Constance Guitian, (202) 653-6171.
5 CFR 410.503	Training; General Prohibitions on Training Through Non-Government Facilities.	Revised regulations to clarify requirement to consider already qualified employees before training in non-Government facilities.	Constance Guitian, (202) 653-6171.
5 CFR 410.508 and 410.509	Training; Agreement to Continue in Service and Failure to Fulfill Agreement to Continue in service.	Final regulations by August 31, 1980. Revised regulations to clarify procedures governing continued service agreements. Final regulations by July 15, 1980.	Constance Guitian, (202) 653-6171.
5 CFR 410.601	Training; Determination of Necessary Expenses of Training.	New regulation to standardize per diem for long-term training. Final regulations by September 30, 1980.	Michael Kurup, (202) 653-6171.
5 CFR Part 412	Executive Development	Final regulations to implement the executive development provisions of the CSRA, September 1, 1980. Additional provisions on management development programs, and material governing sabbaticals; proposed regulations by December 31, 1980.	Merle Junker, (202) 632-4661.
5 CFR Part 470	Personnel Research Programs and Demonstration Projects.	Add new Part 470 to implement programs for conducting R & D projects. Development continuing.	Donald Hill, (202) 632-6848.
5 CFR 511.601 through 511.703	Position Classification Reviews; effective dates of Position Classification Actions and Decisions.	Revisions to regulations to incorporate changes brought about by CSRA and Reorganization Plan #2. Revised processing requirements. Proposed regulations published in May 1980. Final regulations to be developed after comment period ends.	Frank T. Catenaccio, (202) 632-7744.
5 CFR Part 530	Special Salary Rate	Revised regulations. Note: Pay reform legislation, when enacted, will require extensive revision of regulations and program guidance.	Richard J. Carney, (202) 632-6327.

Part 2 of Semiannual Agenda—Continued

[Regulations scheduled for review or development, June 1, through Dec. 31, 1980]

CFR or other authority	Title	Brief description	Knowledgeable official
5 CFR Parts 530 through 550	Civil Service Rules for Pay Administration	Revision of pay administration regulations where applicable for merit pay employees to be issued for comment in June 1980 and as final regulations by September 1980.	Eric Carroll, (202) 653-5990.
5 CFR Parts 531 and 539	Determination of Rate of Basic Pay; Conversions between Pay Systems.	Revised regulations to improve pay-setting policies when employees change to and from merit pay positions. Development continuing.	Betty Roth, (202) 632-4684.
5 CFR Part 531, Subpart C	Pay Adjustments for Supervisors	Revised regulations on pay adjustments for merit pay supervisors of wage employees. Proposed regulations to be published early summer 1980.	Betty Roth, (202) 632-4684.
5 CFR Part 531, Subpart D	Within Grade Increases	Revised regulations to simplify and clarify procedures and standards for granting quality increases and withholding within-grade increases. Proposed regulations to be published by June 30, 1980.	Don Winstead, (202) 632-5530.
5 CFR Part 532	Prevailing Rate Systems	Comprehensive new regulations for Federal Wage System. Proposed regulations published in May 1980; development of final regulations will begin by December 1980.	Windsor Eagan, (202) 632-5454.
5 CFR Part 534, Subpart D	Setting Individual Basic Pay Under the Senior Executive Service.	Final regulations on reducing individual pay in the Senior Executive Service. (August 1980).	Jack Vincent, (202) 632-6820.
5 CFR Part 536	Grade and Pay Retention	Proposed regulations to implement Title VIII of the Civil Service Reform Act of 1978 to be published in early summer 1980.	Larry Holman, (202) 632-5604.
5 CFR Part 550	Pay Administration	Proposed revision on pay for irregular or intermittent duty involving physical hardship or hazard.	Richard J. Carney, (202) 632-6327.
5 CFR Part 550, Subpart C	Pay Administration; Allotments and Assignments.	Proposed regulations to increase delegation of appropriate flexibility to agencies published in May 1980. Final rules to be published by August 15, 1980.	Mary Ann Mercer, (202) 632-4634.
5 CFR Part 550, Subpart H	Pay Administration; Back Pay	Proposed regulations to implement section 702 of the Civil Service Reform Act of 1978 were published on February 1, 1980. Final rules to be published by June 30, 1980.	Don Winstead, (202) 632-5530.
5 CFR Part 550, Subpart J	Pay Administration; Adjustments of Work Schedules for Religious Observances.	Proposed regulations to implement Title IV of the Federal Employees Flexible and Compressed Work Schedules Act of 1978 to be published by June 30, 1980.	Dwight Brown, (202) 632-5530.
5 CFR Part 551	Pay Administration under the Fair Labor Standards Act.	Proposed regulations to implement the Fair Labor Standards Act in the Federal Government to be published in early summer 1980.	Dwight Brown, (202) 632-5530.
5 CFR Part 591	Allowances and Differentials	New regulations to be proposed on allowances for uniforms.	Richard J. Carney, (202) 632-6327.
5 CFR Part 715	Voluntary Actions	Will be revised to cover distinctions between voluntary and involuntary cations. Proposed regulations by September 30, 1980.	Cynthia Field, (202) 254-8431.
5 CFR Part 720	Federal Equal Opportunity Recruitment Program (FEORP).	A proposed new subpart C that pertains to the collection and maintenance of race and ethnicity data on Federal employees.	William H. Lynch, (202) 254-9790, (202) 254-9793.
5 CFR Part 720, Subpart D	FEORP; Hispanic Employment Program	Proposed regs to implement expected revision of E.O. 9830 establishing legal basis for the program and to reinforce OPM's authority in this area following Reorganization Plan No. 1 (Oct. 1, 1979).	Diane Graham or Roceliz Velez, (202) 632-6800.
5 CFR Part 720, Subpart E	FEORP; Selective Placement Program	Proposed regs to implement expected revision of E.O. 9830 and to reinforce OPM's authority in this area following Reorganization Plan No. 1, (Oct. 1, 1979).	Diane Graham or Hedwig Oswald, (202) 632-4437.
5 CFR Part 720, Subpart F	FEORP; Upward Mobility Program	Proposed regs to implement expected revision of E.O. 9830 establishing legal basis for the program and to reinforce OPM's authority in this area following Reorganization Plan No. 1 (Oct. 1, 1979).	Diane Graham or Curtestine Boardley, (202) 632-6258.
5 CFR Part 720, Subpart G	Veterans Employment Programs	Receipt of existing regs from Part 316 to coincide with the VEP's placement within the organization structure of OPM (Oct. 1, 1979).	Diane Graham or Marv Kossman, (202) 254-3058.
5 CFR Part 731	Suitability	Proposed revision to reflect reorganization of CSC and OPM policy of increased delegation of decisionmaking authority to agencies. Early summer 1980.	Bob Hubbard, (202) 632-6152.
5 CFR Part 734	Executive Personnel Financial Disclosure Requirements.	Final regulations and procedures for the filing review and public availability of the financial disclosure reports filed under the Ethics in Government Act by top ranking personnel in the executive branch. Expected October 1, 1980.	Norman Smith, (202) 632-7642.
5 CFR Part 737	Post Employment Conflict of Interest; designation of senior employees and separate components of agencies.	Supplementary designation of senior employees and separate components of agencies pursuant to Title V of the Ethics in Government Act. Expected August 1, 1980.	Gary Davis, (202) 632-7642.
5 CFR Part 738	Designated agency officials and advisory opinions.	Proposed regulations for the duties and responsibilities of designated agency officials and for the rendering of advisory opinions by the Office of Government Ethics. Expected July 1, 1980.	Jane Ley, (202) 632-7642.

Part 2 of Semiannual Agenda—Continued

[Regulations scheduled for review or development, June 1, through Dec. 31, 1980]

CFR or other authority	Title	Brief description	Knowledgeable official
5 CFR 754	Adverse Actions by the OPM	Will be revised to cover all disciplinary and non-disciplinary actions OPM can direct agencies to take. Proposed regulations by September 30, 1980.	Wilma Lehman, (202) 254-8431.
5 CFR Part 831	Retirement; Elimination of Age 70 Mandatory Retirement.	Proposed rules to implement Pub. L. 95-256. Development pending.	Jane Lohr, (202) 632-4634.
5 CFR Part 831	Retirement; disability retirement	Proposed regulations for publication by June 15, 1980, to amend disability retirement provisions.	John Ray, (202) 632-4684.
5 CFR Parts 831 and 339	Retirement; Disability Retirement on Application of an Agency; Medical Qualification Requirements.	Proposed regulations to eliminate certain problems in current fitness-for-duty examination procedures. Publication is scheduled for early summer 1980.	Gay Gardner (202) 632-4634.
5 CFR Part 831	Retirement; Early Retirement Coverage for Law Enforcement and Firefighter Personel Serving in Administrative Positions.	Proposed rules were published January 4, 1980, to delete the regulatory requirement that early retirement coverage attaches to an officer or firefighter only if experience is a basic qualification for filling the position. Final regulations to be published by June 30, 1980.	Jane Lohr, (202) 632-4634.
5 CFR Parts 831, 870, 871, and 890	Retirement; Retention of Benefits upon Employment by Indian Tribal Organizations.	Final regulations to be published by June 30, 1980, to provide for retention of CSR, FEHB, and FEGLI coverages for certain Federal employees who transfer to tribal organization employment.	Gay Gardner, (202) 632-4634.
5 CFR Part 890	FEHB; Conversion of Health Benefits Coverage.	Proposed regulations to be published by June 30, 1980, will order extension of time limit for conversion to private contract where timely conversion was prevented due to administrative error.	Gus Ghessie, (202) 632-4684.
5 CFR Part 890	FEHB; Continuation of Health Benefits Enrollment.	Proposed regulations to provide continued health benefits coverage for certain survivor annuitants to be published by September 30, 1980.	John Ray, (202) 632-4684.
5 CFR Part 890	FEHB Program; Benefits for Members of Medically Underserved Populations.	Interim regulations to implement Pub. L. 96-179 were published on February 26, 1980. Final regulations are to be developed after expiration of the comment period on April 28, 1980.	Bonnie Rose, (202) 254-9574.
5 CFR 900.700	Intergovernmental Personnel Act Programs..	Final regulations which require nondiscrimination on the basis of handicap in Federal Assistance Programs administered by the Office of Personnel Management (implementing section 504 of the Rehabilitation Act of 1973).	Richard Romero, (202) 632-6274.
5 CFR 900.800	Intergovernmental Personnel Act Programs..	Proposed regulations on nondiscrimination on the basis of age in programs or activities receiving Federal Financial Assistance from the Office of Personnel Management; to be published Nov. 1, 1980.	Richard Romero, (202) 632-7274.

[FR Doc. 80-16583 Filed 6-2-80; 8:45 am]

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federal register

Tuesday
June 3, 1980

Part III

Department of Agriculture

Animal and Plant Health Inspection Service

Ventilation Requirements of the Transportation Standards for Dogs and Cats

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 3

Animal Welfare; Standards for the Humane Handling, Care, Treatment, and Transportation of Dogs and Cats

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: This document amends the ventilation requirements of the transportation standards for dogs and cats. The amendment increases the minimum amount of ventilation area required for shipping containers used to transport live dogs and cats in commerce. Revisions of the current transportation standards were proposed in the **Federal Register** (45 FR 15880–15881), March 11, 1980, as a result of various comments and petitions for reconsideration which were received by this Department. Comments and recommendations were received from animal welfare organizations, animal shippers, interested industry groups, and other interested individuals and groups. The Department has evaluated the comments and recommendations and has assessed the various aspects of ventilation in relation to the animals being shipped, the involved industries, and the public perception of the situation. On the basis of such evaluation, the Department has revised the standards which appear herein as final rulemaking.

EFFECTIVE DATE: July 18, 1980.

FOR FURTHER INFORMATION CONTACT: Dr. Dale F. Schwindaman, Senior Staff Veterinarian, Animal Care Staff, Veterinary Services, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 703, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–7833. The Final Impact Statement describing the options considered in developing this final rule and the impact of implementing each option is available on request from the above named individual.

SUPPLEMENTARY INFORMATION: This final action has been reviewed under USDA procedures established in Secretary's Memorandum 1955 to implement Executive Order 12044, and has been classified "not significant." Pursuant to the Animal Welfare Act Amendments of 1976, the Department published standards for the transportation of certain animals in commerce on June 21, 1977, and May 16, 1978, in the **Federal Register** (42 FR 31556–31571 and 43 FR 21160–21167) in order to assure that such animals were provided with humane care and treatment during transportation. Such standards are contained in Title 9 of the Code of Federal Regulations. The ventilation requirements in § 3.12 (9 CFR 3.12) state that primary enclosures (shipping containers) used to transport live dogs and cats shall be constructed in such a manner that there are ventilation openings located on two opposite walls which provide at least 16 percent ventilation per wall, or there are ventilation openings located on all four walls which provide at least 8 percent ventilation per wall, or there are ventilation openings located on three walls which provide at least 8 percent ventilation on two opposite walls and at least 50 percent ventilation on the third wall. Ventilation openings in the top of the animal shipping containers are not addressed since stacking of such containers during transportation is common practice and would effectively block such openings for ventilation purposes.

During fiscal year 1979, the National Committee on Animal Transport, the Society for Animal Protection Legislation, the American Society for the Prevention of Cruelty to Animals, and other interested persons petitioned the Department to reconsider its present standards and to increase the minimum ventilation requirements for shipping containers used to transport dogs and cats in commerce to 25 percent of the total area of the walls of the containers. The Department subsequently published a notice in the **Federal Register** (44 FR 33801), June 12, 1979, requesting opinions, comments, and data from the public regarding the adequacy or inadequacy of the present ventilation requirements for dog and cat shipping containers.

In response to this request, representatives of humane groups, animal shipping container manufacturers, pet animal dealers, zoological parks, air carriers, pet animal breeders and exhibitors, veterinarians, and members of the general public submitted comments. The Department reviewed and analyzed such comments and on March 11, 1980, a proposed amendment to the standards was published in the **Federal Register** (45 FR 15880–15881) where the major comments received by the Department were discussed.

The proposed amendment would have increased the minimum area of ventilation openings for containers used to transport dogs and cats in commerce during the period of April 1 through September 30 each year to 18 percent of the total surface area of the four walls of the container. A 45-day period, ending April 25, 1980, was allowed for public comment on the proposal.

One hundred thirty-one comments were received in response to the proposal within the comment period and all were given due consideration during the development of this final rule. An analysis of the 131 comments reveals that 55 supported the proposal, 66 opposed it, and 10 dealt with items not directly related to the issues of the proposal.

After review of the various comments received, and after an in-depth analysis of the issues involved in this matter, the Department decided to publish this final rule which increases the ventilation required in containers used to ship dogs and cats in interstate commerce. Based on data and other information contained in the comments, the Department has made certain changes in the proposed amendment of the ventilation standards to require that the total combined surface area of ventilation be at least 14 percent of the total combined surface area of all of the walls of the primary enclosure or shipping container. The following discussion summarizes the major concerns expressed in the comments received and the modifications in the rule.

The Need for Increased Ventilation

Many of the comments received by the Department maintained that increased ventilation is necessary to assure at least minimal humane conditions for animals in transit at any time of the year by providing some degree of comfort and safety. Many comments indicated that such increased ventilation is essential during the hot summer months. Concerned individuals who have observed shipments of animals at airports in containers with the lowest amount of ventilation permitted by the current standards have informed the Department that they have observed moisture buildup in these containers. Commenters noted that, on occasion, such moisture buildup and the conditions responsible for it resulted in an inability of the animals involved to maintain their normal body temperature and, in some instances, that animals have died because of inadequate ventilation. The Department recognizes that an insufficient amount of ventilation may not have been the only factor which contributed to the deaths of the animals. However, the information regarding moisture buildup and the reports of occasional deaths, along with other considerations discussed below, provide a basis to increase the amount of required ventilation. The required 14 percent ventilation is intended to provide adequate ventilation under normal handling and weather conditions and should also provide a margin of safety in cases of improper handling or exposure to unusually high temperatures.

The Need for Specific Standards

Some of the comments stated that the proposed amendment was vague. Some persons commented that the proposed rule (requiring 18 percent ventilation of the total surface area of the four sides of an animal container) could be subject to manipulation and inconsistent interpretation. The language of the proposed rule has therefore been modified to establish standards regarding ventilation required for two, three, or four sides of a container, as contained in the present rule, in order to assure that the objective of providing humane treatment for dogs and cats is not so undermined.

The Proposed Seasonal Requirement

The proposed rule would have increased the amount of ventilation required during warm weather months, i.e., April 1 through September 30. Based upon comments which were received regarding this limitation, the Department has concluded that such dual standard would be both impractical and costly and would not adequately fulfill the purpose of the proposed amendment. In some parts of the United States, warm weather prevails throughout the calendar year and therefore, comfort and safety of animals in transit can be best assured by establishing year-round requirements. The proposed rule has therefore been changed to provide for the applicability of the same ventilation standards throughout the year.

Cost of Compliance with the Rule

Numerous comments stated that the proposed increase in ventilation to 18 percent would eliminate or require major changes of nearly all existing dog and cat containers which are manufactured by the principal firms engaged in the production of such containers. This could result in great financial loss to those firms and to users of such containers. The Department has therefore reevaluated the proposed figure of 18 percent in light of these costs and the benefits from the use of that figure. Based upon the information currently available to it, the Department has concluded that the ventilation requirements contained in this final rule (an increase of present requirements) are adequate to assure humane treatment of animals during transportation.

In addition, they should not cause any undue hardship to a majority of manufacturers of animal shipping containers and members of the public who currently own such containers. A large portion of the shipping containers currently on the market comply with the requirements established by this final rule.

Many persons submitted comments that the majority of the "open fronted" containers now in use have adequate ventilation for year round use. The final rule contained herein permits the use of most of the "open fronted" containers currently on the market.

Present Ventilation is Adequate

A number of comments indicated that a great deal of experience in shipping thousands of animals without problems was sufficient reason to reject any increase in ventilation requirements. While the exact amount of distress or physical harm suffered by dogs and cats being transported on hot, humid days in shipping containers with minimum ventilation is not known, sufficient complaints have come to the attention of the Department to support the conclusion that containers in the lower ranges of permitted amounts of ventilation can contribute to discomfort, distress, or even the possible death of animals when high temperatures and high humidity are present.

Requests for Ventilation in Excess of the Proposed 18 Percent

Many comments, from both the opponents and proponents of the proposed rule, indicated that 18 percent ventilation is not sufficient to provide a humane environment for animals in transit. Such commenters stated that it would be desirable, or even necessary, to increase ventilation to 25 percent or more of the total surface area of the side walls of shipping containers. The Department does not have sufficient information at this time on which to conclude that such an increase in ventilation is warranted.

Scientific Data Necessary to Support Any Increase in Ventilation

Many persons who submitted comments remarked that no scientific data exists to support the need for increased ventilation and that any increase should be postponed until current scientific studies are completed. The Department recognizes that little experimental scientific data is available regarding ventilation requirements of animal shipping containers.

Studies are currently being conducted regarding the effects of heat, humidity, ventilation, and other factors on animals in transit. However, these studies are not complete and may not be conclusive as to precise requirements that should be generally applicable. The information available to the Department indicates that present ventilation requirements are not adequate to assure the humane treatment of animals in transit. Therefore, the Department has concluded that an amendment which increases ventilation requirements should not be postponed until the studies have been concluded. Such deferral of action could cause needless suffering of animals for an extended period of time.

Adoption of IATA Standards

Some comments suggested that ventilation standards recommended by the International Air Transport Association (IATA) be adopted. The final rule change will permit shipping containers that satisfy IATA standards. However, containers which comply minimally with the IATA standards provide less ventilation than that required by the amended rule. In addition, the IATA standard would prevent the use of containers which are currently on the market and which the Department considers adequate. Such a requirement would favor certain container manufacturers over others. For these reasons, the Department has decided against this suggestion.

Amendment not Based on Critical and Careful Evaluation of Data and Information Available

Some persons who commented protested that the Department is changing its standards on the basis of the number of comments which support or oppose the change and not on the opinion of qualified experts.

The Department has based the changes contained herein on its own knowledge and expertise regarding animal care as well as the experience it has gained through its administration and enforcement of the animal welfare program, on comments and opinions from the public, including persons expert in animal transportation, and on all other relevant information which has come to its attention. After considering and weighing all these factors, the Department determined that an increased amount of ventilation should be required, and that the increase contained in this rule will cause the least hardship to the affected industry and the public while providing humane travel conditions for dogs and cats.

Other comments

In addition to the comments already discussed, concern was expressed that an increase in the amount of ventilation openings would weaken the structure of shipping containers. Current regulations require that the structural strength of such containers must be sufficient to contain live animals and to withstand the normal rigors of transportation. Such regulations will stay in effect and changes in ventilation openings which make the container structurally unsafe will not be allowed.

Concern was also expressed that too much open area would cause increased exposure of animals to frightening conditions of transportation without providing the security of a closed area into which the animal may retreat. While it is not specifically required that containers be sufficiently closed to provide a feeling of security to the animals, the options available for ventilation of 2, 3, and 4 sides of containers will allow use of containers which satisfy this need.

Comments were made that openings be required in the top of containers to prevent heat buildup within the containers. The regulations do not prohibit ventilation openings in the top of containers but such openings have not been required (and will not be calculated toward meeting minimum ventilation standards) because such openings may be closed off by stacking of cargo.

Comments were also made that increased ventilation would expose animals to harmful drafts within aircraft holds. The conditions within aircraft holds and the manner in which the holds are ventilated and heated make problems from drafts unlikely. In addition, furred animals such as dogs and cats are not particularly susceptible to problems caused by drafts.

One comment stated that no change in ventilation was needed because the environmental temperature in all cargo areas and within aircraft is controlled. Because the standards have a broad application, there are places where the airflow may not be adequate. Also, the environment of some cargo holdings areas is not air conditioned. The Department wishes to ensure sufficient ventilation for "normal" conditions with a safety factor to guard against short term exposure to extreme conditions. A number of comments were received which addressed subjects not directly related to the issues of the proposal or suggested requirements beyond the authority of the Department. These included requests to extend the ventilation requirements to other warm blooded animals and to require that dogs and cats be carried in the passenger area of aircraft and require special cargo areas for animals. The Department will not address these comments at this time.

After due consideration of the comments received, the possible risk to the animals and the cost to the public and businesses involved, the Department has decided to publish this final rule which increases the required ventilation in shipping containers used to transport dogs and cats. As already explained, this rule is a modification of the proposal published in the **Federal Register** on March 11, 1980, (45 FR 15880–15881). Such modification is based on comments received from the public. The present ventilation standards for containers with openings on two, three, and four walls will be amended by this change to add a requirement that the total combined surface area of ventilation openings shall be at least 14 percent of the total combined surface area of all the walls of the primary enclosure or shipping container.

The result of this amendment is that all containers used for the commercial transportation of dogs and cats will be required to have at least 14 percent of the total wall surface devoted to ventilation regardless of the configuration of the openings on the walls. The current standards permit (in the case of certain rectangular containers with sides longer than the ends and openings on four walls) as little as 5.7 percent of the total surface area of the walls to be devoted to ventilation.

Accordingly, Part 3 of Title 9, Code of Federal Regulations, is amended in the following respects:

In § 3.12 that portion of paragraph (a) following the "(4)" and before the words *"Provided, however,"* is amended to read:

§ 3.12 Primary enclosures used to transport live dogs and cats.

(a) * * * except as provided in paragraph (h) of this section, such primary enclosures shall comply with one of the following requirements:

(i) There are ventilation openings located on two opposing walls of the primary enclosure and the ventilation openings on each of the two walls shall be at least 16 percent of the surface area of each such wall and the total combined surface area of the ventilation openings shall be at least 14 percent of the total combined surface area of all the walls of the primary enclosure, or

(ii) There are ventilation openings on three walls of the primary enclosure and the ventilation openings on two opposing walls shall be at least 8 percent of the total surface area of the two walls and the ventilation openings on the third wall of the primary enclosure shall be at least 50 percent of the total surface area of such wall and the total combined surface area of the ventilation openings shall be at least 14 percent of the total combined surface area of all the walls of the primary enclosure, or

(iii) There are ventilation openings located on all four walls of the primary enclosure and the ventilation openings on each of the four walls shall be at least 8 percent of the total surface of each wall and the total combined surface area of the ventilation openings shall be at least 14 percent of the total combined surface area of all the walls of the primary enclosure: * * *

(7 U.S.C. 2131–2156; 42 FR 31562, June 21, 1977, as amended by 43 FR 21162, May 16, 1978; 45 FR 15880, March 11, 1980)

In order to offer protection to dogs and cats being transported during the hot summer months, while giving persons transporting such animals time to acquire primary enclosures which are in compliance with these changes, this amendment will be effective 45 days after publication in the **Federal Register**.

It does not appear that further public participation in this rulemaking procedure would make additional relevant information available to the Department.

Accordingly, under the administrative procedure provision in 5 U.S.C. 553 it is found upon good cause that further notice and other public procedure with respect to this amendment is impractical and unnecessary.

Done at Washington, D.C. this 29th day of May 1980.

R. I. Brown,

Acting Deputy Administraor, Veterinary Services.

[FR Doc. 80-16739 Filed 5-29-80; 12:48 pm]

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federal register

Tuesday
June 3, 1980

Part IV

Department of Justice

Attorney General

Nondiscrimination Based on Handicap in Federally Assisted Programs

DEPARTMENT OF JUSTICE

Attorney General

28 CFR Part 42

Nondiscrimination Based on Handicap in Federally Assisted Programs—Implementation of Section 504 of the Rehabilitation Act of 1973 and Executive Order 11914

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: This subpart establishes procedures and policies to assure nondiscrimination based on handicap in programs and activities receiving Federal financial assistance from the Department of Justice. The subpart is designed to comply with section 504 of the Rehabilitation Act of 1973 as amended, and Executive Order 11914, which relate to nondiscrimination against handicapped persons in programs receiving or benefitting from Federal financial assistance.

EFFECTIVE DATE: July 3, 1980.

FOR FURTHER INFORMATION CONTACT: (1) For Federal assistance programs administered by the Law Enforcement Assistance Administration (LEAA), the National Institute of Justice (NIJ), the Bureau of Justice Statistics (BJS), the Office of Justice Assistance, Research, and Statistics (OJARS), and the Office of Juvenile Justice and Delinquency Prevention (OJJDP): Thomas J. Madden, General Counsel, Office of Justice Assistance, Research, and Statistics, telephone: 202/724-7792.

(2) For other Department of Justice Federal assistance programs: Robert N. Dempsey, Federal Enforcement Section, Civil Rights Division, Telephone: (202) 633-2374.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Justice hereby adds Subpart G to Part 42 of the Department regulations to implement section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), as amended by section 111(a) of the Rehabilitation Act Amendments of 1974 (29 U.S.C. 706) (Supp. V 1975), and section 120(a) of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, Pub. L. 95-602, 92 Stat. 2955 (1978) (hereinafter the Rehabilitation Act Amendments of 1978), with regard to Federal financial assistance administered by this Department. Section 504 provides, in pertinent part, that "no otherwise qualified handicapped individual in the United States * * * shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance * * *."

The subpart is intended to insure that the Department's federally assisted programs and activities are operated without discrimination on the basis of handicap. The subpart defines and forbids acts of discrimination against qualified handicapped persons in employment and in the operation of programs and activities receiving assistance from the Department. As employers, recipients are required to make reasonable accommodations to the handicaps of applicants and employees unless the accommodations would impose undue hardships on the operation of the recipients' programs. As providers of services, recipients are required (1) to make programs operating in existing facilities readily accessible to and usable by handicapped persons, (2) to insure that new facilities are constructed to be readily accessible to and usable by handicapped persons, and (3) to operate their programs in a manner which provides for the full and nondiscriminatory participation of eligible handicapped persons.

This rule is, in part, in response to Executive Order 11914 (41 FR 17871, April 28, 1976), which (1) delegates the coordination of government-wide enforcement of section 504 to the Department of Health, Education, and Welfare and (2) directs each Federal agency providing Federal financial assistance to "issue rules, regulations, and directives, consistent with the standards and procedures established by the Secretary of Health, Education and Welfare." The Secretary established such standards and procedures, effective January 13, 1978 (43 FR 2132, January 13, 1978) (hereinafter "guidelines"). The Department's rule is intended to be consistent with the HEW guidelines and the HEW section 504 rule (42 FR 22676 (May 4, 1977); 45 CFR 84.1 (1979)).

Executive Order 12044, 43 FR 12661 (March 24, 1978), whose objective is to improve government regulations, requires that "regulations shall be as simple and clear as possible." Following that standard, the subject departs, where appropriate, from the language (but not the substance) of the HEW section 504 rule where clarification appears desirable to give further guidance to applicants and recipients of Federal financial assistance administered by the Department. Although the wording may differ, the Department intends no substantive difference between its language and the corresponding language of the HEW section 504 rule and guidelines.

Executive Order 12044 also requires Executive branch agencies to prepare Regulatory Analyses for regulations that may have major economic consequences. The Order defines major economic consequences as (1) an annual effect on the economy of $100 million dollars or more (for example, compliance costs that exceed $100 million dollars) or a stricter requirement if the agency head so determines, or (2) major increases in costs or prices for individual industries, levels of government or geographic regions.

The Department's Notice of Proposed Rulemaking (44 FR 54950, September 21, 1979) requested public comment on the issue of compliance costs and asked for the submission of available cost studies regarding structural and nonstructural modifications to provide for the participation of handicapped persons in programs relevant to this subpart. The public comments received on the matter of costs did not change the Department's earlier view that the compliance costs would not result in major economic consequences within the meaning of Executive Order 12044 and that, accordingly, a Regulatory Analysis would be neither required nor advisable at this time. In the event the Department's experience in implementing this rule indicates that compliance costs exceed anticipated levels, the Department will again review the propriety of undertaking a regulatory analysis.

The anticipated costs of recipients of Department of Justice financial assistance appear to be concentrated in three areas: (1) The removal of architectural barriers; (2) the elimination of communications barriers; and (3) the making of reasonable accommodations to the handicapping conditions of otherwise qualified handicapped persons as employees of recipients.

Architectural Barriers. Structural changes for program accessibility are necessary primarily for persons with severe mobility-related handicaps—persons who cannot climb stairs or step over curbs, cannot open heavy doors, cannot travel without wheelchairs, and the like. Almost all these persons use wheelchairs or walkers. With respect to compliance costs associated with structural modifications, it is crucial to keep the following compliance standards in mind. First, under the requirements of the subpart, structural changes in existing facilities are required only where there is no other feasible way to make the recipient's program accessible to handicapped persons. For existing facilities, the key requirement is not a barrier free environment, but program accessibility (see illustrative examples set forth in Appendix B, Section C, *infra.*). Second, not every existing facility or part of a facility in a program receiving Federal financial assistance from the Department must be accessible to handicapped persons. The subpart requires only that, when viewed in its entirety, the program is readily accessible to handicapped persons. Where physical access to buildings for handicapped persons requires the construction of ramps, HEW has found "after consultation with experts in the field, that outside ramps to buildings can be constructed quickly and at relatively low cost." 42 FR 22690 (May 4, 1977). Whether the simple installation of ramps and appropriate restroom facilities in buildings will suffice depends upon the design of the facility, the nature and location of the program, and the availability of nonstructural modifications to provide program accessibility.

As to new construction, the available evidence indicates that compliance costs directly attributable to this subpart may be modest for the following reasons.

First, all 50 States have architectural barriers statutes covering publicly funded buildings (where most DOJ recipients are located), while at least 22 States additionally cover privately funded public buildings. The statutes of all 50 States cover new construction, while 35 States also cover renovations and alterations.[1] Thus, since the issue is whether the proposed Department regulations will themselves cause a "major" economic impact, it is noteworthy that much of what is required by this subpart in terms of preventing architectural barriers to handicapped persons already is required by existing State law. Hence, to this extent the incremental Department impact on recipients would appear to be significantly reduced.

Second, this subpart requires that design or construction of new facilities, or alteration of existing facilities, conform with the "American National Standard Specifications for Making Buildings and Facilities Accessible to, and Usable by, the Physically Handicapped," published by the American National Standards Institute, Inc. (ANSI). (§ 42.522(b)). At least twenty-seven States have already adopted the ANSI standards in their codes.[2]

Third, the Architectural Barriers Act of 1968, as amended, 42 U.S.C.A. 4151 *et seq.*, requires that all buildings and facilities "financed in whole or in part by a grant or a loan made by the United States after August 12, 1968" are to be accessible to and usable by the physically handicapped, 42 U.S.C.A. 4151, "if the building or facility is subject to standards for design, construction or alteration issued under the law authorizing the grant or loan." 41 CFR 101-19.602(a)(3) (General Services Administration regulations). LEAA has construed the Architectural Barriers Act as covering all its Part E grants for construction of correctional institutions and facilities. See 42 U.S.C. 3750–3750d (Repealed Dec. 27, 1979 by Pub. L. 96-157, 93 Stat. 1167). The Justice System Improvement Act of 1979, Pub. L. 96-157, 93 Stat. 1167, prohibits LEAA from providing financial assistance to new construction programs (Sec. 404(c)(3)).

Finally, applicants for Department assistance may have previously received Federal financial assistance from other Federal agencies, thereby requiring their compliance with § 504 independent of this subpart. For example, LEAA has provided financial assistance to institutions of higher learning that also receive funds from HEW.[3] Also, a substantial portion of Federal revenue sharing money has been annually allocated by State and local units of government to public safety (*i.e.*, police and fire protection). The revenue sharing funds are provided under the State and Local Fiscal Assistance Act of 1972, as amended, 31 U.S.C.A. 1221 *et seq.*, which was amended in 1976 to make section 504 of the Rehabilitation Act applicable to programs funded with revenue sharing monies received by State and local units of government after January 1, 1977.

Communications Barriers. One obvious example of eliminating communications barriers would be the installation of teletypewriters (TTY's) in law enforcement and fire protection agencies to enable hearing and speaking impaired persons to communicate effectively with such agencies. The TTY is a telecommunications device that adapts the telephone to the needs of persons with hearing and speaking impairments. The cost of a TTY is relatively modest and would be even less so where a TTY is shared by a number of public agencies hooked up to a central TTY number.

The use of qualified interpreters in various settings (e.g., police interrogations, court proceedings, correctional rehabilitation programs) who are, when possible, certified by a recognized certification agency, is another important method of ameliorating the communications barriers experienced by speaking and hearing-impaired individuals. A recipient's need for an interpreter is usually not on a continuing basis, and the overall compliance cost would not be substantial.

Employment. The subpart prohibits discrimination in employment against handicapped persons by recipients of Department financial assistance and, further, requires that recipients make "reasonable accommodations" to the handicaps of otherwise qualified applicants or incumbent employees. A reasonable accommodation in a given employment situation depends upon many variables involving the recipient, the job, and the handicapped employee. The Department, like its recipients, will have to deal with this issue on a case-by-case basis. However, HEW's economic impact statement on the compliance costs of section 504 for its recipients concluded that "our analysis strongly suggests that in the large majority of cases enforcement of reasonable accommodation will not result in any significant cost increase for employers." 41 FR 20332 (May 17, 1976). There is nothing to suggest a different result for employers functioning in programs receiving financial assistance from the Department of Justice.

The Department programs covered by section 504 are set forth in Appendix A to this subpart. An analysis of the final rule is set forth in Appendix B.

II. Rulemaking History

On September 21, 1979 the Department published a Notice of Proposed Rulemaking setting forth proposed regulations for public comment (44 FR 54950). The initial 90-day comment period was extended until January 4, 1980 to provide for additional public participation. (44 FR 76303, December 26, 1979) On November 27, 1979 a public meeting was held in Washington, D.C. to hear oral testimony from interested persons on the proposed rule.

A total of more than 60 comments were received and have been analyzed. Both the written comments and the views expressed at the public meeting have illuminated the complex issues involved in implementing section 504 in an effective and workable fashion. The

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[1] *Amicus*, pp. 46–47 July/August 1978, National Center for Law and the Handicapped.

[2] *Amicus, id.*

[3] Section 305 of the Education Organization Act (Pub. L. No. 96-88, 93 Stat. 688), effective October 17, 1979, transferred LEAA's student loan and grant programs to the new Department of Education.

Department's response to the comments of interested parties and the explanation for significant changes in the proposed rule are set forth in the section-by-section analysis of the rule that appears as Appendix B to the rule. As that analysis explains, some provisions in the proposed rule have been eliminated as duplicative, unnecessary, or otherwise inappropriate; others have been shortened or clarified. The goal throughout has been to design a rule that preserves the essential elements of an effective program for ending discrimination, while avoiding the imposition of unnecessary or counterproductive administrative obligations on recipients.

In consideration of the foregoing, Part 42 of Title 28 of CFR is amended by adding a new Subpart G reading as set forth below.

Dated: May 16, 1980.

Benjamin R. Civiletti,

Attorney General.

Subpart G—Nondiscrimination Based on Handicap in Federally Assisted Programs—Implementation of Section 504 of the Rehabilitation Act of 1973 and Executive Order 11914

Authority: Sec. 504, Rehabilitation Act of 1973, Pub. L. 93–112, 87 Stat. 394 (29 U.S.C. 794); Sec. 111(a), Rehabilitation Act Amendments of 1974, Pub. L. 93–516, 88 Stat. 1619 (29 U.S.C. 706); Sec. 120(a), Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, Pub. L. 95–602, 92 Stat. 2955 (1978); Executive Order 11914, April 28, 1976, and 45 CFR Part 85.

General Provisions

§ 42.501 Purpose.

The purpose of this subpart is to implement section 504 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination on the basis of handicap in any program receiving Federal financial assistance.

§ 42.502 Application.

This subpart applies to each recipient of Federal financial assistance from the Department of Justice and to each program receiving or benefiting from such assistance. The requirements of this subpart do not apply to the ultimate beneficiaries of Federal financial assistance in the program receiving Federal financial assistance.

§ 42.503 Discrimination prohibited.

(a) *General.* No qualified handicapped person shall, solely on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program receiving or benefiting from Federal financial assistance.

(b) *Discriminatory actions prohibited.* (1) A recipient may not discriminate on the basis of handicap in the following ways directly or through contractual, licensing, or other arrangements under any program receiving Federal financial assistance:

(i) Deny a qualified handicapped person the opportunity accorded others to participate in the program receiving Federal financial assistance;

(ii) Deny a qualified handicapped person an equal opportunity to achieve the same benefits that others achieve in the program receiving Federal financial assistance;

(iii) Provide different or separate assistance to handicapped persons or classes of handicapped persons than is provided to others unless such action is necessary to provide qualified handicapped persons or classes of handicapped persons with assistance as effective as that provided to others;

(iv) Deny a qualified handicapped person an equal opportunity to participate in the program by providing services to the program;

(v) Deny a qualified handicapped person an opportunity to participate as a member of a planning or advisory body;

(vi) Permit the participation in the program of agencies, organizations or persons which discriminate against the handicapped beneficiaries in the recipient's program;

(vii) Intimidate or retaliate against any individual, whether handicapped or not, for the purpose of interfering with any right secured by section 504 or this subpart.

(2) A recipient may not deny a qualified handicapped person the opportunity to participate in any program receiving Federal financial assistance on the ground that other specialized programs for handicapped persons are available.

(3) A recipient may not, directly or through contractual, licensing, or other arrangements, utilize criteria or methods of administration that either purposely or in effect discriminate on the basis of handicap, defeat or substantially impair accomplishment of the objectives of the recipient's program with respect to handicapped persons, or perpetuate the discrimination of another recipient if both recipients are subject to common administrative control or are agencies of the same State.

(4) A recipient may not, in determining the location or design of a facility, make selections that either purposely or in effect discriminate on the basis of handicap or defeat or substantially impair the accomplishment of the objectives of the program with respect to handicapped persons.

(5) A recipient is prohibited from discriminating on the basis of handicap in a program operating without Federal financial assistance where such action would discriminate against the handicapped beneficiaries or participants in any program of the recipient receiving Federal financial assistance.

(6) Any program not otherwise receiving Federal financial assistance but using a facility provided with the aid of Federal financial assistance after the effective date of this subpart is prohibited from discriminating on the basis of handicap.

(c) The exclusion of nonhandicapped persons or specified classes of handicapped persons from programs limited by Federal statute or executive order to handicapped persons or a different class of handicapped persons is not prohibited by this subpart.

(d) Recipients shall administer programs in the most integrated setting appropriate to the needs of qualified handicapped persons.

(e) Recipients shall insure that communications with their applicants, employees and beneficiaries are effectively conveyed to those having impaired vision and hearing.

(f) A recipient that employs fifteen or more persons shall provide appropriate anxiliary aids to qualified handicapped persons with impaired sensory, manual, or speaking skills where a refusal to make such provision would discriminatorily impair or exclude the participation of such persons in a program receiving Federal financial assistance. Such auxiliary aids may include brailled and taped material, qualified interpreters, readers, and telephonic devices. Attendants, individually prescribed devices, readers for personal use or study, or other devices or services of a personal nature are not required under this section. Departmental officials may require recipients employing fewer than fifteen persons to provide auxiliary aids when this would not significantly impair the ability of the recipient to provide its benefits or services.

(g) The enumeration of specific forms of prohibited discrimination in this subpart is not exhaustive but only illustrative.

§ 42.504 Assurances required.

(a) *Assurances.* Every application for Federal financial assistance covered by this subpart shall contain an assurance that the program will be conducted in compliance with the requirements of section 504 and this subpart. Each agency within the Department that provides Federal financial assistance shall specify the form of the foregoing assurance for each of its assistance programs and shall require applicants for Department financial assistance to obtain like assurances from subgrantees, contractors and subcontractors, transferees, successors in interest, and others connected with the program. Each Department agency shall specify the extent to which an applicant will be required to confirm that the assurances provided by secondary recipients are being honored. Each assurance shall include provisions giving notice that the United States has a right to seek judicial enforcement of section 504 and the assurance.

(b) *Assurances from government agencies.* Assurances from agencies of State and local governments shall extend to any other agency of the same governmental unit if the policies of the other agency will affect the program for which Federal financial assistance is requested.

(c) *Assurances from institutions.* The assurances required with respect to any institution or facility shall be applicable to the entire institution or facility.

(d) *Duration of obligation.* Where the Federal financial assistance is to provide or is in the form of real or personal property, the assurance will obligate the recipient and any transferee for the period during which the property is being used for the purpose for which the Federal financial assistance is extended or for another purpose involving the provisions of similar benefits, or for as long as the recipient retains ownership or possession of the property, whichever is longer. In all other cases the assurance will obligate the recipient for the period during which Federal financial assistance is extended.

(e) *Covenants.* With respect to any transfer of real property, the transfer document shall contain a covenant running with the land assuring nondiscrimination on the condition described in paragraph (d). Where the property is obtained from the Federal Government, the covenant may also include a condition coupled with a right to be reserved by the Department to revert title to the property in the event of a breach of the covenant.

(f) *Remedies.* The failure to secure either an assurance or a sufficient assurance from a recipient shall not impair the right of the Department to enforce the requirements of section 504 and this subpart.

§ 42.505 Administrative requirements for recipients.

(a) *Remedial action.* If the Department finds that a recipient has discriminated against persons on the basis of handicap in violation of section 504 or this subpart, the recipient shall take the remedial action the Department considers necessary to overcome the effects of the discrimination. This may include remedial action with respect to handicapped persons who are no longer participants in the recipient's program but who were participants in the program when such discrimination occurred, and with respect to handicapped persons who would have been participants in the program had the discrimination not occurred.

(b) *Voluntary action.* A recipient may take steps, in addition to the requirements of this subpart, to increase the participation of qualified handicapped persons in the recipient's program.

(c) *Self-evaluation.* (1) A recipient shall, within one year of the effective date of this subpart, evaluate and modify its policies and practices that do not meet the requirements of this subpart. During this process the recipient shall seek the advice and assistance of interested persons, including handicapped persons or organizations representing handicapped persons. During this period and thereafter the recipient shall take any necessary remedial steps to eliminate the effects of discrimination that resulted from adherence to these policies and practices.

(2) A recipient employing fifty or more persons and receiving Federal financial assistance from the Department of $25,000 or more shall, for at least three years following completion of the evaluation required under paragraph (c)(1) of this section, maintain on file, make available for public inspection, and provide to the Department on request: (i) a list of the interested persons consulted, (ii) a description of areas examined and problems identified, and (iii) a description of modifications made and remedial steps taken.

(d) *Designation of responsible employee.* A recipient employing fifty or more persons and receiving Federal financial assistance from the Department of $25,000 or more shall designate at least one person to coordinate compliance with this subpart.

(e) *Adoption of grievance procedures.* A recipient employing fifty or more persons and receiving Federal financial assistance from the Department of $25,000 or more shall adopt grievance procedures that incorporate due process standards *(e.g.* adequate notice, fair hearing) and provide for the prompt and equitable resolution of complaints alleging any action prohibited by this subpart. Such procedures need not be established with respect to complaints from applicants for employment. An employee may file a complaint with the Department without having first used the recipient's grievance procedures.

(f) *Notice.* (1) A recipient employing fifty or more persons and receiving Federal financial assistance from the Department of more than $25,000 shall, on a continuing basis, notify participants, beneficiaries, applicants, employees and unions or professional organizations holding collective bargaining or professional agreements with the recipient that it does not discriminate on the basis of handicap in violation of section 504 and this subpart. The notification shall state, where appropriate, that the recipient does not discriminate in its programs with respect to access, treatment or employment. The notification shall also include identification of the person responsible for coordinating compliance with this subpart and where to file section 504 complaints with the Department and, where applicable, with the recipient. A recipient shall make the initial notification required by this paragraph within 90 days of the effective date of this subpart. Methods of initial and continuing notification may include the posting of notices, publication in newspapers and magazines, placement of notices in recipients' publication, and distribution of memoranda or other written communications.

(2) Recruitment materials or publications containing general information that a recipient makes available to participants, beneficiaries, applicants, or employees shall include a policy statement of nondiscrimination on the basis of handicap.

(g) The Department may require any recipient with fewer than fifty employees and receiving less than $25,000 in Federal financial assistance to comply with paragraphs (c)(2) and (d)–(f) of this section.

(h) The obligation to comply with this subpart is not affected by any State or local law or requirement or limited employment opportunities for handicapped persons in any occupation or profession.

Employment

§ 42.510 Discrimination prohibited.

(a) *General.* (1) No qualified handicapped person shall on the basis of handicap be subjected to discrimination in employment under any program receiving or benefiting from Federal financial assistance.

(2) A recipient shall make all decisions concerning employment under any program receiving Federal financial assistance in a manner which insures that discrimination on the basis of handicap does not occur and may not limit, segregate, or classify applicants or employees in any way that adversely affects their opportunities or status because of handicap.

(3) A recipient may not participate in a contractual or other relationship that has the effect of subjecting qualified handicapped applicants or employees to discrimination prohibited by this section. The relationships referred to in this paragraph include relationships with employment and referral agencies, labor unions, organizations providing or administering fringe benefits to employees of the recipient, and organizations providing training and apprenticeship programs, and with civil service agencies in State or local units of government.

(b) *Specific activities.* The prohibition against discrimination in employment applies to the following activities:

(1) Recruitment, advertising, and application processing;

(2) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff and rehiring;

(3) Pay and any other form of compensation and changes in compensation, including fringe benefits available by virtue of employment, whether or not administered by the recipient;

(4) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;

(5) Leaves of absence, sick leave, or any other leave;

(6) Selection and financial support for training, including apprenticeship, professional meetings, conferences, and selection for leaves of absence to pursue training;

(7) Employer-sponsored activities, including social or recreational programs; and

(8) Any other term, condition, or privilege of employment.

(c) In offering employment or promotions to handicapped individuals, recipients may not reduce the amount of compensation offered because of any disability income, pension or other benefit the applicant or employee receives from another source.

(d) A recipient's obligation to comply with this section is not affected by any inconsistent term of any collective bargaining agreement to which it is a party.

§ 42.511 Reasonable accommodation.

(a) A recipient shall make reasonable accommodation to the known physical or mental limitations of an otherwise qualified handicapped applicant or employee unless the recipient can demonstrate, based on the individual assessment of the applicant or employee, that the accommodation would impose an undue hardship on the operation of its program.

(b) Reasonable accommodation may include making facilities used by employees readily accessible to and usable by handicapped persons, job restructuring, part-time or modified work schedules, acquisition or modification of equipment or devices (*e.g.*, telecommunication or other telephone devices), the provisions of readers or qualified interpreters, and other similar actions.

(c) Whether an accommodation would impose an undue hardship on the operation of a recipient's program depends upon a case-by-case analysis weighing factors that include:

(1) The overall size of the recipient's program with respect to number of employees, number and type of facilities, and size of budget;

(2) The type of the recipient's operation, including the composition and structure of the recipient's workforce; and

(3) The nature and cost of the accommodation needed.

A reasonable accommodation may require a recipient to bear more than an insignificant economic cost in making allowance for the handicap of a qualified applicant or employee and to accept minor inconvenience which does not bear on the ability of the handicapped individual to perform the essential duties of the job.

§ 42.512 Employment criteria.

(a) A recipient may not use any employment test or other selection criterion that tends to screen out handicapped persons unless: (1) The test score or other selection criterion, as used by the recipient, is shown to be job-related for the position in question; and (2) alternative job-related tests or criteria that tend to screen out fewer handicapped persons are not shown by the appropriate Department officials to be available.

(b) A recipient shall administer tests using procedures (*e.g.*, auxiliary aids such as readers for visually-impaired persons or qualified sign language interpreters for hearing-impaired persons) that accommodate the special problems of handicapped persons to the fullest extent, consistent with the objectives of the test. When a test is administered to an applicant or employee who has a handicap that impairs sensory, manual, or speaking skills, the test results must accurately reflect the applicant's or employee's job skills, aptitude, or whatever other factor the test purports to measure, rather than reflecting the applicant's or employee's impaired sensory, manual, or speaking skills (except where those skills are the factors that the test purports to measure).

§ 42.513 Preemployment inquiries.

(a) Except as provided in paragraphs (b) and (c) of this section, a recipient may not conduct a preemployment medical examination and may not make preemployment inquiry of an applicant as to whether the applicant is a handicapped person or as to the nature or severity of a handicap. A recipient may, however, make preemployment inquiry into an applicant's ability to perform job-related functions.

(b) When a recipient is taking remedial action to correct the effects of past discrimination pursuant to § 42.505(a) of this subpart, when a recipient is taking voluntary action to overcome the effects of conditions that resulted in limited participation in its Federally assisted program or activity pursuant to § 42.505(b) of this subpart, or when a recipient is taking affirmative action pursuant to section 503 of the Act, the recipient may invite applicants for employment to indicate whether and to what extent they are handicapped, *Provided* That:

(1) The recipient states clearly on any written questionnaire used for this purpose or makes clear orally if no written questionnaire is used that the information requested is intended for use solely in connection with its remedial action obligations or its voluntary efforts;

(2) The recipient states clearly that the information is being requested on a voluntary basis, that it will be kept confidential as provided in paragraph (d) of this section, that refusal to provide it will not subject the applicant or employee to any adverse treatment, and that it will be used only in accordance with this part.

(c) Nothing in this section shall prohibit a recipient from conditioning an offer of employment on the results of a medical examination conducted prior to the employee's entrance on duty. *Provided* That: (1) All entering employees are subjected to such an examination regardless of handicap, and (2) the results of such an examination are used only in accordance with the requirements of this subpart.

(d) The applicant's medical record shall be collected and maintained on separate forms and kept confidential, except that the following persons may be informed:

(1) Supervisors and managers regarding restrictions on the work of handicapped persons and necessary accommodations;

(2) First aid and safety personnel if the condition might require emergency treatment; and

(3) Government officials investigating compliance with the Act upon request for relevant information.

Program Accessibility

§ 42.520 Discrimination prohibited.

Recipients shall insure that no qualified handicapped person is denied the benefits of, excluded from participation in, or otherwise subjected to discimination under any program receiving Federal financial assistance because the recipient's facilities are inaccessible to or unusable by handicapped persons.

§ 42.521 Existing facilities.

(a) *Program accessibility.* A recipient shall operate each program to which this subpart applies so that the program, when viewed in its entirety, is readily accessible to and usable by handicapped persons. This section does not require a recipient to make each of its existing facilities or every part of a facility accessible to and usable by handicapped persons.

(b) *Compliance procedures.* A recipient may comply with the requirement of paragraph (a) of this section through acquisition or redesign of equipment, reassignment of services to accessible buildings, assignment of aids to beneficiaries, delivery of services at alternate accessible sites, alteration of existing facilities, or any other method that results in making its program accessible to its program accessible to handicapped persons. A recipient is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with paragraph (a) of this section. In choosing among methods for meeting the requirement of paragraph (a), a recipient shall give priority to those methods that offer programs to handicapped persons in the most integrated setting appropriate to obtain the full benefits of the program.

(c) *Small providers.* If a recipient with fewer than fifteen employees finds, after consultation with a handicapped person seeking its services, that there is no method of complying with § 42.521(a) other than making a significant alteration in its existing facilities, the recipient may, as an alternative, refer the handicapped person to other available providers of those services that are accessible.

(d) *Time period.* A recipient shall comply with the requirement of paragraph (a) within ninety days of the effective date of this subpart. However, where structural changes in facilities are necessary, such changes shall be made as expeditiously as possible and shall be completed no later than three years from the effective date of this subpart. If structural changes to facilities are necessary, a recipient shall, within six months of the effective date of this subpart, develop a written plan setting forth the steps that will be taken to complete the changes together with a schedule for making the changes. The plan shall be developed with the assistance of interested persons, including handicapped persons or organizations representing handicapped persons and shall be made available for public inspection. The plan shall, at a mininum:

(1) Identify physical obstacles in the recipient's facilities that limit the accessibility of its program to handicapped persons;

(2) Describe in detail the methods that will be used to make the facilities accessible;

(3) Specify the schedule for taking the steps necessary to achieve full program accessibility and, if the time period of the transition plan is longer than one year, identify the steps that will be taken during each year of the transition period; and

(4) Indicate the person responsible for implementation of the plan.

(e) *Notice.* The recipient shall adopt and implement procedures to insure that interested persons, including mentally retarded persons or persons with impaired vision or hearing, special learning problems, or other disabilities, can obtain information as to the existence and location of services, activities, and facilities that are accessible to and usable by handicapped persons.

§ 42.522 New construction.

(a) *Design and construction.* Each new facility constructed by, on behalf of, or for the use of a recipient shall be designed and constructed in such a manner that the facility is readily accessible to and usable by handicapped persons, if the construction was commenced after the effective date of this subpart. Any alterations to existing facilities shall, to the maximum extent feasible, be made in an accessible manner. Any alterations to existing facilities shall, to the maximum extent feasible, be made in an accessible manner.

(b) *American National Standards Institute accessibility standards.* Design, construction, or alteration of facilities in conformance with the "American National Standard Specifications for Making Buildings and Facilities Accessible to, and Usable by, the Physically Handicapped" published by the American National Standards Institute, Inc. (ANSI A 117.1-1961 (R1971)),[4] which is incorporated by reference in this subpart, shall constitute compliance with paragraph (a) of this section. Departures from particular requirements of those standards by the use of other methods shall be permitted when it is clearly evident that equivalent access to the facility is provided.

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[4] Incorporation by reference provisions approved by the Director of the Federal Register on May 21, 1980, copies obtainable from American National Standards Institute, Inc., 1430 Broadway, New York, N.Y. 10018, (212/354-3300). A copy is also on file at the Office of the Federal Register.

Procedures

§ 42.530 Procedures.

(a) The procedural provisions applicable to Title VI of the Civil Rights Act of 1964 (28 CFR 42.106–42.110) apply to this subpart except that the provision contained in § 42.110(e) and § 42.108(c)(3) which requires the Attorney General's approval before the imposition of any sanction against a recipient does not apply to programs funded by LEAA, NIJ, BJS, OJARS and OJJDP. The applicable provisions contain requirements for compliance information (§ 42.106), conduct of investigations (§ 42.107), procedure for effecting compliance (§ 42.108), hearings (§ 42.109), and decisions and notices (§ 42.110). (See Appendix C).

(b) In the case of programs funded by LEAA, NIJ, BJS, OJARS and OJJDP, the timetables and standards for investigation of complaints and for the conduct of compliance reviews contained in § 42.205(c)(1)–(c)(3) and § 42.206 (c) and (d) are applicable to this subpart except that any finding of noncompliance shall be enforced as provided in paragraph (a) of this section. (See Appendix D).

(c) In the case of programs funded by LEAA, NIJ, BJS, OJARS and OJJDP, the refusal to provide requested information under paragraph (a) above and § 42.106 will be enforced pursuant to the provisions of section 803(a) of Title I of the Omnibus Crime Control and Safe Streets Act, as amended by the Justice System Improvement Act of 1979, Pub. L. 96–157, 93 Stat. 1167.

(d) For acts of discrimination occurring prior to the effective date of this subpart, the 180-day limitation period for filing of complaints (§ 42.107 of this Title) will apply from that date.

(e) The Department will investigate complaints alleging discrimination in violation of section 504 occurring prior to the effective date of this subpart where the language of the statute or HEW's interagency guidelines (43 FR 2132, January 13, 1978) implementing Executive Order 11914 (41 FR 17871, April 28, 1976) provided notice that the challenged policy or practice was unlawful.

Definitions

§ 42.540 Definitions.

As used in this subpart the term:

(a) "The Act" means the Rehabilitation Act of 1973, Pub. L. 93–112, as amended (29 U.S.C. 701 *et seq.*).

(b) "Section 504" means section 504 of the Act (29 U.S.C. 794).

(c) "Department" means the Department of Justice.

(d) "LEAA" means the Law Enforcement Assistance Administration; "NIJ" means the National Institute of Justice; "BJS" means the Bureau of Justice Statistics; "OJARS" means the Office of Justice Assistance, Research and Statistics; "OJJDP" means Office of Juvenile Justice and Delinquency Prevention.

(e) "Recipient" means any State or unit of local goverment, any instrumentality of a State or unit of local government, any public or private agency, institution, organization, or other public or private entity, or any person to which Federal financial assistance is extended directly or through another recipient, including any successor, assignee, or transferree of a recipient, but excluding the ultimate beneficiary of the assistance.

(f) "Federal financial assistance" means any grant, cooperative agreement, loan, contract (other than a direct Federal procurement contract or a contract of insurance or guaranty), subgrant, contract under a grant or any other arrangement by which the Department provides or otherwise makes available assistance in the form of:

(1) Funds;

(2) Services of Federal personnel;

(3) Real and personal property or any interest in or use of such property, including:

(i) Transfers or leases of such property for less than fair market value or for reduced consideration; and

(ii) Proceeds from a subsequent transfer or lease of such property if the Federal share of its fair market value is not returned to the Federal Government;

(4) Any other thing of value by way of grant, loan, contract or cooperative agreement.

(g) "Facility" means all or any portion of buildings, structures, equipment, roads, walks, parking lots, or other real or personal property or interest in such property.

(h) The term "program" means the operations of the agency or organizational unit of government receiving or substantially benefiting from the Federal assistance awarded, *e.g.*, a police department or department of corrections.

(i) "Ultimate beneficiary" is one among a class of persons who are entitled to benefit from, or otherwise participate in, programs receiving Federal financial assistance and to whom the protections of this subpart extend. The ultimate beneficiary class may be the general public or some narrower group of persons.

(j) "Benefit" includes provision of services, financial aid or disposition (*i.e.*, treatment, handling, decision, sentencing, confinement, or other prescription of conduct).

(k) "Handicapped Person". (1) "Handicapped person" means any person who (i) has a physical or mental impairment which substantially limits one or more major life activities, (ii) has a record of such an impairment, or (iii) is regarded as having such an impairment. For purposes of employment, such term does not include any individual who is an alcoholic or drug abuser whose current use of alcohol or drugs prevents such individual from performing the duties of the job in question or whose employment, by reason of such current alcohol or drug abuse, would constitute a direct threat to property or the safety of others. (2) As used in this subpart the phrase:

(i) "Physical or mental impairment" means (A) any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive, digestive; genitourinary; hemic and lymphatic; skin; and endocrine; (B) any mental or psychological disorder such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term "physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, and drug and alcohol abuse.

(ii) "Major life activities" mean functions such as caring for one's self, performing manual tasks walking, seeing, hearing, speaking, breathing, learning, and working.

(iii) "Has a record of such an impairment" means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(iv) "Is regarded as having an impairment" means (A) has a physical or mental impairment that does not substantially limit major life activities but that is treated by a recipient as constituting such a limitation; (B) has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or (C) has none of the impairments defined in paragraph (k)(2)(i) of this section but is treated by a recipient as having such an impairment.

(l) "Qualified handicapped person" means: (1) With respect to employment, a handicapped person who, with reasonable accommodation, can perform the essential functions of the job in question; (2) With respect to services, a handicapped person who meets the essential eligibility requirements for the receipt of such services.

(m) "Handicap" means any condition or characteristic that renders a person a handicapped person as defined in paragraph (k) of this section.

(n) "Drug abuse" means (1) the use of any drug or substance listed by the Department of Justice in 21 CFR 1308.11, under authority of the Controlled Substances Act, 21 U.S.C. 801, as a controlled substance unavailable for prescription because (i) the drug or substance has a high potential for abuse, (ii) the drug or other substance has no currently accepted medical use in treatment in the United States, (iii) there is a lack of accepted safety for use of the drug or other substance under medical supervision; (2) the misuse of any drug or substance listed by the Department of Justice in 21 CFR 1308.12–.15 under authority of the Controlled Substances Act as a controlled substance available for prescription. Examples of (1) include certain opiates and opiate derivatives (*e.g.*, heroin) and hallucinogenic substances (*e.g.*, marihuana, mescaline, peyote) and depressants (*e.g.*, methaqualone). Examples of (2) include opium, coca leaves, methadone, amphetamines and barbituates.

(o) "Alcohol abuse" includes alcoholism but also means any misuse of alcohol which demonstrably interferes with a person's health, interpersonal relations or working.

Appendix A—Federal Financial Assistance of the Department of Justice to Which this Subpart Applies

1. Assistance provided by LEAA, NIJ, BJS, OJARS and OJJDP under Title I of the Omnibus Crime Control and Safe Streets Act of 1968, as amended by the Justice System Improvement Act of 1979, Pub. L. 96–157, 93 Stat. 1167, and the Juvenile Justice and Delinquency Prevention Act of 1974, 42 U.S.C. 5601 *et seq.*, as amended.

2. Assistance provided by the Federal Bureau of Investigation through its National Academy and law enforcement training activities and laboratory facilities under the Omnibus Crime Control and Safe Streets Act of 1968, as amended.

3. Assistance provided by the Bureau of Prisons through its National Institute of Corrections for training programs under the Juvenile Justice and Delinquency Prevention Act, as amended, 18 U.S.C. 4351–4353.

4. Assistance provided by the Drug Enforcement Administration under the Comprehensive Drug Abuse Prevention and Control Act of 1970, 21 U.S.C. 801 *et seq.*

5. Assistance provided by the Attorney General for antitrust enforcement under section 116 of the Crime Control Act of 1976, 42 U.S.C. 3739.[5]

6. Assistance provided by the Department under the Disputes Resolution Act, Pub. L. 96–190, 94 Stat. 17.

7. Assistance provided by the Department under the State and Local Drug Strike Force Grant Program, Pub. L. 96–68, Title II, 93 Stat. 419.

Appendix B—Analysis of Final Rule

A. General Provisions

This subpart prohibits discrimination on the basis of handicap in any program, activity or facility receiving Federal financial assistance (§ 42.501). Section 504 protects not only the ultimate beneficiaries of Federal assistance statutes (*e.g.*, students, prisoners, general public) as identified in the Federal grant statutes directly or by inference, but also nonbeneficiary participants (*e.g.*, employees working in the program receiving Federal financial assistance regardless of whether a primary objective of the Federal assistance includes providing employment opportunities). The subpart applies to all Federal assistance programs administered by the Department and requires all recipients of such assistance to comply with the requirements of the subpart (§ 42.502). The subpart not only applies to grants, contracts and cooperative agreements entered into after the effective date of the subpart, but also applies to any Federal financial assistance previously extended which continues at the time the subpart becomes effective.

The subpart sets forth a variety of illustrative examples to identify conduct which is unlawfully discriminatory and requirements to maintain Federally assisted programs free of unlawful discrimination (§ 42.503). Prohibited conduct includes arbitrary acts of exclusion or other invidious discrimination (§ 42.503(b)(1)(i)), refusal to provide specialized assistance to qualified handicapped persons (§ 42.503(b)(1)(ii)), refusal to permit qualified handicapped persons to participate in a Federal assistance program in providing services (*e.g.*, excluding qualified handicapped persons as contractors). The subpart also prohibits any agency, organization or person that discriminates against handicapped beneficiaries from participating in Federal assistance programs (§ 42.503(b)(1)(v)). A recipient may not discriminate against handicapped persons in its non-Federally funded programs if such action would discriminate against handicapped beneficiaries and participants in the recipient's Federally supported programs (§ 42.503(b)(5)). Further, no program conducted in a facility provided with Federal aid, after the effective date of section 504, can discriminate on the basis of handicap (§ 42.503(b)(6)). Also, a recipient may be required to provide auxiliary aids (*e.g.*, qualified interpreters for speaking and hearing-impaired persons, and readers for sight-impaired persons) under appropriate circumstances (§ 42.503(f)).

The primary thrust of these illustrative examples is to emphasize the Federal policy that qualified handicapped beneficiaries and participants (*e.g.*, employees) in Federally assisted programs are to be treated no differently than nonhandicapped beneficiaries and participants where such different treatment would materially impair the handicapped persons' ability to receive benefits or participate on an equal footing with non-handicapped persons. Thus "a recipient may not, directly or through contractual, licensing, or other arrangements, utilize criteria or methods of administration that either purposely or in effect discriminate on the basis of handicap" (§ 42.503(b)(3)). This provision gives notice that, ordinarily, a recipient's obligation under section 504 is broader than the mere avoidance of direct discrimination and encompasses an obligation to assure that second-tier recipients (*e.g.*, organizations receiving Federal financial assistance through the primary recipient) also adhere to the requirements of section 504. Accordingly, Criminal Justice Councils (CJC's) established under Part D of Title I of the Omnibus Crime Control and Safe Streets Act, as amended by the Justice System Improvement Act of 1979, have a continuing obligation to insure that second-tier recipients receiving Federal financial assistance through the SPA's comply with section 504 and this subpart. The subpart requires an applicant for Federal financial assistance to execute an assurance of compliance with section 504 and this subpart, and obtain similar assurances from seond-tier recipients (§ 42.504(a)–(c)). This is a change from the proposed rule which gave an appropriate Department official discretion to determine the extent a primary recipient would be obligated to obtain assurances from secondary recipients. Some commentators believed the flexible standard in the proposed rule was unwarranted in view of the clear statutory responsibility of second-tier recipients to comply with section 504.

Under certain circumstances it may be necessary to obtain assurances not only from second-tier recipients but also from vendors of services participating in a program receiving Federal financial assistance where such services affect the ultimate beneficiaries (*e.g.*, community-based facilities operating under Federal assistance contracts to provide services to beneficiaries).

Assurances from State or local recipient government agencies shall extend to other agencies of the same governmental unit if the policies or practices of the other agency affect the Federal assistance program of the recipient agency (§ 42.504(b)). Assurances from institutions or facilities (*e.g.*, law enforcement agencies, prisons, court systems) shall cover the entire institution or facility (§ 42.504(c)).

The subpart specifies the duration of the recipient's section 504 obligation (§ 42.504(d)) and notes that the failure to secure an assurance from a recipient does not impair the right of the Department to enforce the requirements of section 504 and this subpart because a recipient's obligation is statutory as well as contractual (§ 42.504(f)).

[5] Congress has not appropriated funds for this program for Fiscal Year 1980 which ends September 30, 1980. The Department made its last grants under the program by September 30, 1979.

Each recipient is required to evaluate and modify any of its policies which does not meet the requirements of the subpart (§ 42.505(c)(1)), and each recipient employing a minimum of fifty employees and receiving Federal financial assistance from the Department of $25,000 or more must maintain a record of the self-evaluation (§ 42.505(c)(2)), designate an employee to coordinate compliance with the subpart (§ 42.505(d)), adopt grievance procedures which incorporate due process standards (§ 42.505(e)) and provide notice on a continuing basis that it does not discriminate on the basis of handicap (§ 42.505(f)).

The HEW section 504 rule provides that any recipient employing fifteen or more persons is required to adopt these procedures (45 CFR 84.6(c)(2), 84.7, 84.8(a)). Some commentators expressed concern that the Department established a less encompassing procedural standard than HEW. The Department's numerical and monetary standard used in this subpart is identical to that used by LEAA, the Department's major grant agency, in its "Equal Employment Opportunity Program Guidelines" (28 CFR 42.301 *et seq.*) directed to its recipients and which requires the formulation, implementation and maintenance of a written equal employment opportunity program relating to employment practices affecting minority persons and women. It is appropriate that the Department maintain a consistent approach in ensuring the rights of the various categories of persons protected by Federal law. Further, it should be noted that the Department's action is consistent with the HEW guidelines for the development of Federal agency section 504 regulations which are substantially less exacting than the procedures adopted by the Department for its own programs. The guidelines impose no minimum numerical standard (45 CFR 85.5(b)). Finally, this subpart provides that "the Department may require any recipient with fewer than fifty employees and receiving less than $25,000 in Federal financial assistance to comply" with the procedural standards (§ 42.505(g)). Of course, recipients having fewer than fifty employees and receiving less than $25,000 in Department assistance are bound by section 504 and all the substantive and procedural requirements of this subpart which do not explicitly exempt such recipients.

The Department adopted one commentator's recommendation that notice be given in § 42.505(d) that employees may file complaints with the Department without having first used the recipients' grievance procedure mechanisms. Additionally, the notice requirements of § 42.505(f)(1) now provide examples of initial and continuing notification (*e.g.*, posters, magazines and memoranda). Further, a new requirement has been added to provide that all recipients must provide notice to the public on where to file section 504 complaints with the Department and, where applicable, with the recipient concerning the recipients' programs.

The subpart also provides that a recipient's obligation to comply with the subpart is not affected by inconsistent State and local laws or the limited employment opportunities for handicapped persons in any occupation or profession (§ 42.505(h)).

B. Employment

HEW has construed section 504 to prohibit employment discrimination against handicapped persons in all programs receiving Federal financial assistance. See HEW's section 504 regulations, 42 FR 22680 (May 4, 1977) and 45 CFR 84.11 (1978). Several courts have construed section 504 to cover employment discrimination. See, *e.g.*, *Duran* v. *City of Tampa*, 430 F. Supp. 75 (M.D. Fla. 1977), *Drennon* v. *Philadelphia General Hospital*, 428 F. Supp. 809 (E.D. Pa. 1977), *Granet* v. *Los Angeles Community College District*, No. CV 78–1823–ALS (Kx) (C.D. Cal., Dec. 29, 1978) (order granting dismissal). To date, two courts of appeals have taken a narrower view. *See* in *Trageser* v. *Libbie Rehabilitation Center, Inc.*, 590 F. 2d 87 (4th Cir. 1978), *cert. den.*, 442 U.S. 947 (1979); *Carmi* v. *Metropolitan St. Louis Sewer District*, No. 79–1325, — F. 2d — (8th Cir. May 6, 1980). In *Trageser* the court held that employment discrimination is prohibited by section 504 only to the extent that it is prohibited by Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d *et seq.* (1970). Title VI, which prohibits racial discrimination in programs receiving Federal financial assistance, covers employment discrimination only (1) "where a primary objective of the Federal financial assistance is to provide employment" (section 604 of Title VI, 42 U.S.C. 2000–3 (1970)), or (2) when the recipient's employment discrimination results in discrimination against the ultimate beneficiaries of the program receiving Federal financial assistance (see *Caulfield* v. *Board of Education*, 583 F. 2d 605 (2d Cir. 1978)). Neither of these factors was present in *Trageser.*

The court's decision appears to rest solely on the language of section 120(a) of the Rehabilitation Act Amendments of 1978, which provides that "the remedies, procedures, and rights set forth in title VI of the Civil Rights Act of 1964 shall be available" to persons aggrieved because of section 504 violations. Accordingly, "in the absence of legislative history to the contrary," the court held that section 120(a) of the Rehabilitation Act Amendments of 1978 incorporated the limitations of Title VI coverage as to employment discrimination. *Id.* at 89.

The court, in its analysis, did not focus on the remedial purpose of section 504 to provide broad protections to handicapped persons. Nor did the court consider the legislative histories of the Rehabilitation Act of 1973 and its subsequent amendments, which reflect the continuing congressional concern for the employment problems of handicapped persons. See, *e.g.*, S. Rep. No. 93–318, 93d Cong., 1st Sess. 18–19, 70 (1973); S. Rep. No. 93–319, 93d Cong., 1st Sess. 2, 8 (1973); H.R. Rep. No. 95–1149, 95th Cong., 2d Sess. 16, 18, 23–29, 34, 38, 42–43 (1978); S. Rep. No. 95–890, 95th Cong., 2d Sess. 8, 13, 20–21, 27, 36 (1978); H.R. Conf. Rep. No. 95–1780, 95th Cong., 2d Sess. 80–81, 94–96, 98, 102 (1978). Further, the legislative history of section 120(a), which apparently was not brought to the attention of the court, indicates that the provision was not intended to limit the scope of section 504, but was merely a legislative ratification of HEW's enforcement procedures under section 504.

Section 120(a) was originally a provision in S. 2600 (95th Cong., 2d Sess., section 118(a) (1978)), the Senate version of the Rehabilitation Amendments of 1978 reported by the Senate Committee on Human Resources on May 15, 1978. The Committee stated, with respect to section 120(a):

It is the committee's understanding that the regulations promulgated by the Department of Health, Education, and Welfare with respect to procedures, remedies, and rights under section 504 conform with those promulgated under Title VI. Thus, *this amendment codifies existing practice as a specific statutory requirement.* (Sen. Rep. No. 95–890, 95th Cong., 2d Sess. 19 (1978).) (Emphasis added)

In view of the legislative history of the Rehabilitation Act of 1973 and its amendments, HEW's administrative construction, the remedial nature of section 504 and the legislative history of section 120(a), the Department believes that the employment practices of recipients of Federal financial assistance are covered by section 504 regardless of the purpose of the assistance, and the Department's proposed regulations reflect this view (§§ 42.510–42.513).[6] However, *Trageser* is the controlling rule for Maryland, North Carolina, South Carolina, Virginia and West Virginia, the five States comprising the Fourth Circuit; and *Cermi* is the controlling law for Arkansas, Iowa, Minnesota, Missouri, Nebraska, North Dakota and South Dakota, the seven States comprising the Eighth Circuit. Accordingly, the provisions of this subpart relating to employment will be enforced in the Fourth and Eighth Circuit States only where employment is a primary objective of the Federal financial assistance or where discrimination against employees affects the beneficiaries of the assistance.

It should be noted that § 42.510(e) of the proposed rule was deleted and is now incorporated in § 42.510(a)(3) of the final rule for the reason that § 42.510(e) was largely duplicative of § 42.510(a)(3). The subpart requires that recipients make a reasonable accommodation to the known physical or mental limitations of an otherwise qualified handicapped applicant or employee. If a qualified handicapped applicant or employee is denied a job or is terminated, the burden is on the employer to show, based on the individual assessment of the applicant or employee, that the accommodation would impose an undue hardship on the operation of its program. The subpart suggests examples of reasonable accommodations (*e.g.*, job restructuring, modified work schedules, acquisition or modification of equipment or devices) (§ 42.511(b)) but recognizes that the determination of whether an accommodation presents an undue hardship depends on a case-by-case analysis weighing factors such as the overall size of the recipient's program with respect to the number of employees, number and type of facilities, and size of budget; the type of the

[6] In *Cormi* v. *Metropolitan St. Louis Sewer District, supra*, the three-judge panel adopted the view of *Trageser*. At least one Federal district court has declined to follow the *Trageser* ruling. *See*, *Hart* v. *County of Alameda*, No. C–79–0091 WHO (N.D. Cal. Sept. 5, 1979).

recipient's operation, including the composition and structure of the recipient's workforce; and the nature and cost of the accommodation needed (§ 42.511(c)(1)–(5)). The Department believes that the fact that an accommodation's cost would be more than nominal does not by itself justify refusal of the accommodation.

The use of the "reasonable accommodation/undue hardship" standard in determining the issue of reasonable accommodation is drawn from the HEW section 504 rule (45 CFR 84.12(a), (c)) and represents a change from the language (but not the substance) of the Department's proposed rule. Some commentators believed the Department's departure from the HEW language in order to broaden the concept of reasonable accommodation resulted in weakening that standard. In the interest of eliminating this perception and to promote uniformity, the Department has adopted the HEW language.

The proposed rule places an obligation on the recipient to use job-related tests or other job-related selection criteria which screen out the fewest qualified handicapped persons and to "administer tests using procedures (*e.g.*, auxiliary aids such as readers for visually-impaired persons or qualified interpreters for hearing-impaired persons) which accommodate the special problems of handicapped persons to the fullest extent, consistent with the objectives of the test" (§ 42.512). Thus an oral test given to an applicant with a speech impediment would be improper where the essential functions of the job do not require clear speech. Where physical agility and visual acuity are necessary to perform the essential functions of a job, tests measuring those factors are permitted. To further clarify this obligation the Department has, at the recommendation of several commentators, added language to § 42.512 drawn from the HEW section 504 rule (see 45 CFR 84.13(b)) to the effect that tests are to measure job qualifications and not impaired sensory, manual, or speaking skills, except where those skills are the factors that the test purports to measure.

A recipient is prohibited from making pre-employment inquiry regarding an applicant's physical or mental handicaps except where the recipient is taking remedial or voluntary action under § 42.505(a) or (b) of this subpart, affirmative action under section 503 of the Act, or conducting a permissible pre-employment physical examination. Under such circumstances, response to the inquiries must be voluntary and certain safeguards (*e.g.*, confidentiality) must be maintained by the employer (§ 42.513(b)). Recipients may, of course, inquire about an applicant's ability to perform job-related functions. Accordingly, for example, questions regarding the ability to drive a car, shoot a gun, or work steadily over long periods of time or in situations of emergency or stress are proper questions for the job of police officer, while questions as to whether the applicant has epilepsy or a heart condition are not permitted. An employer may, of course, ask whether the applicant can perform a particular job without endangering the applicant or others. Further, an application form containing a checklist of diseases and conditions is not permitted. However, nothing in this subpart prohibits an employer from setting forth validated medical requirements in recruitment material. Medical examinations are permitted, after a conditional job offer has been made, if the examinations are administered to all entering employees in a nondiscriminatory manner and the results are treated on a confidential basis (§§ 42.513(a) and (b)). An applicant can only be considered to have failed a medical examination if the applicant's medical condition, even with reasonable accommodation, would prevent the applicant from performing the essential functions of the job.

The ban on pre-employment inquiry regarding physical or mental handicaps is required under the HEW standards for the development of Federal agency section 504 regulations. See 45 CFR 85.55, 43 FR 2132, 2138 (January 13, 1978). Its purpose is to insure that job decisions are not infected with non-job related considerations. For example, an applicant for the position of police officer completes the application process, the written examination, and the oral interview satisfactorily and is offered the position conditioned on the successful completion of a medical examination. The medical exam reveals that the applicant has a history of epilepsy. At this point the police department must make a decision whether the behavioral manifestations of the applicant's particular handicap would prevent the applicant from performing the essential functions of the job.

One virtue of this standard is that it makes it possible to determine whether the reason for not hiring a handicapped person is because of handicap. We also believe that legitimate purposes for obtaining such information are fulfilled as well at this later stage in the hiring process.

The misunderstanding of this section apparent in many comments makes it important to emphasize again that this provision does not prohibit taking job-related conditions into account in making employment decisions, nor does it preclude a recipient from obtaining information as to such conditions. It merely affects the time at which and the manner in which the information may be obtained. (HEW Final Rule, Implementation of Executive Order 11914, 43 FR 2132, 2135, January 13, 1978).

Of course, where pre-employment job-related questions disclose an inability to perform a job as a result of a handicap, a decision not to employ may be made on that basis. Where recipients conduct extensive background security checks for prospective employees, a conditional offer of employment could be made contingent upon successfully passing both a medical examination and background check. The medical examination could occur first and if the applicant did not pass it, there would be no need for the background check. The results of the medical examination must, of course, remain confidential and could not be given to the person conducting the background check.

C. Physical and Other Accessibility to Programs

The subpart prohibits the exclusion of qualified handicapped persons from Federally assisted programs because a recipient's facilities are not readily accessible or usable. The recipient is not required to have each of its existing facilities or every part of a facility accessible to and usable by handicapped persons. The requirement is that the program, when viewed in its entirety, must be readily accessible to and usable by handicapped persons. Structural changes may be unnecessary where other less costly or burdensome methods may be equally effective. Whatever method is chosen to meet physical accessibility and usability requirements, it is essential that Federally assisted programs be offered to qualified handicapped persons in the most integrated setting appropriate to obtain the full benefits of the program (§ 42.521(b)). (As used below, the term "accessibility" incorporates "usability."

Physical accessibility is probably the area of greatest concern to recipients because of the perceived economic cost associated with the elimination of such barriers. It has been HEW's experience that its recipients have erroneously exaggerated the actual cost of compliance due, in part, to a misunderstanding of the extent to which structural changes are requred under section 504.[7] The following illustrations may serve to underscore the options available to recipients for moderating the costs of compliance while providing full program accessibility to qualified handicapped persons. These illustrations also serve to alert recipients that attaining program accessiblity need not involve the removal of all architectural barriers.

The examples which follow also set forth a number of situations in which recipients are required under this subpart to provide auxiliary aids (§ 42.503(f)) to remove communications barriers that prevent accessibility to Federally assisted programs. These examples are included as the result of a number of comments which recommended that the Department provide additional guidance in this area.

1. *Law Enforcement Agencies.* These agencies include municipal police departments, sheriffs' offices, state highway patrols, regional law enforcement agencies, campus police and fire protection agencies. Such agencies, as recipients of Department assistance, must make the programs they operate readily accessible to the handicapped beneficiaries of the programs (*e.g.*, the general public the law enforcement agency is required to serve). With respect to members of the general public who require police assistance, an initial question regarding program accessibility is, for example, whether a wheelchair user requires physical accessibility to the law enforcement agency to obtain the benefits of the agency's programs. Frequently, requests for assistance are initiated by telephone, and law enforcement assistance is often provided away from the agency's facility. Some law enforcement operations ordinarily require citizens to appear at the law enforcement agency's facility (*e.g.*, obtaining a gun license;

[7] *A Summary of Information On The Costs To All HEW Grantees of Achieving Program Accessibility Under Section 504 Of The Rehabilitation Act.* Office of the Secretary, Department of Health, Education and Welfare (July 11, 1979).

viewing a line-up; examining physical evidence). However, with respect to wheelchair users or others having severe mobility-related handicaps, law enforcement agencies could accommodate the physical limitations of such persons by making home visits or visits to alternate accessible sites. Whether such special accommodations in all cases would enable those with severe mobility-related handicaps to participate effectively in the benefits of a law enforcement agency's programs would depend upon the nature of the benefit provided. While the subpart requires that services be provided in the most integrated setting appropriate, that standard has no apparent application where the service provided is essentially personal (one-on-one) rather than general (*e.g.*, educational programs).

Law enforcement agencies should provide for the availability of qualified interpreters (certified, where possible, by a recognized certification agency) to assist the agencies when dealing with hearing-impaired persons. Where the hearing-impaired person uses American Sign Language for communication, the term "qualified interpreter" would mean an interpreter skilled in communicating in American Sign Language. It is the responsibility of the law enforcement agency to determine whether the hearing impaired person uses American Sign Language or Signed English to communicate.

If a hearing-impaired person is arrested, the arresting officer's *Miranda*[8] warning should be communicated to the arrestee on a printed form approved for such use by the law enforcement agency where thee is no qualified interpreter immediately available and communication is otherwise inadequate. The form should also advise the arrestee that the law enforcement agency has an obligation under Federal law to offer an interpreter to the arrestee without cost and that the agency will defer interrogation pending the appearance of an interpreter.

Law enforcement agencies are also required to install TTY's or equivalent mechanisms (as the technology advances) to enable persons with hearing and speaking impairments to communicate effectively with such agencies. Law enforcement agencies may be hooked up to a central TTY number shared by a number of public agencies if experience shows that this procedure does not materially delay the transmittal of emergency communications to the agencies.

2. *Detention and Correctional Agencies and Facilities.* These agencies include jails, prisons, reformatories and training schools, work camps, reception and diagnostic centers, pre-release and work release facilities, and community-based facilities. Where local or State policy prohibits the detention or incarceration of wheelchair users, no structural modification to detention or correctional facilities to accommodate wheelchair users is required. Where there is no such exclusionary policy, structural modifications may be unnecessary where alternate accessible facilities are available (*e.g.*, short term detention in the prisoner's home or at a medical facility). Where local policy precludes alternate detention facilities, a detention agency would be required to make structural modifications to accommodate detainees or prisoners in wheelchairs. In such circumstances, however, not every detention facility of the agency would have to become accessible. Only a sufficient number of detention cells need be accessible to wheelchair users as can be reasonably expected to be detained based on the agency's prior experience. A different problem arises, however, when accessibility requirements are imposed on small, independently operated community based facilities used, for example, for the placement of juveniles in a home setting. A metropolitan area may have a number of such homes. Each such home receiving assistance from the Department with fewer than fifteen employees is not required to be accessible to handicapped persons as long as a sufficient number of homes are accessible in the service area. If a home, after consultation with the handicapped person concerned, determines that its facilities are not accessible to such person because of the person's handicapping condition, it is the responsibility of the home to locate an accessible home providing equivalent services (§ 42.522(c)).

All detention and correctional agencies must provide accessibility for handicapped visitors (*e.g.*, accessible visiting rooms, restrooms) since the prisoner's right to receive visitors is an element of the program administered by the agencies. Where a facility's visitation area is inaccessible to the handicapped, a detention or correctional agency has the option to (a) house the prisoner in a facility which is accessible to handicapped visitors, (b) move the prisoner to an alternate, accessible area either within or outside the facility for visits from wheelchair users, (c) make structural modifications to make the visitation area accessible. It should be kept in mind that the benefit provided is the right to visit rather than the right to visit in any particular area.

Facilities available to all inmates or detainees, such as classrooms, infirmary, laundry, dining areas, recreation areas, work areas, and chapels, must be readily accessible to any handicapped person who is confined to that facility. Beyond insuring the physical accessibility of facilities, detention and correctional agencies must insure that their programs and activities are accessible to handicapped persons. For example, correctional agencies should provide for the availability of qualified interpreters (certified, where possible, by a recognized certification agency) to enable hearing impaired inmates to participate on an equal basis with nonhandicapped inmates in the rehabilitation programs offered by the correctional agencies (*e.g.*, educational programs).

Correctional officials should take into account any handicaps which inmates may have in classifying them. In making housing and program assignments, such officials must be mindful of the vulnerability of some handicapped inmates to physical and other abuse by other inmates. The existence of a handicap alone should not, however, be the basis for segregation of such inmates in institutions or any part thereof where other arrangements can be made to satisfy safety, security and other needs of the handicapped inmate.

3. *Court Agencies.* These agencies include State and local court systems. Wheelchair users may participate in court trials as judges, jurors, plaintiffs, defendants, witnesses or be present as spectators. Full accessibility is required for such participants.

Where a county has but one courtroom situated on the third floor of a country courthouse having no elevator, and where one of the participants in a trial is a wheelchair user, the court has the following options: (a) moving the court, for the duration of the trial, to accessible quarters in or outside of the courthouse; (b) moving the court permanently to existing accessible quarters; or (c) making those structural modifications in the existing courtroom necessary to provide accessibility to the handicapped participant.

In a large court system, where there are numerous courtrooms, cases involving wheelchair users can be assigned to a courtroom that has been made fully accessible. There is no requirement that all courtrooms be made fully accessible, although it would appear that areas of all courtrooms set aside for the general public should be readily accessible to wheelchair users.

Court systems receiving Federal financial assistance shall provide for the availability of qualified interpreters for civil and criminal court proceedings involving persons with hearing or speaking impairments. (Where a recipient has an obligation to provide qualified interpreters under this subpart the recipient has the corresponding responsibility to pay for the services of the interpreter).

Where the courts provide specialized assistance with respect to court proceedings, the courts are required to insure that handicapped persons are able to participate in such assistance on an equal basis with nonhandicapped persons. For example, in cases where the courts appoint counsel for indigents, the courts under this subpart are also required to assign qualified interpreters (certified, where possible, by recognized certification agencies) in cases involving indigent defendants with hearing or speaking impairments to aid the communication between client and attorney. The availability of interpreting services to the indigent defendant would be required for all phases of the preparation and presentation of the defendant's case. The courts may establish some reasonable guidelines on the use of interpreter services that would not adversely affect the ability of the defendant and the defendant's attorney to develop and present the defendant's case. Caution should be exercised that the guidelines reflect the requirement of section 504 and this subpart that handicapped persons received access to programs receiving Federal financial assistance equal to that of nonhandicapped persons.

While handicapped participants in trials may require appropriate auxiliary aids depending on the nature of the handicap, courts would not be required to provide such aids to participants for purposes unconnected with the litigation process. For example,

[8] *Miranda* v. *Arizona*, 384 U.S. 436 (1966).

where medically necessary, a defendant with a severe heart condition would have the right to have a qualified attendant provided by the court during the defendant's appearance in court or elsewhere pursuant to an order of the court (*e.g.*, a subpoena), but not at the defendant's customary place of residence.

Court witnesses with hearing or speaking impairments have the right, independent of the rights of defendants, to have interpreters available to them for their testimony.

4. *Prosecution and Defense Agencies.* Prosecution agencies include State attorneys general and district, county and city attorneys. The programs administered by such agencies must be readily accessible to handicapped persons. As with other programs assisted by the Department, such agencies need not make structural changes in the facilities where there are feasible options (*e.g.*, home visits, delivery of services at alternate accessible sites) for providing the full benefits of the program to handicapped beneficiaries.

New facilities and altered portions of existing facilities must be designed and constructed in such manner as to make them readily accessible to handicapped persons if groundbreaking begins after the effective date of this subpart (§ 42.522). It is not necessary that all cells or housing units in new detention and correctional facilities be constructed to accommodate handicapped detainees or inmates. Only a sufficient percentage of the cells or housing units need be accessible and usable by handicapped persons as can reasonably be expected to be incarcerated based on the history of the handicapped detainee or inmate population in the recipient's jurisdiction. If there is a local or State policy not to incarcerate wheelchair users in its institutions, this subpart would not require creation of prison cells accessible to wheelchair users. If, however, a sufficient number of cells or housing units is not available at any particular time to house all handicapped inmates or detainees, it would be a violation of this subpart to place a handicapped person in a cell which is not accessible to such person. In such exceptional circumstances, assignment of aides to assist the handicapped person may suffice to make additional cells usable.

D. Southeastern Community College v. Davis, 442 U.S. 397 (1979).

This subpart requires that (1) employers make reasonable accommodation to the handicaps of qualified handicapped applicants or employees, and that (2) programs be readily accessible to and usable by qualified handicapped persons. These requirements must be read in the light of *Southeastern Community College* v. *Davis*, 442 U.S. 397 (1979), where the Supreme Court first considered the reach of section 504 of the Rehabilitation Act.

Davis held that section 504 did not require the petitioner college to make fundamental alterations to its registered nurses' training program in order to accommodate the severe hearing loss of respondent who had applied for admission to the program as a student. The Court held that the respondent failed to meet the legitimate and necessary physical requirements of the program, established by petitioner, and, hence, was not qualified to participate in the program. The Court noted that the section 504 regulations of the Department of Health, Education, and Welfare (45 CFR § 84.3(k)(3) (1978)) reinforced the Court's conclusion that the respondent was not qualified to be a student in petitioner's training program. *Id.* at 406. Section 84.3(k)(3) of Title 45 provides that, as to postsecondary and vocational services, a "qualified handicapped person" means "a or participation in the recipient's educational program or activity." An explanatory note to the HEW regulations defines "technical standards" as "all nonacademic admissions criteria * * * essential to participation in the program in question." 45 CFR Part 84, App. A, at p. 405.

While the HEW section 504 regulations relating to postsecondary education require recipients to modify any academic requirements that might discriminate against qualified handicapped persons and, further, require the provision of educational "auxiliary aids" (*e.g.*, taped texts, interpreters, classroom equipment, readers in libraries) (45 CFR 84.44 (a), (d)) where necessary to avoid discrimination, the Court noted these regulatory provisions did not require fundamental programmatic and personal service adjustments needed by the respondent.

First, the Court noted that petitioner's training program required "the ability to understand speech without reliance on lipreading" to ensure "patient safety during the clinical phase of the program," and that the respondent would require the "close individual attention by a nursing instructor" in order to participate effectively in clinical work. *Id.* at 407, 409. However, the HEW regulation requiring auxiliary aids specifically excludes "attendants, individually prescribed devices, readers for personal use or other study, or other devices or services of a personal nature." 45 CFR 84.44(d)(2). Accordingly, in the Court's view, the law did not require the petitioner to provide respondent with an attendant nursing instructor since, in the context of a clinical program where each student would be required to deal individually with patients, this would have constituted "services of a personal nature." Hence the respondent could not qualify for the clinical segment of the training program and would be confined to taking academic courses only.

Second, academic "modifications" set forth in the HEW regulation include (but are not necessarily limited to):

changes in the length of time permitted for the completion of degree requirements, substitution of specific courses required for the completion of degree requirements, and adaptation of the manner in which specific courses are conducted (45 CFR 84.44).

However, as the Court saw it, such required modifications did not encompass a curricular change which waived effective participation in a critical component of a degree program in registered nursing. "Whatever benefits respondent might realize from such a course of study, she would not receive even a rough equivalent of the training a nursing program normally gives." *Id.* at 410.

While rejecting respondent's gloss on section 504 and HEW's implementing regulations, the Court inferentially upheld the HEW regulation mandating modification in admission criteria for qualified handicapped persons by noting that "situations may arise where a refusal to modify an existing program might become unreasonable and discriminatory." *Id.* at 412–13.

This subpart is consistent with the holding in *Davis* for it prohibits discrimination only against qualified handicapped persons in the Department's Federally assisted programs and activities. Section 42.540(1) defines "qualified handicapped persons" as follows:

(1) With respect to employment, a handicapped person who, with reasonable accommodation, can perform the essential functions of the job in question.

(2) With respect to services, a handicapped person who meets the essential eligibility requirements for the receipt of such services.

The critical consideration in determining whether a handicapped person qualifies for participation in a program or activity receiving assistance from the Department is whether a particular physical or mental ability is a necessary prerequisite for effective participation, or whether that ability is only said to be necessary because a recipient of Federal funds has not given adequate consideration to the ways in which stated requirements may be modified in order to permit participation by handicapped persons.

E. Procedures

The Department has adopted the Title VI complaint and enforcement procedures for use in implementing section 504 except that OJARS will not be required to obtain the Attorney General's approval before the imposition of any sanctions against a recipient. This is consistent with OJARS' practice in enforcing the civil rights provisions of the Omnibus Crime Control and Safe Streets Act, as amended by the Justice System Improvement Act of 1979, Pub. L. 96–157, sec. 815(c), 93 Stat. 1206.

In conformity with HEW's Policy Interpretations 1 and 2 (43 FR 18631 (May 1, 1978)), the 180-day time limitation for filing complaints (§ 42.107 of this Title) alleging discriminatory acts which occurred prior to the effective date of this subpart will not begin to run until that date (§ 42.530(d)). Further, the Department will investigate alleged discriminatory acts which occurred and ended prior to the effective day of this subpart where it is shown that the language of section 504 of HEW's interagency guidelines (43 FR 2132, January 13, 1978) implementing Executive Order 11914 (41 FR 17871, April 28, 1976) provided sufficient notice that the challanged activity was unlawful (§ 42.530(e)).

As to remedies, section 120(a) of the Rehabilitation Act Amendments of 1978 authorizes the payment of attorneys' fees to the prevailing party "in any action or proceeding to enforce or charge a violation of this title" (Title V). Accordingly, it is clear that there is a private right of action under section 504. "The availability of attorneys' fees should assist in vindicating private rights of action * * * arising under section * * *

504." Sen. Rep. No. 95–890, 95th Cong., 2d Sess. (1978). *Cf., Cannon* v. *University of Chicago*, 441 U.S. 677 (1979). Nothing in this subpart requires the referral of a complaint against a recipient to the Department for action as a legal prerequisite for filing a lawsuit against the recipient.

The term "recipient" (§ 42.540(e)) in LEAA programs includes State and local governments, Criminal Justice Councils, Local Offices, criminal justice coordinating councils, nonprofit institutions, contractors, under grants and any other recipient of LEAA funds. Recipients in Federal Bureau of Investigation programs include law enforcement agencies serving municipalities, counties or States. Recipients in Federal assistance programs of the National Institute of Corrections of the Bureau of Prisons include States, general units of local government, as well as public and private agencies, educational institutions and organizations and individuals involved in the development, implementation or operation of correctional programs and services. Recipients in Drug Enforcement Administration programs include State and local governments, officials of law enforement agencies and forensic laboratories. A recipient not only includes a primary recipient (*i.e.*, a recipient which receives Federal financial assistance from a Federal agency directly) but also a second-tier recipient (*i.e.*, a recipient which receives Federal financial assistance through the primary recipient). The term does not include the ultimate beneficiaries of the program (*i.e.*, those for whom the Federal financial assistance is designed to benefit).

The term "Federal financial assistance" (§ 42.540(f)) includes any arrangement by which the Department provides or makes available funds, property, services, or anything of value by way of grants, contracts, loans or cooperative agreements including subgrants and contracts under grants. It does not include licenses, for example, since licenses are not Federal assistance grants, contracts, loans or cooperative agreements. Nor does the term include direct Federal procurement contracts. Procurement contracts are generally used whenever the principal purpose of the transaction is the acquisition by purchase, lease, or barter, of property or services for the direct benefit or use of the Federal Government. Federal assistance contracts, grants, loans and cooperative agreements are used whenever the principal purpose of the transaction is to accomplish a public purpose authorized by Federal statute.

A "program" (§ 42.540(h)) includes any activity or facility receiving Federal financial assistance whether such benefits are provided directly with the aid of Federal financial assistance or with the aid of any non-Federal assistance required to meet the conditions of Federal financial assistance. The term "program" includes activities where payments are made by a Federal agency to ultimate beneficiaries on condition of their participation in a program conducted by a recipient. The receipt of Federal financial assistance by, for example, a law enforcement agency or department of corrections, makes section 504 and this subpart applicable to all operations of the recipient agency or department although the Federal financial assistance may have been used in only certain of the activities or operations of the agency or department.

Drug and alcohol abuse are "physical or mental impairments" within the meaning of section 7(6) of the Rehabilitation Act of 1973, as amended. Accordingly, drug and alcohol abusers are handicapped under section 504 if their impairment substantially limits one of their major life activities (§ 42.540(k)(2)(i)(C)). "Drug abuse" in this subpart is defined as (1) the *use* of any drug or substance listed by the Department (21 CFR 1308.11) under authority of the Controlled Substances Act (21 U.S.C. 801), as a controlled substance unavailable for prescription, or (2) the *misuse* of any drug or substance listed by the Department (21 CFR 1308.12–15) as a controlled substance available for prescription. Examples of (1) include certain opiates and opiate derivatives (*e.g.*, heroin) and hallucinogenic substances (*e.g.*, marihuana, mescaline, peyote) and depressants (*e.g.*, methaqualone). Examples of (2) include opium, coca leaves, methadone, amphetamines and barbiturates.

While Congress did not specifically address the problems of drug and alcohol abuse in enacting section 504, the committees which considered the Rehabilitation Act of 1973 were made aware of HEW's long-standing practice of treating drug and alcohol abusers as eligible for rehabilitation services under the Vocational Rehabilitation Act. Further, Congress has expressed its concern regarding discrimination against drug and alcohol abusers by providing that a person may not be denied Federal civilian employment or a Federal license solely on the ground of prior drug abuse (Drug Abuse Office and Treatment Act of 1972, 21 U.S.C. 1101, 1180(c)(1) or prior alcohol abuse or alcoholism) (Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act of 1970, 42 U.S.C. 4541, 4561(c)(1)). These nondiscrimination provisions cover the employment practices of all Federal law enforcement agencies with the exception of the national security agencies (*i.e.*, the Federal Bureau of Investigation, the Central Intelligence Agency and the National Security Agency, and positions designated as sensitive in other agencies for purposes of national security). Of course, section 504 covers present drug and alcohol use as well (*e.g.*, legal methadone maintenance). An individual who is otherwise qualified could not be excluded, for example, from a job in a program receiving Federal financial assistance solely because the applicant's current drug or alcohol use is allegedly a handicapping condition, unless it is shown that such drug and alcohol use impairs the applicant's ability to perform the job in question.

In section 122(a)(6) of the Rehabilitation Act Amendments of 1978, Congress specifically provided that, with respect to employment covered by section 504, the term handicapped individual "does not include any individual who is an alcoholic or drug abuser whose current use of alcohol or drugs prevents such individual from performing the duties of the job in question or whose employment, by reason of such current alcohol or drug abuse, would constitute a direct threat to property or the safety of others." This amendment, in effect, made no substantive change in section 504 protections because persons whose current use of drugs and alcohol resulted in such behavioral characteristics would have been disqualified for employment even prior to the amendment. But the amendment does under-score the fact that this subpart does not require employers or program administrators to ignore drug and alcohol abuse in making determinations whether a handicapped individual is qualified for employment or other participation in a Federal assistance program. The subpart holds only that handicapped persons, as well as others, should be assessed on the basis of their behavior. A recipient employer may consider for all applicants, including drug and alcohol abusers, past personnel records, absenteeism, disruptive, abusive or dangerous behavior, violations of the law or work rules, or unsatisfactory work performance. Where such factors are absent, the fact that an individual once abused drugs or alcohol does not permit an employer to assume that a danger to safety would result in employing the person.

This subpart does not preclude a recipient employer from rejecting a handicapped applicant for legitimate reasons other than his or her handicap. For example, a recipient employer is not required to hire as a law enforcement officer a drug abuser who continues to violate laws prohibiting the use, possession or sale of drugs if the rejection is based on the violation of the law and not the handicap.

In the case of past drug abuse, each case must be judged on its own merits. With respect to employment, employers may weigh the following:

(1) patterns of use;

(2) kind of drug used;

(3) for each kind of drug used, the date started and the last date used;

(4) circumstances at the start of drug use;

(5) circumstances at the time of discontinuance of drug use;

(6) nature of treatment and prognosis;

(7) social behavior and attitude since discontinuance of drug use;

(8) history of previous rehabilitation efforts.

Many of these same factors would be relevant in assessing the employability of those with records of past alcohol abuse.

Some commentators expressed concern that the Department's discussion of drug and alcohol abuse which accompanies the Department's proposed rule suggested that, unlike other handicapping conditions, the Department would permit pre-employment inquiry into drug and alcohol abuse. That preception is erroneous. Section 42.513 of this subpart generally prohibits a recipient's pre-employment inquiry regarding an applicant's physical or mental handicaps. The same standard is applicable to a recipient's inquiry regarding an applicant's current or past drug or alcohol use or abuse. A recipient, of course, may condition an offer of employment on the results of a medical examination given to all applicants. Once a recipient makes such a conditional offer, inquiry regarding drug and alcohol use, like any other handicap, may be made as part of the medical examination. If the outcome of the medical examination results in the withdrawal of the offer of employment, it is clear that the reason for not hiring the applicant is because of handicap, real or perceived. Accordingly, the recipient would then be required to justify such action under the relevant provisions of this subpart.

Some commentators were concerned that inquiry into past drug abuse at any stage of the employment process would discourage persons with drug abuse backgrounds from seeking employment and would serve as a basis for employer rejection of such applicants. That possibility, of course, exists for all job applicants with handicapping conditions, and there is no basis for making an exception with respect to drug and alcohol abuse. Further, the listing of the above suggested factors which employers may weigh in this subpart regarding an applicant with a drug use or abuse background is not an attempt by the Department to single out this handicapping condition for more intensive scrutiny than other handicapping conditions, but only an effort to establish useful guidelines in determining the employability of an applicant with a drug use of abuse background. These are the same factors used by Federal agencies in implementing the nondiscrimination provision of the Drug Abuse Office and Treatment Act of 1972 which prohibits the denial of Federal civilian employment solely on the ground of prior drug abuse.

F. Request for Comments

In its Notice of Proposed Rulemaking the Department requested comment on certain issues (44 FR 54957-58). To the extent these matters are not already addressed in the above analysis, they remain under review by the Department.

Appendix C—Department Regulations Under Title VI of the Civil Rights Act of 1964 (28 CFR 42.106-42.110) Which Apply to This Subpart

§ 42.106 Compliance information.

(a) *Cooperation and assistance.* Each responsible Department official shall, to the fullest extent practicable, seek the cooperation of recipients in obtaining compliance with this subpart and shall provide assistance and guidance to recipients to help them comply voluntarily with this subpart.

(b) *Compliance reports.* Each recipient shall keep such records and submit to the responsible Department official or his designee timely, complete, and accurate compliance reports at such times, and in such form and containing such information, as the responsible Department official or his designee may determine to be necessary to enable him to ascertain whether the recipient has complied or is complying with this subpart. In general, recipients should have available for the Department racial and ethnic data showing the extent to which members of minority groups are beneficiaries of federally assisted programs. In the case of any program under which a primary recipient extends Federal financial assistance to any other recipient or subcontracts with any other person or group, such other recipient shall also submit such compliance reports to the primary recipient as may be necessary to enable the primary recipient to carry out its obligations under this subpart.

(c) *Access to sources of information.* Each recipient shall permit access by the responsible Department official or his designee during normal business hours to such of its books, records, accounts, and other sources of information, and its facilities, as may be pertinent to ascertain compliance with this subpart. Whenever any information required of a recipient is in the exclusive possession of any other agency, institution, or person and that agency, institution, or person fails or refuses to furnish that information, the recipient shall so certify in its report and set forth the efforts which it has made to obtain the information.

(d) *Information to beneficiaries and participants.* Each recipient shall make available to participants, beneficiaries, and other interested persons such information regarding the provisions of this subpart and its applicability to the program under which the recipient receives Federal financial assistance, and make such information available to them in such manner, as the responsible Department official finds necessary to apprise such persons of the protections against discrimination assured them by the Act and this subpart. [Order No. 365-66, 31 FR 10265, July 29, 1966, as amended by Order No. 519-73, 38 FR 17955, July 5, 1973]

§ 42.107 Conduct of investigations

(a) *Periodic compliance reviews.* The responsible Department official or his designee shall from time to time review the practices of recipients to determine whether they are complying with this subpart.

(b) *Complaints.* Any person who believes himself or any specific class of individuals to be subjected to discrimination prohibited by this subpart may by himself or by a representative file with the responsible Department official or his designee a written complaint. A complaint must be filed not later than 180 days from the date of the alleged discrimination, unless the time for filing is extended by the responsible Department official or his designee.

(c) *Investigations.* The responsible Department official or his designee will make a prompt investigation whenever a compliance review, report, complaint, or any other information indicates a possible failure to comply with this subpart. The investigation should include, whenever appropriate, a review of the pertinent practices and policies of the recipient, the circumstances under which the possible noncompliance with this subpart occurred, and other factors relevant to a determination as to whether the recipient has failed to comply with this subpart.

(d) *Resolution of matters.* (1) If an investigation pursuant to paragraph (c) of this section indicates a failure to comply with this subpart, the responsible Department official or his designee will so inform the recipient and the matter will be resolved by informal means whenever possible. If it has been determined that the matter cannot be resolved by informal means, action will be taken as provided for in § 42.108.

(2) If an investigation does not warrant action pursuant to paragraph (d)(1) of this section, the responsible Department official or his designee will so inform the recipient and the complainant, if any, in writing.

(e) *Intimidatory or retaliatory acts prohibited.* No recipient or other person shall intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or priviledge secured by section 601 of the Act or this subpart, or because he has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this subpart. The identity of complainants shall be kept confidential except to the extent necessay to carry out the purpose of this subpart, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder.

(Order No. 368-66, 31 FR 10265, July 29, 1966, as amended by Order No. 519-73, 38 FR 17955, July 5, 1973)

§ 42.108 Procedure for effecting compliance.

(a) *General.* If there appears to be a failure or threatened failure to comply with this subpart and if the noncompliance or threatened noncompliance cannot be corrected by informal means, the responsible Department official may suspend or terminate, or refuse to grant or continue, Federal financial assistance, or use any other means authorized by law, to induce compliance with this subpart. Such other means include, but are not limited to, (1) appropriate proceedings brought by the Department to enforce any rights of the United States under any law of the United States (including other titles of the Act), or any assurance or other contractural undertaking, and (2) any applicable proceeding under State or local law.

(b) *Noncompliance with assurance requirement.* If an applicant or recipient fails or refuses to furnish an assurance required under § 42.105, or fails or refuses to comply with the provisions of the assurance it has furnished, or otherwise fails or refuses to comply with any requirement imposed by or pursuant to Title VI or this subpart, Federal financial assistance may be suspended, terminated, or refused in accordance with the procedures of Title VI and this subpart. The Department shall not be required to provide assistance in such a case during the pendency of administrative proceedings under this subpart, except that the Department will continue assistance during the pendency of such proceedings whenever such assistance is due and payable pursuant to a final commitment made or an application finally approved prior to the effective date of this subpart.

(c) *Termination of or refusal to grant or to continue Federal financial assistance.* No order suspending, terminating, or refusing to grant or continue Federal financial assistance shall become effective until (1) the responsible Department official has advised the applicant or recipient of his failure to comply and has determined that compliance cannot be secured by voluntary means, (2) there has been an express finding on the record, after opportunity for hearing, of a failure by the applicant or recipient to comply with a requirement imposed by or pursuant to this subpart, (3) the action has been approved by the Attorney General pursuant to § 42.110, and (4) the expiration of 30 days after the Attorney General has filed with the committee of the House and the committee of the Senate having legislative jurisdiction over the program involved, a full written report of the circumstances and the grounds for such action. Any action to suspend or terminate or to refuse to grant or to continue Federal financial assistance shall be limited to the particular political entity, or part thereof, or other applicant or recipient as to whom such a finding has been made and shall be limited in its effect to the particular program, or part thereof, in which such noncompliance has been so found:

(d) *Other means authorized by law.* No action to effect compliance by any other means authorized by law shall be taken until (1) the responsible Department official has determined that compliance cannot be secured by voluntary means, (2) the action has been approved by the Attorney General, and (3) the recipient or other person has been notified of its failure to comply and of the action to be taken to effect compliance.

§ 42.109 Hearings.

(a) *Opportunity for hearing.* Whenever an opportunity for a hearing is required by § 42.108(c), reasonable notice shall be given by registered or certified mail, return receipt requested, to the affected applicant or recipient. That notice shall advise the applicant or recipient of the action proposed to be taken, the specific provision under which the proposed action against it is to be taken, and the matters of fact or law asserted as the basis for that action. The notice shall (1) fix a date, not less than 20 days after the date of such notice, within which the applicant or recipient may request that the responsible Department official schedule the matter for hearing or (2) advise the applicant or recipient that a hearing concerning the matter in question has been scheduled and advise the applicant or recipient of the place and time of that hearing. The time and place so fixed shall be reasonable and shall be subject to change for cause. The complainant, if any, shall be advised of the time and place of the hearing. An applicant or recipient may waive a hearing and submit written information and argument for the record. The failure of an applicant or recipient to request a hearing under this paragraph or to appear at a hearing for which a date has been set shall be deemed to be a waiver of the right to a hearing afforded by section 602 of the Act and § 42.108(c) and consent to the making of a decision on the basis of such information as is available.

(b) *Time and place of hearing.* Hearings shall be held at the offices of the Department in Washington, D.C., at a time fixed by the responsible Department official, unless he determines that the convenience of the applicant or recipient or of the Department requires that another place be selected. Hearings shall be held before the responsible Department official or, at his discretion, before a hearing examiner designated in accordance with 5 U.S.C. 3105 and 3344 (section 11 of the Administrative Procedure Act).

(c) *Right to counsel.* In all proceedings under this section, the applicant or recipient and the Department shall have the right to be represented by counsel.

(d) *Procedures, evidence, and record.* (1) The hearing, decision, and any administrative review thereof shall be conducted in fonformity with 5 U.S.C. 554–557 (sections 5–8 of the Administrative Procedure Act), and in accordance with such rules of procedure as are proper (and not inconsistent with this section) relating to the conduct of the hearing, giving of notices subsequent to those provided for in paragraph (a) of this section, taking of testimony, exhibits, arguments and briefs, requests for findings, and other related matters. Both the Department and the applicant or recipient shall be entitled to introduce all relevant evidence on the issues as stated in the notice for hearing or as determined by the officer conducting the hearing.

(2) Technical rules of evidence shall not apply to hearings conducted pursuant to this subpart, but rules or principles designed to assure production of the most credible evidence available and to subject testimony to test by cross-examination shall be applied whenever reasonably necessary by the officer conducting the hearing. The hearing officer may exclude irrelevant, immaterial, or unduly repetitious evidence. All documents and other evidence offered or taken for the record shall be open to examination by the parties and opportunity shall be given to refute facts and arguments advanced on either side of the issues. A transcript shall be made of the oral evidence except to the extent the substance thereof is stipulated for the record. All decisions shall be based upon the hearing record and written findings shall be made.

(e) *Consolidated or joint hearings.* In cases in which the same or related facts are asserted to constitute noncompliance with this subpart with respect to two or more programs to which this subpart applies, or noncompliance with this subpart and the regulations of one or more other Federal Departments or agencies issued under Title VI of the Act, the Attorney General may, by agreement with such other departments or agencies, whenever appropriate, provide for the conduct of consolidated or joint hearings, and for the application to such hearings of rules of procedure not inconsistent with this subpart. Final decisions in such cases, insofar as this subpart is concerned, shall be made in accordance with § 42.110.

[Order No. 365–66, 31 FR 10265, July 29, 1966, as amended by Order No. 519–73, 38 FR 17955, July 5, 1973]

§ 42.110 Decisions and notices.

(a) *Decisions by person other than the responsible Department official.* If the hearing is held by a hearing examiner, such hearing examiner shall either make an initial decision, if so authorized, or certify the entire record, including his recommended findings and proposed decision to the responsible Department official for a final decision and a copy of such initial decision or certification shall be mailed to the applicant or recipient. Whenever the initial decision is made by the hearing examiner, the applicant of recipient may, within 30 days of the mailing of such notice of initial decision, file with the responsible Department official his exceptions to the initial decision, with his reasons therefor. In the absence of exceptions, the responsible Department official may on his own motion, within 45 days after the initial decision, serve on the applicant or recipient a notice that he will review the decision. Upon filing of such exceptions, or of such notice of review, the responsible Department official shall review the initial decision and issue his own decision thereon including the reasons therefor. In the absence of either exceptions or a notice of review the initial decision shall constitute the final decision of the responsible Department official.

(b) *Decisions on the record or on review by the responsible Department official.* Whenever a record is certified to the responsible Department official for decision or he reviews the decision of a hearing examiner pursuant to paragraph (a) of this section, or whenever the responsible Department official conducts the hearing the applicant or recipient shall be given a reasonable opportunity to file with him briefs or other written statements of its contentions, and a copy of the final decision of the responsible Department official shall be given in writing to the applicant or recipient and to the complainant, if any.

(c) *Decisions on the record whenever a hearing is waived.* Whenever a hearing is waived pursuant to § 42.109(a), a decision shall be made by the responsible Department official on the record and a copy of such decision shall be given in writing to the applicant or recipient and to the complainant, if any.

(d) *Rulings required.* Each decision of a hearing officer or responsible Department official shall set forth his ruling on each finding, conclusion, or exception presented and shall identify the requirement or requirements imposed by or pursuant to this subpart with which it is found that the applicant or recipient has failed to comply.

(e) *Approval by Attorney General.* Any final decision of a responsible Department official (other than the Attorney General) which provides for the suspension or termination of, or the refusal to grant or continue Federal financial assistance, or the imposition of any other sanction available under this subpart or the Act, shall promptly be transmitted to the Attorney General who may approve such decision, vacate it, or remit or mitigate any sanction imposed.

(f) *Content of orders.* The final decision may provide for suspension or termination of, or refusal to grant or continue, Federal financial assistance, in whole or in part, under the program involved and may contain such terms, conditions, and other provisions as are consistent with and will effectuate the purposes of the Act and this subpart including provisions designed to assure that no Federal financial assistance will thereafter be extended under such program to the applicant or recipient determined by such decision to be in default in its performance of an assurance given by it pursuant to this subpart or to have otherwise failed to comply with this subpart unless and until it corrects its noncompliance and satisisfies the responsible Department official that it will fully comply with this subpart.

(g) *Post-termination proceedings.* (1) An applicant or recipient adversely affected by an order issued under paragraph (f) of this section shall be restored to full eligibility to receive Federal financial assistance if it satisfies the terms and conditions of that order for such eligibility or if it brings itself into compliance with this subpart and provides reasonable assurance that it will fully comply with this subpart.

(2) Any applicant or recipient adversely affected by an order entered pursuant to paragraph (f) of this section may at any time request the responsible Department official to restore fully its eligibility to receive Federal financial assistance. Any such request shall be supported by information showing that the applicant or recipient has met the requirements of paragraph (g)(1) of this section. If the responsible Department official denies any such request, the applicant or recipient may submit a request for a hearing in writing specifying why it believes such official to have been in error. It shall thereupon be given an expeditious hearing with a decision on the record, in accordance with rules of procedure issued by the responsible Department official. The applicant or recipient will be restored to such eligibility if it proves at such a hearing that it satisfied the requirements of paragraph (g)(1) of this section. While proceedings under this paragraph are pending sanctions imposed by the order issued under paragraph (f) of this section shall remain in effect.

(Order No. 365-66. 31 FR 10265 July 29, 1966, as amended by Order No. 519-73, 38 FR 17956, July 5, 1973)

Appendix D—OJARS' Regulations Under the Omnibus Crime Control and Safe Streets Act, as Amended Which Apply to This Subpart (28 CFR 42.205 and 42.206)

§ 42.205 Complaint investigation.

(a) The Administration shall investigate complaints that allege a violation of:

(1) Section 518(c)(1) of the Crime Control Act;

(2) Section 262(b) of the Juvenile Justice Act; or

(3) This subpart.

(b) No complaint will be investigated if it is received more than one year after the date of the alleged discrimination, unless the time for filing is extended by the Administrator for good cause shown.

(c) The Administration shall conduct investigations of complaints as follows:

(1) Within 21 days of receipt of a complaint the Administration shall:

(i) Ascertain whether it has jurisdiction under paragraphs (a) and (b) of this section;

(ii) If jurisdiction if found, notify the recipient alleged to be discriminating of its receipt of the complaint; and

(iii) Initiate the investigation.

(2) The investigation will ordinarily be initiated by a letter requesting data pertinent to the complaint and advising the recipient of:

(i) The nature of the complaint, and with the written consent of the complainant, the identity of the complainant.

(ii) The programs or activities affected by the complaint;

(iii) The opportunity to make, at any time prior to receipt of the Administration's findings, a documentary submission, responding to, rebutting, or denying the allegations made in the complaint; and

(iv) The schedule under which the complaint will be investigated and a determination of compliance or noncompliance made.

Copies of this letter will also be sent to the chief executive of the appropriate unit(s) of government, and to the appropriate SPA.

(3) Within 150 days or, where an onsite investigation is required, within 175 days after the initiation of the investigation, the Administration shall advise the complainant, the recipient, the chief executive(s) of the appropriate unit(s) of government, and the appropriate SPA, of:

(i) Its preliminary findings;

(ii) Where appropriate, its recommendations for compliance, and

(iii) If it is likely that satisfactory resolution of the complaint can be obtained, the opportunity to request the Administration to engage in voluntary compliance negotiations prior to the Administrator's determination of compliance or noncompliance.

(4) If, within 30 days, the Administration's recommendations for compliance are not met, or voluntary compliance is not secured, the matter will be forwarded to the Administrator for a determination of compliance or noncompliance. The determination shall be made no later than 14 days after the conclusion of the 30-day period. If the Administrator makes a determination of noncompliance with section 518(c) of the Crime Control Act, or section 262(b) of the Juvenile justice Act, the Administration shall institute administrative proceedings pursuant to § 42.210, et. seq.

(5) If the complainant or another party, other than the Attorney General, has filed suit in Federal or State court alleging the same discrimination alleged in a complaint to LEAA, and, during LEAA's investigation, the trial of that suit would be in progress. LEAA will suspend its investigation and monitor the litigation through the court docket and contacts with the complainant. Upon receipt of notice that the court has made a finding of discrimination within the meaning of § 42.210, the Administration will institute administrative proceedings pursuant to § 42.210, et seq.

(6) The time limits listed in paragraphs (c)(1) through (c)(5) of this section shall be appropriately adjusted where LEAA requests another Federal agency or another branch of the Department of Justice to act on the complaint. LEAA will monitor the progress of the matter through liaison with the other agency. Where the request to act does not result in timely resolution of the matter, LEAA will institute appropriate proceedings pursuant to this section.

§ 42.206 Compliance reviews.

(a) The Administration shall periodically conduct compliance reviews of selected recipients of LEAA assistance.

(b) The Administration shall seek to review those recipients which appear to have the most serious equal employment opportunity problems, or the greatest disparity in the delivery of services to the white and nonwhite, or male and female communities they serve. Selection for review shall be made on the basis of:

(1) The relative disparity between the percentage of minorities, or women, in the relevant labor market, and the percentage of minorities, or women employed by the recipient;

(2) The percentage of women and minorities in the population receiving project benefits;

(3) The number and nature of discrimination complaints filed against a recipient with LEAA or other Federal agencies;

(4) The scope of the problems revealed by an investigation commenced on the basis of a complaint filed with the Administration against a recipient; and

(5) The amount of assistance provided to the recipient.

(c) Within 15 days after selection of a recipient for review, the Administration shall inform the recipient that it has been selected and will initiate the review. The review will ordinarily be initiated by a letter requesting data pertinent to the review and advising the recipient of:

(1) The practices to be reviewed;

(2) The programs or activities affected by the review;

(3) The opportunity to make, at any time prior to receipt of the Administration's findings, a documentary submission responding to the Administration, explaining validating or otherwise addressing the practices under review; and

(4) The schedule under which the review will be conducted and a determination of compliance or non-compliance made.

Copies of this letter will also be sent to the chief executive of the appropriate unit(s) of government, and to the appropriate SPA.

(d) Within 150 days or, where an onsite investigation is required within 175 days after the initiation of the review, the Administration shall advise the recipient, the chief executives of the appropriate unit(s) of government, and the appropriate SPA, of:

(1) Its preliminary findings;

(2) Where appropriate, its recommendations for compliance; and

(3) The opportunity to request the Administration to engage in voluntary compliance negotiations prior to the Administrator's determination of compliance or non-compliance.

(e) If, within 30 days, the Administration's recommendations for compliance are not met, or voluntary compliance is not secured, the matter will be forwarded to the Administrator for a determination of compliance or non-compliance. The determination shall be made no later than 14 days after the conclusion of the 30-day negotiation period. If the Administrator makes a determination of non-compliance with section 518(c) of the Crime Control Act, or section 262(b) of the Juvenile Justice Act, the Administration shall institute administrative proceedings pursuant to § 42.210, et seq.

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Part V

Office of Personnel Management

Policy Agenda; Identifying Areas of Concern and Key Policy Issues

OFFICE OF PERSONNEL MANAGEMENT

Policy Agenda for the Office of Personnel Management

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: This is the first Policy Agenda for the Office of Personnel Management (OPM). It identifies the areas of concern and key policy issues which, in OPM's opinion, are likely to confront the Federal civil service and OPM in the near future, as well as some issues covering a longer span of time.

COMMENT DATE: September 2, 1980. Comments received after this date will be retained for furute consideration.

ADDRESS: Send or deliver written comments to: Director, Office of Planning and Evaluation, Room 3305, Office of Personnel Management, 1900 E St., NW., Washington, D.C. 20415.

FOR FURTHER INFORMATION CONTACT: Robert K. Summers, 202-632-6593.

SUPPLEMENTARY INFORMATION: This is the first Policy Agenda for the Office of Personnel Management (OPM). It identifies the areas of concern and specific issues on which OPM plans to concentrate its policy analysis and development efforts and resources. Civil Service Reform Act initiatives are considered to be in the implementation stage and are therefore not a part of this Policy Agenda. The Agenda will be updated periodically to reflect the resolution of current issues and to add new issues.

Office of Personnel Management.

Beverly M. Jones,

Issuance System Manager.

OPM gives notice of its Policy Agenda as follows:

Policy Agenda for the Office of Personnel Management

April 1980, Office of Personnel Management, Washington D.C. 20415.

Introduction

This is the first Policy Agenda for the Office of Personnel Management (OPM). It identifies the areas of concern and specific issues on which OPM plans to concentrate its policy analysis and development efforts and resources. Civil Service Reform Act initiatives are considered to be in the implementation stage and are therefore not a part of this Policy Agenda.

The original draft of this Agenda was circulated for comments in October 1979 to OPM executives, to Assistant Secretaries for Administration in six agencies, to ten agency Directors of Personnel, and to executive staff in the Office of Management and Budget, a total of 43 persons.

The draft was revised in accordance with comments received, and presented to OPM's Policy and Research Advisory Board. This Board, consisting of fourteen executive-level OPM officials, was established by the Director of OPM on November 1, 1979 to review and provide recommendations on major Federal personnel management issues. Between November 1979 and February 1980, this Board met four times to consider the draft Agenda. The Policy Agenda which follows reflects the judgement of the Board as to the key issues likely to confront the Federal civil service and OPM in the near future, as well as some issues covering a longer span of time.

The Agenda will be updated periodically to reflect the resolution of current issues and to add new issues. Staff support for the Policy Agenda is provided by OPM's Office of Planning and Evaluation.

The Policy Agenda is available to all interested parties. Comments and suggestions are welcome, and should be addressed to: Director, Office of Planning and Evaluation, Office of Personnel Management, 1900 E Street, NW, Washington, DC 20415.

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1. Area of Concern: Employee Benefits

Employee benefits are a major Federal personnel management concern not only because of their very substantial expense, but also because of their effect on employee morale and productivity. Benefits are becoming increasingly important in the private sector and we can expect them to become more important in the public sector as well. OPM needs constantly to review its approach to employee benefits to determine if changes are necessary to satisfy both management objectives and employee needs.

Several areas of concern in the next few years can be identified now. The proposed Compensation Reform Act focuses renewed attention on the benefits portion of the total compensation package. Unions can be expected to pay even more attention to this area than they have in the past. The dollar equivalent value of various benefits will be hotly debated. As a supplement to the present across-the-board approach, consideration could be given to tailoring benefit packages to achieve specific management objectives such as the recruitment of particularly desirable individuals into the Senior Executive Service or the retention of specialists in hard-to-fill jobs. Whether the Civil Service Retirement System should be integrated with Social Security will be a major issue, as will improvements in early retirement, disability retirement, and funding of the retirement system.

Fruitful areas for research include employee-tailored benefit packages, relocation assistance, and health care costs. Other areas, such as day-care centers, have been fully researched, but policy decisions remain to be made. Other forms of benefits or incentives which may not technically be a part of the total compensation comparability formula will also become more important as expectations concerning the quality of working life rise. These will include relocation assistance for transferred employees, improvements in occupational safety and health, and increased opportunities for flexitime, compresssed work schedules and part-time work. Union interest in influencing the scope of these and other benefits which affect the quality of work life can be expected to increase.

Following are some of the more significant policy issues in this area which have been identified at this time.

1.1 Mobility

Issue. What should the Federal Policy be with respect to employee mobility and relocation?

Background. The Cherry Hill Conference highlighted this issue as a major concern of agency managers. In recent years there has been an increasing reluctance on the part of employees, both public and private, to relocate for career advancement. Several factors influence this development, including the high cost of housing, disruption to family life, changed values with respect to achievement, and dual income families where relocation affects two jobs instead of one.

The Federal Government needs to determine whether changed attitudes towards mobility and relocation are having an adverse impact on mission accomplishment, and if so, what needs to be done to address the problem. In addition, current policies concerning reimbursement for house-hunting trips, shipping and moving expenses, temporary lodging, and payment for closing costs and lease-breaking need to be reviewed for continued relevance.

Activity Related To Issue: 1. Title: Joint OPM-GSA-OMB project to study employee mobility and relocation issue.

Estimated Completion Date: To be determined.

Current Status: Preliminary organizational stage.

2. President's Conference on Families, in which OPM will participate, may address stress on the family caused by our mobile society.

1.2 Health Care Costs

Issue. Should OPM do more to help contain health care costs of Federal employees without reducing the quality of protection?

Background. Health care costs have been growing faster than other costs in the economy. There are various proposals under consideration by Congress for containing health care costs for the general population. OPM has some leverage in containing health care costs for Federal employees through its administration of employee health plans. Suggestions to accomplish this include fostering greater competition between plans by making it easier for Federal employees to compare the benefits of different plans, a task which is not easily done now. Over 100 separate health insurance plans are available to civilian employees, and their benefits vary considerably.

OPM needs to define its role in the cost containment area and evaluate the sufficiency of current efforts to help contain Federal employees' health care costs. In 1978, the Federal Employees Health Benefits Program had receipts of $3.2 billion and payments of $3.0 billion.

Activity Related To Issue: Compensation Group to prepare policy options paper for Policy and Research Advisory Board consideration.

1.3 Early Retirement for Law Enforcement Officers, Firefighters, and Air Traffic Controllers

Issue. What legislative, regulatory, or administrative changes should be made in current policies which provide for the early retirement of law enforcement officers, firefighters, and air traffic controllers?

Background. Beginning on July 11, 1947, with the enactment of Pub. L. 80–168, the Congress passed a series of laws to provide special retirement benefits and early mandatory retirement for Federal law enforcement officers, firefighters, and air traffic controllers. The special retirement laws are based on the premise that the duties of the covered occupations generally are strenuous, arduous, and hazardous, and therefore their satisfactory performance requires youth and vigor. These laws provide approximately 55,000 Federal employees with special retirement benefits. In 1977, GAO released a report critical of the early retirement program for firefighters and law enforcement personnel. GAO said that covered employees are not retiring much earlier than employees under regular civil service retirement provisions, that coverage is being extended indiscriminately to persons whose jobs do not involve performing duties defined as duties of law enforcement or firefighter personnel per se, and that the program is too costly in light of the fact that it only marginally reduces the retirement age of firefighters and law enforcement personnel.

In 1977, the House Subcommittee on Compensation and Employee Benefits held hearings which raised additional questions concerning the early retirement program. As a result of these hearings, OPM has been reviewing the early retirement provisions for firefighters, law enforcement officers, and air traffic controllers in order to develop recommendations to Congress for improvements in the program.

Activity Related To Issue: Title: Task force on early retirement for firefighters, law enforcement officers, and air traffic controllers. Estimated Completion Date: Late 1980. Current Status: Several task force meetings have been held and additional ones are planned. The task force includes representatives from several agencies.

1.4 Sick Leave

Issue. Are there improvements which can be made to the present sick leave system?

Background. The present sick leave system has been criticized for perceived employee abuse and for costing too much money. Recommendations have been made for improving the system, but final decisions have yet to be made.

Activity Related To Issue. Compensation to prepare policy options paper for Policy and Research Advisory Board consideration.

1.5 Disability Retirement System

Issue. What improvements should be made to the present disability retirement system?

Background. The Civil Service disability retirement program has been criticized because the rate of disability retirement is higher than that experienced by Social Security, because of the relatively low rate of recovery from disability that has been experienced by the Civil Service disability retirement program, and because the disability roll has not been reduced through strict policing methods. OPM believes that improvements can be made in the system to overcome these administrative problems. Closely related issues are whether the basis and amounts of disability annuities are sufficient to sustain disabled retired employees.

Activity Related To Issue. 1. Title: Disability retirement study. Estimated Completion Date: Completed. Current Status: Comments received. Final staff report being prepared.

1.6 Retirement System Costs

Issue. What action should be taken to assure that the Civil Service Retirement system is fully funded?

Background. Annuity payments from the civil service retirement fund increased 279 percent from fiscal year 1970 to fiscal year 1978. Federal payments to the retirement fund increased about 400 percent over the same period ($11.1 billion in 1978). The unfunded liability of the fund grew by 240 percent (to a total of $180 billion) from fiscal year 1970 to fiscal year 1978.

The cost of benefits being earned by current Federal employees is not being fully funded because the present method of funding the retirement system does not give consideration to annuity cost-of-living adjustments. Ultimately, the Government must pay costs that employee contributions do not. When retirement costs are understated, the costs of Government operations and agency programs are also understated. Understatement of retirement costs may result in a tendency to adopt benefits which could jeopardize the affordability of the retirement system.

Activity Related to Issue: Title: Draft legislation to implement recommendations of the Board of Actuaries for improved funding of the Civil Service Retirement System. Estimated Completion Date: By end of FY 80.

Current Status: Preparation of draft legislation is in initial stages.

1.7 Civil Service Retirement/Social Security Integration

Issue. What should OPM's policy be with respect to proposals to integrate the Civil Service Retirement Fund and Social Security?

Background. The question has been raised as to whether there should be Social Security coverage for Federal employees and whether the Social Security and Federal Civil Service Retirement funds should be integrated. The Secretary of Health, Education, and Welfare has completed a study, as directed by Pub. L. 95–216, enacted December 20, 1977, of the feasibility and desirability of extending Social Security coverage to Federal employees, as well as to State and local Government employees and employees of non-profit organizations who are not now covered.

The DHEW study has been completed and was sent to the Congress on March 24, 1980. The study neither advocates nor opposes coverage of Federal employees by Social Security. Rather, it presents Congress with an analysis of the implications of continuing Federal employees outside the Social Security system, and of options for extending Social Security coverage to Federal employees by integrating the benefits provided by Social Security and Civil Service Retirement.

The Secretary of HEW wrote in transmitting the study group's report to Congress that the "Administration has taken no position on the Report and has no plans at this time to submit legislation regarding changes in Social Security coverage."

Activity Related to Issue: Compensation to prepare briefing for the Policy and Research Advisory Board on the HEW report, and alternatives for OPM policies.

1.8 Day Care Facilities

Issue. Should there be policy changes with respect to providing day care facilities for the children of Federal employees?

Background. One of the greatest impediments to full participation in employment faced by women is the lack of adequate day care facilities. The problem will become more severe as the percentage of working mothers increases during the next decade.

Activity Related to Issue: 1. Title: Draft legislation on Federal day care centers. Estimated Completion Date: Not yet determined. Current Status: Federal Womens' Program Office is preparing background and justification material, expected to be ready by end of April 1980.

2. Office of Affirmative Employment Programs to brief Policy and Research Advisory Board on issues and draft legislation.

1.9 Employee-Tailored Benefits Packages

Issue: What are the significant constraints and policy issues which need to be considered in evaluating whether or not employee-tailored benefits packages are appropriate to the Federal compensation system?

Background: There has been some experimentation in private industry with employee-tailored benefits packages. This concept permits individual employees to select, within a given dollar limit, the mix of pay, leave, insurance, health benefits, retirement benefits, and other compensation elements which best satisfies the employee's own individual needs. The total compensation cost to the employer remains essentially the same, but employees' total compensation needs are more satisfactorily met. In some cases packages could be tailored to meet specific management objectives such as recruitment or retention of desirable individuals or groups.

Activity Related to Issue: A Title VI research effort to assess the state-of-the-art concerning flexible benefits has tentatively been funded.

2. Area of Concern: Simplification of the System

For years there have been complaints that the Federal personnel system is too complicated, that there is too much paperwork, that systems are outmoded, and that the personnel process is generally unresponsive to management needs. To some extent the Civil Service Reform Act has addressed this problem through the requirement for more delegation of authority to agencies. This is a step in the direction of speeding up personnel case processing, but it can also mean simply a transfer of work from one agency to another and not a simplification of the way the work itself is actually done.

OPM needs to take the lead in restudying the basic objectives of such personnel systems as the classification system to see if there isn't a more efficient and effective way to achieve the basic objective than the way we are operating now. The Federal Government needs better ways to organize during times when there is a shrinking workforce and a rising workload. OPM needs to continually search for ways to simplify the administration of new CSRA initiatives such as streamlined disciplinary procedures.

Resources for carrying out the personnel management function are likely to remain scarce. More efficient ways to carry out personnel management responsibilities are needed if personnelists are to continue to be a responsible part of the management team.

Following are some of the more significant policy issues in this area which have been identified at this time.

2.1 Classification and Qualification Standards

Issue. What policy options are there to develop a more efficient and effective system for the classification and qualification needs of the Government?

Background. The Cherry Hill Conference highlighted this issue as a major concern of agency managers. Agency managers have expressed concerns regarding the need of eighteen different GS levels, the slowness of classification standards development, the difficulty in developing urgently needed standards as the system presently operates, the large amount of personnel and management time needed to run the system, and the general cumbersomeness of the system. While we need to improve and speed up the present system for standards development, we also need to look on a high priority basis at options for developing an entirely new approach to classification and qualification.

Activity Related to Issue: 1. Special government-wide task force being established to study the position classification system.

2. Results from the Navy demonstration project will have an impact on this issue.

2.2 Streamlined Staffing Procedures

Issue. Beyond the Model Staffing Plan, what additional actions can be taken to further streamline staffing procedures?

Background. Since enactment of the Civil Service Reform Act, OPM has taken several steps to streamline the appointment process. These steps include development of a Model Staffing Plan, testing of a special on-call employment plan for large industrial activities, approval of a plan to simplify recruitment in disaster areas, revision of merit promotion guidelines, and delegation of certain staffing authorities to agencies. However, room for additional improvements remains, including a procedure for measuring the efficiency and timeliness of Federal staffing procedures.

Activity Related to Issue: 1. Title: Implementation of Model Staffing System. Estimated Completion date: 1st quarter FY 82. Current status: On schedule.

2. Studies of the career-conditional appointment system probationary period, on-call appointment authority, term promotions, and reduction-in-force procedures are being conducted by Staffing Services.

3. OPE and Staffing Services to work together to devise a method for measuring the efficiency and timeliness of Federal staffing procedures. Prepare status report for Policy and Research Advisory Board consideration.

2.3 Career-Conditional Employment

Issue. What should the competitive appointment system consist of? How many kinds of appointments are really needed, and what should be their relationship to each other in terms of interchangeability, benefits, etc. Is a longer or shorter probationary period appropriate for certain kinds of jobs? At what point should an employee acquire career tenure and what should it mean?

Background. The career-conditional appointment system was created by E.O. 10577 in 1955. The system includes significant civil service concepts such as the initial probationary period, a 3-year conditional period, status, and tenure. The system was designed in response to restrictions on permanent appointment and size of workforce in the Whitten Amendment and to the conversion needs of hundreds of thousands of employees hired indefinitely during the Korean emergency. The career-conditional period today is essentially meaningless because the Whitten Amendment is no longer in effect, OMB counts career-conditional appointees against permanent ceiling, and individuals acquire competitive status upon completion of the initial one year probationary period. Also, with increased emphasis on performance based personnel actions throughout an employee's career, the career-conditional system seems to have little usefulness as an additional probationary period.

Activity Related to Issue: 1. Title: Career conditional employment system study. Estimated completion date: August 30, 1980, for Executive Order. Current Status: Research phase completed. Proposal for agency comment being developed.

2.4 Personnel Investigations

Issue. What policy options are there to the existing program of conducting full-field pre-appointment background investigations on applicants for Federal employment?

Background. The Federal Government administers an extensive and costly program of full-field pre-appointment personnel background investigations. The General Accounting Office has questioned whether the security and suitability determination goals of the program could not be met in some other more cost-efficient manner.

Activity Related To Issue: Title: Action plan to study the feasibility of implementing recommendations of the General Accounting Office in its Report FPCD 79-79, "Costs of Federal Personnel Security Investigations Could and Should be Cut." (Joint OPM and DOD study.)

Estimated Completion Date: October 3, 1980.

Current Status. On schedule per plan.

2.5 Excepted Service

Issue. Should the variety of excepted appointing authorities be regrouped and redefined in terms of what functions they now serve?

Background. The excepted service was originally created to accommodate positions of such a nature that the procedures for entering the competitive service could not or should not be used. Since then, a proliferation of separate authorities designed to accommodate people in special situations has minimized the differences between Schedules A, B, and C.

Activity Related To Issue: Staffing Services Group to prepare policy options paper for Policy Advisory and Research Board consideration.

3 Area of Concern: Competence of the Work Force

Workforce competence is a central theme of the Civil Service Reform Act. It is also a central theme in many complaints about big Government. To a large extent these complaints are unjustified. Nevertheless, the work of the U.S. Government is very complex and becoming even more complex each day. Particularly at the top management levels, the need for exceptional competence is greater today than ever before. The CSRA recognized this need through establishment of the Senior Executive Service. It also dealt with the larger area of competence through new requirements for merit pay and performance appraisal. Much remains to be done however to assure that the competence of the U.S. workforce remains at a high level.

Following are some of the more significant policy issues in this area which have been identified at this time.

3.1 Fitness-for-Duty Examinations

Issue. What is the proper role of fitness-for-duty examinations and what conditions should govern their use?

Background. When an employee is unable to perform the duties and responsibilities assigned because of medical or mental problems, the agency may order the employee to have a fitness-for-duty examination. It has been alleged that fitness-for-duty psychiatric exams have sometimes been motivated by disciplinary or retaliatory reasons rather than medical ones. Agencies may have used such tactics to get rid of employees without having to go through the regular adverse action and appeals procedures. In constructing safeguards against improper use of such examinations, however, the legitimate use of fitness-for-duty examinations to detect medical or mental problems that impair employees in their ability to do assigned work should be preserved.

Activity Related To Issue: 1. Title: Fitness-for-duty study. Estimated Completion Date: Study completed. Current Status: Proposed regulations being prepared.

3.2 Employee Retraining

Issue. What policy options should be considered in relation to the retraining of employees?

Background. A number of Federal employees receive early retirements each year under the provisions of various laws. This includes early retirements of law enforcement officers, fire fighters, air traffic controllers, and those affected by major reduction-in-force, major transfer of function, major reorganization, and disability. Suggestions have been made that the provisions of these laws should be reevaluated to determine whether some of these employees could and should be retrained for other useful work rather than receiving early retirement benefits.

We also need to develop clearer personnel management policy on the use of retraining in situations such as obsolescence of jobs, poor job performance, remedial education, and mid-life career changes.

Activity Related To Issue: WED to prepare policy options paper for Policy Advisory and Research Board consideration.

3.3 Selection of Supervisors and Managers

Issue. How can pre-selection evaluation of applicants for supervisory and managerial jobs be improved to help assure selection of persons with the requisite competencies?

Background. Research findings suggest that supervisory and managerial effectiveness can be increased through better pre-selection screening. Research conducted by the American Telephone and Telegraph Company, for example, indicated that substantially increased screening efforts produced better first-line supervisors.

Activity Related To Issue: 1. Title: Executive and managerial competencies survey. Estimated Completion Date: September 30, 1980. Current Status: On schedule.

2. Title: Executive competencies critical incidents study. Estimated Completion Date: September 30, 1980. Current Status: On schedule.

3. Title: Workforce Effectiveness and Development Group Task Force on Supervisors. Estimated Completion Date: No completion date set. Current Status: Initial meetings held and data collected on current OPM efforts in the area. Issues and possible activities for task force involvement being identified.

4. Workforce Effectiveness and Development Group to develop state-of-the-art paper or research project.

3.4 Effectiveness of Supervisors

Issue. What more can be done to improve the effectiveness of first-line supervisors?

Background. For many years there have been repeated expressions of concern about the ability of first-line supervisors to perform their very difficult and critical role. In the past, there have been studies of the roles and problems of front-line supervisors, and some actions to improve their effectiveness have been taken, e.g., required supervisory training, merit pay under the Civil Service Reform Act, a new probationary period for supervisors, and a new magazine directed to them. However, it still appears that some first-line supervisors are not able to do the job at the level of effectiveness necessary for the success of many Government programs. Supervisors as a class continue to exhibit feelings of isolation from both the workers and the management chain above them. These and other problems at the first-line supervision level are susceptible to study and action.

Activity Related To Issue: Title: WED Task Force on Supervisors. Estimated Completion Date: No completion date set. Current Status: Initial meetings held and data collected on current OPM efforts in the area. Issues and possible activities for task force involvement being identified.

3.5 Employee Counseling

Issue. What should the Government's role be with respect to counseling employees?

Background. The Government has begun to do a good job in counseling employees with alcohol and drug-related problems, but more needs to be done in the counseling area to assure that employees are able to devote full time and attention to their work and thus be as productive as they can be.

For example, the so-called mid-life crisis has been written about extensively in recent years. There appears to be general agreement that each person experiences it, and that the outcome of this self-reassessment can cause prfound changes in a person's life. It may be in the Government's self-interest as an employer to consider what constructive role it can play vis-a-vis employees at this stage of their lives. A retrained, reinvigorated employee with fresh new goals for the future should be much more productive than a disgruntled, depressed employee who perceives both himself and his job as being deadened.

Retirement counseling is also a largely unmet need when a Federal employee is coming to the end of a careeer of public service. Financial and legal counseling are examples of additional kinds of counseling needs now largely unmet.

Activity Related To Issue: 1. A Title VI research effort to evaluate the effectiveness and impact of employee counseling programs, and especially those aimed at alcohol and drug abuse, has been tentatively approved.

2. The Southwest Region has a training package being presented with NASA (Houston, Texas) to develop training courses to help employees cope with mid-career changes.

3. Workforce Effectiveness and Development Group to do a study of overall question of the need for various types of counseling for Federal employees, e.g., mid-life assessment, drugs, alcohol, Equal Employment Opportunity, retirement, financial, legal, etc., and preparation of an options paper for Policy and Research Advisory Board consideration.

3.6 Mid-Level Development Programs

Issue. What policy options are there to improve the development of mid-level managers to prepare them for senior assignments?

Background. Traditionally mid-level managers and/or journeyman level professionals have made up the talent pool from which the majority of senior level Government managers have been drawn. CSRA provides considerable flexibility, special avenues, and requirements for the development of senior managers. We now need to promote the development of mid-level managers and journeyman professionals. Of paramount importance, mid-level managers and journeyman professionals do not have the flexibility of moving across occupational lines, which results in narrow career development and a lack of the breadth required in senior positions.

Activity Related To Issue: 1. Executive Personnel and Management Development Group to prepare state-of-the-art paper for Policy and Research Advisory Board consideration.

4 Area of Concern: Management Improvement

One of the underlying principles of civil service reform is that personnel management is not an end in itself, but a powerful means to improve the performance, effectiveness, and productivity of Government programs of all types. OPM's new involvement in productivity improvement exemplifies the Administration's intention that Federal personnel management practices result in improvements in the delivery of services to the American public. Establishment of the President's Management Improvement Council within the Office of Personnel Management is another example of this interest. OPM is asserting a larger role in the area of Federal management practices than was true in the past.

The issue of contracting for services, for example, directly affects the size and functions of the Federal workforce. The impact of technology on the workforce is a major management concern in terms of obsolete jobs, retraining needs, job classification changes, and changed recruitment needs. Overtime work and pay policies need to be reviewed from the management, not just the pay, standpoint, to determine what management practices give rise to the use and abuse of overtime.

Ceiling controls administered by OMB have long been used to control the overall size of the Federal workforce, but complaints about adverse consequences resulting from the use of this technique continue to increase.

The fundamental underlying issue is to think about how Federal personnel management policies and practices either help or hinder Federal managers in the achievement of their program objectives. Personnel management policies and practices must be addressed in the context of mission accomplishment.

Following are some of the more significant policy issues in this area which have been identified at this time.

4.1 Technology and the Workforce

Issue. What more should be done to assure that modern methods, procedures, and technology are applied to Government operations as a means of increasing the productivity of the Federal workforce? If OPM takes initiatives in this area as the central personnel management agency in the Federal Government, what is the most appropriate manner of involving the major Federal unions in the process? How can employment of the handicapped be advanced through the use of new office technology?

Background. Great emphasis is currently being placed upon increasing the productivity of Government operations. Some Government operations are using methods, procedures, and equipment which are outmoded and inefficient. New methods and technology are being developed at a rapid pace and could be adapted for use by Government with resulting sigificant gains in productivity, effectiveness, and employment of the handicapped.

Activity Related To Issue: 1. GSA and OPM considering further implementation of office automation in Government and impact on Federal workforce: occupational changes, staffing levels, training needs, etc.

2. Workforce Effectiveness and Development Group to prepare policy options paper for Policy and Research Advisory Board consideration.

4.2 Tailored Personnel Systems

Issue. Should the many separate personnel systems for police forces and for police-type occupations within the Federal service be combined into fewer personnel systems? Should special personnel systems be tailored for professional employees? For other employee groups?

Background. Standard personnel programs and practices designed for civil service employees across-the-board do not always recognize the special needs and career patterns of members of special groups and professions within the Federal workforce. For example, within the Federal service there are numerous police forces and police-type occupations. These include Park Police (Interior), Airport Police (FAA), Aqueduct Police, Zoo Police (Smithsonian), Secret Service Uniformed Division (Treasury), Federal Protective Service (GSA), and others. They differ in many key respects, such as entry requirements, qualification standards, compensation plans, retirement systems, and others. These differences introduce administrative instability into personnel systems that relate to what are essentially similar kinds of jobs.

Federal firefighters, on the other hand, are predominantly covered by the General Schedule classification and pay system. However, because of applicable pay laws, the unusual nature of the work, and the way that work is organized, there are important management and pay problems (e.g., pay inversion between supervisory levels).

Activity Related To Issue: 1. Title: Study to develop special systems for protective occupations is on Compensation Group's projected FY 80–82 project list. Estimated Completion Date: Not yet determined. Current Status: Initial stages of consideration.

2. The Office of Planning and Evaluation to prepare policy options paper on tailored personnel systems for professional employees for Policy and Research Advisory Board consideration.

4.3 Humanistic Management

Issue. What policy options are there for more fully realizing human potential in the workplace as a means to increase both productivity and the quality of work life?

Background. One major underlying objective of the Civil Service Reform Act is to make the Federal workforce more productive and responsive to the public. The new provisions for merit pay, performance appraisal, and the Senior Executive Service are attempts to achieve this objective. However, legislation alone cannot fully tap the potential in the Federal workforce for improvements in personal performance and delivery of services to the public. Ways need to be found to identify and eliminate institutional barriers to creativity in the workplace, and to build organizational structures and work processes which allow employees to use their full potential in the workplace for the good of both themselves and the public they serve.

Activity Related To Issue: 1. Workforce Effectiveness and Development Group to prepare policy options paper for Policy and Research Advisory Board consideration.

2. OPM and the National Science Foundation are conducting, with the assistance of Title VI funds, a research project testing the use of organizational teams to improve productivity.

4.4 Alternatives to Ceiling Control

Issue. What alternatives to personnel ceilings could be used to control the size of the Federal workforce?

Background. The use of rigid personnel ceilings to control the size of the Federal workforce has contributed to the inability to hire needed new employees, excessive use of contracting-out, and other practices. The problems in managing Government programs and motivating the workforce that flow from rigid personnel ceilings have received a great deal of attention in congressional hearings, professional literature, and the popular press.

Activity Related To Issue: 1. Title: Full-Time Equivalency ceiling system study. Estimated Completion Date: May 1982. Status: On schedule per plan.

2. Title: Experimental part-time direct-hire program. Estimated Completion Date: Summer 1982. Status: Proposal for use of direct-hire authority for part-timers approved by the Director.

4.5 Contracting Out

Issue. What are the policy options with respect to the practice of contracting out?

Background. Since it began in the Eisenhower administration, the policy of contracting out to the private sector for the commercially available goods and services used by the Federal Government has been highly controversial. Federal unions view contracting out as a threat to the jobs of Federal employees. Private sector suppliers stress that the Government's business is not to be in business.

Currently, OMB Circular A–76 requires rigorous cost analyses and head-to-head competitive bidding on clearly specified work statements between agencies and private sector contractors. Where no overriding factors such as military necessity arise, lowest relative cost is the key factor in determining whether to contract out. OPM has a direct interest in the practice of contracting out because it affects such issues as Equal Employment Opportunity, the size of the Federal workforce, employment ceilings, labor-management relations, recruitment, and training.

The requirements for clearly defining agency work, capturing the true costs of performing it, and measuring the expected results, which are the heart of OMB's policies on contracting out, coincide with actions OPM is urging agencies to take to help improve productivity within the Federal government.

Activity Related To Issue: 1. Director Campbell recently testified before Congress on the personnel management implications of contracting out by the Federal Government.

2. OPM is asking agencies to report on contracts related to implementation of CSRA.

3. The Department of Defense Authorization Bill for 1980 included a specific requirement that DOD certify to Congress that before a contracting out cost comparison is made, the in-house operation will be reorganized to its most efficient pattern. Federal employee unions are backing this provision.

4. OPE to develop policy options paper for Policy and Research Advisory Board consideration.

4.6 Overtime Policies

Issue. What are the most appropriate uses of overtime work? How can overtime use be focused or limited to these instances?

Background. Emphasis on personnel ceilings rather than personnel costs, poor management practices, archaic laws, the granting of premium pay on an annualized basis, and other factors contribute to the use of overtime work. Some overtime is justifiable and unavoidable. The unwarranted use of overtime, however, is not only expensive, but results in lower productivity, since each unit of work produced has a higher unit cost. Human fatigue during overtime work also contributes to lower productivity, more errors, and increased safety risks.

Activity Related To Issue: 1. Title: Premium pay study. Estimated Completion Date: December 31, 1980 (Report to Director Campbell). Current Status: Draft report being prepared.

2. Title: GAO survey of Federal overtime practices. Estimated Completion Date: Unspecified. Current Status: Preliminary stages.

4.7 Productivity and Personnel Management

Issue. What role should personnelists play in relation to productivity and management improvement in the Federal service?

Background. In the 1950's the core of the personnel management job included staffing and placement work, position classification, and employee relations. During that era, employee training was added but the personnel traditionalists still have a hard time accepting it as part of the core of the profession. In the 1960's, labor relations was added to the job of the personnel profession. In the 1970's, Equal Employment Opportunity and affirmative action were added. In the 1980's it is likely that productivity will be added. The question is how this latter function can best be integrated with the other personnel management functions of the personnel profession as a whole, at the OPM level and in agencies of the Federal Government.

Activity Related To Issue: 1. Study of future role of the personnel office being conducted by Jeff Diamond for the Deputy Director. Draft expected in Spring 1980.

2. WED to develop policy options paper for Policy and Research Advisory Board consideration after review of Diamond study.

4.8 Grade Escalation

Issue. What should be done to identify and correct causes of grade escalation? What policy options are there in dealing with the phenomenon? What impact have grade control programs had in the past, and what lessons do they point to for the future?

Background. Position classifiers complain of management pressures upon them to assign higher grades to positions. Managers say they have little faith in the position classification process. Out of these clashes over position classification has come a continuing problem of grade escalation in the Government as a whole. In the past there have been periods of heightened concern about grade escalation, studies to identify the causes, and control measures such as the average grade program imposed by OMB.

Activity Related To Issue: 1. Navy demonstration project under Title VI, CSRA, attempts to lessen the pressure on the classification system by shifting to pay for performance and replacing the GS–5/18 grade structure with 5 broad pay categories.

2. Special government-wide task-force being established to study the position classification system.

5 Area of Concern: Labor-Management Relations

The effectiveness and efficiency of Government operations are influenced increasingly by labor management and employee relations. Collective bargaining in the Federal Government has evolved a great deal since 1962 when President Kennedy established the Federal Labor Management Program by Executive order. Since then, the number of nonpostal civilian Federal employees organized into bargaining units has increased from under 25,000 to over 1.2 million, or 60 percent of all nonpostal civilian Federal employees. Bargaining extends to matters which previously were subject only to unilateral management action. Through negotiation and consultation, a broad range of personnel policies and working conditions have come under bilateral decisionmaking. They include the scheduling of work hours, overtime and rest periods; leave administration; safety and health practices; training and promotion policies; and grievance and complaint handling. Pressure to expand these areas is certain to continue.

The Federal Labor Management Relations Program's primary intent is to promote the well-being of employees and the efficient administration of Government by establishing orderly and constructive relationships between labor organizations and management officials. The underlying assumption of the program is that employee-management relations can be improved by providing employees with an opportunity for greater participation in developing policies and procedures that affect their employment conditions while maintaining the public interest as the paramount consideration.

Following is one of the more significant policy issues in this area which has been identified at this time.

5.1 Improving the Labor-Management Relationship

Issue. To what extent is the labor relations system devised in Title VII of CSRA meeting its goals of enhancing employee well-being and Government efficiency and effectiveness? What is the proper mix of adversarial and cooperative relationships in the Federal labor-management relations program? What steps need to be taken to move Federal labor relations closer to the Congressional intent?

Background. The labor relations system enacted in CSRA draws its roots from the private sector model, with some important distinctions. These are primarily a narrower scope of bargaining, particularly with respect to significant economic issues, union security, and a prohibition on strikes. These exceptions recognize the special nature of government and the fact that the public interest is paramount, but they also remove or lessen part of the dynamics that makes private sector labor relations work. Employee organization and participation through labor unions are an accomplished fact, but the best means of achieving a good fit of the adversarial and cooperative nature of the Title VII system to the Federal system is not fully clear.

Activity Related To Issue: Office of Labor-Management Relations to prepare policy options paper for Policy and Research Advisory Board consideration.

6 Area of Concern: Merit and Entitlement

Pollster Daniel Yankelovich reports that about three-fourths of the nation's workforce has been overtaken by a psychology of entitlement-feeling that they deserve good jobs, a rising standard of living, plus a satisfying work experience. Carnegie-Mellon University economist Arnold Weber says that throughout the American workplace the 1980's will be a time of increased tension and potential conflict among the various groups in the labor force. Weber predicts that with women, minorities, handicapped workers, veterans and others seeking special attention in the workforce, a backlash against affirmative action will grow. Harvard University economist Richard B. Freeman says that workers age 25 to 44 will encounter fierce competition for promotions, coupled with substantial career disappointments. Director Campbell has spoken to this latter point in recent speeches.

In short, in the next few years we can expect increased claims for employment entitlements from a variety of groups and increased dissatisfaction when the perceived entitlements cannot always be realized. Unions stand to gain in membership and influence from this situation. There will be increased pressure on management to provide the training, career development assignments, and other forms of credentialism which will be perceived to be necessary for advancement and successful competition.

There will be increased pressure to accommodate the traditional principles of the merit system, e.g., open competition, selection based on qualifications for the work, advancement based on performance, and equal pay for equal work, to the claims of entitlement.

The larger number of well-qualified individuals available to fill mid level and high level positions may act to reduce the upward pressure on pay and benefits.

Following are some of the more significant policy issues in this area which have been identified at this time.

6.1 Employment of Handicapped Individuals

Issue. What policy options are there for ensuring reasonable accommodation in Federal employment to handicapped individuals?

Background. According to census reports, there were more than 11 million Americans who had a permanent work disability in 1970. With enactment of the Rehabilitation Act of 1973, as amended, and its provisions regarding affirmative action for the handicapped, and because of new technological, medical and rehabilitation developments, there is a growing number of handicapped persons entering the labor market and seeking Federal employment. The degree to which these individuals may be denied employment opportunities is unknown. In addition, the issue of what constitutes reasonable accommodation for these individuals is in no way settled.

Activity Related To Issue: 1. Office of Affirmative Employment Programs to develop policy options paper for Policy and Research Advisory Board consideration.

2. OPM will participate with HEW, using Title VI funds, to research ways of identifying and reducing the adverse impact of selection procedures with regard to handicapped individuals.

6.2 Multiple Clientele Groups

Issue. How should OPM prepare itself to respond to the needs of the several minority groups, women, handicapped, and aging workers?

Background. There is increasing recognition of the problems facing the several minority groups, women, handicapped, and aging workers on a national rather than a more localized basis. This is resulting in greater demands on the Federal Government to respond to their needs in terms of governmental services, recognition, and employment opportunities. This trend can be expected to continue. OPM needs to consider how it can best organize its affirmative employment program and resources to equitably address the needs of all affected groups.

Activity Related To Issue: Office of Affirmative Employment Programs to develop policy options paper for Policy and Research Advisory Board consideration.

6.3 Written Tests

Issue. What should be the future role of written tests vis-a-vis alternative selection procedures in the Federal employee selection process?

Background. Recent events have brought into question the future role of written tests in the selection process. For example, the Uniform Guidelines on Employee Selection Procedures emphasize that alternative selection procedures be used to eliminate the adverse impact of written tests. Also, recent attempts at the State level to enact so-called Truth-in-Testing laws could, if applied at the Federal level, make the development and administration of written tests prohibitively expensive.

Activity Related to Issue: 1. Title: Study of alternative approaches for conducting occupational analysis used in test, rating schedule, and standards development. Estimated Completion Date: 12/80. Current Status: Guidance issued. Outreach and training efforts underway.

2. A Title VI research effort to prepare a cluster of state-of-the-science papers relative to the efficacy of written tests, other selection instruments and combinations of selection instruments has tentatively been approved.

7. Area of Concern: Long-Range Policy Issues

There is a need to think about Federal workforce patterns and problems five to ten years in the future. Other Areas of Concern in this Policy Agenda deal with more immendiate policy issues. The effects of personnel cutbacks, affirmative action, shorter workweeks, growth in part-time employment, a slower economy, an aging population, energy crises, and other significant forces need to be evaluated and planned for. What effect will they have on staffing, training, recruitment, labor-relations, and other personnel management programs? It is good business to try to know all it is possible to know about the future and to lay plans in the present for dealing with future contingencies.

7.1 Work Force Planning

Issue. How can the data needed to plan for future workforce requirements best be collected, analyzed, and used? What systems can OPM establish in Government to allow OPM and agencies to foresee and prepare for broad demographic and social changes that will affect employment markets in the future?

Background. We do not now have a good understanding of how changes in population and labor force variables such as age, sex, occupation, and education can affect the Federal workforce. Nor have we done much systematic analysis of how such variables as employee attitudes, changes in economic conditions (inflation, recession), legislation (energy, environment), or other large-scale social and economic shifts can affect the Federal workforce.

Activity Related to Issue: 1. A Title VI research effort on forecasting staffing needs and external labor markets has tentatively been approved.

2. Title: GAO review: *Issues and Barriers to Effective Workforce Planning.* Estimated Completion Date: Unspecified. Current Status: Preliminary stages. GAO will study the impact of approximately 20 previous related GAO reports.

7.2 Future Role of Personnel Organization

Issue. What are the potential roles for political appointees, executives, managers and supervisors, the personnel staff, and other staff offices in the field of personnel management? Where should the personnel officer fit in the managerial team? How can the labor relations function best be carried out?

Background. Most personnel officers report to an individual with broader responsibilities for administration. Relatively few are considered part of the top management team of their agencies. The enactment of civil service reform and the creation of OPM are intended to accomplish dramatic changes, including changes in the role of personnel management. Involvement in labor-management relations, productivity, workforce effectiveness, executive and managerial development, quality of working life and accountability will help determine whether the personnel manager is a part of the management team. The issue might be stated better by addressing how the Federal personnel function is to be carried out, and what contribution should be expected from political leadership, operating line executives and managers, personnel managers and their staffs, and other staff offices. Not all Federal personnel managers should play the same role or operate in the same fashion.

Crucially important is the role, function, and organization of the personnel office in a workforce that is 60% organized. One-by-one agencies are splitting off labor-management relations from personnel since it cannot be handled adequately with aggressive unions under strong law when buried in the personnel function.

Activity Related to Issue: Study of the future role of personnel being conducted by Jeff Diamond at the direction of the Deputy Director. Draft expected in Spring 1980.

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Tuesday
June 3, 1980

Part VI

Department of Labor

Office of the Secretary

Improving Government Regulations; Semiannual Agenda

DEPARTMENT OF LABOR

Office of the Secretary

20 CFR Chapters I, IV, V, VI, and VII; 29 CFR Subtitle A and Chapters II, IV, V, XVII and XXV; 30 CFR Chapter I

Improving Government Regulations; Semiannual Agenda

AGENCY: Department of Labor.

ACTION: Third Semiannual Agenda of Regulations Selected for Review or Development.

SUMMARY: In accordance with Executive Order 12044 and the Department of Labor Regulatory Reform Guidelines, this Document sets forth the Department's third semiannual agenda of regulations selected for review or development during the coming 6 month period.

DATES: This Agenda is applicable for the period from May 30, 1980 to November 30, 1980.

ADDRESS: Seth D. Zinman, Associate Solicitor for Legislation and Legal Counsel, Office of the Solicitor, Department of Labor, 200 Constitution Avenue, NW., Room N2428, Washington, DC 20210, 202-523-8201.

FOR FURTHER INFORMATION CONTACT: Dr. Judy Sorum, Special Assistant to the Secretary, 200 Constitution Avenue NW, Room S2018, Washington, D.C. 20210, 202-523-9184, or Mark E. Solomons, Counsel for Special Legislative Projects, Department of Labor, 200 Constitution Avenue N.W., Room N2428, Washington, D.C. 20210, 202-523-8088.

SUPPLEMENTARY INFORMATION: Executive Order 12044 and the Department of Labor's Implementing Guidelines (44 FR 5570-5590) require the semiannual publication in the **Federal Register** of a complete Agenda of the significant regulations which will be considered, reviewed, or developed by the Department of Labor during the coming 6 month period. The Department's First Agenda was published on January 26, 1979 and was followed by a Supplemental Agenda on August 28, 1979. A Second Agenda was published on November 13, 1979. The Department's Third Semiannual Agenda of Regulations Selected for Review or Development is contained in this document.

This Third Agenda follows the same format as that of the Second Agenda. Each entry is identified by Agency, Title, and Code of Federal Regulations citation. Each entry contains a brief description of the regulation, states why the regulation is being reviewed or developed, and indicates whether the regulation is a "major" regulation for which a regulatory analysis may be required. Each entry also indicates the current status of the regulatory initiative, whether the regulation may be of special interest to small business, small organizations, or local governments, and each contains the name, address and telephone number of a knowledgeable agency official who may be contacted by any member of the public who has an interest in the regulation.

The small business or small orgnization interest indicator is a new feature of the Department's Agenda. In a Memorandum dated November 16, 1979 the President directed the heads of all Executive Departments to give special consideration to the burdens imposed on small business by agency regulation. The Department of Labor is committed to the success of this Presidential initiative and has already taken steps to improve communication with small businesses, aid small businesses in meeting regulatory requirements, reduce reporting and paperwork burdens on small businesses and, when authorized to so so by statute, tailor regulations to fit the size and nature of the regulated public. In keeping with these efforts, the Department also intends to amend its Regulatory Reform Guidelines before publication of the next Agenda to ensure that all agencies within the Department are aware of the special needs and problems of small businesses, small organizations and local governments. Through this change policymakers will be made better aware of the impact of regulations on small businesses and with this knowledge it should be possible to take the steps necessary to avoid unnecessary burdens which may result from some Departmental regulations.

The public is invited to offer suggestions on how the Department's Guidelines could be improved to ensure that small business, small organization and local government issues are fully considered in all Department of Labor rulemaking. Comments and suggestions should be submitted to one of the contact persons listed at the beginning of this preamble by July 31, 1980:

The Regulatory Reform process continues to be an extremely valuable aid in the development of better regulations by the Department. We believe that improved regulatory management, more clearly written regulations, and in many instances, significantly less burdensome regulations are all attributable to our regulatory reform program.

Further improvement is certainly needed and we are constantly seeking new and innovative approaches in pursuit of this goal. All interested members of the public are invited and encouraged to let Departmental officials know how our regulatory reform process can be further improved and, of course, to participate in the review or development of the regulations listed on the Agenda.

The Department of Labor's Fourth Semiannual Agenda will be published on or about November 30, 1980.

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Note.—Regulations which may be of special interest to small businesses, small organizations, or local governments are followed in this index with an asterisk (*).

42. OSHA—Beryllium. *
43. OSHA—Employee Medical Records.*
44. OSHA—Noise.*
45. OSHA—Standards Completion.*
46. OSHA—Asbestos.
47. OSHA—Abrasive Blasting.
48. OSHA—Cadmium.*
49. OSHA—Nickel.*
50. OSHA—MBOCA.
51. OSHA—Chemical Hazards.*
52. OSHA—Federal Employees.
53. OSHA—Reporting.
54. OSHA—Grain Handling.*
55. OSHA—Lockout/Tagout.*
56. OSHA—Confined Spaces.*
57. Office of the Assistant Secretary for Administration and Management (OASAM)—Unsolicited Proposals.
58. OASAM—Debarred and Ineligible Bidders.*
59. OASAM—Grants and Agreements.*
60. OASAM—Grants and Agreements.*
61. OASAM—State Employment Security Grants.
62. Employment Standards Administration (ESA)—OFCCP.*
63. ESA—OFCCP.*
63A. ESA—Private Clubs.
64. ESA—OFCCP Program Requirements.*
65. ESA—OFCCP.*
66. ESA—Reproductive Hazards.
67. ESA—OFCCP—Fringe Benefits.*
68. ESA—OFCCP—Handicapped Workers.*
69. ESA—OFCCP—Documents.
70. ESA—Service Contracts.*
71. ESA—Davis-Bacon*
72. ESA—Farm Labor.*
73. ESA—Employment of Minors.*
74. ESA—Wage Payments.*
75. ESA—Overtime.*
76. ESA—FLS Records.*
77. ESA—Patient Workers in Hospitals.*
78. ESA—Agricultural Exemptions.*
79. ESA—Sheltered Workshops.*
80. ESA—National Endowment for the Arts.
81. ESA—Child Labor.*
82. ESA—Black Lung Disability Standards.
83. ESA—Black Lung State Criteria.
84. ESA—Coal Operator's Insurance.*
85. ESA—Discrimination Complaints Under the Black Lung Act.
86. ESA—Longshore Compensation.*
87. Mine Safety and Health Administration (MSHA)—Surface Mine Construction.*
88. MSHA—Underground Coal Mine Safety.*
89. MSHA—Respirable Dust Standard.
90. MSHA—Self Rescue Devices.
91. MSHA—Impoundments and Tailings Piles.*
92. MSHA—Surface Coal Mine Safety.*
93. MSHA—Respirable Dust-Underground Coal Mines.*
94. MSHA—Transfer of Miners.*
95. MSHA—Independent Contractors.*
96. MSHA—Mine Rescue Teams.*
97. MSHA—Construction Worker Training.
98. MSHA—Telephones.
99. MSHA—Pattern of Violations.
100. MSHA—Review of Metal and Nonmetal Standards.*
101. MSHA—Civil Penalties.*
102. MSHA—Miner Participation in Dust Sampling.*
103. MSHA—Labor-Management Services Administration (LMSA)—Labor Organization Reports.
104. LMSA—LMRDA Enforcement.
105. LMSA—Standards of Conduct.
106. LMSA—Financial Reports.
107. LMSA—Employee Protection Dispute Resolution.
108. LMSA—Redwood National Park.
109. LMSA—Public Health Services.
110. LMSA/ERISA—Suspension of Benefits.
111. LMSA/ERISA—Transitional Relief.
112. LMSA/ERISA—Benefit Reporting and Recordkeeping.
113. LMSA/ERISA—Plans Offering HMO Membership.
114. LMSA/ERISA—Reporting Exemptions.
115. LMSA/ERISA—Revision of Forms.
116. LMSA/ERISA—Insurance Company Financial Reports.
117. LMSA/ERISA—Compliance Oriented Returns.*
118. LMSA/ERISA—Ownership of Plan Assets.
119. LMSA/ERISA—Alternative Compliance/Reporting and Disclosure.*
120. LMSA/ERISA—Supplemental Pay.
121. LMSA/ERISA—Annual Report Forms.
122. LMSA/ERISA—Reporting—Certain Non-Model Pensions.*
123. LMSA/ERISA—Reporting—Short Plan Years.
124. LMSA/ERISA—Plan Assets and Establishment of Trust.*
125. LMSA/ERISA—Acquisition of Sale of Securities and Real Property.
126. LMSA/ERISA—Transitional Relief.

Department of Labor Third Semiannual Agenda

1. *Employment and Training Administration* (ETA)—20 CFR Part 615—Extended benefits for unemployment insurance claimants, including Federal employees and ex-servicemen.

This regulation will modify the currently used "trigger" for bringing the Extended Benefit Program into operation by excluding claims for extended benefits from the calculations. The purpose of this change is to improve the method by which the calculation of unemployment insurance indicator rates are made. Other technical and clarifying changes also will be made. A regulatory analysis was not required.

Status: A final regulation was published on January 3, 1980 and the entry is therefore removed from the Agenda.

Contact: Joe Hickey, Room 7310—Patrick Henry Building, 601 D Street, N.W., Washington, D.C. 20213, 202-376-7122.

2. *ETA*—20 CFR Part 653—Services for Veterans.

This regulation, which governs services provided to veterans by the State employment service agencies, and which establishes the fiscal year 1980 veteran's preference service levels used by the Department to monitor the State employment service agencies and ensures that veteran applicants receive priority treatment, must be reviewed annually. New veterans preference indicator levels must be established when necessary. A regulatory analysis is not required.

Status: The publication of a final regulation by June 1980 is anticipated.

Contact: Emmett McNulty, Room 8111—Patrick Henry Building, 601 D Street, N.W., Washington, D.C. 20213, 202-376-6557.

3. *ETA*—20 CFR Part 656—Labor Certification Process for Permanent Employment of Aliens in the United States.

These regulations set forth the alien labor certification process in detail, describe the responsibilities of employers who wish to employ aliens on a permanent basis, and delineate the role of the public employment service in assisting employers in finding available U.S. workers. Technical changes are being considered in order to update and clarify these regulations. A regulatory analysis is not required. This rule may be of special interest to small business employers of alien labor.

Status: A notice of proposed rulemaking was published on January 22, 1980 and the publication of a final regulation by May 30, 1980 is anticipated.

Contact: Nandor Kertai, Room 8416, Patrick Henry Building, 601 D Street, N.W., Washington, D.C. 20213, (202) 376-6982.

4. *ETA*—20 CFR Part 653, Subparts A, and E—Basic Services of the Employment Service System, Support Services of the Employment Service System.

The purpose of these regulations is to clarify and simplify existing policies, procedures, and guidelines contained in the Employment Security manual and the field instructions governing basic services of the Employment Service System. The need for review of existing regulations and for the development of new regulations where only a manual existed, was determined in discussions involving both State and Federal agencies. The Employment Service Manual contains a complex assortment of directives and advisory material. It has evolved over a 30 year period and much of it is now out of date and incomplete. Recent court rulings have highlighted the need for the Employment Service to codify and clarify its regulations, policies and procedures. A regulatory analysis is not required.

Status: This regulation was published in proposed form in October, 1978 and the publication of a final regulation by June, 1980 is anticipated.

Contact: Edward A. Waters, Room 8018—Patrick Henry Building, 601 D

Street, N.W., Washington, D.C. 20213, 202–376–6700.

5. *ETA*—20 CFR Part 658, Subpart G—Administrative Provisions governing the Employment Service; Review and Assessment of State Agency Compliance with Employment Service Regulations.

These regulations will serve to further clarify and simplify the many current policies, procedures, and guidelines contained in the Employment Security Manual, as well as field instructions governing the review and assessment of State agency compliance with employment service regulations. The need for review of existing regulations and the development of new regulations was determined in discussions involving both State and Federal agencies. The current Employment Service manual has evolved over a 30 year period and now much of it is out of date and incomplete. Recent court rulings have also highlighted the need to develop comprehensive regulations in this area. A regulatory analysis is not required.

Status: A notice of proposed rulemaking was published on January 11, 1980 and the publication of a final rule by June, 1980 is anticipated.

Contact: Edward A. Waters, see item 4.

6. *ETA*—20 CFR Part 609—Unemployment Compensation for Federal Employees.

These regulations implement 5 U.S. Code 8501–8508, which sections provide a program of unemployment compensation for Federal employees administered by State Employment Security agencies. A review of the regulations is required because of amendments made to the law by Pub. L. 94–566. A regulatory analysis is not required.

Status: The publication of a proposed regulation by April 30, 1980 is anticipated.

Contact: Charles Reynolds, Room 7014—Patrick Henry Building, 601 D Street, N.W., Washington, D.C. 20213, 202–376–6222.

7. *ETA*—20 CFR Part 614—Unemployment Compensation for Ex-Servicemen.

These regulations implement 5 U.S.C. 8521–8525, which provide a federally funded unemployment compensation program for certain ex-servicemen. The program is administered by State employment security agencies acting as agents of the United States. A review of the regulation is required because of amendments to the law made by Pub. L. 94–566. A regulatory analyeis is not required.

Status: The publication of a proposed regulation by April 30, 1980 is anticipated.

Contact: Charles Reynolds, see item 6.

8. *ETA*—20 CFR Part 616—Interstate Arrangement for Combined Employment and Wages.

These regulations govern the ability of an unemployed worker with covered employment or wages in more than one State to combine all such employment and wages in a single State, in order to maximize entitlement to unemployment insurance benefits. These regulations will be reviewed in response to a request by the Interstate Conference of Employment Security Agencies, whose members have experienced certain difficulties with existing procedures. Other changes are also required by Pub. L. 94–566. A regulatory analysis is not required.

Status: A proposed regulation was published on February 5, 1980, and the publication of a final regulation by June 1, 1980 is anticipated.

Contact: Edwin Kerley, Room 7102—Patrick Henry Building, 601 D Street, N.W., Washington, D.C. 20213, 202–376–7105.

9. *ETA*—20 CFR Part 640—Standards for Benefit Payment Promptness—Unemployment Compensation.

These regulations establish standards for promptness in the payment of unemployment insurance benefits, set forth criteria States must attain to meet these standards, and corrective action to be taken when a State's performance falls below the criteria. Review of these regulations is necessary to add a standard of compliance to clarify the requirements for the prompt payment of unemployment compensation. Enforcement provisions will be revised to cover all aspects of conformity and compliance with the requirements on promptness of benefit payments. A regulatory analysis is not required.

Status: The publication of a proposed regulation by June 1, 1980 is anticipated.

Contact: Edwin Kerley, see item 8.

10. *ETA*—20 CFR Part 662—Transfers to State Accounts Under Section 903 of the Social Security Act (Reed Act).

These regulations describe the purposes for which Reed Act funds may be used and the administrative requirements which aply to their use. Review may be required to develop a clear and comprehensive set of requirements applicable to the use of Reed Act funds. A regulatory analysis is not required.

Status: The publication of a proposed regulation by November 1, 1980 is anticipated.

Contact: Edward H. Rowland, Room 4208—Patrick Henry Building, 601 D Street, N.W., Washington, D.C. 20213, 202–376–6414.

11. *ETA*—29 CFR Part 32—Nondiscrimination on the Basis of a Handicap in Programs and Activities Receiving or Benefiting From Federal Financial Assistance.

The purpose of this regulation is to implement Section 504 of the Rehabilitation Act of 1973, as amended, with respect to programs and activities receiving Federal financial assistance from the Department of Labor. The development of this regulation is required by Section 504 of the Rehabilitation Act of 1973, Executive Order 11914, and Department of Health, Education, and Welfare regulations implementing Executive Order 11914. A regulatory analysis has been prepared. This regulation may be of special interest to small businesses and small governmental institutions.

Status: A proposed regulation was published on January 4, 1980. The publication of a final regulation by July 31, 1980 is anticipated.

Contact: Frederick A. Drayton, Room 1034—Patrick Henry Building, 601 D Street, N.W., Washington, D.C. 20213, 202–376–6743.

12. *ETA*—29 CFR Part 31—Nondiscrimination in Federally Assisted Programs of the Department of Labor.

The purpose of this regulation is to amend the Department's regulations implementing Title VI of the Civil Rights Act of 1964, as amended, and to establish a single, comprehensive rule with uniform procedures for administration and enforcement of Title VI and all other nondiscrimination requirements applicable to programs receiving financial assistance from the Department, including the Age Discrimination Act of 1975, as amended, Title IX of the Education Amendments of 1972, as amended; and Section 132 of CETA; so that no person shall be excluded from participation in, denied the benefits of or otherwise subjected to discrimination under any such program on the basis of race, color, religion, sex, national origin, age or in the case of CETA participants, citizenship. The draft regulation has been submitted to the Department of Justice for review prior to publication in proposed form. The Department intends to consolidate its regulations under Section 504 of the Rehabilitation Act (see item 11) within this comprehensive regulation when it is published as a final rule. Except for the Section 504 regulations, a regulatory analysis is not required. This regulation may be of special interest to local governments.

Status: The publication of a proposed regulation by July 31, 1980 is anticipated.

Contact: Frederick A. Drayton, see item 11.

13. *ETA*—20 CFR Part 687—Special Programs and Activities Under Title III of the Comprehensive Employment and Training Act (CETA).

These regulations will replace the existing provision of 29 CFR Part 97, Subpart D, which governs special programms and activities under Section 301 of CETA. Review is required by amendments to CETA. A regulatory analysis is not required.

Status: The publication of a proposed regulation by June 30, 1980 is anticipated.

Contact: James M. Aaron, Room 6213—Patrick Henry Building, 601 D Street, N.W., Washington, D.C. 20213, (202) 376-6257.

14. *ETA*—20 CFR Part 689—Migrant and Other Seasonally Employed Farmworkers Program Under CETA.

These regulations replaced 29 CFR Part 97, Subpart C, which governs programs for migrant and seasonal farmworkers under Section 303 and other provisions of CETA. Review was required by amendments to CETA. A regulatory analysis was not required. These regulations may be of special interest to small businesses.

Status: A final regulation was published on May 25, 1979 and amendments to the final regulation were published on February 15, 1980. New Subparts F and G applying to programs for youth will be finalized by June 1, 1980.

Contact: Dan Cox, Room 6308—Patrick Henry Building; 601 D Street N.W., Washington, D.C. 20213, 202-376-7240.

15. *ETA*—Community Service Employment Pilot Program for Handicapped Individuals.

These regulations would govern the programs authorized under Title VI of the Comprehensive Rehabilitation Services Amendments of 1978. A regulatory analysis is not required.

Status: The Department continues to review this matter and is considering the development of regulations.

Contact: Paul Mayrand, Room 6122—Patrick Henry Building, 601 D Street, N.W., Washington, D.C. 20213, 202-376-6233.

16. *ETA*—29 CFR Part 89—Senior Community Service Employment Program.

These regulations govern the Senior Community Service Employment Program under Title V of the Older Americans Act. Review is required by amendments to the enabling Act. A regulatory analysis is not required.

Status: A proposed regulation was published on March 25, 1980. The publication of a final regulation by November 1, 1980 is anticipated.

Contact: Paul Mayrand, see item 15.

17. *ETA*—29 CFR Part 26—Exemplary Rehabilitation Certificates for Ex-Servicemen.

These regulations describe the process by which certain ex-servicemen will be issued a certificate by the Secretary of Labor entitling the person to receive special counseling and job development assistance through the United States Employment Service. A review of the regulations will be undertaken as a part of an effort to determine the viability of the existing program and the appropriateness of any changes in the regulation. A regulatory analysis is not required.

Status: It has been determined that revisions are not required at this time. The regulation is, therefore, removed from the Agenda.

Contact: Dennis R. Wyant, Room 10100—Patrick Henry Building, 601 D Street, N.W., Washington, D.C. 20213, 202-376-7480.

18. *ETA*—Airline Employee Protection Program.

These regulations are being developed to implement the employee protection provisions of the Airline Deregulation Act (Pub. L. 95-504). The Department is required to develop these regulations in accordance with this new legislation. A regulatory analysis is not required.

Status: The publication of a final regulation by June 1, 1980 is anticipated.

Contact: Bob Gillham, Room 7306—Patrick Henry Building, 601 D Street, N.W., Washington, D.C. 20213, (202) 376-6715; or LMSA Contact: Lary Yud, Room S5639—Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210, (202) 523-6495.

19. *ETA*—29 CFR Part 91, Adjustment Assistance for Workers After Certification Under the Trade Act of 1974.

These regulations are required by Section 248 of the Trade Act of 1974 to implement provisions relating to individual entitlements to trade adjustment assistance for certain workers. A review of the regulations is underway to determine whether it is necessary to clarify existing provisions, correct errors and omissions, and update those sections relating to program administration. A regulatory analysis is not required.

Status: The publication of a proposed regulation by April 30, 1980 is anticipated.

Contact: Bob Gillham, Room 7306—Patrick Henry Building, 601 D Street, N.W., Washington, D.C. 20213, 202-376-6715.

20. *ETA—20 CFR Part 615—Extended Benefits.* It is intended to amend the entitlement restriction rules to include a provision governing a between terms denial of benefits to certain school employees. It is expected that the new regulations will no longer require the Federal Government to reimburse 50 percent of the cost of sharable compensation and extended benefits paid to former employees of a state and its political subdivisions. Other technical and clarifying amendments will also be considered. A regulatory analysis is not required.

Status: The publication of a proposed regulation by June 30, 1980 is anticipated.

Contact: Edwin Kerley, see item 8.

21. *ETA*—20 CFR Part 653—Services For Veterans.

The Services for Veterans regulations will be revised to bring them into conformity with recent statutory amendments, eliminate unnecessary detail and make the regulation more easily understandable. A regulatory analysis is not required.

Status: The publication of a proposed regulation by May 1, 1980 is anticipated.

Contact: Fred Stallworth, Room 8118—Patrick Henry Building, 601 D Street, N.W., Washington, D.C. 20213, 202-376-6221.

22. *ETA*—20 CFR 655.207—Adverse Effect Wage Rate Methodology.

This subpart contains regulations related to establishing Adverse Effect Wage Rates for the Temporary Employment of Aliens in Agriculture. This proposed regulation will establish a new methodology for computing and applying a wage rate offered by employers who request utilization of temporary alien workers in agriculture. The proposal will not impact on sheep-herding or logging activities. This regulation may be of special interest to small businesses.

Status: A regulatory analysis is not required. The publication of a proposed regulation by November 1, 1980 is anticipated.

Contact: David O. Williams, Room 8000, Patrick Henry Building, 601 D Street, N.W., Washington, D.C. 20213, 202-376-6289.

23. *Occupational Safety and Health Administration (OSHA)*—29 CFR Part 1910, Subpart L—Fire Protection.

These regulations contain requirements for fire suppression equipment and fire protection systems. The existing subpart is being revised to simplify present requirements related to fire suppression equipment and fire protection systems and to require training for persons who are members of certain fire brigades. This regulation may be of special interest to small businesses. A regulatory analysis is not required.

Status: The publication of a final regulation by May 30, 1980 is anticipated.

Contact: Thomas Seymour, Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210, 202-523-7216.

24. *OSHA*—29 CFR Part 1910, Standards for Work in Confined Spaces.

This standard will establish requirements for protection of workers who must enter and work in confined spaces with hazardous environments. This regulation is being developed because of an increasing number of fatalities and serious injuries from this type of work and the receipt of a NIOSH criteria document for the standard. The need for a regulatory analysis is under study. This regulation may be of special interest to small businesses.

Status: An advance notice of proposed rulemaking was published on October 19, 1979. The publication of a proposed regulation by October 31, 1980 is anticipated. Public meetings on the advance notice of proposed rulemaking are scheduled for May, 1980.

Contact: Dr. Jerry Purswell, Room N3605, Main Labor Building, 200 Constitution Avenue, N.W., Washington, D.C. 20210, 202-523-8061.

25. *OSHA*—29 CFR Part 1907, Laboratory Accreditation.

This regulation establishes standards to accredit testing laboratories which certify that equipment used by workers meets OSHA standards. The regulation is being reviewed to improve existing procedures in this area. The need for a regulatory analysis is under study. This regulation may be of special interest to small businesses.

Status: The publication of an advance notice of proposed rulemaking by November 30, 1980 is anticipated.

Contact: Dr. Jerry Purswell, see item 24.

26. *OSHA*—29 CFR 1910.177—Multi-piece Wheel Rims.

The regulation is a new addition to 29 CFR Part 1910, subpart N to govern the handling of multi-piece wheel rims. The regulation is needed to afford additional protection to affected workers who may be subject to serious hazards when multi-piece wheel rims explode while being assembled and disassembled. A regulatory analysis is not required. This regulation may be of special interest to small businesses.

Status: A final regulation was published on January 29, 1980. This item is therefore, removed from the Agenda.

Contact: Dr. Jerry Purswell, see item 24.

27. *OSHA*—29 CFR 1910.186—Conveyors.

This regulation will prescribe standards to protect employees from safety hazards encountered around conveyors. A new standard is needed to help control such hazards as limbs being caught in conveyors, falling while going over conveyors and objects falling from conveyors onto workers. An economic study has been performed. This regulation may be of special interest to small businesses.

Status: The publication of a final regulation by Sumer 1980 is anticipated.

Contact: Dr. Jerry Purswell, see item 24.

28. *OSHA*—29 CFR Part 1926, Subpart M—Perimeter Protection, Flat Roofs.

This proposed new standard would provide perimeter protection for employees working on flat roofs. A new regulation is required in response to recent court decisions and to the recommendations of a draft NIOSH study of the hazards in the roofing industry. A regulatory analysis is not required. This regulation may be of special interest to small businesses.

Status: A proposed regulation was published August 17, 1979 and the evaluation of public comments is now underway. The publication of a final regulation by June 30, 1980 is anticipated.

Contact: Allen E. Martin, Room N3457, Main Labor Building, 200 Constitution Avenue, N.W., Washington, D.C. 20210, 202-523-8161.

29. *OSHA*—29 CFR Part 1926—Subpart S—Tunnels.

These regulations prescribe safety and health standards to protect employees working in the construction of tunnels and shafts. The standard needs revision to bring coverage up to date with current technology and provide for improved monitoring of hazardous conditions. A regulatory analysis is not required.

Status: The publication of a proposed regulation by August 31, 1980 is anticipated.

Contact: Allen E. Martin, see item 28.

30. *OSHA*—29 CFR Part 1981a—Safety and Health Regulations for Marine Terminal Facilities.

These regulations will prescribe safety and health standards for employment in marine terminal facilities. New standards are now being developed as a result of a request from the industry, and in order to facilitate voluntary compliance and have more efficient enforcement in a high hazard industry. A regulatory analysis is not required.

Status: The publication of a proposed regulation by May 31, 1980 is anticipated.

Contact: Edward March, Room N3471, Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20210, 202-523-7234.

31. *OSHA*—29 CFR Part 1910, Subpart d—Walking and Working Surfaces.

Subpart D contains safety requirements concerning falling and tripping hazards related to holes in floors, walls, platforms and ladders at the workplace, This subpart may be in need of revision to simplify language, bring requirements up to date with current technology and cover new types of work platforms. The need for a regulatory analysis is under study. This regulation may be of special interest to small businesses.

Status: The publication of a proposed regulation by October 30, 1980 is anticipated.

Contact: Thomas Seymour, see item 23.

32. *OSHA*—29 CFR Part 1926, Subpart L, Ladders and Scaffolding.

This subpart contains standards to protect employees working on ladders and scaffolds. These regulations are being reviewed to coincide with the review of 29 CFR 1910, Subpart D, to simplify language, bring requirements up to date with current technology, and cover new types of work platforms. The need for a regulatory analysis is under study. This regulation may be of special interest to small businesses.

Status: The publication of a proposed regulation by October 30, 1980 is anticipated.

Contact: Allan Martin, see item 28.

33. *OSHA*—29 CFR 1910.401—Commercial Diving Operations.

This regulation is being revised to reflect differences in hazards for scientific diving as compared to commercial diving. The rulemaking record for the current standard did not adequately treat these differences. For this reason the regulation will be reviewed at the request of the scientific diving community. A regulatory analysis is not required. This regulation may be of special interest to small businesses.

Status: The publication of a proposed regulation by June 30, 1980 is anticipated.

Contact: Dr. Jerry Purswell, see item 24.

34. *OSHA*—29 CFR Parts 1915, 1916 and 1917—Ship Repairing, Shipbuilding, Shipbreaking.

These regulations are being consolidated by administrative action into a single standard for all three activities in order to reduce overlapping provisions and produce a simplified standard for three related activities. A regulatory analysis in not required.

Status: The publication of an administrative action by July 30, 1980 is anticipated.

Contact: Edward March, see item 30.

35. *OSHA*—29 CFR Part 1910, Subpart H—Hazardous Materials.

This subpart contains regulations for control of hazardous materials in the workplace which can cause fires and explosions and which may also produce acute health effects such as asphyxiation or chemical burns. The existing standard needs to be revised to encompass the continuing number of fires and explosions resulting in worker fatalities for which no standards exist. The need for a regulatory analysis is under study. This regulation may be of special interest to small business.

Status: An advance notice of proposed rulemaking on the hazardous materials in grain handling facilities was published on February 15, 1980. An advance notice of proposed rulemaking on other hazardous materials will be published by May 31, 1980.

Contact: Thomas Seymour, see item 23.

36. *OSHA*—29 CFR Part 1910, Subpart S—Electrical

This Subpart contains provisions related to the design and installation of electrical systems in public and private facilities. Subpart S requires revision to provide a significant simplification of the current regulations and to bring the existing regulations up to date with the current consensus standards and technology. A regulatory analysis is not required. This regulation may be of special interest to small businesses.

Status: A proposed regulation was published on September 26, 1979. A hearing is scheduled for May 6, 1980. The publication of a final regulation by July 31, 1980 is anticipated.

Contact: Sil Patti, Room N3510, Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210, 202-523-7207.

37. *OSHA*—29 CFR Part 1926, Subpart M—Floor and Wall Openings and Stairways.

This subpart contains standards to protect employees working around floor, roof, and wall openings and stairways. This subpart needs to be revised to coincide with the revision of 29 CFR Part 1910—Subpart D since similar material is treated. It is being revised to simplify language, bring requirements up-to-date with current technology and cover new types of work platforms. The need for a regulatory analysis is under study. This regulation may be of special interest to small businesses.

Status: The publication of a proposed regulation by October 31, 1980 is anticipated.

Contact: Allan Martin, see item 28.

38. *OSHA*—29 CFR Part 1910—Lockout/Tagout Systems For Machines.

This standard will prescribe the requirements for locking out or otherwise insuring that employees are not injured while maintaining machines and equipment. A petition for a standard from the United Auto Workers and an increasing number of fatalities to workers from this hazard have highlighted the need for activity in this area. Recently completed analyses of data from OSHA fatality investigations as well as data supplied by others demonstrates a serious problem with worker exposure to electrical, mechanical and chemical hazards while maintaining or servicing equipment. These hazards produce electrocution, severe trauma from being caught in and between machine parts, chemical or thermal burns, and acute respiratory problems. The need for a regulatory analysis is under study.

Status: The publication of an advance notice of proposed rulemaking in May, 1980 is anticipated.

Contact: Dr. Jerry Purswell, see item 24.

39. *OSHA*—Occupational Exposure to Chromium.

OSHA is developing a standard for occupational exposure to chromium. The standard would include permissible exposure limits, and provisions for medical surveillance, exposure monitoring, methods of compliance, and employee training. The Agency is responding to a need to provide more effective protection of employees from the health hazards of chromium exposure. The potential hazards include skin ulceration, nasal septal perforation, and cancer. The need for a regulatory analysis is under study.

Status: The publication of a proposed regulation by November 30, 1980 is anticipated.

Contact: Bailus Walker, Room N3718, Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210, 202-523-7075.

40. *OSHA*—Identification, Classification, and Regulation of Toxic Substances Posing a Potential Carcinogenic Risk (Cancer Policy).

OSHA has published a standard for the regulation of potential carcinogens found in the occupational environment. The Agency is responding to a need to find a more expeditious means of evaluating data on potentially carcinogenic materials and for developing regulations to provide adequate employee protection from exposure to these substances. A regulatory analysis has been prepared.

Status: A final regulation was published on January 22, 1980. The entry is, therefore removed from the Agenda.

Contact: Bailus Walker, see item 29.

41. *OSHA*—29 CFR Part 1910, Subpart Z—Occupational Exposure to Pesticides.

OSHA is developing a generic standard to control occupational exposure to pesticides during the manufacturing and formulating processes. OSHA has determined that employees in the pesticide industry have an increased risk of illness due to their exposure to pesticides, and the agency has developed several alternative standards designed to reduce this risk. The standards include provisions relating to work practices, medical surveillance, employee training and respiratory protection. A regulatory analysis will be prepared. This regulation may be of special interest to small businesses.

Status: The publication of a proposed regulation by September 30, 1980 is anticipated.

Contact: Flo H. Ryer, Room N3663—Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210, 202-523-7175.

42. *OSHA*—29 CFR Part 1910—Occupational Exposure to Beryllium.

OSHA is developing a standard for occupational exposure to beryllium. The standard would include permissible exposure limits, and provisions for medical surveillance, exposure monitoring, methods of compliance, and employee training. The Agency is responding to a need to provide more effective protection of employees from the health hazards of beryllium exposure. The potential hazards include berylliosis (a disease of the lungs and other organs) and cancer. A regulatory analysis is not required. This regulation may be of special interest to small businesses.

Status: The publication of a final regulation in the Spring of 1980 is anticipated.

Contact: Bailus Walker, see item 39.

43. *OSHA*—Access to Employee Exposure and Medical Records.

Employers which make or maintain exposure and medical records may be required to retain these records for a specified period of time ad make them available to employees, former employees, their designated representatives, and to OSHA and NIOSH. This proposed rule would implement OSHA's policy under the OSHAct that employees have the basic right to know information obtained by employers on the employees' exposure to workplace hazards and any consequent health effects on the employees. A regulatory analysis is not required. This regulation may be of special interest to small businesses.

Status: The publication of a final regulation in the Spring of 1980 is anticipated.

Contact: Flo Ryer, see item 41.

44. *OSHA*—29 CFR Part 1910—Occupational Exposure to Noise.

OSHA is reviewing the record on the proposed noise standard that was issued in October, 1974, in light of the public hearings held during 1975 and 1976. Specific requirements for hearing conservation programs, methods of compliance, and permissible exposure limits are being reviewed and options analyzed. Steps are being taken to prepare an evaluation of the economic impact of the standard and various alternatives. This regulation may be of special interest to small businesses.

Status: The Agency has made considerable progress in analyzing the voluminous public record, and expects to issue a final regulation by October 1, 1980.

Contact: Bailus Walker, see item 39.

45. *OSHA*—29 CFR Part 1910, Subpart Z—Standards Completion Project.

The purpose of the project is to establish a general stndard on environmental monitoring of worker exposure to toxic chemicals, medical surveillance of exposed employees, employee training and recordkeeping. In addition, supplementary, substance-specific guidelines would be prepared for employer and employee use. The project covers the current list of chemicals for which OSHA has only permissible exposure limits. The Occupational Safety and Health Act of 1970 describes the above provisions as important elements of a comprehensive and effective program of industrial hygiene. Conclusion of this project is important to assuring that the intent of the Act is fulfilled. A regulatory analysis will be prepared. This regulation may be of special interest to small businesses.

Status: Alternative regulatory options are under study.

Contact: Flo Ryer, see item 41.

46. *OSHA*—29 CFR 1910.94(a)—Occupational Exposure Standards for Asbestos.

OSHA is considering revisions to its current asbestos standard. Revision might include changes to the permissible exposure limit and provisions for medical surveillance, monitoring, etc. New research on the health hazards of asbestos and concern for the adequacy of our current standard prompted our review. Asbestos is a major cause of occupationally related cancer. A regulatory analysis will be prepared.

Status: Staff analysis of the need for a new proposal is continuing. A decision on further rulemaking will be made in the near future.

Contact: Bailus Walker, see item 39.

47. *OSHA*—29 CFR Part 1910—Occupational Standard for Abrasive Blasting Operations.

OSHA is reviewing and considering modifications to the current standards for abrasive blasting. Information available to the Agency suggests that the current standards need to be revised to make them more effective in protecting abrasive blasters, and workers in the vicinity of abrasive blasting from the hazards inherent in the process, which include silicosis and other lung disorders. A regulatory analysis will be prepared. This regulation may be of special interest to small businesses.

Status: The publication of a proposed regulation by July, 1980 is anticipated.

Contact: Fayez Hanna, Room N3718, Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210, 202–523–7148.

48. *OSHA*—29 CFR Part 1910, Subpart Z—Occupational Exposure to Cadmium.

OSHA is considering revisions to amend its current permissible exposure limit for cadmium and add provisions for medical surveillance, exposure monitoring, etc. Research on the health effects of cadmium indicates that the current standard may not be adequately protective. Exposure to cadmium may cause kidney, liver, adrenal and other systemic damage as well as several types of cancer. The need for a regulatory analysis is under study. This regulation may be of special interest to small businesses.

Status: The publication of a proposed regulation in Fall, 1980 is anticipated.

Contact: Bailus Walker, see item 39.

49. *OSHA*—29 CFR Part 1910, Subpart Z—Occupational Exposure to Nickel.

OSHA is considering revisions to amend its current permissible exposure limit for nickel and add provisions for medical surveillance, environmental monitoring, etc. The National Institute for Occupational Safety and Health has published a summary of the toxic effects of nickel and recommendations for controlling occupational exposure to this substance. The NIOSH report, called a Criteria Document, indicated that OSHA's current standard for nickel may not be sufficiently protective. Exposure to nickel may increase the risk of lung and nasal cancer and also causes nasal septum perforation and dermatitis. The need for a regulatory analysis is under study. This regulation may be of special interest to small businesses.

Status: Agency review of available data is underway. No action during the coming six months is anticipated.

Contact: Bailus Walker, see item 39.

50. *OSHA*—29 CFR Part 1910—Occupational Exposure to MBOCA.

OSHA is developing a standard for occupational exposure to MBOCA (4,4 methylene bis (2-chloroaniline)) which may include a permissible exposure limit and provisions for medical surveillance, environmental monitoring, methods of compliance, and employee training. An earlier standard for MBOCA was vacated for a procedural reason through judicial action. MBOCA has been found to increase the risk of liver and bladder cancer.

The need for a regulatory analysis is under study.

Status: The publication of a proposed regulation by September 30, 1980 is anticipated.

Contact: Bailus Walker, see item 39.

51. *OSHA*—Chemical Hazard Identification.

OSHA is developing a proposal to require employers to inform employees of the identities of hazardous chemicals in the workplace, by means of labels, lists, material safety data sheets, hazard warnings, and records preservation. Awareness of the chemical hazards to which they are exposed provides employees with the knowledge necessary for the individual to actively participate in the reduction or elimination of exposure to these harmful agents. A regulatory analysis will be prepared. This regulation may be of special interest to small businesses.

Status: The publication of a proposed regulation by August, 1980 is anticipated.

Contact: Flo Ryer, see item 41.

52. *OSHA*—29 CFR Part 1960—Safety and Health Provisions for Federal Employees.

The regulations and guidelines of Part 1960 are applicable only to Federal employees and constitute a framework for the occupational safety and health programs of the various Federal agencies. Modification of criteria for program evaluation and safety and health awards have been under development for inclusion in 29 CFR Part 1960. Additional sections of Part 1960 are being modified to conform to requirements of Executive Order 12196. No regulatory analysis is required.

Status: This regulation is applicable to Federal employees only and as such is not subject to the notice and comment procedure of the Administrative Procedure Act. The regulation is, therefore, removed from the Agenda.

Contact: Annie W. Asensio, Room N3423, Main Labor Building, 200

Constitution Avenue, NW, Washington, D.C. 20210, 202-523-8677.

53. *OSHA*—29 CFR 1904.8—Reporting of Fatality or Multiple Hospitalization Accidents.

OSHA is proposing to shorten the time for reporting fatality or multiple hospitalization accidents. Employers would now be required to report a fatality or multiple hospitalization accident within 8 hours. Reduction of the reporting time and prompt investigation of the accident by OSHA will assure a timely gathering of more useful information and more effective identification of the hazards involved. A regulatory analysis is not required.

Status: Public comments are being reviewed. No further action has yet been scheduled.

Contact: Kathleen A. Grosso, Department of Labor, 200 Constitution Avenue NW, Washington, D.C. 20210, 202-523-8137.

54. *OSHA*—29 CFR Part 1910—Occupational Exposures to Safety and Health Hazards in Grain Handling Facilities.

OSHA is considering the development of a standard to control occupational exposures to the safety and health hazards found in grain handling facilities. The safety hazards include fires and explosions which result when grain dust or processed grain (flour) is ignited. The health hazards include grain dust, pesticides and plant and animal matter associated with grain and dust. Exposures to these substances can result in various acute and chronic health effects including allergies, dermatitis, respiratory disease and cancer.

OSHA is seeking comments and information on the hazards associated with grain handling facilities. In addition to a request for written comments, informal public meetings were held in April 1980 to discuss this issue. The need of for a regulatory analysis is under study. This regulation may be of special interest to small businesses.

Status: A determination of the need for this regulation will be based on the evaluation of all information and comments received.

Contact: Flo Ryer (Health), see item 41, and Thomas Seymour (Safety), see item 23.

55. *OSHA*—29 CFR Part 1926—Lockout Tagout Systems.

There are a number of existing standards in 29 CFR Part 1926 concerning lockout and tagout. This regulation would be a separate section that would revise and clarify these rules, add new rules, and cross reference other applicable standards in 29 CFR Part 1926. These regulations are also being reviewed and coordinated to coincide with the action being considered for 29 CFR Part 1910 (See Agenda Item No. 38.).

There are three types of situations where lockout is necessary for hazard control. The first is locking out to prevent the movement of a piece of equipment. This most commonly involves electrically powered equipment, but does include hydraulic, pneumatic, steam and other power sources. Secondly, lockouts are used to prevent the generation of hazardous atmospheres. This include hazardous gases and extreme temperatures or pressures occurring in confined spaces. Third, lockouts are used to preclude exposure to electrical current. The need for a regulatory analysis is under study. This regulation may be of special interest to small businesses.

Status: Publication of an advance notice of proposed rulemaking in May, 1980 is anticipated.

Contact: Allan Martin, see item 28.

56. *OSHA*—29 CFR Part 1926—Standards for Work in Confined Spaces.

Several existing paragraphs within Part 1926 address some of the hazards of confined or enclosed spaces which occur in construction. These existing requirements will be reviewed to coincide with proposed rulemaking planned for 29 CFR Part 1910 (See Agenda Item 24.) New paragraphs and cross references for construction will be placed within 29 CFR Part 1926.

This regulatory action is necessary because construction accident reports indicate that employees are being injured or killed because of oxygen deficient, toxic or flammable atmospheres found in confined spaces such as tanks, vats, vaults, pits and reactor vessels. These reports also indicate that rescue attempts into confined spaces are often unsuccessful and result in additional injuries and deaths. The need for a regulatory analysis is under study. This regulation may be of special interest to small businesses.

Status: Publication of a notice of proposed rulemaking in November, 1980 is anticipated.

Contact: Allan Martin, see item 28.

57. *Office of the Assistant Secretary For Administration and Management (OASAM)*—41 CFR 29-4.9—Unsolicited Proposals.

This regulation governs unsolicited grant proposals received by the Department. New Federal procurement regulations require the Department to review these existing provisions. A regulatory analysis is not required.

Status: An evaluation of the need for this regulation has shown that it is not necessary. It is, therefore, removed from the Agenda.

Contact: Ted Goldberg, Room S1323—Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210, 202-523-9147.

58. *OASAM*—49 CFR 29-1.6—Debarred, Suspended and Ineligible Bidders.

These regulations govern the exclusion of individuals and concerns from eligibility to receive Deparment of Labor contracts, on account of violations of applicable Federal laws and regulations. Current Departmental regulations on this subject need to be reviewed and updated. A regulatory analysis is not required. This regulation may be of special interest to small businesses.

Status: The publication of a proposed regulation by July 1, 1980 is anticipated.

Contact: Ted Goldberg, see item 57.

59. *OASAM*—41 CFR Part 29-70—Administrative Requirements Governing All Grants and Agreements by Which Department of Labor Agencies Award Funds.

This regulation will amend 41 CFR Part 29-70 to add a new § 29-70.213, "Suspension and termination of grants and agreements, debarment." This section implements Attachment L to OMB Circular No. A-110 and the part of Attachment L to OMB Circular No. A-102 which deals with sanctions under grants. Section 29-70.213 includes the Federal standards which apply if a grant must be suspended or terminated; or if a grantee is debarred from eligibility to receive a Department of Labor grant. A regulatory analysis is not required. This regulation may be of special interest to small businesses.

Status: The publication of a proposed regulation by October 1, 1980 is anticipated.

Contact: Ted Goldberg, see item 57.

60. *OASAM*—41 CFR Part 29-70—Administrative Requirements Governing All Grants and Agreements by Which the Department of Labor Agencies Award Funds.

This regulation will amend 29 CFR 70.103, "Cost Principles," and 29 CFR 70.216, "Procurement standards; required provisions for recipient contracts." The amendment is needed to incorporate requirements of amended OMB Circulars which govern Federal standards and cost principles applicable to Federal financial assistance. The Office of Management and Budget recently published revised cost principles for educational institutions as OMB Circular No. A-21; and revised Attachment O to OMB Circular No. A-102 which amended "Federal Standards Governing State and Local grantee procurement." A regulatory analysis is not required. This regulation may be of special interest to small businesses.

Status: The publication of a final regulation by October 1, 1980 is anticipated.

Contact: Ted Goldberg, see item 57.

61. *OASAM*—41 CFR Part 29-15 Cost Principles for State Employment Security Administration (SESA) Grants.

These regulations establish general principles and procedures governing the allowability of SESA costs. They consist of descriptions of particular types which are allowable, allowable with prior Department of Labor approval and unallowable as charges to grants to States for Employment Security and Unemployment Insurance administration.

These regulations are needed to implement Federal Management Circular 74-4 and OMB Circular A-102 and to provide complete guidance to State agencies on the use of Reed Act Funds.

Legislative authority appears in the rulemaking provisions of the Wagner-Peyser Act (29 U.S.C. 49 C-3). A regulatory analysis is not required.

Status: The publication of a proposed rule by October 1, 1980 is anticipated.

Contact: Ted Goldberg, see item 57.

62. *Employment Standards Administration* (ESA)—41 CFR Parts 60-1, 60-2, and 60-30. Office of Federal Contact Compliance Programs.

The regulatory changes published for comment in the **Federal Register** of March 20, 1979, deal with three distinct subjects related to prohibition of employment discrimination and to affirmative action by federal contractors under E.O. 11246: Conciliation agreements, annual reports by contractors, and expedited enforcement hearings. A regulatory analysis was not required. This regulation may be of special interest to small businesses.

Status: A final rule was published on December 28, 1979. This entry is, therefore, removed from the Agenda.

Contact: Kenneth Patton, Room C3324—Main Labor Building, 200 Constitution Avenue, NW, Washington, DC 20210, (202) 523-9426.

63. *ESA*—41 CFR Parts 60-1, 60-2, 60-20, 60-30, 60-50, 60-60, 60-250 and 60-741. Office of Federal Contract Compliance Programs Coverage, Requirements, Prohibited Practices, and Guidelines.

This group of regulations contains OFCCP's rules covering obligations of Federal contractors and general enforcement provisions under E.O. 11246 (41 CFR Part 60-1), affirmative action program requirements (41 CFR Part 60-2), sex discrimination guidelines under E.O. 11246 (41 CFR Part 60-20), administrative hearing rules (41 CFR Part 60-30), religion and national origin discrimination guidelines (41 CFR Part 60-50), nonconstruction contractor evaluation procedures (41 CFR Part 60-60); affirmative action requirements and enforcement provisions under Section 402 of the Vietnam Era Veteran Readjustment Assistance Act (41 CFR Parts 60-1, 60-30, 60-250); and affirmative action requirements and enforcement provisions under Section 503 of the Rehabilitation Act of 1973 (41 CFR Parts 60-1, 60-30 and 60-471).

This group of regulations is in need of a comprehensive reorganization, simplification, and clarification. Although minor amendments and modifications have been made to OFCCP's regulations in recent years, there have been no extensive changes since 1974. Expanded program activities since that time, new and evolving policy issues, and past litigation make substantial revisions necessary. Additionally, the need to improve and shorten regulations in light of regulatory reform makes review of these regulations especially timely and worthwhile.

Some of the proposed changes to the regulations were published in the **Federal Register** on December 28, 1979. They address such issues as the degree to which labor unions have an interest or a role in the compliance review process, the processing of complaints of discrimination, the handling of a growing volume of preaward compliance review requests, preliminary enforcement procedures, aggregation of contracts to establish the $50,000 floor for coverage under the written affirmative action program requirement, the extension of affirmative action program requirements to the non-construction workforce of construction contractors, modification of maternity leave guidelines, and provisions which address the issue of sexual harassment in the workforce.

The December 28, 1979, proposal was supplemented by publication on February 22, 1980, of a proposed rule clarifying that Federal deposit or share insurance would not be terminated by the Department of Labor and that financial institutions would not be debarred from Federal deposit or share insurance based on violations of E.O. 11246, Section 503 of the Rehabilitation Act, or Section 402 of the Vietnam Era Veterans Readjustment Assistance Act. With respect to Federal deposit or share insurance, the proposal provides for the following enforcement options: (1) Referral to the Department of Justice for injunctive relief; (2) referral to the appropriate Federal financial institution regulatory agency for action under the agency's procedures. Comments on both proposals were received until March 24, 1980.

On January 22, 1980, a proposal was published which would prohibit the payment or reimbursement by contractors of membership fees and other expenses for participation by their employees in a private club or organization which bars, restricts, or limits its membership on the basis of race, color, sex, religion, or national origin. The contractor, however, could refute such a violation should it establish that the membership of its employees in these clubs or organizations has no impact on the employees' opportunity for promotion, compensation, or other terms and conditions of employment. Public comments on this proposal were received until March 24, 1980. A regulatory analysis is not required. These regulations may be special interest to small businesses.

Status: A final rulemaking is anticipated for these items by July 31, 1980.

Contact: Kenneth Patton, see item 62.

Note.—Additional regulatory activities relating to 41 CFR Parts 60-2, 60-20, 60-250, and 60-741 are listed in items 64, 66, 67 and 68 of this Agenda.

63A. *ESA*—41 CFR Part 60-1—Payment of Membership Fees in Private Clubs and Organizations.

Status: This item has been combined with entry 63 and is, therefore, removed from the Agenda as a separate entry.

Contact: Kenneth Patton, see item 62.

64. *ESA*—41 CFR Part 60-2—Affirmative Action Requirements.

This regulation under Executive Order 11246 contains detailed information concerning the requirements of Affirmative Action Programs, including several types of analyses and goal setting procedures which must be part of such programs. Proposed changes will be published to achieve clarification and simplification. Further, the need to improve and shorten regulations in light of regulatory reform makes review of these regulations especially timely and worthwhile. A regulatory analysis is not required.

Status: The publication of a proposed regulation by August 15, 1980 is anticipated.

Contact: Kenneth G. Patton, see item 62.

65. *ESA*—41 CFR Part 60-4—Construction Contractors' Affirmative Action Requirements under Executive Order 11246, as amended.

Proposed nationwide minority employment goals under this regulation were published for public comment in the **Federal Register** on September 7, 1979. A regulatory analysis is not required. This regulation may be of special interest to small businesses.

Status: The publication of a final rule by July 1, 1980, is anticipated.

Contact: Kenneth Patton, see item 62.

66. *ESA*—41 CFR Part 60–20—Exclusionary Employment Policies Involving Exposure to Reproductive Hazards.

On February 1, 1980, EEOC and OFCCP published jointly proposed guidelines under Title VII of the Civil Rights Act of 1964, as amended and E.O. 11246 involving exclusionary employment policies and practices related to exposure to alleged reproductive hazards. A correction was published in the **Federal Register** on March 14, 1980. A 120-day public comment period is applicable to this proposal. This proposal may be of significant interest to small businesses and organizations. The need for a regulatory analysis is under study.

Status: A final rulemaking is anticipated by November 1, 1980.

Contact: Kenneth Patton, see item 62.

67. *ESA*—41 CFR Part 60–20—Fringe Benefits.

A proposed change in a provision of the Sex Discrimination Guidelines contained in 41 CFR Part 60–20 concerns the treatment of fringe benefits. A proposal was published for public comment a August 25, 1978, indicating the unlawfulness of a differential in benefits based on differences between the cost to the employer of providing benefits to women as a group and the cost of providing benefits to men as a group, and of employees of one sex being required to make greater contributions from their wages than are employees of the opposite sex in order to receive equal benefits. The need for a regulatory analysis is under study.

Status: The publication of a final rule by November 1, 1980 is anticipated.

Contact: Kenneth Patton, see item 62.

68. *ESA*—41 CFR Part 60–741—Affirmative Action Obligations for Handicapped Workers. A proposal is under development to make the definition section of these regulations consistent with 1978 amendments to the Rehabilitation Act of 1973, and to comport these regulations with the Department's regulations implementing Section 504 of the Rehabilitation Act. (See item 11.) Conforming changes will ensure that government contractors covered by Section 503 of this Act who are also covered by Section 504 will be subject to consistent legal requirements concerning pre-employment physical examinations and reasonable accommodations. A regulatory analysis is not required. This regulation may be of special interest to small businesses and organizations.

Status: A proposal is expected to be published for public comment by June 30, 1980.

Contact: Kenneth Patton, see item 62.

69. *ESA*—41 CFR Part 60–40—Examination and Copying of OFCCP Documents.

These provisions cover the implementation of the Freedom of Information Act with respect to records of the OFCCP. Revisions are being developed to accommodate recent court decisions and advice received from the U.S. Department of Justice. A regulatory analysis is not required.

Status: The publication of a proposed regulation by July 31, 1980 is anticipated.

Contact: Kenneth Patton, see item 62.

70. *ESA*—29 CFR Part 4—Labor Standards for Federal Service Contracts.

These provisions contain regulations and interpretations governing the administration of the Service Contract Act, which requires certain contractors and subcontractors performing work under service contracts with the United States Government to observe prevailing wage and fringe benefit standards for the various classes of employees engaged in the performance of the contract. Since 1969, there has not been a thorough substantive updating and clarification of this regulation. Changes clarifications and revision are proposed to reflect and codify in the regulations the policies, rulings, and interpretations developed in the course of the Department's experience in administering and enforcing the Act over the years. A regulatory analysis is not required. These regulations may be of special interest to small businesses.

Status: A proposal was published on December 28, 1979. Publication of a final regulation is anticipated by September 1, 1980.

Contact: Dorothy P. Come, Room S3502—Main Labor Building, 200 Constitution Avenue, N.W., Washington, D.C. 20210, 202–523–8333.

71. *ESA*—29 CFR Parts 1, 3 and 5—Labor Standards Provisions, Davis-Bacon and Related Acts.

These provisions contain regulations and interpretations governing the issuance of prevailing wage and fringe benefits determinations and the administration of labor standards required to be included in federally-funded or assisted construction contracts under the Davis-Bacon Act, the Contract Work Hours and Safety Standards Act, and responsibilities under the Copeland Anti-Kickback Act. Proposed revisions include modifications to wage determination procedures, changes to assure better coordination of enforcement by the contracting agencies, and changes to provide for more effective enforcement procedures. Also, changes, clarifications and revisions are proposed to reflect and codify in the regulations policies, rulings, and interpretations developed in the course of the Department's experience in administering and enforcing the Act over the years. A regulatory analysis is not required. These regulations may be of special interest to small businesses.

Status: The publication of a proposed Part 1 and Subpart A of Part 5 occurred on December 28, 1979. Publication of a final rule is anticipated by September 1, 1980. The publication of the remainder by August 15, 1980 is anticipated.

Contact: Dorothy P. Come, see item 70.

72. *ESA*—29 CFR Part 41—Interpretations of the Farm Labor Contractor Registration Act.

These regulations contain interpretations of the Farm Labor Contractor Registration Act, which requires farm labor contractors, their full-time or regular employees and users of migrant agricultural workers to observe certain rules regarding the recruiting, transporting, and housing of migrant workers. This Interpretative Bulletin has not been revised since the Act was significantly amended in 1974. Revisions are required to reflect the changes made in the statute and to provide clear interpretations regarding the administration of the law. A regulatory analysis is not required. This regulation may be of special interest to small businesses.

Status: The publication of a proposed regulation by September 30, 1980 is anticipated.

Contact: Solomon Sugarman, Room S3504—Main Labor Building, 200 Constitution Avenue, N.W., Washington, D.C. 20210, 202–523–7531.

73. *ESA*—29 CFR Part 570, Subpart C—Employment of Minors Between 14 and 16 Years of Age.

This regulation sets forth the periods and conditions for the employment of minors 14 and 15 years of age. This regulation is issued under Section 3(1) of the Fair Labor Standards Act. Revisions in the Regulations are needed in order to clarify its meaning and provide consistency in the application of its provisions. A regulatory analysis is not required. This regulation may be of special interest to small businesses.

Status: The publication of a proposed regulation by September 1, 1980 is anticipated.

Contact: Lucille C. Pinkett, Room S3002—Main Labor Building, 200 Constitution Avenue, N.W., Washington, D.C. 20210, 202-523-8412.

74. *ESA*—29 CFR Part 531—Wage Payments Under the Fair Labor Standards Act (FLSA).

This regulation defines the term "wage" under the FLSA and establishes criteria used in determining the "reasonable cost" and "fair value" of board, lodging and other facilities customarily furnished by an employer which may be counted toward an employee's wages in meeting the pay standards of the FLSA. The regulation must be updated to reflect changes in the tip credit and minimum wage provisions under the 1974 and 1977 amendments to the Act and to reflect interpretative rulings resulting from court decisions and policy decisions made by the Department in recent years. A regulatory analysis is not required. This regulation may be of special interest to small businesses.

Status: The publication of a proposed regulation by August 1, 1980 is anticipated.

Contact: Brooks Sipes, Room S3508—Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210, 202-523-7043.

75. *ESA*—29 CFR Part 778 Overtime Compensation.

This regulation implements and interprets the overtime and maximum hours provisions of the FLSA. Because of increases in the Federal minimum wage under the 1974 and 1977 amendments to the Act, arithmetic examples in this regulation are obsolete and need to be updated. In addition, a change is needed in order to clarify the computation of overtime pay in situations where employers pay for certain activities, such as eating lunch, which are not ordinarily regarded as hours worked. A regulatory analysis is not required. This regulation may be of special interest to small businesses.

Status: The publication of a proposed regulation by May 31, 1980 is anticipated.

Contact: Brooks Sipes, see item 74.

76. *ESA*—29 CFR Part 516—Records to be Kept By Employers (FLSA).

This regulation contains recordkeeping requirements applicable to all employers whose employees are covered by the FLSA. Certain sections of this regulation need to be deleted and a revision must be made to reflect the repeal of certain FLSA exemptions and modification of another exemption by the 1974 and 1977 amendments to the Act. A regulatory analysis is not required. This regulation may be of special interest to small businesses.

Status: The publication of a proposed regulation by May 31, 1980 is anticipated.

Contact: Brooks Sipes, see item 74.

77. *ESA*—29 CFR Part 529—Employment of Patient Workers in Hospitals and Institutions at Subminimum Wages.

This regulation sets forth the conditions under which certificates may be issued authorizing special minimum wage rates for patients performing work for the hospitals or institutions in which they reside, under Section 14 of the FLSA. These regulations were initially issued in 1975. Our administrative experience with the regulations reveals a need for providing standards for situations not adequately covered in the current regulation. A regulatory analysis is not required. This regulation may be of special interest to small businesses.

Status: The publication of a proposed regulation by September 1, 1980 is anticipated.

Contact: Arthur H. Korn, Room C4316, Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20210, 202-523-8727.

78. *ESA*—29 CFR Part 780—Exemption Applicable to Agriculture, Processing of Agricultural Commodities, and Related Subjects under the Fair Labor Standards Act.

This regulation discusses exemptions under various sections of the FLSA for certain employers engaged in agriculture or the processing of agricultural commodities. Review is required to reflect changes in exemptions brought about by the 1974 and 1977 amendments to the FLSA. A regulatory analysis is not required. This regulation may be of special interest to small businesses.

Status: The publication of a proposed regulation by September 1, 1980 is anticipated.

Contact: Brooks Sipes, see item 74.

79. *ESA*—29 CFR Part 525—Employment of Handicapped Clients in Sheltered Workshops.

This regulation sets forth the conditions under which special certificates can be issued providing for employment of handicapped persons at special minimum wage rates in sheltered workshops, under the Fair Labor Standards Act. These regulations were last comprehensively revised in 1967. Revisions are needed to resolve problems which have arisen and to simplify certain procedures in order to improve the administration of the program. A regulatory analysis is not required. This regulation may be of Special interest to small business organizations, or local governments.

Status: The publication of a proposed regulation by September 30, 1980 is anticipated.

Contact: Arthur Korn, see item 77.

80. *ESA*—29 CFR Part 505—Labor Standards on Projects or Productions Assisted by Grants from the National Endowment for the Arts.

The regulation sets forth procedures to carry out the provisions of Section 5(j) of the National Foundation on the Arts and Humanities Act of 1965 relating to labor standards requirements on projects or productions assisted by grants from the National Endowment for the Arts. The regulation must be updated to reflect the imposition of labor standards requirements with respect to all professional performers and related or supporting professional personnel employed on projects or productions financed in whole or in part under grants made by the National Endowment for the Humanities brought about by the 1976 Amendments to the National Foundation on the Arts and the Humanities Act of 1965. A regulatory analysis is not required.

Status: The publication of a proposed regulation by May 1, 1980 and a final regulation by September 1, 1980 is anticipated.

Contact: Brooks Sipes, see item 74.

81. *ESA*—29 CFR 570.61—Occupations Involving Slaughtering, Meat Packing, or Processing, or Rendering (Child Labor Hazardous Order No. 10) under the FLSA.

This Order prohibits the employment of minors 16 and 17 years of age in occupations involving slaughtering, meat packing or processing, or rendering.

A review of this order is needed to clarify its scope and to update it in light of various technological changes which have occurred in the affected industries since it was adopted. A regulatory analysis is not required. This regulation may be of special interest to small businesses.

Status: The publication of a proposed regulation by September 30, 1980 is anticipated.

Contact: Lucille Pinkett, see item 73.

82. *ESA*—20 CFR Part 718—Standards For Determining Coal Miner's Total Disability or Death Due to Pneumoconiosis.

ESA has finalized regulations establishing standards to be applied in determining whether a coal miner is or was totally disabled due to pneumoconiosis or died from pneumoconiosis and specifying procedures and requirements to be followed in conducting medical examinations and in administering various medical tests. Review and revision of Part 718 was required by the amendments made to the Black Lung Benefits Act by the Black Lung Benefits Reform Act of 1977. A regulatory analysis is not required.

Status: A final regulation was published on February 29, 1980. This entry is therefore, removed from the Agenda.

Contact: James Yocum, Department of Labor, 200 Constitution Avenue, NW, Washington, D.C. 20210, 202-523-6692.

83. *ESA*—20 CFR Part 722—Criteria for Determining Whether State Workers' Compensation Laws Provide Adequate Coverage For Pneumoconiosis and Listing of Approved Laws.

These regulations established procedures and standards to be applied by the Secretary of Labor in determining whether a State workers' compensation law provides adequate coverage for death or disability due to pneumoconiosis. Review and revision of Part 722 is necessary because of the amendments to Section 421 of the Black Lung Benefits Act by the Black Lung Benefits Reform Act of 1977. A regulatory analysis is not required.

Status: The publication of a proposed regulation by November 1, 1980 is anticipated.

Contact: James Yocum, see item 82.

84. *ESA*—20 CFR Part 726—Black Lung Benefits: Requirements for Coal Mine Operators Insurance.

These rules govern the manner by which a coal mine operator shall fulfill its insurance obligations under the Black Lung Benefits Act, either by qualification as a self-insurer or by contracting with a commercial insurance company. Revision of Part 726 is necessary as a result of enactment of the Black Lung Benefits Reform Act of 1977 and the Black Lung Benefits Revenue Act of 1977. The need for a regulatory analysis is under study. This regulation may be of special interest to small businesses.

Status: The publication of a proposed regulation by November 1, 1980 is anticipated.

Contact: James Yocum, see item 82.

85. *ESA*—20 CFR Part 728. Procedures for Processing Discrimination Complaints Under Section 428 of the Black Lung Benefits Act.

Regulations are needed to implement Section 428 of the Black Lung Benefits Act, which prohibits coal mine operators from discharging or otherwise discriminating against any miner in their employ because such miner is suffering from pneumoconiosis. These regulations will reflect procedures set out in a December 1979 Memorandum of Understanding between the Mine Safety and Health Administration and the Employment Standards Administration of the Department. A regulatory analysis is not required.

Status: Publication of a proposal is anticipated by November 1, 1980.

Contact: James Yocum, see item 82.

86. *ESA*—20 CFR Parts 702, and 703—Longshoremen's and Harbor Workers' Compensation.

Revisions and additions to the Longshore Act regulations are being considered. These revisions would establish standards to permit employer groups to qualify as self-insurers under 20 CFR Part 703, would reflect and codify the Department's policies and procedures for handling second injury relief cases, modify procedures for requiring employers to pay additional compensation for failure to pay compensation without an award, and make other changes. A regulatory analysis is not required. These regulations may be of special interest to small businesses.

Status: The publication of proposed regulation by November 1, 1980 is anticipated.

Contact: Neil Montone, Room C4515, Department of Labor, 200 Constitution Avenue, NW, Washington, D.C. 20210, 202-523-8721.

87. *Mine Safety and Health Administration*—30 CFR Part 110—Safety and Health Standards for Construction Work At All Surface Mines.

This regulation would set forth minimum safety and health requirements for construction workers at surface mines. Although MSHA has existing regulations which are applicable to construction at surface coal and metal/nonmetal mines, many of the requirements contained in this rulemaking will be new to the mining industry. Section 101(a)(8) of the Federal Mine Safety and Health Act of 1977 requires that the Secretary, to the extent practicable, promulgate separate standards applicable to mine construction activity on the surface. The need for a regulatory analysis is under study. These regulations may be of special interest to small businesses.

Status: An advance notice of proposed rulemaking was published in August, 1979, and the publication of a proposed regulation by September 30, 1980 is anticipated.

Contact: Frank White, Mine Safety and Health Administration, 4015 Wilson Boulevard, Arlington, Virginia 22203, 703-235-1910.

88. *MSHA*—30 CFR Part 75—Underground Coal Mine Safety Standards.

All safety standards applicable to underground coal mines are contained in 30 CFR Part 75. Prior to March 9, 1978, the effective date of the Federal Mine Safety and Health Act of 1977, there had been pre-proposal consultations with the coal industry with respect to changes in safety standards relating to suface coal mines. A regulatory analysis is not required. These regulations may be of special interest to small businesses.

Status: MSHA has determined not to take further action at this time. The item is therefore removed from the Agenda.

Contact: Frank White, see item 87.

89. *MSHA*—30 CFR Part 71—Respirable Dust Standard For Surface Coal Mines.

This is a health standard which sets forth the dust level and procedures for sampling respirable coal mine dust in surface coal mines. This proposed regulation would change the current sampling procedure and give miners a greater degree of participation in this program. The proposed sampling procedures and opportunity for miner participation are similar to the rules applicable to underground coal mines. A regulatory analysis is not required.

Status: A proposed regulation was published on April 8, 1980. Public hearings are scheduled for June 3 and 5, 1980.

Contact: Frank White, see item 87.

90. *MSHA*—30 CFR Part 57—Requirements To Provide Self-Contained (oxygen generating) Self Rescue Devices To Underground Metal and Non Metal Miners.

This regulation would require that all undeground metal and nonmetal miners be provided with self-contained (oxygen-generating) self-rescue devices. The current self-rescue devices available to underground metal and nonmetal miners are of a filter type, which do not generate oxygen, and hence the user must rely on the oxygen in the air. The new device, which does generate oxygen, will greatly increase a miner's chance of surviving a mine emergency in which irrespirable air is present. A regulatory analysis is not required.

Status: MSHA has decided to defer action on this regulation at this time for the following reason. On November 21, 1978, MSHA revised its self-rescue standards for underground coal mines to require the use, over a two year phase-in period, of self contained (oxygen-generating) self-rescue devices in underground coal mines. The coal mine regulations would, therefore, become fully effective on December 21, 1980. In the preamble to the final rule, MSHA informed the coal mining community that, during the two year phase-in period, it would conduct field tests involving the devices to examine in detail how the regulations would affect miners. It was generally felt that the experience gained by MSHA, miners and operators over the two year phase-in period would facilitate total implementation of the program in underground coal mines. Because this regulation concerns the use of these same devices in underground metal and nonmetal mines, MSHA believes that it would be beneficial to both the metal and nonmetal mining community and MSHA to wait until the field tests are completed with respect to the coal regulations. This item is, therefore, removed from the Agenda.

Contact: Frank White, see item 87.

91. *MSHA*—30 CFR Parts 55, 56 and 57—Requirements For Construction and Maintenance of Impoundments and Tailings Piles at Metal and Nonmetal Mines.

This regulation would set forth minimum safety standards for waste piles and impounding structures at metal and nonmetal mines. Improved standards governing waste dams at coal mines were developed following the dam failure at Buffalo Creek in 1972, which caused death and injury to many miners. These proposed standards, which would set forth requirements for new dam construction and upgrading of existing facilities at metal and non-metal mines, will help reduce the likelihood of dam failures occurring. Because of recent dam failures which include the potential for loss of life and damage to the environment, MSHA decided to develop improved standards for new and existing waste piles and dams. The need for a regulatory analysis is under study. This regulation may be of special interest to small businesses.

Status: The publication of an advance notice of proposed rulemaking by July 1, 1980 is anticipated.

Contact: Frank White, see item 87.

92. *MSHA*—30 CFR Part 77—Surface Coal Mine Safety Standards.

This regulation includes mandatory safety standards for surface coal mines and surface areas of underground mines. This regulation was proposed in January, of 1977. MSHA is in the process of reviewing all of the comments and preparing a new proposal in light of the MSH Act. The need for a regulatory analysis is under study. This regulation may be of special interest to small businesses.

Status: The publication of a proposed regulation by June 30, 1980 is anticipated.

Contact: Frank White, see item 87.

93. *MSHA*—30 CFR Part 70—Respirable Dust Standards For Underground Coal Mines.

Rulemaking had begun on this regulation at the time of the transfer of MESA from the Department of Interior to the Department of Labor. A regulatory analysis is not required. This regulation may be of special interest to small businesses.

Status: The regulation was finalized on April 8, 1980 and should significantly enhance the effectiveness of MSHA's dust control efforts. The effective date of rule is November 1, 1980.

Contact: Frank White, see item 87.

94. *MSHA*—30 CFR Part 90—Transfer of Miners.

These regulations contain procedures for the transfer of surface and underground coal miners with evidence of pneumoconiosis to low dust work areas in order to prevent further development of the disease. To improve the health environment of coal miners and for consistent enforcement, MSHA is revising all of its respirable dust regulations. This regulation will give miners both greater health and economic protections and it is expected that the regulation will encourage more miners to exercise their transfer rights. A regulatory analysis is not required. This regulation may be of special interest to small businesses.

Status: A proposed regulation was published on April 8, 1980. Public hearings are scheduled for June 3, and 5, 1980.

Contact: Frank White, see item 84.

95. *MSHA*—30 CFR Part 45—Regulations to Identify Independent Contractors as Mine Operators.

This regulation sets forth criteria and procedures for identifying independent contractors as mine operators. Once identified as operators, these independent contractors would be subject to the requiements of the Act, standards, and regulations. The proposed regulation was designed to enable MSHA to implement an enforcement policy consistent with the amended definition of "operator". Section 3(d) of the Federal Mine Safety and Health Act of 1977 amended the definition of "operator" to include "any independent contractor performing construction or services at a mine." A regulatory analysis is not required. This regulation may be of special interest to small business.

Status: A notice of proposed rulemaking was published in August, 1979 and the publication of a final regulation by May 30, 1980 is anticipated.

Contact: Frank White, see item 87.

96. *MSHA*—30 CFR Part 49—Mine Rescue Teams for all Underground Mines.

This regulation sets forth proposed requirements for insuring a mine rescue capability at all underground mines. Section 115(e) of the Federal Mine Safety and Health Act requires the Secretary to propose regulations requiring that mine-rescue teams be available for rescue and recovery work at all underground mines.

A regulatory analysis is not required. This regulation may be of special interest to small businesses.

Status: The publication of a final regulation by May 30, 1980 is anticipated.

Contact: Frank White, see item 87.

97. *MSHA*—30 CFR Part 48, Subpart C—Training Regulations for Construction Workers.

This regulation will set forth training and retraining requirements for construction workers on mine property. Section 115(d) of the MSH Act requires that the Secretary promulgate appropriate standards for safety and health training for mine construction workers. The need for a regulatory analysis is under study.

Status: During the course of the development of this regulation, MSHA has determined that it will be necessary to resolve certain issues with respect to the construction regulations before further action can be taken. This regulation is, therefore, removed from the Agenda.

Contact: Frank White, see item 87.

98. *MSHA*—30 CFR Part 23—Telephones and Signaling Devices.

This regulation would permit MSHA to approve telephones that are connected to the mine power system. Previously MSHA could approve only battery operated telephones. This amendment would conform the existing regulation to advances in technology. A regulatory analysis is not required.

Status: The publication of a proposed regulation by November 1, 1980 is anticipated.

Contact: Frank A. White, see item 87.

99. *MSHA*—Pattern of Violations.

Under the Federal Mine Safety and Health Act of 1977 MSHA can issue a "pattern of violations" notice to operators who have a pattern of violations which could have significantly and substantially contributed to the cause and effect of safety and health hazards in the mine. After receiving notice that a pattern of violations exists the operator may be subject to closure orders for subsequent, significant and substantial violations. These proposed regulations will set forth criteria for determining if a "pattern of violations" exists. A regulatory analysis is not required.

Status: The publication of a proposed document by July 30, 1980 is anticipated.

Contact: Frank A. White, see item 84.

100. *MSHA*—30 CFR Parts 55, 56 and 57—Review of Metal and Nonmetal Standards.

MSHA has decided to undertake a thorough review of the metal and nonmetal health and safety standards in order to update and uprade existing standards and to consider eliminating, consolidating, clarifying, simplifying and reorganizing provisions where appropriate. MSHA indicated its commitment to this effort in the preamble to the final rule converting the former metal and nonmetal advisory standards to mandatory standards. MSHA informed the metal and nonmetal mining community that it would conduct a study of all the metal and nonmetal standards to determine their applicability and effectiveness. To allow early public participation in this rulemaking project, MSHA has prepared an advance notice of proposed rulemaking soliciting input from the metal and nonmetal mining community concerning problems encountered in the application of the existing standards and requesting commenters to assist MSHA in prioritizing the standards for purposes of review and possible revision. The need for a regulatory analysis is under study. These regulations may be of special interest to small businesses.

Status: An advance notice of proposed rulemaking was published on March 25, 1980. The evaluation of public comments is now underway.

Contact: Frank A. White, see item 87.

101. *MSHA*—30 CFR Part 100—Civil Penalties.

The civil penalty regulations were promulgated on May 30, 1978. At that time, MSHA made a commitment to review them after one year to determine if changes were needed. In August 1979, MSHA initiated this review and invited all segments of the mining industry to comment on both the substance and the application of the regulations. In response to those comments, MSHA has determined that there is a need to amend the regulations in order to restructure the civil penalty system. A regulatory analysis is not required. These regulations may be of special interest to small businesses.

Status: The publication of an advance notice of proposed rulemaking by June 30, 1980 is anticipated.

Contact: Frank A. White, see item 87.

102. *MSHA*—30 CFR Part 70—Miner Participation in Respirable Dust Sampling Procedures.

This regulation would amend the coal dust regulations to permit miners' representatives to participate in the dust sampling process in underground coal mines. This issue was first raised in a significant way during the public hearings on revisions to the procedures for sampling respirable dust in underground coal mines. Officials, safety committee members, and rank and file members of the United Mine Workers of America were critical of how the sampling program was actually being implemented in the nation's mines. The participation of miners' representatives in the sampling procedures is intended to promote better cooperation between the coal mine operators and the miners whose health may be affected in order to improve the effectiveness of the respirable dust control program. A regulatory analysis is not required.

Status: A proposed regulation was published on April 8, 1980. Public hearings are scheduled for June 3 and 5, 1980.

Contact: Frank A. White, see item 87.

103. *Labor Management Services Administration (LMSA)*—29 CFR Parts 402 and 403—Labor Organization Reports.

Amendments under consideration would have required labor organizations to mail or directly supply to every member copies of certain reports filed under the Labor Management Reporting and Discolsure Act (LMRDA). This proposal was set forth in a petition received from nine union members represented by the Institute for Public Interest Representation of the Georgetown University Law Center. A regulatory analysis is not required.

Status: This proposal has been considered in light of comments received from the public in response to a proposed rule published on February 9, 1979. A decision has been made not to amend the regulation and notice to this effect will be published by June 30, 1980. This item is therefore removed from the Agenda.

Contact: Herbert Raskin, Room N5109—Main Labor Building, 200 Constitution Avenue, NW., Washington, D.C. 20210, 202-523-7373.

104. *LMSA*—29 CFR Part 452, Subpart J—Election Enforcement Provisions of the LMRDA.

A proposed regulatory statement to revise and update existing enforcement provisions of the interpretative bulletin on elections (29 CFR Part 452) has been prepared. A regulatory analysis is not required.

Status: The publication of a proposed regulation by June 30, 1980 is anticipated.

Contact: Herbert Raskin, see item 103.

105. *LMSA*—29 CFR Part 204—Standards of Conduct Regulations.

These regulations contain rules and procedures governing the standards of conduct prescribed for Federal employee organizations. Certain changes are required by the recently enacted Civil Service Reform Act. A regulatory analysis is not required.

Status: A final regulation was published on March 7, 1980. The item is, therefore, removed from the Agenda.

Contact: Herbert Raskin, see item 103.

106. *LMSA*—29 CFR Part 403—Labor Organization Financial Reports.

An amendment was under consideration to allow labor organizations with up to $100,000 total annual receipts to file annual financial reports on Form LM-3 (Short Form) rather than the more detailed LM-2. The present cut-off amount at the time was $30,000 total annual receipts. A regulatory analysis was not required. This item may be of special interest to small organizations.

Status: Final regulations were published on February 1, 1980. The item is, therefore, removed from the Agenda.

Contact: Herbert Raskin, see item 103.

107. *LMSA*—29 CFR Part 212—Dispute Resolution Procedures for Determination of Employee Protections.

These guidelines will be issued to provide information about the Department of Labor's procedures for making final and binding determinations in the resolution of disputes over employee protections arising under Section 13(c) of the Urban Mass Transportation Act of 1964, as amended, and under Section 405(b) of the Rail Passenger Service Act of 1970, as amended. These guidelines are necessary so that employees and representatives of employees and employers in the mass passenger transportation industry will know how disputes which are submitted to the Department for adjudication are processed. A regulatory analysis is not required.

Status: A regulatory analysis is not required. The publication of a proposed regulation by October 31, 1980 is anticipated.

Contact: Bruce Leet, Room N5639, Department of Labor, 200 Constitution Avenue N.W., Washington, D.C. 20210, (202) 523-6495.

108. *LMSA*—29 CFR 92.1—92.9—Redwood National Park Employee Protection Program.

These regulations are being developed to define the criteria which employees must meet to receive benefits under the Redwood National Park Expansion Act. A regulatory analysis is not required.

Status: The publication of a final regulation by May 15, 1980 is anticipated.

Contact: Ron Glass, Room N5639—Department of Labor, 200 Constitution Avenue N.W., Washington, D.C. 20210, 202–523–6495.

109. *LMSA*—29 CFR Part 225—Protective Arrangements Under Section 1642(c), Public Health Services Act.

President Carter signed the Health Planning and Resources Development Act of 1979 on October 4, 1979. Included in Title III of this legislation is a new HEW administered grant program designed to encourage and assist the discontinuance of unneeded hospital services.

Section 1642(c)(1) of the Act requires the certification of employee protective arrangements by the Secretary of Labor before the approval of grant applications by HEW. Section 1642(c)(2) states that "[t]he Secretary of Labor shall by regulation prescribe guidelines for arrangements for the protection of the interests of employees affected by the discontinuance of hospital services."

The Act requires the Secretary of Labor to certify that "fair and equitable arrangements have been made to protect the interests of employees affected by the discontinuance of services against a worsening of their positions with respect to their employment, including arrangements to preserve the rights of employees under collective bargaining agreements, continuation of collective bargaining rights consistent with the provisions of the National Labor Relations Act, reassignment of affected employees to other jobs, retraining programs, protecting pension, health benefits and fringe benefits of affected employees, and arranging adequate severance pay, if necessary." A regulatory analysis is not required.

Status: The publication of a proposed regulation by May 15, 1980 is anticipated.

Contact: Ron Glass, see item 108.

110. *LMSA/ERISA*—29 CFR 2530.203–3 Suspension of Benefits.

This regulation will describe the circumstances under which an employee pension benefit plan will be permitted to suspend the payment of benefits to a retiree under section 203(a)(3)(B) of The Employee Retirement Income Security Act (ERISA). Section 203(a)(3)(B) of ERISA directs the Secretary to prescribe such regulations as may be necessary to carry out the purposes of that provision, including regulations with respect to the meaning of the term "employed". A regulatory analysis is not required.

Status: A proposed regulation was published on December 19, 1978 and the publication of a final regulation by June 1, 1980 is anticipated.

Contact: Judith B. Kahn, Room N4461—Main Labor Building, 200 Constitution Avenue N.W., Washington, D.C. 20210, 202–523–8430.

111. *LMSA/ERISA*—29 CFR 2550.414c–1, 2 and 3—Transitional Relief for Certain Loans, Leases, and Dispositions of Property Prior to June 30, 1984, under Sections 414(c)(1), (2) and (3) of ERISA.

These regulations, if adopted, will clarify the scope of transitional relief provided in section 414(c)(1), (2) and (3) of ERISA, which suspends until June 30, 1984 the application of the prohibited transaction provisions of sections 406 and 407(a) of ERISA to certain loans, leases, joint uses and dispositions of property between employee benefit plans and parties in interest. In part, these regulations will define certain terms and clarify certain conditions contained in section 414(c)(1), (2) and (3). These regulations may relieve the Department's administrative burden by reducing the number of applications for exemptions from the prohibited transaction provisions of ERISA. A regulatory analysis is not required.

Status: A proposed regulation was published in April, 1979 and the publication of a final regulation by June 30, 1980 is anticipated.

Contact: William J. Flanagan, Room C–4508—Main Labor Building, 200 Constitution Avenue N.W., Washington, D.C. 20210, 202–523–7931.

112. *LMSA/ERISA*—29 CFR 2520. 105–1 through 2520.105–11 and 2530.209–1 through 2530.209–9—Individual Benefit Reporting and Recordkeeping.

These regulations will govern (1) reports that must be furnished to participants in pension plans and in some cases, to their beneficiaries regarding the benefits to which they are entitled, or may become entitled at retirement; and (2) records that must be maintained to provide the information necessary to prepare these reports. These regulations, if adopted, would provide necessary guidance to employers maintaining pension plans and to the pension plan administrators for compliance with certain statutory reporting and recordkeeping requirements of ERISA. The need for a regulatory analysis is under study.

Status: A proposed regulation was published in February 1979 and the publication of a new proposed regulation by June 30, 1980 is anticipated.

Contact: Robert Doyle, Room N4472—Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210, 202–523–7901.

113. *LMSA/ERISA*—29 CFR 2520—Certain Exemptions For Plans Under Which Membership in a Health Maintenance Organization is Offered as a Benefit.

This regulation would provide exemptions from certain reporting and disclosure requirements, where application of those requirements might be duplicative in view of the Health Maintenance Organization Act of 1977. It will also provide that the grievance procedures which qualified HMOs are required to establish under the HMO Act with respect to benefits offered by the HMO will be deemed to satisfy the claims requirements of ERISA. The action taken is intended to harmonize the requirements of the two Acts and reduce unnecessary paperwork. A regulatory analysis is not required.

Status: A proposed regulation was published in June, 1979. Publication of a final regulation will depend upon coordination with the Department of Health and Human Services.

Contact: Robert Doyle, see item 112.

114. *LMSA/ERISA*—29 CFR 2520—Exemption From Reporting and Disclosure Requirements With Regard to Apprenticeship and Other Training Plans.

This regulation would amend an existing regulation, 29 CFR 2520.104–22, to provide an exemption from the reporting and disclosure requirements under Title I of ERISA for plans which provide solely apprenticeship training benefits, other training benefits or a combination of apprenticeship and other training benefits. The availability of the exemption for plans providing solely apprenticeship training would be conditioned on a plan administrator's filing a brief notice with the Department containing certain information about the plan, taking steps to see that the information contained in the notice is disclosed to certain employees of employers contributing to the plan, and making the notice available to those employees upon request. The Department believes that the relief offered by the proposed exemption is necessary to relieve certain apprenticeship and training plans of reporting and disclosure requirements that are particularly burdensome in light of the benefits obtained from such reporting and disclosure. A regulatory analysis is not required.

Status: A final regulation was published on March 11, 1980. The item is, therefore, removed from the Agenda.

Contact: Douglas Wham, Room C4508, Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210, 202–523–9141.

115. *LMSA/ERISA*–Revision of Forms 5500, 5500–C, and 5500–K (Annual Return/Report Forms) and Schedule A (Insurance Information) Filed under ERISA.

Revisions of these forms would affect the reporting of certain commission information relating to the acquisition of insurance coverage by employee benefit plans. Specifically, item 3 of Schedule A, attached to the annual return/report form, would be revised to provide information in a manner that would be more useful to the Department and to participants and less burdensome to plans and insurance companies. In conjunction with these revisions, additional questions would be added to item 15 of Forms 5500, 5500–C, and 5500–K. The Department proposed revisions to item 3 of Schedule A and to item 15 of the Forms 5500, 5500–C, and 5500–K in light of public objections to certain aspects of the current reporting requirement. A regulatory analysis is not required.

Status: Final forms were published on March 4, 1980. The item is therefore, removed from the Agenda.

Contact: Wayland Coe, Room N4902–Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210, 202–523–8474.

116. *LMSA/ERISA*–29 CFR Part 2520–Limited Exemption and Alternative Method of Compliance For Filing of Insurance Company Financial Reports.

This regulation would require that insurance company financial reports be filed with the Department only upon request, in lieu of the present statutory requirement that such reports be filed with the plan's annual report. The proposed regulation is part of the Department's effort to reduce the administrative and cost burdens imposed by the reporting and disclosure requirements of ERISA. Experience to date demonstrates that the infrequent need for information contained in financial reports of insurance companies does not justify a requirement that the reports be filed on an annual basis. A regulatory analysis is not required.

Status: A final regulation was published on March 4, 1980. The item is, therefore, removed from the Agenda.

Contact: Wayland Coe, see item 115.

117. *LMSA/ERISA*–29 CFR Part 2520–Revision of Certain Annual Information Return/Reports: Compliance Oriented Returns.

These form changes will effectuate a transition from annual to triennial filing of the annual return/report for certain plans under ERISA. The triennial return/reports would be filed by administrators of pension or welfare plans with fewer than 100 participants at the beginning of the plan year. Plans will file a Form 5500–R Registration Statement during the other two years. On May 10, 1978, a series of actions to reorganize and reform the regulation of employee benefit plans was announced at the White House. As a part of the reform, the IRS, DOL, and PBGC have these form changes under consideration as a substitution for the current system of annual reporting. A regulatory analysis is not required. This form change may be of special interest to small businesses.

Status: Proposed changes were published in June, 1979 and the date of publication of a final form will be determined in coordination with other Federal agencies.

Contact: John Christensen, Room N4472—Main Labor Building, 200 Constitution Avenue, N.W., Washington, D.C. 20210, 202–523–8377.

118. *LMSA/ERISA*—29 CFR Part 2550—Maintenance of Indicia of Ownership of Plan Assets Outside Jurisdiction of District Courts of the United States.

Revision of this regulation will clarify the conditions under which banks may maintain the indicia of ownership of certain plan assets in foreign entities under 29 CFR 2550.404(b). Public comments received from banks have requested clarification of this regulation. A regulatory analysis is not required.

Status: The publication of a proposed regulation by July 1, 1980 is anticipated.

Contact: Gloria E. Pollack, Room C4508—Main Labor Building, 200 Constitution Avenue, N.W., Washington, D.C. 20210, 202–523–8297.

119. *LMSA/ERISA*—Alternative Method of Compliance with the Reporting and Disclosure Requirements of ERISA for Certain Simplified Employee Pensions.

This regulation, if adopted, will provide an alternative method of compliance with the reporting and disclosure requirements of ERISA for simplified employee pensions (SEPs) established by use of Internal Revenue Service Form 5305–SEP (Model SEPs). The Secretary of Labor is authorized to prescribe such an alternative method of compliance by section 110(a) of ERISA. The regulation is intended to reduce the reporting and disclosure requirements for these Model SEPs. A regulatory analysis is not required. This regulation may be of special interest to small businesses.

Status: A final regulation was published on April 11, 1980. The item is, therefore, removed from the Agenda.

Contact: Timothy S. Smith, Room C4508—Main Labor Building, 200 Constitution Avenue, N.W., Washinton, D.C. 20210, 202–523–6855.

120. *LMSA/ERISA*—29 CFR Part 2510—Supplemental Pay.

A regulation to amend the existing regulation to clarify the circumstances under which an arrangement to make supplemental payments to employees will not be deemed an employee pension benefit plan under section 3(2) of ERISA.

Status: The development of this regulation is no longer under consideration by the Department. It is, therefore, removed from the Agenda.

Contact: Helene Benson, Room N4700—Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210, 202–523–8664.

121. *LMSA/ERISA*—29 CFR Part 2520—Revision of Annual Report Forms re: Master Trusts.

This forms revision would change the manner in which employee benefit plans' investments in master trusts are reported annually under ERISA. The contemplated revision would make reporting easier for plans with no loss of information available to either the Secretary of Labor or to plan participants. A regulatory analysis is not required.

Status: The publication of a proposed forms revision by July 1, 1980 is anticipated.

Contact: Miriam Freund, Room N4472, Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210, 202–523–7901.

122. *LMSA/ERISA*—29 CFR Part 2520—Alternative Method of Compliance With the Reporting and Disclosure Requirements of ERISA For Certain (Non-Model) Simplified Employee Pensions.

This regulation would provide an alternative method of compliance with the reporting and disclosure requirements of ERISA for certain simplified employee pensions (SEPs) other than Model SEPs. The Secretary of Labor is authorized to prescribe such an alternative method of compliance by section 110(a) of ERISA. The regulation is intended to reduce the reporting and disclosure requirements for these Non-Model SEPs. A regulatory analysis is not required. This regulation may be of special interest to small businesses.

Status: An interim regulation was published on April 15, 1980.

Contact: Timothy Smith, see item 119.

123. *LMSA/ERISA*—29 CFR Part 2520—Alternative Method of Compliance With the Reporting and Disclosure Requirements of ERISA in Report to Short Plan Years.

This regulation would provide an alternative method of compliance with the reporting and disclosure requirements of ERISA in respect to engaging independent qualified public accountants where short plan years are involved. The Secretary of Labor is authorized to prescribe such an alternative method of compliance by section 110(a) of ERISA. The intent of the regulation is to reduce the administrative burden for employee benefit plans. A regulatory analysis is not required.

Status: The publication of a proposed regulation by June 30, 1980 is anticipated.

Contact: John Christensen, see item 117.

124. *LMSA/ERISA*—29 CFR Part 2550—Definition of Plan Assets and Establishment of Trust.

This regulation would clarify what will be regarded as assets of an employee benefit plan under ERISA and would provide certain exemptions from the requirements that plan assets be held in trust. Clarification of the term "plan asset" is needed since it is a basic concept used, for example, in determining what property must be held in trust, and to what transactions the fiduciary responsibility provisions of ERISA would apply. In addition clarification was requested by commentators on a previously proposed regulation. The need for a regulatory analysis is under study. This regulation may be of special interest to small businesses.

Status: The publication of a final or reproposed regulation by September 1, 1980 is anticipated.

Contact: Robert R. Bitticks, Room C4508, Main Labor Building, 200 Constitution Avenue, N.W., Washington, D.C. 20210, 202-523-8620.

125. *LMSA/ERISA*—29 CFR 2550.408(e)—Statutory Exemption for Acquisition or Sale of Qualifying Employer Securities and for Acquisition, Sale, or Lease of Qualifying Employer Real Property.

A proposed regulation designed to interpret and clarify the statutory exemption set forth in section 408(e) of ERISA was published in the **Federal Register** on August 28, 1979 (44 FR 50367). The regulation will provide necessary guidance to employee benefit plans regarding the application of the prohibited transaction provisions of ERISA to acquisitions or sales of "qualifying employer securities" and to acquisitions, sales or leases of "qualifying employer real property" by plans. A regulatory analysis is not required.

Status: The publication of a final regulation by June 30, 1980 is anticipated.

Contact: Jay Neuman, Room C4508, Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210, 202-523-9141.

126. *LMSA/ERISA*—29 CFR 2550.414(c)(5)—Transitional Relief for Certain Dispositions of Property Under Section 414(c)(5) of ERISA.

This proposed regulation would clarify the scope of the transitional relief provided in section 414(c)(5) of ERISA. The proposed regulation is designed to clarify the circumstances under which the prohibited transaction provisions contained in sections 406 and 407(a) of ERISA are inapplicable to certain sales, exchanges or other dispositions of property to a party in interest. A regulatory analysis is not required.

Status: The publication of a proposed regulation by August 1, 1980 is anticipated.

Contact: Gloria Pollack, see item 118.

Signed this 27th day of May 1979 at Washington, D.C.

Ray Marshall,

Secretary of Labor.

[FR Doc. 80-16804 Filed 6-2-80; 8:45 am]

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