7. 2,050 hours.
8. Not applicable.

*Reinstatement*

1. Department of Medicine and Surgery.
2. National Needs Assessment Study of Vietnam Veterans.
3. VA Form 10–20769c(NR) through 10–20769dd(NR)
4. On occasion.
5. Individuals or households.
6. 9,738 responses.
7. 16,535 hours.
8. Not applicable.

[FR Doc. 86–18890 Filed 8–20–86; 8:45 am]
BILLING CODE 8320–01–M

# Sunshine Act Meetings

Federal Register
Vol. 51, No. 162
Thursday, August 21, 1986

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

**FARM CREDIT ADMINISTRATION**

**SUMMARY:** Notice is hereby given pursuant to the Government in the Sunshine Act (5 U.S.C. 5526(e)(3)), of the forthcoming special meeting of the Farm Credit Administration Board ("Board").

**DATE AND TIME:** The meeting is scheduled to be held at the offices of the Farm Credit Administration in McLean, Virginia, on August 15, 1986, from 3:00 p.m. until such time as the Board concludes its business.

**FOR FURTHER INFORMATION CONTACT:** Kenneth J. Auberger, Secretary to the Farm Credit Administration Board, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

**ADDRESS:** Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

**SUPPLEMENTARY INFORMATION:** This special meeting of the Farm Credit Administration Board will be closed to the public pursuant to exemption prescribed in 5 U.S.C. 5526(c)(8) and (9). The meeting is being called to discuss examination and supervision matters.

Dated: August 15, 1986.

**Frank W. Naylor, Jr.,**

*Chairman, Farm Credit Administration Board.*

[FR Doc. 86–18959 Filed 8–21–86; 11:30 am]

BILLING CODE 6705–01–M

### 2

**NATIONAL TRANSPORTATION SAFETY BOARD**

**"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT:** 51 FR 27110, July 29, 1986.

**PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING:** 9 a.m., Tuesday, August 5, 1986.

**CHANGE IN MEETING:** A majority of the Board determined by recorded vote that the business of the Board required revising the agenda of this meeting and that no earlier announcement was possible. The following item was added to the agenda and discussed in closed session.

7. *Opinion and Order:* Administrator v. Towner, Docket SE–7497, disposition of the appeals of both parties.

**CONTACT PERSON FOR MORE INFORMATION:** H. Ray Smith (202) 386–6527.

**Ray Smith,**

*Federal Register Liaison Officer.*

August 18, 1986.

[FR Doc. 86–18967 Filed 8–19–86; 12:07 pm]

BILLING CODE 7533–01–M

### 3

**NATIONAL TRANSPORTATION SAFETY BOARD**

**"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT:** 51 FR 28912, August 12, 1986.

**PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING:** 9 a.m., Tuesday, August 19, 1986.

**CHANGE IN MEETING:** A majority of the Board determined by recorded vote that the business of the Board required revising the agenda of this meeting and that no earlier announcement was possible. The following two items were deleted and the last item was added to the agenda.

2. *Highway Accident Report:* Tractor-Semitrailer/Wagon Runaway, Collision and Fire in Van Buren, Arkansas.

3. *Aircraft Incident Summary Report:* USAir, Flight 4381, McDonnell-Douglas DC–9, N965VJ, Erie, Pennsylvania.

Board Response to FAA Petition for Rulemaking, "Regulation of VFR Cruising Altitude of Flight Level."

**CONTACT PERSON FOR MORE INFORMATION:** H. Ray Smith (202) 386–6527.

**Ray Smith,**

*Federal Register Liaison Officer.*

August 18, 1986.

[FR Doc. 86–18968 Filed 8–19–86; 12:07 pm]

BILLING CODE 7533–01–M

### 4

**NUCLEAR REGULATORY COMMISSION**

**DATES:** Weeks of August 18, 25, September 1, and 8, 1986.

**PLACE:** Commissioners' Conference Room 1717 H Street NW., Washington, DC.

**STATUS:** Open and Closed.

**MATTERS TO BE CONSIDERED:**

**Week of August 18**

No Commission meetings

**Week of August 25—Tentative**

*Thursday, August 28*

2:00 p.m.
Affirmation Meeting (Public Meeting) (if needed)

**Week of September 1—Tentative**

*Wednesday, September 3*

10:00 a.m.
Discussion of Pending Investigations (Closed—Ex. 5 & 7)

2:00 p.m.
Briefing on IAEA Chernobyl Meeting (Open/Closed to be Determined)

*Thursday, September 4*

2:00 p.m.
Discussion/Possible Vote on Kerr-McGee Sequoyah Facility (Public Meeting)

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting)
a. Comanche Peak Construction Permit Extension (*Postponed* from August 6)

*Friday, September 5*

10:00 a.m.
Discussion/Possible Vote on Full Power Operating License for Perry-1 (Public Meeting)

**Week of September 8—Tentative**

*Thursday, September 11*

2:00 p.m.
Meeting with the Advisory Committee on Reactor Safeguards on Standardization Policy Statement (Public Meeting)

3:30 p.m.
Affirmation Meeting (Public Meeting) (if needed)

**TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING)** (202) 634–1498.

**CONTACT PERSON FOR MORE INFORMATION:** Robert McOsker (202) 634–1410.

**Andrew L. Bates,**

*Office of the Secretary.*

August 14, 1986.

[FR Doc. 86–18923 Filed 8–19–86; 8:52 am]

BILLING CODE 7590–01–M

Federal Register

Thursday
August 21, 1986

Part II

# Nuclear Regulatory Commission

10 CFR Part 50

**Safety Goals for the Operations of Nuclear Power Plants; Correction and Republication of Policy Statement**

## NUCLEAR REGULATORY COMMISSION

### 10 CFR Part 50

### Safety Goals for the Operation of Nuclear Power Plants; Policy Statement; Correction and Republication

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Policy statement; correction and republication.

**SUMMARY:** This document corrects a number of typographical errors found in a policy statement that was published in the **Federal Register** on August 4, 1986 (51 FR 28044). The policy statement pertains to 10 CFR Part 50 and establishes goals that broadly define an acceptable level of radiological risk with regard to the operation of nuclear power plants. In addition, the policy statement is being republished in its entirety in order to highlight the key elements of the policy statement.

**FOR FURTHER INFORMATION CONTACT:** Merrill Taylor, Regional Operations and Generic Requirements Staff, Office of the Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: 301–492–4356.

In FR Doc. 86–17496, published in the **Federal Register** of Monday, August 4, 1986, make the following corrections:

1. On page 28044, in the first column, in the Summary statement, in the 12th line, the word "Commission" should read "Committee".

2. On page 28044, in the third column, in the 6th line, the word "on" should read "of", and in the 11th line following the word "everything" add the word "that".

3. On page 28045, in the heading of the first column, the word "This" should read "this".

4. On page 28045, in the second column, in the second complete paragraph, in the 13th line, the word "goals" should read "goal".

5. On page 28045, in the second column, the last word at the bottom of the column, "plants" should read "plant".

6. On page 28045, in the third column, in the third complete paragraph, in the 4th line, the last word "have" should read "has", and in the 11th line, the word "need" should read "needed".

7. On page 28046, in the first column, in the fourth paragraph under the C heading, in the 7th line, the word "exceed" should read "exceeds".

8. On page 28046, in the third column, in the second complete paragraph, in the 10th line, the word "estmates" should read "estimates".

9. On page 28047, in the first column, in the second paragraph under V, in the 2nd line, the word "goal" should read "goals".

10. On page 28047, in the first column, in the second paragraph under V, in the 18th line, the word "guidence" should read "guidance".

11. On page 28047, in the second column, in the 1st line, the word "Sitting" should read "Siting", and in the 2nd line, the word "in" should read "is".

12. On page 28047, in the third column, under General Performance Guideline, in the 2nd line, the phrase "to a low" should read "to an as low".

13. On page 28048, in the second column, in the second paragraph under Commissioner Bernthal's separate views, in the 4th line, place the word "does" between the words "it" and "all".

14. On page 28048, in the second column, in the last paragraph of the column, on the 7th line, the word "options" should read "option".

15. On page 28048, in the third column, in the 2nd line, the term "defense-in-dept" should read "defense-in-depth".

Dated at Bethesda, Maryland, this 14th day of August, 1986.

For the Nuclear Regulatory Commission.

**John Philips,**

*Chief, Rules and Procedures Branch, Division of Rules and Records, Office of Administration.*

[FR Doc. 86–18771 Filed 8–20–86; 8:45 am]

BILLING CODE 7590-01

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### 10 CFR Part 50

### Safety Goals for the Operations of Nuclear Power Plants; Policy Statement; Republication

[**Editorial Note.**—The following document was originally published at page 28044 in the issue of Monday, August 4, 1986. It is being republished in its entirety, with corrections, at the request of the agency.]

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Policy statement.

**SUMMARY:** This policy statement focuses on the risks to the public from nuclear power plant operation. Its objective is to establish goals that broadly define an acceptable level of radiological risk. In developing the policy statement, the NRC sponsored two public workshops during 1981, obtained public comments and held four public meetings during 1982, conducted a 2-year evaluation during 1983 to 1985, and received the views of its Advisory Committee on Reactor Safeguards.

The Commission has established two qualitative safety goals which are supported by two quantitative objectives. These two supporting objectives are based on the principle that nuclear risks should not be a significant addition to other societal risks. The Commission wants to make clear that no death attributable to nuclear power plant operation will ever be "acceptable" in the sense that the Commission would regard it as a routine or permissible event. The Commission is discussing acceptable risks, not acceptable deaths.

• The *qualitative safety goals* are as follows:

—Individual members of the public should be provided a level of protection from the consequences of nuclear power plant operation such that individuals bear no significant additional risk to life and health.

—Societal risks to life and health from nuclear power plant operation should be comparable to or less than the risks of generating electricity by viable competing technologies and should not be a significant addition to other societal risks.

• The following *quantitative objectives* are to be used in determining achievement of the above safety goals:

—The risk to an average individual in the vicinity of a nuclear power plant of prompt fatalities that might result from reactor accidents should not exceed one-tenth of one percent (0.1 percent) of the sum of prompt fatality risks resulting from other accidents to which members of the U.S. population are generally exposed.

—The risk to the population in the area near a nuclear power plant of cancer fatalities that might result from nuclear power plant operation should not exceed one-tenth of one percent

(0.1 percent) of the sum of cancer fatality risks resulting from all other causes.

**EFFECTIVE DATE:** August 4, 1986.

**FOR FURTHER INFORMATION CONTACT:** Merrill Taylor, Regional Operations and Generic Requirements Staff, Office of the Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone (301/492–4356).

**SUPPLEMENTARY INFORMATION:** The following presents the Commission's Final Policy Statement on Safety Goals for the Operation of Nuclear Power Plants:

## I. Introduction

### *A. Purpose and Scope*

In its response to the recommendations of the President's Commission on the Accident at Three Mile Island, the Nuclear Regulatory Commission (NRC) stated that it was "prepared to move forward with an explicit policy statement on safety philosophy and the role of safety-cost tradeoffs in the NRC safety decisions." This policy statement is the result.

Current regulatory practices are believed to ensure that the basic statutory requirement, adequate protection of the public, is met. Nevertheless, current practices could be improved to provide a better means for testing the adequacy of and need for current and proposed regulatory requirements. The Commission believes that such improvement could lead to a more coherent and consistent regulation of nuclear power plants, a more predictable regulatory process, a public understanding of the regulatory criteria that the NRC applies, and public confidence in the safety of operating plants. This statement of NRC safety policy expresses the Commission's views on the level of risks to public health and safety that the industry should strive for in its nuclear power plants.

This policy statement focuses on the risks to the public from nuclear power plant operation. These are the risks from release of radioactive materials from the reactor to the environment from normal operations as well as from accidents. The Commission will refer to these risks as the risks of nuclear power plant operation. The risks from the nuclear fuel cycle are not included in the safety goals.

These fuel cycle risks have been considered in their own right and determined to be quite small. They will continue to receive careful consideration. The possible effects of sabotage or diversion of nuclear material are also not presently included in the safety goals. At present there is no basis on which to provide a measure of risk on these matters. It is the Commission's intention that everything that is needed will be done to keep these types of risks at their present very low level; and it is the Commission's expectation that efforts on this point will continue to be successful. With these exceptions, it is the Commission's intent that the risks from all the various initiating mechanisms be taken into account to the best of the capability of current evaluation techniques.

In the evaluation of nuclear power plant operation, the staff considers several types of releases. Current NRC practice addresses the risks to the public resulting from operating nuclear power plants. Before a nuclear power plant is licensed to operate, NRC prepares an environmental impact assessment which includes an evaluation of the radiological impacts of routine operation of the plant and accidents on the population in the region around the plant site. The assessment undergoes public comment and may be extensively probed in adjudicatory hearings. For all plants licensed to operate, NRC has found that there will be no measurable radiological impact on any member of the public from routine operation of the plant. (Reference: NRC staff calculations of radiological impact on humans contained in Final Environmental Statements for specific nuclear power plants; e.g., NUREG–0779, NUREG–0812, and NUREG–0854.)

The objective of the Commission's policy statement is to establish goals that broadly define an acceptable level of radiological risk that might be imposed on the public as a result of nuclear power plant operation. While this policy statement includes the risks of normal operation, as well as accidents, the Commission believes that because of compliance with Federal Radiation Council (FRC) guidance, (40 CFR Part 190), and NRC's regulations (10 CFR Part 20 and Appendix I to Part 50), the risks from routine emissions are small compared to the safety goals. Therefore, the Commission believes that these risks need not be routinely analyzed on a case-by-case basis in order to demonstrate conformance with the safety goals.

### *B. Development of this Statement of Safety Policy*

In developing the policy statement, the Commission solicited and benefited from the information and suggestions provided by workshop discussions. NRC-sponsored workshops were held in Palo Alto, California, on April 1–3, 1981 and in Harpers Ferry, West Virginia, on July 23–24, 1981. The first workshop addressed general issues involved in developing safety goals. The second workshop focused on a discussion paper which presented proposed safety goals. Both workshops featured discussions among knowledgeable persons drawn from industry, public interest groups, universities, and elsewhere, who represented a broad range of perspectives and disciplines.

The NRC Office of Policy Evaluation submitted to the Commission for its consideration a Discussion Paper on Safety Goals for Nuclear Power Plants in November 1981 and a revised safety goal report in July 1982.

The Commission also took into consideration the comments and suggestions received from the public in response to the proposed Policy Statement on "Safety Goals for Nuclear Power Plants," published on February 17, 1982 (47 FR 7023). Following public comment, a revised Policy Statement was issued on March 14, 1983 (48 FR 10772) and a 2-year evaluation period began.

The Commission used the staff report and its recommendations that resulted from the 2-year evaluation of safety goals in developing this final Policy Statement. Additionally, the Commission had benefit of further comments from its Advisory Committee on Reactor Safeguards (ACRS) and by senior NRC management.

Based on the results of this information, the Commission has determined that the qualitative safety goals will remain unchanged from its March 1983 revised policy statement, and the Commission adopts these as its safety goals for the operation of nuclear power plants.

## II. Qualitative Safety Goals

The Commission has decided to adopt qualitative safety goals that are supported by quantitative health effects objectives for use in the regulatory decisionmaking process. The Commission's first qualitative safety

goal is that the risk from nuclear power plant operation should not be a significant contributor to a person's risk of accidental death or injury. The intent is to require such a level of safety that individuals living or working near nuclear power plants should be able to go about their daily lives without special concern by virtue of their proximity to these plants. Thus, the Commission's first safety goal is—

*Individual members of the public should be provided a level of protection from the consequences of nuclear power plant operation such that individuals bear no significant additional risk to life and health.*

Even though protection of individual members of the public inherently provides substantial societal protection, the Commission also decided that a limit should be placed on the societal risks posed by nuclear power plant operation. The Commission also believes that the risks of nuclear power plant operation should be comparable to or less than the risks from other viable means of generating the same quantity of electrical energy. Thus, the Commission's second safety goal is—

*Societal risks to life and health from nuclear power plant operation should be comparable to or less than the risks of generating electricity by viable competing technologies and should not be a significant addition to other societal risks.*

The broad spectrum of expert opinion on the risks posed by electrical generation by coal and the absence of authoritative data make it impractical to calibrate nuclear safety goals by comparing them with coal risks based on what we know today. However, the Commission has established the quantitative health effects objectives in such a way that nuclear risks are not a significant addition to other societal risks.

Severe core damage accidents can lead to more serious accidents with the potential for life-threatening offsite release of radiation, for evacuation of members of the public, and for contamination of public property. Apart from their health and safety consequences, severe core damage accidents can erode public confidence in the safety of nuclear power and can lead to further instability and unpredictability for the industry. In order to avoid these adverse consequences, the Commission intends to continue to pursue a regulatory program that has as its objective providing reasonable assurance, while giving appropriate consideration to the uncertainties involved, that a severe core damage accident will not occur at a U.S. nuclear power plant.

## III. Quantitative Objectives Used To Gauge Achievement of The Safety Goals

### *A. General Considerations*

The quantitative health effects objectives establish NRC guidance for public protection which nuclear plant designers and operators should strive to achieve. A key element in formulating a qualitative safety goal whose achievement is measured by quantitative health effects objectives is to understand both the strengths and limitations of the techniques by which one judges whether the qualitative safety goal has been met.

A major step forward in the development and refinement of accident risk quantification was taken in the Reactor Safety Study (WASH–1400) completed in 1975. The objective of the Study was "to try to reach some meaningful conclusions about the risk of nuclear accidents." The Study did not directly address the question of what level of risk from nuclear accidents was acceptable.

Since the completion of the Reactor Safety Study, further progress in developing probabilistic risk assessment and in accumulating relevant data has led to a recognition that it is feasible to begin to use quantitative safety objectives for limited purposes. However, because of the sizable uncertainties still present in the methods and the gaps in the data base—essential elements needed to gauge whether the objectives have been achieved—the quantitative objectives should be viewed as aiming points or numerical benchmarks of performance. In particular, because of the present limitations in the state of the art of quantitatively estimating risks, the quantitative health effects objectives are not a substitute for existing regulations.

The Commission recognizes the importance of mitigating the consequences of a core-melt accident and continues to emphasize features such as containment, siting in less populated areas, and emergency planning as integral parts of the defense-in-depth concept associated with its accident prevention and mitigation philosophy.

### *B. Quantitative Risk Objectives*

The Commission wants to make clear at the beginning of this section that no death attributable to nuclear power plant operation will ever be "acceptable" in the sense that the Commission would regard it as a routine or permissible event. We are discussing acceptable risks, not acceptable deaths. In any fatal accident, a course of conduct posing an acceptable risk at one moment results in an unacceptable death moments later. This is true whether one speaks of driving, swimming, flying or generating electricity from coal. Each of these activities poses a calculable risk to society and to individuals. Some of those who accept the risk (or are part of a society that accepts risk) do not survive it. We intend that no such accidents will occur, but the possibility cannot be entirely eliminated. Furthermore, individual and societal risks from nuclear power plants are generally estimated to be considerably less than the risk that society is now exposed to from each of the other activities mentioned above.

### *C. Health Effects—Prompt and Latent Cancer Mortality Risks*

The Commission has decided to adopt the following two health effects as the quantitative objectives concerning mortality risks to be used in determining achievement of the qualitative safety goals—

- *The risk to an average individual in the vicinity of a nuclear power plant of prompt fatalities that might result from reactor accidents should not exceed one-tenth of one percent (0.1 percent) of the sum of prompt fatality risks resulting from other accidents to which members of the U.S. population are generally exposed.*
- *The risk to the population in the area near a nuclear power plant of cancer fatalities that might result from nuclear power plant operation should not exceed one-tenth of one percent (0.1 percent) of the sum of cancer fatality risks resulting from all other causes.*

The Commission believes that this ratio of 0.1 percent appropriately reflects both of the qualitative goals—to provide that individuals and society bear no significant additional risk. However, this does not necessarily mean that an additional risk that exceeds 0.1 percent would by itself constitute a significant additional risk. The 0.1 percent ratio to other risks is low enough to support an expectation that people living or working near nuclear power plants would have no special concern due to the plant's proximity.

The average individual in the vicinity of the plant is defined as the average individual biologically (in terms of age and other risk factors) and locationally who resides within a mile from the plant site boundary. This means that the average individual is found by accumulating the estimated individual

risks and dividing by the number of individuals residing in the vicinity of the plant.

In applying the objective for individual risk of prompt fatality, the Commission has defined the vicinity as the area within 1 mile of the nuclear power plant site boundary, since calculations of the consequences of major reactor accidents suggest that individuals within a mile of the plant site boundary would generally be subject to the greatest risk of prompt death attributable to radiological causes. If there are no individuals residing within a mile of the plant boundary, an individual should, for evaluation purposes, be assumed to reside 1 mile from the site boundary.

In applying the objective for cancer fatalities as a population guideline for individuals in the area near the plant, the Commission has defined the population generally considered subject to significant risk as the population within 10 miles of the plant site. The bulk of significant exposures of the population to radiation would be concentrated within this distance, and thus this is the appropriate population for comparison with cancer fatality risks from all other causes. This objective would ensure that the estimated increase in the risk of delayed cancer fatalities from all potential radiation releases at a typical plant would be no more than a small fraction of the year-to-year normal variation in the expected cancer deaths from nonnuclear causes. Moreover, the prompt fatality objective for protecting individuals generally provides even greater protection to the population as a whole. That is, if the quantitiative objective for prompt fatality is met for individuals in the immediate vicinity of the plant, the estimated risk of delayed cancer fatality to persons within 10 miles of the plant and beyond would generally be much lower than the quantitative objective for cancer fatality. Thus, compliance with the prompt fatality objective applied to individuals close to the plant would generally mean that the aggregate estimated societal risk would be a number of times lower than it would be if compliance with just the objective applied to the population as a whole were involved. The distance for averaging the cancer fatality risk was taken as 50 miles in the 1983 policy statement. The change to 10 miles could be viewed to provide additional protection to individuals in the vicinity of the plant, although analyses indicate that this objective for cancer fatality will not be the controlling one. It also provides more representative societal protection, since the risk to the people beyond 10 miles will be less than the risk to the people within 10 miles.

## IV. Treatment of Uncertainties

The Commission is aware that uncertainties are not caused by use of quantitative methodology in decisionmaking but are merely highlighted through use of the quantification process. Confidence in the use of probabilistic and risk assessment techniques has steadily improved since the time these were used in the Reactor Safety Study. In fact, through use of quantitative techniques, important uncertainties have been and continue to be brought into better focus and may even be reduced compared to those that would remain with sole reliance on deterministic decisionmaking. To the extent practicable, the Commission intends to ensure that the quantitative techniques used for regulatory decisionmaking take into account the potential uncertainties that exist so that an estimate can be made on the confidence level to be ascribed to the quantitative results.

The Commission has adopted the use of mean estimates for purposes of implementing the quantitative objectives of this safety goal policy (i.e., the mortality risk objectives). Use of the mean estimates comports with the customary practices for cost-benefit analyses and it is the correct usage for purposes of the mortality risk comparisons. Use of mean estimates does not however resolve the need to quantify (to the extent reasonable) and understand those important uncertainties involved in the reactor accident risk predictions. A number of uncertainties (e.g., thermal-hydraulic assumptions and the phenomenology of core-melt progression, fission product release and transport, and containment loads and performance) arise because of a direct lack of severe accident experience or knowledge of accident phenomenology along with data related to probability distributions.

In such a situation, it is necessary that proper attention be given not only to the range of uncertainty surrounding probabilistic estimates, but also to the phenomenology that most influences the uncertainties. For this reason, sensitivity studies should be performed to determine those uncertainties most important to the probabilistic estimates. The results of sensitivity of studies should be displayed showing, for example, the range of variation together with the underlying science or engineering assumptions that dominate this variation. Depending on the decision needs, the probabilistic results should also be reasonably balanced and supported through use of deterministic arguments. In this way, judgements can be made by the decisionmaker about the degree of confidence to be given to these estimates and assumptions. This is a key part of the process of determining the degree of regulatory conservatism that may be warranted for particular decisions. This defense-in-depth approach is expected to continue to ensure the protection of public health and safety.

## V. Guidelines For Regulatory Implementation

The Commission approves use of the qualitative safety goals, including use of the quantitative health effects objectives in the regulatory decisionmaking process. The Commission recognizes that the safety goal can provide a useful tool by which the adequacy of regulations or regulatory decisions regarding changes to the regulations can be judged. Likewise, the safety goals could be of benefit in the much more difficult task of assessing whether existing plants, designed, constructed and operated to comply with past and current regulations, conform adequately with the intent of the safety goal policy.

However, in order to do this, the staff will require specific guidelines to use as a basis for determining whether a level of safety ascribed to a plant is consistent with the safety goal policy. As a separate matter, the Commission intends to review and approve guidance to the staff regarding such determinations. It is currently envisioned that this guidance would address matters such as plant performance guidelines, indicators for operational performance, and guidelines for conduct of cost-benefit analyses. This guidance would be derived from additional studies conducted by the staff and resulting in recommendations to the Commission. The guidance would be based on the following general performance guideline which is proposed by the Commission for further staff examination—

*Consistent with the traditional defense-in-depth approach and the accident mitigation philosophy requiring reliable performance of containment systems, the overall mean frequency of a large release of radioactive materials to the environment from a reactor accident should be less than 1 in 1,000,000 per year of reactor operation.*

To provide adequate protection of the public health and safety, current NRC regulations require conservatism in design, construction, testing, operation

and maintenance of nuclear power plants. A defense-in-depth approach has been mandated in order to prevent accidents from happening and to mitigate their consequences. Siting in less populated areas is emphasized. Furthermore, emergency response capabilities are mandated to provide additional defense-in-depth protection to the surrounding population.

These safety goals and these implementation guidelines are not meant as a substitute for NRC's regulations and do not relieve nuclear power plant permittees and licensees from complying with regulations. Nor are the safety goals and these implementation guidelines in and of themselves meant to serve as a sole basis for licensing decisions. However, if pursuant to these guidelines, information is developed that is applicable to a particular licensing decision, it may be considered as one factor in the licensing decision.

The additional views of Commissioner Asselstine and the separate views of Commissioner Bernthal are attached.

Dated at Washington, DC, this 30th day of July 1986.

For the Nuclear Regulatory Commission.

**Lando W. Zech, Jr.,**

*Chairman.*

### Additional Views by Commissioner Asselstine on the Safety Goal Policy Statement

The commercial nuclear power industry started rather slowly and cautiously in the early 1960's. By the late 1960's and early 1970's the growth of the industry reached a feverish pace. New orders were coming in for regulatory review on almost a weekly basis. The result was the designs of the plants outpaced operational experience and the development of safety standards. As experience was gained in operational characteristics and in safety reviews, safety standards were developed or modified with a general trend toward stricter requirements. Thus, in the early 1970's, the industry demanded to know "how safe is safe enough." In this Safety Goal Policy Statement, the Commission is reaching a first attempt at answering the question. Much credit should go to Chairman Palladino's efforts over the past 5 years to develop this policy statement. I approve this policy statement but believe it needs to go further. There are four additional aspects which should have been addressed by the policy statement.

#### Containment Performance

First, I believe the Commission should have developed a policy on the relative emphasis to be given to accident prevention and accident mitigation. Such guidance is necessary to ensure that the principle of defense-in-depth is maintained. The Commission's Advisory Committee on Reactor Safeguards has repeatedly urged the Commission to do so. As a step in that direction, I offered for Commission consideration the following containment performance criterion:

> In order to assure a proper balance between accident prevention and accident mitigation, the mean frequency of containment failure in the event of a severe core damage accident should be less than 1 in 100 severe core damage accidents.

Since the Chernobyl accident, the nuclear industry has been trying to distance itself from the Chernobyl accident on the basis of the expected performance of the containments around the U.S. power reactors. Unfortunately, the industry and the Commission are unwilling to commit to a level of performance for the containments.

The argument has been made that we do not know how to develop containment performance criteria (accident mitigation) because core meltdown phenomena and containment response thereto are very complex and involve substantial uncertainties. On the other hand, to measure how close a plant comes to the quantitative guidelines contained in this policy statement and to perform analyses required by the Commission's backfit rule, one must perform just those kinds of analyses. I find these positions inconsistent.

The other argument against a containment performance criterion is that such a standard would overspecify the safety goal. However, a containment performance objective is an element of ensuring that the principle of defense-in-depth is maintained. Since we cannot rule out core meltdown accidents in the foreseeable future, given the current level of safety, I believe it unwise not to establish an expectation on the performance of the final barrier to a substantial release of radioactive materials to the environment, given a core meltdown.

#### General Performance Guideline

While I have previously supported an objective of reducing the risks to an as low as reasonably achievable level, the general performance guideline articulated in this policy (i.e., ". . . the overall mean frequency of a large release of radioactive materials to the environment from a reactor accident should be less than 1 in 1,000,000 per year of reactor operation.") is a suitable compromise. I believe it is an objective that is consistent with the recommendations of the Commission's chief safety officer and our Director of Research, and past urgings of the Advisory Committee on Reactor Safeguards. Unfortunately, the Commission stopped short of adopting this guideline as a performance objective in the policy statement, but I am encouraged that the Commission is willing at least to examine the possibility of adopting it. Achieving such a standard coupled with the containment performance objective given above would go a long way toward ensuring that the operating reactors successfully complete their useful lives and that the nuclear option remains a viable component of the nation's energy mix.

In addition to preferring adoption of this standard now, I also believe the Commission needs to define a "large release" of radioactive materials. I would have defined it as "a release that would result in a whole body dose of 5 rem to an individual located at the site boundary." This would be consistent with the EPA's emergency planning Protective Action Guidelines and with the level proposed by the NRC staff for defining an Extraordinary Nuclear Occurrence under the Price-Anderson Act. In adopting such a definition, the Commission would be saying that its objective is to ensure that there is no more than a 1 in 1,000,000 chance per year that the public would have to be evacuated from the vicinity of a nuclear reactor and that the waiver of defenses provisions of the Price-Anderson Act would be invoked. I believe this to be an appropriate objective in ensuring that there is no undue risk to the public health and safety associated with nuclear power.

#### Cost-Benefit Analyses

I believe it is long overdue for the Commission to decide the appropriate way to conduct cost-benefit analyses. The Commission's own regulations require these analyses, which play a substantial role in the decisionmaking on whether to improve safety. Yet, the Commission continues to postpone addressing this fundamental issue.

#### Future Reactors

In my view, this safety goal policy statement has been developed with a steady eye on the apparent level of safety already achieved by most of operating reactors. That level has been arrived at by a piecemeal approach to designing, constructing and upgrading of the plants over the years as experience

was gained with the plants and as the results of required research became available. Given the performance of the current generation of plants, I believe a safety goal for these plants is not good enough for the future. This policy statement should have had a separate goal that would require substantially better plants for the next generation. To argue that the level of safety achieved by plant designs that are over 10 years old is good enough for the next generation is to have little faith in the ingenuity of engineers and in the potential for nuclear technology. I would have required the next generation of plants to be substantially safer than the currently operating plants.

**Separate Views of Commissioner Bernthal on Safety Goals Policy**

I do not disapprove of what has been said in this policy statement, but too much remains unsaid. The public is understandably desirous of reassurance since Chernobyl; the NRC staff needs clear guidance to carry out its responsibilities to assure public health and safety; the nuclear industry needs to plan for the future. All want and deserve to see clear, unambiguous, practical safety objectives that provide the Commission's answer to the question, "How safe is safe enough?" at U.S. nuclear power plants. The question remains unanswered.

It is unrealistic for the Commission to expect that society, for the foreseeable future, will judge nuclear power by the same standard as it does all other risks. The issue today is not so much calculated risk; the issue is public acceptance and, consistent with the intent of Congress, preservation of the nuclear option.

In these early decades of nuclear power, TMI-style incidents must be rendered so rare that we would expect to recount such an event only to our grandchildren. For today's population of reactors, that implies a probability for severe core damage of $10^{-4}$ per reactor year; for the longer term, it implies something better. I see this as a straightforward policy conclusion that every newspaper editor in the country understands only too well. If the Commission fails to set (and realize) this objective, then the nuclear option will cease to be credible before the end of the century. In other words, if TMI-style events were to occur with 10–15 year regularity, public acceptance of nuclear power would almost certainly fail.

And while the Commission's primary charge is to protect public health and safety, it is also the clear intent of Congress that the Commission, if possible, regulate in a way that preserves rather than jeopardizes the nuclear option. So, for example, if the Commission were to find 100 percent confidence in some impervious containment design, but ignored what was inside the containment, the primary mandate would be satisfied, but in all likelihood, the second would not. Consistent with the Commission's long-standing defense-in-depth philosophy, both core-melt and containment performance criteria should therefore be clearly stated parts of the Commission's safety goals.

In short, this pudding lacks a theme. Meaningful assurance to the public; substantive guidance to the NRC staff; the regulatory path to the future for the industry—all these should be provided by plainly stating that, consistent with the Commission's "defense-in-depth" philosophy:

(1) Severe core-damage accidents should not be expected, on average, to occur in the U.S. more than once in 100 years;

(2) Containment performance at nuclear power plants should be such that severe accidents with substantial offsite damages are not expected, on average, to occur in the U.S. more than once in 1,000 years;

(3) The goal for offsite consequences should be expected to be met after conservative consideration of the uncertainties associated with the estimated frequency of severe core-damage and the estimated mitigation thereof by containment.[1]

The term "substantial offsite damages" would correspond to the Commission's legal definition of "extraordinary nuclear occurrence." "Conservative consideration of associated uncertainties" should offer at least 90 percent confidence (typical good engineering judgment, I would hope) that the offsite release goal is met.

The broad core-melt and offsite-release goals should be met "for the average power plant"; i.e., for the aggregate of U.S. power plants. The decision to fix or not to fix a specific plant would then depend on achieving "the goal for offsite consequences." As a practical matter, this offsite societal risk objective would (and should) be significantly dependent on site-specific population density.

The absence of such explicit population density considerations in the Commission's 0.1 percent goals for offsite consequences deserves careful thought. Is it reasonable that Zion and Palo Verde, for example, be assigned the same theoretical "standard person" risk, even though they pose considerably different risks for the U.S. population as a whole? As they stand, these 0.1 percent goals do not explicitly include population density considerations; a power plant could be located in Central Park and still meet the Commission's quantitative offsite release standard.

I believe the Commission's standards should preserve the important principle that site-specific population density be quantitatively considered in formulating the Commission's societal risk objective; e.g., by requiring that for the *entire* U.S. population, the risk of fatal injury as a consequence of U.S. nuclear power plant operations should not exceed some appropriate specified fraction of the sum of the expected risk of fatality from all other hazards to which members of the U.S. population are generally exposed.

I am further concerned by the arbitrary nature of the 0.1 percent incremental "societal" health risk standard adopted by the Commission, a concept grounded in a purely subjective assessment of what the public might accept. The Commission should seriously consider a more rational standard, tied statistically to the average variations in natural exposure to radiation from all other sources.

Finally, as noted in its introductory comments, the Commission long ago committed to "move forward with an explicit policy statement on safety philosophy and the role of safety-cost tradeoffs in NRC safety decisions." While this policy statement may not be very "explicit", as discussed above, it contains nothing at all on the subject of " 'safety-cost' tradeoffs in NRC safety decisions." For example, *is* $1,000 per person-rem an appropriate cost-benefit standard for NRC regulatory action? While I have long argued that such fundamental decisions are more rightly the responsibility of Congress, the NRC staff continues to use its own ad-hoc judgment in lieu of either the Commission or the Congress speaking to the issue.

In summary, while the Commission has produced a document which is not in conflict with my broad philosophy in such matters, I doubt that the public expected a philosophical dissertation, however erudite. It is a tribute to Chairman Palladino's efforts that the Commission has come this far. But the task remains unfinished.

[1] Interestingly enough, the Commission has adopted proposed goals similar to the above core-melt and containment performance objectives—without clearly saying so. Taken together, the Commission's: (1) 0.1 percent offsite prompt fatality goals; (2) proposed $10^{-4}$ per-reactor-year "large offsite release" criterion; (3) commitment "to provide reasonable assurance . . . that a severe core-damage accident will not occur at a U.S. nuclear power plant," though they may be ill-defined, can be read to be more stringent than the plainly stated criteria suggested above.

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Thursday
August 21, 1986

## Part III

# Department of Labor

**Wage and Hour Division, Employment Standards Administration**

**29 CFR Part 530**

**Employment of Homeworkers in Certain Industries; Notice of Proposed Rulemaking**

**DEPARTMENT OF LABOR**

**Wage and Hour Division, Employment Standards Administration**

**29 CFR Part 530**

## Employment of Homeworkers in Certain Industries

**AGENCY:** Wage and Hour Division, ESA, Labor.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This document provides a notice of proposed rulemaking on restrictions affecting the employment of industrial homeworkers in certain industries under section 11(d) of the Fair Labor Standards Act (FLSA). Under this proposal, any employer who would employ any homeworker in six currently restricted industries would be required to first obtain a certificate from the Department of Labor (the Department) authorizing such employment. Any such employer who did not first obtain a certificate could not legally employ any homeworkers (other than those homeworkers issued special certificates under certain specified conditions) and would be subject to the existing restrictions and sanctions provided by the FLSA .

**DATE:** Comments are due on or before October 20, 1986.

**ADDRESS:** Submit comments to Paula V. Smith, Administrator, Wage and Hour Division, U.S. Department of Labor, Room S–3502, 200 Constitution Avenue NW., Washington, DC 20210. Commenters who wish to receive notification of receipt of comments are requested to include a self-addressed, stamped post card.

**FOR FURTHER INFORMATION CONTACT:** Herbert J. Cohen, Deputy Administrator, Wage and Hour Division, U.S. Department of Labor, Room S–3502, 200 Constitution Avenue NW., Washington, DC 20210, (202) 523–8305. This is not a toll free number.

**SUPPLEMENTARY INFORMATION:** .

### Background

*Statutory Provisions and Homework Regulations*

Section 11(d) of the FLSA provides that the Secretary of Labor is "authorized to make such regulations and orders regulating, restricting or prohibiting industrial homework as are necessary or appropriate to prevent the circumvention or evasion of and to safeguard the minimum wage rate prescribed in this Act." Pursuant to this authority, the Secretary has issued regulations, published as Part 530 of Title 29 of the Code of Federal Regulations. As originally issued in the 1940's, these regulations restricted the employment of industrial homework in seven industries: knitted outerwear; women's apparel; jewelry manufacturing; gloves and mittens; button and buckle manufacturing; handkerchief manufacturing; and embroideries. Homework in other industries has not been restricted. The regulations essentially provide that the production of goods in these restricted industries may not be carried on by employees in or about a home, apartment, tenement, or room in a residential establishment except by a certified homeworker. Under specified conditions, an employer may obtain a certificate for employees who are unable to adjust to factory work because of age or physical or mental disability or who are unable to leave home because their presence is required to care for an invalid there. Individuals may also be employed as industrial homeworkers in the restricted industries under the supervision of a sheltered workship without obtaining a certificate under Part 530.

*Final Rule Establishing a Certification System in Knitted Outerwear Industry Effective December 5, 1984*

In 1980, in light of the fact that the homework regulations had been in effect for almost 40 years without substantive revision, the Department undertook a review of the status of industrial homework. The Department published a proposal in the Federal Register on May 5, 1981 (46 FR 25108) to remove the existing restrictions on homework in all seven industries. On October 9, 1981, after reviewing the entire record, the Department issued a final rule rescinding the restrictions on the employment of homeworkers in the knitted outerwear industry only (46 FR 50348).

This rulemaking action was challenged in court by the International Ladies' Garment Workers' Union (ILGWU), various knitgoods manufacturers, the New York and California State Labor Commissioners, and others who sought to enjoin the rescission. The United States District Court for the District of Columbia upheld the rule. However, on November 29, 1983, the Court of Appeals for the District of Columbia Circuit vacated the rescission of the restriction and remanded the case to the district court resulting in the reinstatement of restrictions in the knitted outerwear industry on May 23, 1984.

The Court of Appeals ruled that the final rule had been promulgated in violation of the Administrative Procedure Act, in that the Department had failed to articulate adequately the reasons for its action (*ILGWU* v. *Donovan*, 722 F.2d 795 (D.C. Cir. 1983)). The court was concerned that the Department had failed to consider alternatives to the complete lifting of the ban, and that the record lacked factual support for the Department's assertion that an effective enforcement program would be feasible if the ban were lifted. In this connection, the court focused on four factors which arguably rendered the enforcement of the minimum wage for homeworkers difficult or impossible:

1. Difficulty of locating and identifying homeworkers;
2. Inadequate or nonexistent recordkeeping by employers and employees;
3. Strain on departmental resources required by excessive investigative time in homework cases; and
4. Difficulty in recovering back wages when violations were discovered.

Thereafter, the Department published a proposal on March 27, 1984 (49 FR 11786) to repromulgate a permanent rule rescinding the restrictions in knitted outerwear, and solicited comments on various alternatives to total rescission. A second comment period was announced on June 22, 1984 (49 FR 25641) inviting comments on the alternatives to total rescission, and in particular comments pertaining to licensing/registration of employers of industrial homeworkers.

On March 27, 1984, the Department also promulgated an "emergency" rule (49 FR 11792) temporarily rescinding the restrictions on homework in knitted outerwear for 120 days, to avoid potential disruption to homeworkers while the new rulemaking was pending. On May 8, 1984, the District Court ruled that the emergency rule was invalid, and ordered that it be rescinded forthwith.

On November 5, 1984, a final rule was published in the Federal Register (49 FR 44262) which permits the use of homeworkers in the knitted outerwear industry, provided the employer first obtains a certificate from the Department. Those knitted outerwear employers who do not obtain such certificates remain subject to the ban on homework and to the same restrictions applicable in the case of the other six restricted industries. The authority of the Department to promulgate this regulation was never challenged.

*Inconsistencies in Current Regulations*

Except for the 1981 and 1984 revisions to the homework regulations for the knitted outerwear industry, these

regulations have not been substantively changed since the early 1940s. The theory behind these regulations was that people working in their homes in these industries would invariably be abused through denial of federally mandated minimum wages. We know, today, however, that the prohibition on homework in these industries did not prevent homework from being done in them or prevent wage abuse of workers. We believe the prohibition on homework merely prevented homeworkers from reporting wage violations because reporting such violations would result in the loss of homework employment opportunity.

Today, we also know that many individuals prefer and choose to work at home instead of in a factory for a variety of personal reasons. These reasons include the desire to be at home to care for their children; an inability to afford the costs of employment outside the home including child care, clothing, transportation, and meals; a lack of transportation or difficulty in commuting to a factory; and a desire to work part-time and/or to be able to set their own work schedule. These individuals not only prefer to work at home, but consider the ability to work at home their right.

In the 1980s homework is being performed by men and women in a variety of industries throughout the country. Yet, homework remains prohibited in only six specific industries by regulations that have not been substantively changed since the 1940s.

The current regulations prohibit the manufacture at home of certain articles while other similar articles may be manufactured at home without restrictions. Men's apparel can be producted by a homeworker, while women's apparel cannot be produced at home. Bathrobes can be produced at home but housecoats cannot. Women's ski suits may be made at home, but infants ski suits may not. Leather watch straps can be produced at home while metal watch straps cannot. Golf gloves can be produced at home while work gloves cannot. Metal buttons can be produced at home while wooden buttons cannot. And, under the present certification system, a homeknitter whose employer has obtained a certificate may knit sweaters and hats at home, but may not knit mittens. The extension of the certification system to the remaining six industries would alleviate these inequities and inconsistencies in the current regulations.

*Petitions To Lift the Remaining Restriction on Homework*

Since the implementation of the certification system, the Department has received several petitions requesting amendment of Regulations Part 530 to rescind the remaining restrictions on homework.

On July 2, 1985, the President of Maine Brand Manufacturing, Inc., Houlton, Maine petitioned the Department to rescind the restrictions in the gloves and mittens industry.

On March 13, 1986, the Director of The Center on National Labor Policy also petitioned the Department to lift the restrictions in the gloves and mittens industry. He requested that the Department issue a regulation under the "emergency temporary rulemaking" procedures to protect homeworkers employed by the Tom Thumb Glove Co., Wilkesboro, North Carolina who may lose their jobs if the restrictions are not lifted.

On May 7, 1986, Congressman Stephen L. Neal forwarded a petition to the Secretary signed by 884 of his constituents in the Wilkesboro, North Carolina, area. The petition urged the lifting of all the restrictions on homework and cited the economic hardship these regulations are causing in the 5th Congressional District of North Carolina. The Department also received two other petitions with a total of 609 signatures, urging a rescission of all the restrictions on homework.

*Opposition To Lifting the Remaining Restrictions on Homework*

The ILGWU is strongly opposed to any further attempts to lift the restrictions on homework. When the Department published its existing rule permitting homework in the knitted outerwear industry under a certification system, the ILGWU stated it would not challenge the rule in court, but would view the new system as an experiment. The ILGWU stated it would closely monitor the enforcement experience of the Department for 12 to 24 months to give the Department a reasonable period of time to demonstrate that the certification system was a viable alternative to an outright ban on homework.

Between March 1984, and July 1986, the Department responded to several extensive requests under the Freedom of Information Act (FOIA) from the ILGWU and provided nearly 6750 pages of documents related to the homework enforcement program, particularly in the knitted outerwear industry.

In three meetings with the Department staff on April 14, 1986, June 12, 1986, and July 10, 1986, the ILGWU stated its opposition to any further deregulation of homework, and its contention that the enforcement effort to date in the knitted outerwear industry had been ineffective.

In addition to the ILGWU, other garment industry unions and manufacturer associations in the knitted outerwear and other restricted industries have expressed their opposition to deregulation of homework, although none of these parties formally challenged the present rule. The Amalgamated Clothing and Textile Workers Union (AFL–CIO) has joined the ILGWU in its opposition to extension of the certification system to other restricted industries, particularly the gloves and mittens industry.

*Enforcement Experience in Knitted Outerwear Industry*

The knitted outerwear certification program has been in place since December 1984. After 17 months, 58 certificates have been requested, of which 56 have been granted. Two employers were not issued certificates because of investigations revealing monetary and recordkeeping violations of the FLSA. In one of these cases, litigation has been instituted, and the other case is currently being considered for litigation. One certificate was revoked because of the firm's refusal to pay back wages due its employees.

All employers of homeworkers in the knitted outerwear industry who were issued certificates to employ homeworkers have been scheduled for investigation within 60 days of certification. During the 17 month period investigations were completed of 37 of the 58 firms which requested certificates. Seventeen firms requesting certificates were not investigated because they did not currently employ homeworkers covered by the FLSA. Investigations of the remaining firms were still in process.

Upon completion of the initial investigation, a reinvestigation of each employer has been scheduled for a future date not to exceed one year from the first investigation. Reinvestigations of four certified employers were completed as of April 30, 1986. These employers were found to be in compliance with the monetary provisions of the FLSA and three of the four have corrected the specific recordkeeping violations found in the initial investigations.

These investigations have been undertaken pursuant to the Department's enforcement program established specifically to assure FLSA protections for homeworkers in the

knitted outerwear industry. Under this enforcement program, the Department has closely monitored the certification system, and has provided extensive guidance and instructions to its compliance staff on the handling of investigations of certified and uncertified employers. The importance of the homework enforcement program has been continually emphasized in management conferences and staff meetings. The Field Operations Handbook (FOH) used by all Wage and Hour Division compliance staff has been regularly revised and updated to provide specific instructions regarding FLSA enforcement under the certification system. Included in these FOH instructions are detailed definitions of the knitted outerwear and other restricted industries; instructions regarding review of certificates and the conduct of time studies; a detailed listing of homeworker employer recordkeeping requirements; instructions on investigation leads; and special instructions for investigations of firms in the knitted outerwear industry.

The enforcement experience in knitted outerwear has demonstrated the effectiveness of the certification program in improving the Department's ability to enforce the FLSA and in fostering FLSA compliance. During the pre-certification period of October 1981 through December 1984, 18 of 50 (36 percent) knitted outerwear homeworker investigations disclosed monetary violations which averaged $1,000 in back wages due per underpaid worker. By contrast, during the period of December 1984 through April 1986, 10 of 44 knitted outerwear homeworker investigations (23 percent) revealed monetary violations. Significantly, only 5 of 35 (14 percent) investigations of certified employers of knitted outerwear homeworkers disclosed monetary violations which averaged only $100 in back wages due per underpaid worker. The 14 percent violation rate for certified employers of knitted outerwear homeworkers since the certification process has been in place is extremely low in comparison with the results of all Wage-Hour investigations, which, although primarily based on complaints, historically disclose back wages due employees in 66 percent of the cases. The traditional pattern of back wage violations affecting homeworkers in the other (non-knitted outerwear) restricted industries has continued during the period of certification. Investigations of 123 firms using homeworkers in the other restricted industries that were completed between December 1984 through April 1986 disclosed back wages due employees in 44 (36 percent) of the cases, with an average underpayment of $340 per worker.

While 27 of the 35 (77 percent) certified employers investigated were in violation of one or more FLSA recordkeeping requirements, three out of the four employers for which reinvestigations were completed by April 30, 1986, had corrected the recordkeeping violations found in the initial investigation. It is important to note that the recordkeeping requirements for employers of homeworkers are much more stringent than the recordkeeping requirements for other employers subject to the FLSA. In addition to the records required of all employers who have employees subject to the FLSA minimum wage (including a record of daily and weekly hours worked), an employer of homeworkers must maintain records containing the following information for each and every homeworker employed:

(1) With respect to each lot of work:

(i) Date on which work is given out to worker, or begun by worker, and amount of such work given out or begun,

(ii) Date on which work is turned in by worker, and amount of such work,

(iii) Kind of articles worked on and operations performed,

(iv) Piece rates paid,

(v) Hours worked on each lot of work turned in,

(vi) Wages paid for each lot of work turned in,

(vii) Date of wage payment and pay period covered by payment.

(2) With respect to any agent, distributor, or contractor: The name and address of each such agent, distributor, or contractor through whom homework is distributed or collected and name and address of each homeworker to whom homework is distributed or from whom it is collected by each such agent, distributor, or contractor.

In addition, an employer of homeworkers must:

(1) Maintain homeworker handbooks for each homeworker;

(2) Distribute such handbooks to each homeworker employed;

(3) Assure that the required entries are made in the handbooks;

(4) See that the handbook remains in the possession of the homeworker until such time as the handbook is filled or the homeworker is no longer employed;

(5) Retain filled handbooks and those of former homeworkers for the required 2-year period.

All but one of the 27 employers with recordkeeping violations agreed to future compliance with these requirements. One employer refused to pay back wages due and stated she would no longer employ homeworkers. This employer's certificate was revoked.

The Department did not consider it appropriate to revoke the certificates of employers who, in the first investigation, were found to be in violation of one or more of the recordkeeping requirements. However, as a result of the high rate of recordkeeping violations in initial investigations, the Department has accelerated its enforcement efforts by scheduling reinvestigations of these employers within three months of the first investigation. Any employer who does not correct the recordkeeping or other violations found in the initial investigation will be subject to certificate revocation.

Thus, the Department's enforcement experience in the knitted outerwear industry demonstrates that the certification system has resulted in increased FLSA compliance in this industry, including compliance with the recordkeeping requirements.

In the first seventeen months of the certification program, the increased willingness of employers and homeworkers in the knitted outerwear industry to identify themselves has resolved a major obstacle to effective FLSA enforcement which existed prior to the certification program, namely, the difficulty of locating homeworkers and obtaining their cooperation in investigations. The ability of the Department to locate homeworkers under this program is demonstrated by the identification and investigation over the period December 1984—April 1986 of 44 knitted outerwear employers (35 certified and 9 noncertified employers) employing approximately 665 homeworkers during the first seventeen months of the certification program. The number of knitted outerwear employers investigation in the years from 1981 to 1984 prior to the certification system ranged from 8 to 20 annually.

As previously indicated, two applicants did not receive certificates, and these cases have been referred for consideration of litigation. The remaining seven noncertified employers in the knitted outerwear industry were advised of the requirement to obtain a certificate if they wished to employ homeworkers in the future. Two of these employers have gone out of business; and one employer is in a State which bans homework (Massachusetts), and was informed by the State that homework was illegal. The remaining four employers agreed to apply for a certificate should they wish to employ homeworkers. The Department has

scheduled reinvestigations of these employers.

Through investigations of certified employers, five leads were obtained identifying employers of homeworkers. One of these is among the 35 certified employers. The remaining four were being investigated or were scheduled for investigation as of April 30, 1986.

The certification program in knitted outerwear was implemented to permit law-abiding employers to employ homeworkers who want or need to work in their homes and to enable the Department to effectively enforce the FLSA with respect to such homeworkers. An informal telephone survey in May 1986 reflects that approximately 500 homeworkers are currently employed by certified knitted outerwear employees, at an estimated total annual payroll of over $3 million. It appears that these 500 homeworkers represent a sizable portion of the universe of homeworkers in the knitted outerwear industry. In the 1981 hearings, the testimony regarding estimates of the number of homeworkers in the industry indicated that there were fewer than 1000 homeworkers nationwide. In 1985, at the request of the Department, the Census Bureau prepared a Work at Home Tabulation based on the 1980 census which indicated there were less then 636 homeworkers in the knitted outerwear industry.

The experience under the knitted outerwear certification program has demonstrated that this program is an acceptable alternative to a total ban on the use of homeworkers in promoting FLSA compliance.

*Increased Homeworker Enforcement Efforts*

Since 1981, the Department has conducted a concerted compliance effort to detect violations of the FLSA among homeworkers. As part of this effort, the Department has given priority to investigating all complaints received involving homework and it has actively sought to ensure that homework activity, wherever it occurs, is in compliance with the FLSA. Between October 1981, and April 30, 1986, 1442 investigations of employees utilizing homeworkers were conducted, as compared with approximately 75 to 80 such investigations during the entire previous six-year period.

The Department is fully committed to maintaining a strong and effective FLSA enforcement program in industries utilizing homeworkers and will continue to provide a sufficient level of resources to insure the accomplishment of this goal.

It is the Department's view that the existing prohibition against homework in the remaining restricted industries has been counterproductive. Of prime significance is the fact that a ban on homework reduces an employee's incentive to file a complaint regarding minimum wage violations, since a successful complaint may lead to a loss of the homeworker's job. Unlike a certification system, a ban provides no alternative basis for identifying those firms employing homeworkers. Also, homework firms operating in the restricting industries are operating in violation of the law simply by employing homeworkers. Thus, these firms have little incentive to comply with the FLSA wage provisions, since, in any event, their very existence violates the FLSA, and if found by the Department, their homework operations must be discontinued regardless of any minimum wage or overtime pay violations.

The Department has carefully reviewed its experience with the certification system in the knitted outerwear industry which has been in effect since December 5, 1984, and believes that the FLSA can be effectively enforced under this system while allowing persons employed in this type of work the same basic freedom to work at home that is allowed to almost all other workers. Accordingly, the Department proposes to apply the same certification procedure to the remaining restricted industries.

*Interest in Removing Remaining Restrictions on Homework*

Since the implementation of the certification system in the knitted outerwear industry the Department has received five petitions with 1493 signatures requesting further deregulation of homework, as well as over 400 letters from individuals and organizations urging that the remaining homework restrictions be lifted. Among the reasons for wishing to work at home cited by employees are: the desire to be at home to care for their children; their inability to afford the costs of child care, transportation, clothing, and meals, if they had to work in a factory; the lack of transportation or the difficulty in commuting from their homes to a factory; their desire to set their own work schedules; and their ability to engage in farming operations or other pursuits while working part-time at home.

Individuals who write to the Department regarding the homework restrictions continually point out the inequity and incongruity of regulations which permit the manufacture at home of certain articles of clothing and prohibit the manufacture at home of other similar articles of clothing. For example homeknitters whose employer has obtained a certificate may knit sweaters and hats at home, but they may not knit mittens which are in a restricted industry. Men's apparel can be produced by a homeworker, while women's apparel cannot be produced at home. The extension of the certification system to the remaining six restricted industries will alleviate these inequities while permitting the Department to enforce compliance with the FLSA more effectively.

**Scope of the Proposed Rule**

Under the proposed rule, employers in the remaining six restricted industries who obtain certificates would be permitted to employ homeworkers, while employers without such certificates would continue to be subject to the existing prohibitions on the employment of homeworkers. The same certification procedures used in knitted outerwear would be used in all restricted industries. Employers legally utilizing homeworkers would be known to the Department and their compliance with the FLSA could be determined by investigation. Employers who do not identify themselves and obtain certificates would remain subject to the current restrictions on the use of homeworkers. Homeworkers who will be paid properly will not be deprived of employment opportunities and employers of homeworkers who fail to identify themselves could not legally employ homeworkers.

Under this rule, employers in the restricted industries who wish to utilize homeworkers will notify the Department of the name(s), physical address and mailing address of their firm(s). The certification procedure has been made as simple as possible in order to avoid unnecessary paperwork burdens.

Authorization for such firms to employ homeworkers may be denied or revoked should it be determined that they have failed to notify the Department of changes in the information already provided, or have failed to comply with any of the provisions of the FLSA.

The Department is prepared to commit the necessary resources and to use available sanctions where appropriate to ensure effective enforcement of this rule.

Violations of any provision of the FLSA could result in the employer's homeworker certificate being revoked for up to one year. In determining whether to deny a certificate or to revoke an existing certificate for FLSA

violations, the Department will give careful consideration to an employer's past compliance record and the employer's willingness to comply in the future and to restore the full amount of any back wages found due employees. Consistent with the existing provisions of Part 530, before a certificate is denied, interested parties will be given written notice and afforded an opportunity to demonstrate or achieve compliance. In appropriate circumstances, the Administrator of the Wage and Hour Division will afford an opportunity for a hearing to resolve a disputed matter. By this procedure, due process will be provided to affected employers.

**Executive Order 12291**

This rule is not classified as a "major rule" under Executive Order 12291 on Federal Regulations, because it is not likely to result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Therefore no regulatory impact analysis is required.

**Regulatory Flexibility Act**

The proposed rule, if promulgated, will not have a significant effect on a substantial number of small entities. This conclusion is based on all information presently available to the Department concerning the employment of homeworkers. The Secretary has certified to the Chief Counsel for Advocacy of the Small Business Administration to this effect.

**Paperwork Reduction Act**

In accordance with the Paperwork Reduction Act of 1980, the recordkeeping provisions that are included in this regulation have been or will be submitted for approval to the Office of Management and Budget (OMB).

This document was prepared under the direction and control of Paula V. Smith, Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor.

**List of Subjects in 29 CFR Part 530**

Employment, Investigations, Labor, Law enforcement, Minimum wages, Wages, Licenses.

Accordingly, it is proposed to amend 29 CFR Part 530 as set forth below. In addition, the complete text of existing 29 CFR Part 530 is reprinted as an appendix solely for information purposes and ease of reference for interested parties. As indicated by the regulatory text below, the Department is proposing changes only to the introductory text of paragraph (c) and paragraph (c)(2)(i) of § 530.4 and comments are requested only on these paragraphs.

Signed at Washington, D.C., on this 15th day of August 1986.

**William E. Brock,**

*Secretary of Labor.*

**Susan R. Meisinger,**

*Deputy Under Secretary for Employment Standards.*

**Paula V. Smith,**

*Administrator, Wage and Hour Division.*

## PART 530—EMPLOYMENT OF HOMEWORKERS IN CERTAIN INDUSTRIES

1. The authority citation for Part 530 is revised to read as set forth below and the authority citations following all of the sections in Part 530 are removed.

**Authority:** Sec. 11, 52 Stat. 1066 (29 U.S.C. 211) as amended by Sec. 9, 63 Stat. 910 (29 U.S.C. 211(d)); Secretary's Order No. 6–84, 49 FR 32473, August 14, 1984; and Employment Standards Order No. 85–01, June 5, 1985.

2. In § 530.4, the introductory text of paragraph (c) and paragraph (c)(2)(i) are revised to read as follows:

**§ 530.4 Terms and conditions for the issuance of certificates.**

* * * * *

(c) A certificate may be issued to an employer authorizing the employment of homeworkers in any industry defined in paragraphs (d) through (j) of § 530.1 of this part; this certificate may be issued irrespective of whether individual homeworkers meet the conditions set forth in paragraph (a) of this section. In the absence of a certificate, the employment of homeworkers in these industries is prohibited, and an employer violating this prohibition is subject to all the sanctions provided in this Act and in this subpart, including an injunction restraining the employment of homeworkers. Certificates authorizing such employment may be issued on the following terms and conditions upon written notice to the Administrator of the Wage and Hour Division, U.S. Department of Labor, Washington, DC 20210:

* * * * *

(2) * * *

(1) Employment of homeworkers in an industry defined in paragraphs (d) through (j) of § 533.1 without a certificate may be cause for denial of a request for certification for a period of up to one year from the final date of the violation.

* * * * *

**Appendix**

**Note.**—The following is the existing text of 29 CFR Part 530 as it appears in the Code of Federal Regulations, revised as of July 1, 1986.

## PART 530—EMPLOYMENT OF HOMEWORKERS IN CERTAIN INDUSTRIES

Sec.



**Authority:** Sec. 11, 52 Stat. 1066 (29 U.S.C. 211) as amended by sec. 9, 63 Stat. 910 (29 U.S.C. 211(d)); Secretary's Order No. 6–84, 49 FR 32473, Aug. 14, 1984; and Employment Standards Order No. 78–1, 43 FR 51469, Nov. 3, 1978, unless otherwise noted.

**Source:** 24 FR 729, Feb. 3, 1959, unless otherwise noted.

**§ 530.1 Definitions.**

(a) The meaning of the terms "person," "employ," "employer," "employee," "goods," and "production," as used in this part, is the same as in the Fair Labor Standards Act of 1938, as amended.

(b) "Industrial homeworker" and "homeworker," as used in this part, mean any employee employed or suffered or permitted to perform industrial homework for an employer.

(c) "Industrial homework," as used in this part, means the production by any person in or about a home, apartment, tenement, or room in a residential establishment of goods for an employer who suffers or permits such production, regardless of the source (whether obtained from an employer or elsewhere) of the materials used by the homeworker in such production.

(d) The women's apparel industry is defined as follows: The production of women's, misses' and juniors' dresses, washable service garments, blouses, and neckwear from woven or purchased knit fabric; women's, misses', children's and infants' underwear, nightwear, and

negligees from woven fabrics; corsets and other body supporting garments from any material; other garments similar to the foregoing; and infants; and children's outerwear.

(e) The jewelry manufacturing industry is defined as follows:

(1)(i) The manufacturing, processing, or assembling, wholly or partially from any material, of jewelry, commonly or commercially so known. Jewelry as used herein includes without limitation, religious, school, college, and fraternal insignia; articles of ornament or adornment designed to be worn on apparel or carried on or about the person, including, without limitation, cigar and cigarette cases, holders, and lighters; watch cases; metal mesh bags and metal watch bracelets; and chain, mesh, and parts for use in the manufacture of any of the articles included in this definition. Jewelry as used in this part does not include pocket knives, cigar cutters, badges, emblems, military and naval insignia, belt buckles, and handbag and pocketbook frames and clasps, or commercial compacts and vanity cases, except when made from or embellished with precious metals or precious, semiprecious, synthetic or imitation stones, or the assaying, refining, and smelting of base or precious metals.

(ii) The term "parts" as used in paragraph (e)(1)(i) of this section does not include parts which are used predominantly for products other than jewelry, such as springs, blades, and nail files. The term "commercial compacts and vanity cases" as used means compacts and vanity cases which bear the trade name or mark of a cosmetic manufacturer and are made for the purpose of distributing or advertising said cosmetics.

(2) The manufacturing, cutting, polishing, encrusting, engraving, and setting of precious, semiprecious, synthetic, and imitation stones.

(3) The manufacturing, drilling, and stringing of pearls, imitation pearls, and beads designed for use in the manufacture of jewelry.

(4) The term "hand-fashioned jewelry" as used in § 530.12(b) means articles of jewelry commonly known as genuine Navajo, Pueblo, Hopi, or Zuni handmade jewelry which in all elements of design, fashioning and ornamentation are handmade by methods and with the help of only such devices as permit the maker to determine the shape and design of each individual product: *Provided,* That silver used in the making of such jewelry shall be of at least nine hundred fineness, and that turquoise and other stones used shall be genuine stones, uncolored and untreated by artificial means: *And provided further,* That power machinery is permitted in the production of findings, in the cutting and polishing of stones, in the buffing and polishing of completed products, and in incidental functions. Equipment specifically prohibited shall include hand presses, foot presses, drop hammers, and similar equipment: *And provided further,* That solder may be of less silver content than nine hundred; *And provided further,* That findings may be mechanically made of any metal by Indians or others: *And provided further,* That turquoise and other stones may be cut and polished by Indians or others without restrictions as to methods or equipment used.

(f) The knitted outerwear industry is defined as follows: The knitting from any yarn or mixture of yarns and the further manufacturing, dyeing or other finishing of knitted garments, knitted garment sections, or knitted garment accessories for use as external apparel or covering which are partially or completely manufactured in the same establishment as that where the knitting process is performed; and the manufacture of bathing suits from any purchased fabric: *Provided,* That the manufacturing, dyeing or other finishing of the following shall not be included:

(1) Knitted fabric, as distinguished from garment sections or garments, for sale as such.

(2) Fulled suitings, coatings, topcoatings, and overcoatings.

(3) Garments or garment accessories made from purchased fabric, except bathing suits.

(4) Gloves or mittens.

(5) Hosiery.

(6) Knitted garments or garment accessories for use as underwear, sleeping wear, or negligees.

(7) Fleece-lined garments made from knitted fabric containing cotton only or containing any mixture of cotton and not more than 25 percent, by weight, of wool or animal fiber other than silk.

(8) Knitted shirts of cotton or any synthetic fiber or any mixture of such fibers which have been knit on machinery of 10-cut or fine: *Provided,* That this exception shall not be construed to exclude from the knitted outerwear industry and the manufacturing, dyeing, or other finishing of knitted shirts made in the same establishment as that where the knitting process is performed, if such shirts are made wholly or in part of fibers other than those specified in this clause, or if such shirts of any fiber are knit on machinery coarser than 10-cut.

(g) The gloves and mittens industry is defined as follows: The production of gloves and mittens from any material or combination of materials, except athletic gloves and mittens.

(h) The button and buckle manufacturing industry is defined as follows: The manufacture of buttons, buckles, and slides, and the manufacture of blanks and parts for such articles from any material except metal, for use on apparel.

(i) The handkerchief manufacturing industry is defined as follows: The manufacture of men's, women's and children's handkerchiefs, plain or ornamented, from any materials.

(j) The embroideries industry is defined as follows: The production of all kinds of hand and machine-made embroideries and ornamental stitchings, including but not by way of limitation, tucking shirring, smocking, hemstitching, hand rolling, fagoting, Bonnez embroidery, appliqueing, crochet beading, hand drawing, machine drawing, rhinestone trimming, sequin trimming, spangle trimming, eyelets, passementerie, pleating, the application of rhinestones and nailheads, stamping and perforating of designs, Schiffli embroidery and laces, burnt-out laces and velvets, Swiss handmachine embroidery, thread splitting, embroidery thread cutting, scallop cutting, lace cutting, lace making-up, making-up of embroidered yard goods, straight cutting of embroidery and cutting out of embroidery, embroidery trimmings, bindings (not made in textile establishments), pipings and emblems: *Provided,* That (1) the foregoing when produced or performed by a manufacturer of a garment, fabric or other article for use on such garment, fabric or other article, and (2) the manufacture of covered buttons and buckles, shall not be included.

(Sec. 11, 52 Stat. 1066 (29 U.S.C. 211); Secretary's Order No. 16–75, 40 FR 55913, Dec. 2, 1975; and Employment Standards Order No. 78–1, 43 FR 51469, Nov. 3, 1978)

[24 FR 729, Feb. 3, 1959, as amended at 46 FR 50349, Oct. 9, 1981; 49 FR 22036, May 24, 1984]

### § 530.2 Restriction of homework.

Except as provided in § 530.4(c), no work in the industries defined in paragraphs (d) through (j) of § 530.1 shall be done in or about a home, apartment, tenement, or room in a residential establishment unless a special homework certificate issued and in effect pursuant to this part has been obtained for each homemaker or unless the homeworker is so engaged under the supervision of a Sheltered Workshop, as defined in § 525.2 of this chapter.

[49 FR 44270, Nov. 5, 1984]

**§ 530.3 Application on official forms.**

Certificates authorizing the employment of industrial homeworkers in the industries defined in § 530.1 may be issued on the following terms and conditions upon application therefore on forms provided by the Wage and Hour Division. Such forms shall be signed by both the homeworker and the employer.

(Approved by the Office of Management and Budget under control number 1215–0005)

[24 FR 729, Feb. 3, 1959, as amended at 49 FR 18294, Apr. 30, 1984]

**§ 530.4 Terms and conditions for the issuance of certificates.**

(a) Upon application by the homeworker and the employer on forms provided by the Wage and Hour Division, certificates may be issued to the applicant employer authorizing the employment of a particular worker in industrial homework in a particular industry, provided that the application is in proper form and sets forth facts showing that the worker:

(1)(i) Is unable to adjust to factory work because of age or physical or mental disability; or

(ii) Is unable to leave home because the worker's presence is required to care for an invalid in the home; and

(2)(i) Was engaged in industrial homework in the particular industry for which the certificate is applied, as such industry is defined in § 530.1, prior to: (*a*) April 4, 1942, in the button and buckle manufacturing industry; (*b*) November 2, 1942, in the embroideries industry; (*c*) April 1, 1941, in the gloves and mittens industry; (*d*) October 7, 1942, in the handkerchief manufacturing industry; (*e*) July 1, 1941, in the jewelry manufacturing industry; or (*f*) March 5, 1942, in the women's apparel industry, except that if this requirement shall result in unusual hardship to the individual homeworker it shall not be applied; or

(ii) Is engaged in industrial homework under the supervision of a State Vocational Rehabilitation Agency.

(b) No homeworker shall perform industrial homework for more than one employer in the same industry, but homework employment in one industry shall not be a bar to the issuance of certificates for other industries.

(c) A certificate may be issued to an employer authorizing the employment of homeworkers in the knitted outerwear industry, as defined in § 530.1(f) of this part; this certificate may be issued irrespective of whether individual homeworkers meet the conditions set forth in paragraph (a) of this section. In the absence of a certificate, the employment of homeworkers in this industry is prohibited, and an employer violating this prohibition is subject to all the sanctions provided in this Act and in this subpart, including an injunction restraining the employment of homeworkers. Certificates authorizing such employment may be issued on the following terms and conditions upon written notice to the Administrator of the Wage and Hour Division, U.S. Department of Labor, Washington, D.C. 20210:

(1) The notice of request for certification shall be signed by the employer and shall contain the name of the firm, its mailing address, and the physical location of the firm's principal place of business. The employer shall provide the Administrator, within thirty (30) days, a notice of each change of address of the principal place of business. The notification shall be in writing and addressed to the Administrator, Wage and Hour Division, Employment Standards Administration, 200 Constitution Avenue, NW., Washington, D.C. 20210. Such change of address shall be deemed effective upon receipt by the Administrator unless a later date is specified in the notice.

(2) A request for certification under this subpart may be denied for cause.

(i) Employment of homeworkers in the knitted outerwear industry without a certificate may be cause for denial of a request for certification for a period up to one year from the final date of the violation.

(ii) Failure to pay back wages found to be due as a result of a violation of sections 15(a)(2) or 15(a)(3) shall be cause for denial of a certificate until the back wages are paid.

(iii) Failure to pay civil money penalties determined to be owing for a violation of section 15(a)(4) shall be cause for denial of a certificate until the civil penalties are paid.

(iv) Violation of any provision of the FLSA or the regulations issued thereunder may be cause for denial of a certificate for a period of up to one year from the final date of the violation.

(v) An open investigation may result in the withholding of a certificate pending the conclusion and resolution thereof.

Before any certificate is denied, interested parties shall be notified in writing of the facts warranting such denial and afforded an opportunity to demonstrate or achieve compliance. In appropriate circumstances, the Administrator shall afford an opportunity for a hearing to resolve the disputed matter.

(3) An employer issued a certificate under this subpart may be subject to investigaton at any time to determine compliance with the provisions of the Fair Labor Standards Act.

(Information collection requirements contained in paragraph (a) were approved by the Office of Management and Budget under control number 1215–0005. Information collection requirements contained in paragraph (c) were approved under control number 1215–0159.)

(Secretary's Order No. 16–75, dated Nov. 25, 1975 (40 FR 55913); Employment Standards Order No. 76–2, dated Feb. 23, 1976 (41 FR 9016))

[24 FR 729, Feb. 3, 1959, as amended at 43 FR 28470, June 30, 1978; 46 FR 50349, Oct. 9, 1981; 49 FR 44270, Nov. 5, 1984]

**§ 530.5 Investigation.**

An investigation may be ordered in any case to obtain additional data or facts. A medical examination of the worker or invalid may be ordered or a certification of facts concerning eligibility for the certificate by designated officers of the State or Federal Government may be required.

**§ 530.6 Termination of certificates.**

(a) A certificate shall be valid under the terms set forth in the certificate for a period to be designated by the Administrator or his authorized representative. Application for renewal of any certificate shall be filed in the same manner as an original application under this part.

(b) No effective certificate shall expire until action on an application for renewal shall have been finally determined, provided that such application has been properly executed in accordance with the requirements, and filed not less than 15 nor more than 30 days prior to the expiration date. A final determination means either the granting of or initial denial of the application for renewal of a certificate, or withdrawal of the application. A "properly executed" application is one which contains the complete information required on the form.

[24 FR 729, Feb. 3, 1959, as amended at 27 FR 7020, July 25, 1962]

**§ 530.7 Revocation and cancellation.**

Any certificate may be revoked for cause at any time. Violation of any provision of the Fair Labor Standards Act shall be sufficient grounds for revocation of all certificates issued to an employer, in which event no certificates shall be issued to the offending employer for a period of up to one year. Before any certificate is cancelled, however, interested parties shall be notified in writing of the facts warranting such cancellation and afforded an opportunity to demonstrate or achieve compliance. In appropriate

circumstances, the Administrator shall afford an opportunity for a hearing to resolve the disputed matter.

[49 FR 44271, Nov. 5, 1984]

**§ 530.8 Preservation of certificates.**

A copy of all certificates provided to the employer under this part shall be maintained for a period of at least three years after the last employment under the certificate.

[49 FR 44271, Nov. 5, 1984]

**§ 530.9 Records and reports.**

The issuance of a certificate shall not relieve the employer of the duty of maintaining the records required in the regulations in Part 516 of this chapter and failure to keep such records shall be sufficient cause for the cancellation of certificates issued to such an employer.

**§ 530.10 Delegation of authority to grant, deny, or cancel a certificate.**

The Administrator may from time to time designate and appoint members of the Administrator's staff or State Agencies as his authorized representatives with full power and authority to grant, deny, or cancel homework certificates.

(Secretary's Order No. 16–75, dated Nov. 25, 1975 (40 FR 55913); Employment Standards Order No. 76–2, dated Feb. 23, 1976 (41 FR 9016))

[43 FR 28470, June 30, 1978]

**§ 530.11 Petition for review.**

Any person aggrieved by the action of an authorized representative of the Administrator in granting or denying a certificate may, within 15 days thereafter or within such additional time as the Administrator for cause shown may allow, file with the Administrator a petition for review of the action of such representative praying for such relief as is desired. Such petition for review, if duly filed, will be acted upon by the Administrator or an authorized representative of the Administrator who took no part in the proceeding being reviewed. All interested parties will be afforded an opportunity to present their views in support of or in opposition to the matters prayed for in the petition.

**§ 530.12 Special provisions.**

(a) *Gloves and mittens industry.* Any certificate issued to an industrial homeworker by the New York State Department of Labor under paragraph II of Home Work Order No. 4 Restricting Industrial Homework in the Glove Industry, dated June 28, 1941, will be given effect by the Administrator as a certificate permitting the employment of the homeworker under the terms of § 530.4 for the period during which such certificate shall continue in force.

(b) *Jewelry manufacturing industry.* Nothing contained in the regulations in this part shall be construed to prohibit the employment, as homeworkers, of American Indians residing on the Navajo, Pueblo, and Hopi Indian Reservations, who are engaged in producing genuine hand-fashioned jewelry on the Indian reservations mentioned, provided the employment of such homeworker is in conformity with the following conditions:

(1) That each employer of one or more Indian homeworkers engaged in making hand-fashioned jewelry on these Indian reservations shall submit in duplicate to the regional office of the Wage and Hour Division for the region in which the employer's place of business is located, on April 1, August 1, and December 1 of each year, the name and address of such employee engaged during the preceding 4-month period in making hand-fashioned jewelry on Indian reservations;

(2) That each employer of one or more Indian homeworkers engaged in making hand-fashioned jewelry on these Indian reservations shall file copies of the piece rates in duplicate with the regional office of the Wage and Hour Division for the region in which the employer's place of business is located on April 1, August 1, and December 1 of each year, and

(3) That each employer of one or more Indian homeworkers engaged in making hand-fashioned jewelry on these Indian reservations shall keep, maintain, and have available for inspection by the Administrator or the Administrator's authorized representative at any time, records and reports showing with respect to each of the homeworkers engaged in making hand-fashioned jewelry on these Indian reservations, the following information:

(i) Name of the homeworker.

(ii) Address of the homeworker.

(iii) Date of birth of the homeworker, if under 19 years of age.

(iv) Description of work performed.

(v) Amount of cash wage payments made to the homeworker for each pay period.

(vi) Date of such payment.

(vii) Schedule of piece rates paid.

These records shall be kept by each employer for each of the employer's homeworkers engaged in making hand-fashioned jewelry on Indian reservations, as provided in this section, in lieu of the records required under §§ 516.2 and 516.31 of this chapter: *Provided, however,* That nothing in this section shall relieve an employer from maintaining all other records required by Part 516 of this chapter.

(Secretary's Order No. 16–75, dated Nov. 25, 1975 (40 FR 55913); Employment Standards Order No. 76–2, dated Feb. 23, 1976 (41 FR 9016))

[24 FR 729, Feb. 3, 1959, as amended at 43 FR 28470, June 30, 1978]

**§ 530.13 Petition for amendment of regulations.**

Any person wishing an amendment, addition, or revision of any of the terms of the foregoing regulations may submit in writing to the Administrator a petition setting forth the changes desired and reasons for proposing them. If upon inspection of the petition, or upon the Administrator's own motion, the Administrator believes that reasonable cause for amendment of the rules and regulations appears, the Administrator will, unless it is impractical, unnecessary, or contrary to the public interest to do so, either schedule a hearing with due notice to interested persons or make other provisions to afford interested persons opportunity to present their veiws in support of or in opposition to the proposed changes.

(Secretary's Order No. 16–75, dated Nov. 25, 1975 (40 FR 55913); Employment Standards Order No. 76–2, dated Feb. 23, 1976 (41 FR 9016))

[43 FR 28470, June 30, 1978]

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