Sunshine Act Meetings

Federal Register
Vol. 57 No. 173
Friday, September 4, 1992

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).

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Changes in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its open meeting held at 10:05 a.m. on Tuesday, September 1, 1992, the Corporation's Board of Directors determined, on motion of Director C.C. Hope, Jr. (Appointee), seconded by Director T. Timothy Ryan, Jr. (Office of Thrift Supervision), concurred in by Director Stephen R. Steinbrink (Acting Comptroller of the Currency) and Acting Chairman Andrew C. Hove, Jr., that Corporation business required the withdrawal from the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matters:

Memorandum and resolution re: Final amendments to Part 327 of the Corporation's rules and regulations, entitled "Assessments," which amendments increase the assessment to be paid by Savings Association Insurance Fund members.

Memorandum and resolution re: Final amendments to Part 327 of the Corporation's rules and regulations, entitled "Assessments," which amendments increase the assessment to be paid by Bank Insurance Fund members.

Memorandum re: Bank Insurance Fund Recapitalization Schedule.

Memorandum and resolution re: Final regulation establishing a transitional risk-based assessment.

By the same majority vote, the Board further determined that no notice earlier than August 28, 1992, of these changes in the subject matter of the meeting was practicable.

The meeting was held in the Board Room of the FDIC Building located at 550 17th Street, NW., Washington, DC.

Dated: September 1, 1992.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 92-21523 Filed 9-2-92; 2:48 pm]

BILLING CODE 6714-01-M

Corrections

Federal Register
Vol. 57, No. 173
Friday, September 4, 1992

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 210

National School Lunch Program, Special Milk Program for Children, and School Breakfast Program: Coordinated Review Effort

Correction

In rule document 92–20400 beginning on page 38579 in the issue of Wednesday, August 26, 1992 make the following corrections:

1. On page 38584, in the third column, in amendatory instruction 2d., in the third line, "for" should read "from".

2. On the same page, in the same column, in amendatory instruction 2i., in the third line, "(1)(3)" should read "(l)(3)".

§ 210.18 [Corrected]

3. On page 38585, in the first column, in § 210.18(j), in the last line, "§ 210.3(d)(3)" should read "§ 210.30(d)(3)"; and two lines below paragraph (j), "(1) * * *" should read "(l) * * *".

BILLING CODE 1505–01–D

DEPARTMENT OF COMMERCE

International Trade Administration

University of California, Berkeley, et al.; Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

Correction

In notice document 92–19428 appearing on page 36635 in the issue of Friday, August 14, 1992, in the third column, in the second line from the top, "MIIα" should read "MPα".

BILLING CODE 1505–01–D

federal register

Friday
September 4, 1992

Part II

Department of Health and Human Services

Social Security Administration

Supplemental Security Income Modernization Project; Final Report; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

Supplemental Security Income Modernization Project; Final Report by the Experts

AGENCY: Social Security Administration, HHS

ACTION: Notice of final report and request for public comments.

SUMMARY: The Social Security Administration (SSA) requests comments on the final report of the Supplemental Security Income (SSI) Modernization Project (the Project) experts.

DATES: Comments must be postmarked on or before December 3, 1992.

ADDRESSES: Comments should be submitted in writing to the SSI Modernization Project Staff, room 311, Altmeyer Building, P.O. Box 17052, Baltimore, MD 21235.

FOR FURTHER INFORMATION CONTACT: SSI Modernization Project Staff, room 311, Altmeyer Building, P.O. Box 17052, Baltimore, MD 21235, telephone (410) 965–3571.

SUPPLEMENTARY INFORMATION:

SSA has undertaken a comprehensive examination of the SSI program by reviewing its fundamental structure and purpose. The SSI program has been in operation over 18 years. The purpose of the Project is to determine whether the SSI program is meeting and will continue to meet the needs of the population it is intended to serve in an efficient and caring manner, recognizing the constraints in the current fiscal climate.

The Project was intended to create a dialogue that provided a full examination of how well the SSI law, and the policies developed by SSA to implement the law, serve people with very low or no income who are over 65 or blind or otherwise disabled. The goal of the initial dialogue was to exchange ideas and information about the program and to promote the sharing of ideas among attendees' constituencies, including advocacy groups, State and local governments, and academicians. To begin this dialogue, the Commissioner involved 21 people who are experts in the SSI program and/or related public policy areas. The experts represent a wide range of interests regarding programs that serve aged, blind and disabled persons. Dr. Arthur S. Flemming, former Secretary of Health, Education and Welfare, is the Chairman. The Project held meetings in Baltimore, MD; Washington, DC; New York, NY; Chicago, IL; Los Angeles, CA; Montgomery, AL; Atlanta, GA; and Falls Church, VA. We announced these meetings in the **Federal Register** and invited the public to comment either in person or through correspondence. During these meetings, the public as well as the experts expressed their individual views and concerns about the SSI program.

From late June 1990 to July 1991 more than 400 individuals, including current and former SSI recipients, representative payees, representatives from professional organizations, advocacy groups, legal services organizations, institutions, private agencies and federal, State and local governments, provided oral and/or written comments. The Chairman and other experts met with SSA employees in regional offices in all 10 regions of the Department of Health and Human Services across the country. They also met with State disability determination services employees in five States, and staff in a hearing office.

On July 31, 1991, the Project published a paper in the **Federal Register** (56 FR 36640) which identified issues and options. The paper summarized the comments which had been provided and included options for change that were identified as a result of public comments. The public was invited to comment by September 30, 1991. In all, approximately 14,600 comments were received on this paper. These public comments were shared with the Project experts in preparation for their final meeting, on January 9–10, 1992, in Falls Church, VA. The experts' individual views concerning what options they supported and which deserve priority consideration are included in this final report.

The Commissioner of Social Security has asked the Modernization Project Staff to solicit comments on this report. After the close of the public comment period announced by this notice, the Project staff will prepare an analysis of the options presented in this paper, taking into account the experts' individual views and the public comments. The analysis will be considered by SSA in developing legislative proposals as well as in determining regulatory and other initiatives which do not require legislation.

Dated: August 18, 1992.

Peter D. Spencer,

Executive Staff Director, SSI Modernization Project.

August 24, 1992.

Gwendolyn S. King,

Commissioner of Social Security, Baltimore, Maryland 21235

Dear Commissioner King: I am transmitting to you the report of the experts who served on the Supplemental Security Income Modernization Project.

In submitting this report, I want to express our deep appreciation to you for establishing this project and for providing us with a farsighted mandate which constitutes a basis for the study. I also want to express our gratitude for the part played by Rhoda Davis, the Associate Commissioner for Supplemental Security Income, and Peter Spencer, the Executive Staff Director of the project. They, and many of your associates, traveled the second mile in rendering us services. We want to pay tribute also to the other members of your career staff for their help and assistance and for acting at all times in accordance with the highest standards of the Federal career service.

I want to make a few observations growing out of my participation in this study.

I am stuck by the fact that this nation does not have a well-coordinated policy for poor persons as individuals.

I have been very much impressed by the following observation by Father Henry J.M. Nouwen in his book, "Aging: The Fulfillment of Life".

"The painful suffering of many old people cannot be understood by pointing to their mistakes, weaknesses, or sins. By doing so we might avoid the realization that the fact of many old people reflects an evil that is the evil of a society in which love has been overruled by power and generosity by competition. They are not just suffering for themselves but for all of us who are, knowingly or unknowingly, responsible for their condition."

I find no difficulty in substituting for "old people" the words "poor people". This then becomes an accurate portrayal of what is oftentimes our approach to poor persons of any age.

We seem to be unaware of their suffering—suffering which grows out of starvation, lack of clothing, and lack of a home. We rationalize our failure to respond to this suffering by pointing to the mistakes, weaknesses, and sins of some. We fail to recognize that all are suffering and that the fate of many poor persons also reflects the evil of a society in which love has been overruled by power.

We seem to forget that their suffering is taking place now and that, in many instances, compassion is overruled by what we are told is "practical".

Therefore, we fail, for example, to coordinate SSI and AFDC in an effective manner in spite of the fact that they are both Social Security programs—both committed to lifting the poor out of poverty. President Nixon was right when he urged an income floor for all Americans.

I believe that many of the changes supported by a majority of the experts point to a national policy in which today's suffering is recognized and compassion becomes a way of life for our nation.

That is why the experts oppose those policies which would keep poor people poor

under the guise of giving them help. A majority supports ending a policy which penalizes an SSI beneficiary because that person receives help in the way of food or shelter from family or friends.

We also believe there should be significant upward revisions and simplifications in a resource requirement which makes it impossible for a person to save money and set aside a "nest egg" to meet the unknown hazards of the future.

We also believe that we should strengthen immeasurably the provisions for work incentives—the provisions which permit and encourage an SSI recipient to leave the beneficiary rolls and enable him or her to live in accordance with his or her highest possibilities by becoming a member of the workforce.

Our preferred options on benefits are geared to providing now what is needed today for food, clothing, and housing. Unless we expedite this process, we know that many of today's poor people will suffer and die prematurely because we have failed to act as a compassionate society.

Congress has lifted the criteria for program access for poor people to 120 percent of poverty, or more, under some fifteen programs. We believe that those people who are below 120 percent of poverty should become eligible for the Supplemental Security Income program. We recognize that, in suggesting that these benefits be phased in over a period of five years, we have made a concession to practicality. We feel, however, that we are supporting the right goal.

We recognize that the overall price tag at the end of five years—$38.8 billion—is an expensive one. Nearly $28 billion of that price tag, or more than two-thirds, is attributable to benefit increases which are long overdue.

We are, however, the richest nation in the world. I also recognize, as a recent Congressional Budget Office study revealed, that the after-tax income of the upper one percent of our population doubled in the period from 1977 to 1989 and represented 70 percent of the after-tax income increases received during that 12-year period. During that same period, the lower 20 percent of our population experienced a decline of nine percent in after-tax income.

I believe that it is only fair to ask the upper one percent to share a small portion of their wealth with the poor.

That is why your decision is welcomed to have a group of fiscal experts recommend "where, in the light of the fiscal situation over the next five years, we can get the money" to pay for the conclusions made by the experts. This group will report to you within six months as you have directed. Therefore, both the Executive and Legislative Branches will have both reports before them very early in the next session of Congress.

Again, I appreciate very much the opportunity of developing, with the colleagues that you have appointed, the blueprint for action for the Supplemental Security Income program.

Very sincerely yours,
Arthur S. Flemming,
Chairman.

List of SSI Modernization Project Experts

Elizabeth M. Boggs—the parent, guardian and representative payee (for Social Security) of an adult son with complex disabilities; she has been a volunteer advocate for people with developmental disabilities for more than forty years.

M. Kenneth Bowler—currently Vice President, Federal Government Relations with Pfizer Inc. He was formerly Staff Director of the House Ways and Means Committee, and is an Adjunct Professor at the University of Maryland, Baltimore. He is married and has four children.

A. Lorraine Brannen—District Manager, Social Security Administration (Retired).

John Costa—Former Commissioner, U.S. Assistance Payments Administration.

Arthur S. Flemming—Former Secretary, Department of Health, Education and Welfare, has held many prominent posts including U.S. Commissioner on Aging and Chairman, U.S. Commission on Civil Rights. He currently chairs coalitions of national organizations serving as advocates in the areas of social security, health care, and civil rights.

Robert E. Fulton—an independent public policy analyst. He works part-time for the Oklahoma Alliance for Public Policy Research and the National Center for Children in Poverty (Columbia University). He formerly served for 35 years in executive-level positions in federal and State governments.

Lou Glasse—M.S.W., President of the Older Women's League, is a consultant on policies and services for older people. She serves on the Board of Advisors of the Mildred and Claude Pepper Foundation and of the National Academy on Aging.

Sharon Gold—President, National Federation of the Blind, California.

Robert Gorski—Disability Advocate, City of Pasadena, California.

Arthur E. Hess—Former Acting Commissioner of Social Security and first SSA director of Disability Insurance and of Medicare.

Chris Koyanagi—Vice President for Government Affairs, National Mental Health Association.

Carmela G. Lacayo—National Association of Hispanic Elderly; President and CEO.

Richard P. Nathan—Provost, State University of New York and Director of its Rockefeller Institute of Government, Albany, New York.

Barbara L. Sackett—parent of an adult daughter with developmental disabilities, and a professional in the field of developmental disabilities; she has been a volunteer advocate for people with disabilities for more than thirty years.

Samuel Sadin—Deputy Director, Brookdale Center on Aging of Hunter College, Institute on Law and Rights of Older Adults, New York.

Bert Seidman—was AFL–CIO Social Security Director from 1966 until his retirement in 1990. Since then he has been a consultant to the National Council of Senior Citizens. He has twice served on the Advisory Council on Social Security and more recently on the Prospective Payment Assessment Commission which deals with the hospitalization (Part A) phase of Medicare. One of his three daughters who is autistic and severely retarded has been in a State mental hospital for 30 years.

Timothy M. Smeeding—Professor of Economics and Public Administration, Maxwell School, Syracuse University.

Michael Stern—R. Duffy Wall and Associates; formerly Minority Staff Director, U.S. Senate Finance Committee.

Eileen P. Sweeney—Children's Defense Fund; formerly staff attorney, National Senior Citizens Law Center.

Fernando M. Torres-Gil—Professor, University of California, Los Angeles.

Elaine T. White—retired management analyst, Office of Child Support Enforcement, Department of Health and Human Services, and a former SSA employee.

TOPICAL LISTING

Introduction

Twenty years ago, a White House press release heralded the enactment of a new amendment to the Social Security Act—the Supplemental Security Income (SSI) program. It was proclaimed as "landmark legislation" for the aged, blind, and disabled which would end many inequities and "provides dramatic and heart-warming evidence that America is the country that cares—and translates that humanitarian care into a better life for those who need, and deserve, the support of their fellow citizens."

With one bold stroke, Franklin Delano Roosevelt in 1935 brought into existence the Social Security system, a system which was made up of ten programs. It has proved to be the greatest system ever enacted for the prevention of poverty.

Today, there is general agreement that the SSI program has been a great step forward for the Social Security system. It has kept many people of all ages, including older women and minorities, from destitution. In 1992, the program will serve over 5.5 million people—up from 3.2 million in January 1974, the first month for which SSI benefits were paid.

The program has provided a means for independent living for many people with disabilities. People with disabilities now comprise the largest segment of the beneficiary population. It has enabled many children with disabilities and their families to receive needed income and medical assistance. Over 500,000 children with disabilities will receive benefits in 1992. It also has rendered an outstanding service to needy older persons. Some of the principal needs confronting the blind have been met.

SSI is the only national effort to date where the Federal Government has undertaken to assure a minimum income to a significant portion of those in need in America. However, millions of people who are aged, blind, or disabled—and who are truly needy—are denied access to SSI benefits because of inadequate outreach and rules and procedures which deny them access to the program.

Today the disability community is confronted with a backlog of approximately 782,000 cases and an estimated 1.4 million backlog by the end of 1993 because of inadequate funding and staffing. On average, a person currently filing a claim for the first time waits up to four months to receive benefits. If the backlog doubles, it can be assumed that the average delay will increase materially.

Today—nearly 20 years after the first payments were made—SSI still fails to lift its constituency out of poverty. The Federal floor which is established is still below the poverty line.

In 1992, the poverty income guideline for an individual is $6,810. But the income which SSI assures qualified individuals is only $5,064. While forty-three States and the District of Columbia voluntarily supplement this Federal standard, in all but two States the total amount available to beneficiaries living independently is still below the poverty line.

Despite its shortcomings, recipients and advocates around the country have directly and indirectly testified to the importance of the program.

One advocate, an attorney, stated, "The SSI program is a great program. It is the best way currently in use to provide some basic financial and medical relief to a great number of disabled individuals. Unfortunately, they are poor and many times illiterate, but this should be looked on as an opportunity for this country to serve, rather than oppress its people."

Similarly, an advocate for the mentally ill stated, "* * * I believe the SSI program is marvelous. It serves millions of needy persons and considering the size and scope of the program, does it relatively efficiently. However, in my contacts both professionally and personally with SSI recipients I see a number of inequities."

Like this person, and many others who wrote in or came to public meetings, the experts find no flaw with the underlying basic concepts upon which SSI is based. However, the poorest of the poor among people who are aged, blinded, or disabled are being shortchanged.

The public comments and the results of the experts' analysis reflect three key themes:

- First, this is a solid, exceptionally important program which, despite the intent of those who created it, has never completely lived up to its potential;
- Second, after almost twenty years, some of the rules of the program should be modified to reflect the realities of being poor and aged, blind or disabled in America in the 1990's and to bring about better coordination with other social security programs; and
- Third, no program, no matter how exceptional, can meet its goal if it is perpetually understaffed, creating bureaucratic nightmares for those intended to benefit from the program and morale problems for agency staff.

The body of this report addresses more than 50 program improvements which would grant SSI access to truly needy persons who are aged, blind, or disabled and which would improve the quality of care received by people on the rolls. A majority of experts endorse these improvements which cover diverse issues, including: Matters relating to the payment of benefits and the adequacy of the benefits; the criteria for eligibility (the needs tests—income and resources—and tests for categorical eligibility—the definitions of age and disability); agency staffing; linkages to the Medicaid and food stamps programs; and the need for periodic reviews of the program. Also included is relevant background information about the current program and specific issues the experts believe need to be addressed, as well as the individual points of view of all experts, including those whose

perspective differs from that of the majority on a given issue.

While individual experts differ on how far they want to go on changes, and how fast to go, a majority of the experts concluded that there are four top priorities, each of equal importance, which should be addressed first. In no particular order, they are:

- Increase SSA staffing;
- Increase the federal benefit rates;
- Stop counting, as income, in-kind support and maintenance; and
- Increase the resources limits, while streamlining the resources exclusions.

When Commissioner King asked the experts to work on the SSI Modernization Project, she asked them to explore in depth the implementation of the objectives that Congress had in mind when it approved the program in 1972. They were asked to provide a blueprint for improving the program to meet the needs of low income elderly, blind and disabled people in the 1990's.

This is the experts' blueprint for action extending over a period of 5 years. The action should not be delayed. The poorest of the poor among the aged, blind, and disabled are suffering today. The mark of a truly great nation is that it faces the needs of those who are poor; it does not shrug its shoulders but goes to work on meeting those needs today.

The next chapter tells about the objectives of the SSI program, overall characteristics of the people it serves, and the experts' work. It also tells about the four highest priorities of a majority of experts. The remaining chapters deal with all of the options supported by the experts.

Chapter I—Program Background and the Experts' Findings and Priorities

This chapter summarizes: (1) Background material on the SSI program; (2) the activities of the experts—their public meetings, and individual visits to field offices of the Social Security Administration, including discussions with career staff in those offices; and finally, (3) the experts' priorities.

A. Program Background

Objectives of the SSI Program

The main objective of the SSI program when it was enacted was to provide a national income floor for needy people who are aged, blind, or disabled. More specifically, it was intended that the program would provide:

- An income floor for aged, blind, or disabled persons whose income and resources were below specified levels and which would lift them out of poverty;
- Eligibility requirements and benefit standards that were nationally uniform;
- Incentives and opportunities for those recipients able to work or to be rehabilitated which would enable them to increase their independence;
- An efficient and economical method of providing assistance;
- Inducements to encourage States to provide supplementation of the basic federal benefit;
- Appropriate coordination of the SSI program with the social insurance programs for retirement, survivorship and disability; and
- Protection for the eligibility and income levels of recipients under the former State programs who were transferred to the SSI program.

The SSI program is an integral part of the nation's total social security program. "Social Security" is an "umbrella" title which was used in 1935 for ten closely related programs. The programs under Social Security are dependent on one another to attempt to lift people out of poverty. For example, a total of 2.3 million persons draw monthly benefits from both SSI and the social insurance programs. In addition, approximately 500,000 persons on SSI participate in the Medicare program through the payment of premiums.

These 2.8 million persons draw SSI Federal benefits which are below the poverty line and, therefore, SSI does not lift them out of poverty. But, if it were not for SSI, these people would not even approximate the poverty level with their social insurance benefits. Therefore, the social insurance programs are very dependent on SSI; without it, they would be criticized as programs for middle and higher income people which ignore the poor.

SSI—a Program For All Ages

The former State-administered programs which SSI replaced generally did not provide benefits for children. (The Federal legislation specified that persons under age 18 could not qualify for benefits. An exception applied to the Aid to the Blind program—States could choose to include children in that program.)

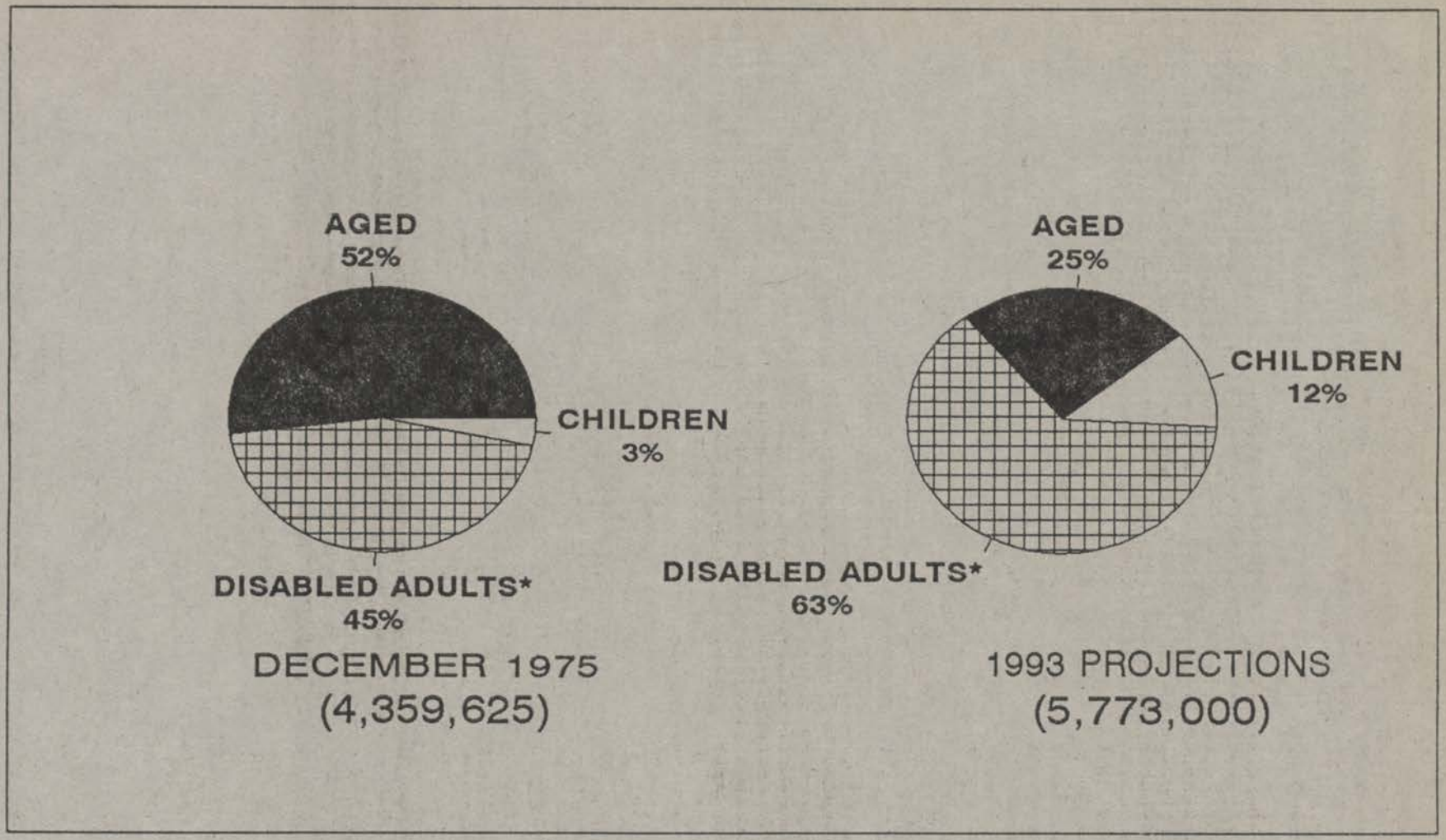
On the other hand, by the time it had passed both houses of Congress, SSI was designed to provide benefits to qualified persons of all ages. The House Committee on Ways and Means was instrumental in including disabled children in the SSI program because such children who were in low-income households were "certainly among the most disadvantaged of all Americans" and deserved "special assistance in order to help them become self-supporting members of our society."

In December 1975, children comprised slightly over 3 percent of recipients of Federal SSI benefits, and persons who qualified on the basis of age comprised 52 percent. The remaining 45 percent represented adults ages 18 and over who qualified due to blindness or disability.

While the program always has served people of all ages, over time there have been changes in the makeup of the caseload. The portion of beneficiaries who qualify on the basis of disability has been increasing over the years. Projections for FY '93 show that those receiving benefits on the basis of age will comprise slightly less than 25 percent of those who receive Federal benefits. Children are expected to represent 12 percent of the total. Blind and disabled adults are expected to make up 63 percent of the population served. (Note: Approximately 550,000 persons who came on the rolls on the basis of blindness or disability have reached age 65 but continue to qualify as blind or disabled. Thus, while the number of people under 65 has increased greatly, the total number of those ages 65 and over has been holding steady at a little more than 2 million since 1982.)

BILLING CODE 4190-29-M

SSI RECIPIENT ELIGIBILITY, DECEMBER 1975 & 1993 PROJECTIONS



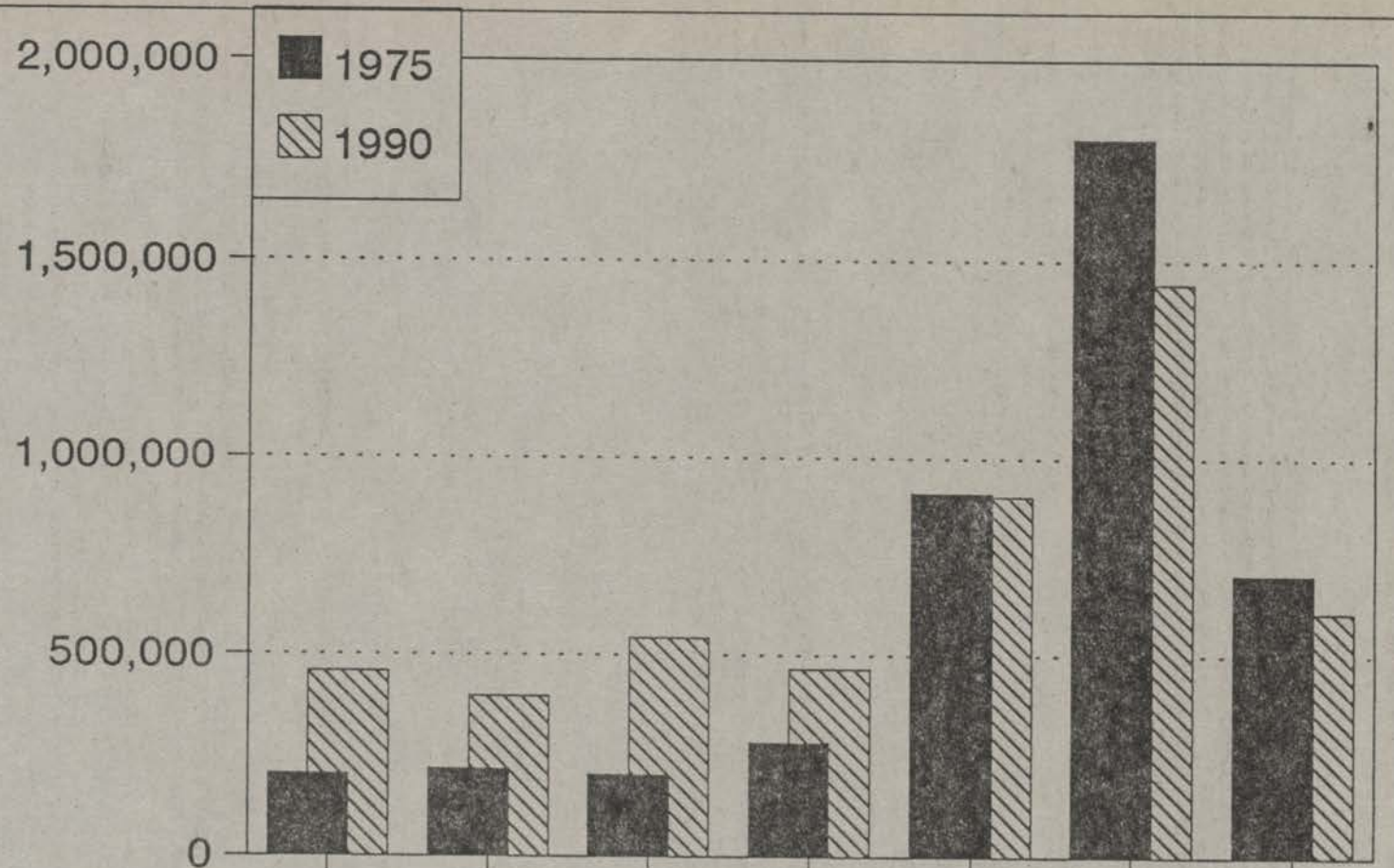
* Includes persons 65 and over who began receiving SSI before age 65.
Disabled includes the blind

BILLING CODE 4190-29-C

The trend in the caseload composition has been attributed to several different factors: the retirement insurance program under title II of the Social Security Act has reduced poverty among the elderly; outreach efforts have been more successful with respect to younger (disabled) people; and court decisions relating to determinations of disability have expanded the population served on this basis. The Supreme Court decision in *Zebley*, which changed the disability criteria for children, has particular impact with respect to the projections of the increasing number of children on the rolls.

BILLING CODE 4190-29-M

AGE DISTRIBUTION OF SSI RECIPIENTS, DECEMBER 1975 AND 1990



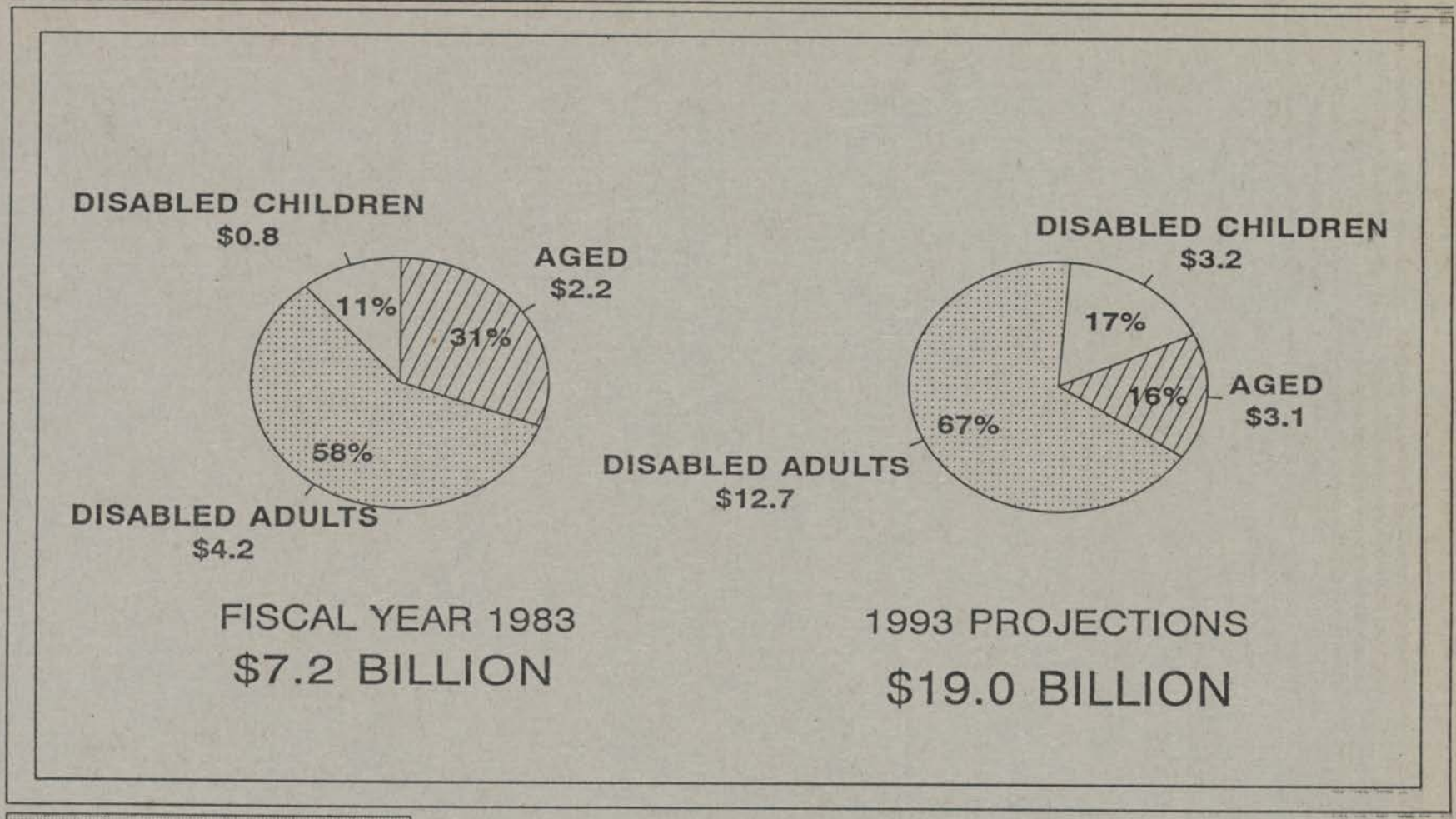
	21 and under	22 - 29	30 - 39	40 - 49	50 - 64	65 - 79	80 and over
1975	199,757	213,911	201,351	280,887	909,221	1,805,465	703,683
1990	457,525	394,860	542,601	466,491	901,648	1,444,248	609,754

BILLING CODE 4190-29-C

In terms of program expenditures, the cash value of Federal benefits paid to children in FY '93 is expected to exceed the amount for the elderly; nearly 17 percent of the total is expected to be for children—this compares to 16 percent for the elderly. (Note: The percent for the elderly does not include benefits payable to the 550,000 recipients who are 65 or over, but whose eligibility is based on disability or blindness.) This difference reflects the fact that the elderly on the rolls are more likely to have other income—particularly retirement social insurance benefits.

BILLING CODE 4190-29-M

SSI FEDERAL BENEFITS 1983 ACTUALS AND 1993 PROJECTIONS



Disabled includes the blind
Dollars in billions

BILLING CODE 4190-29-C

SSI—An Essential Supplement

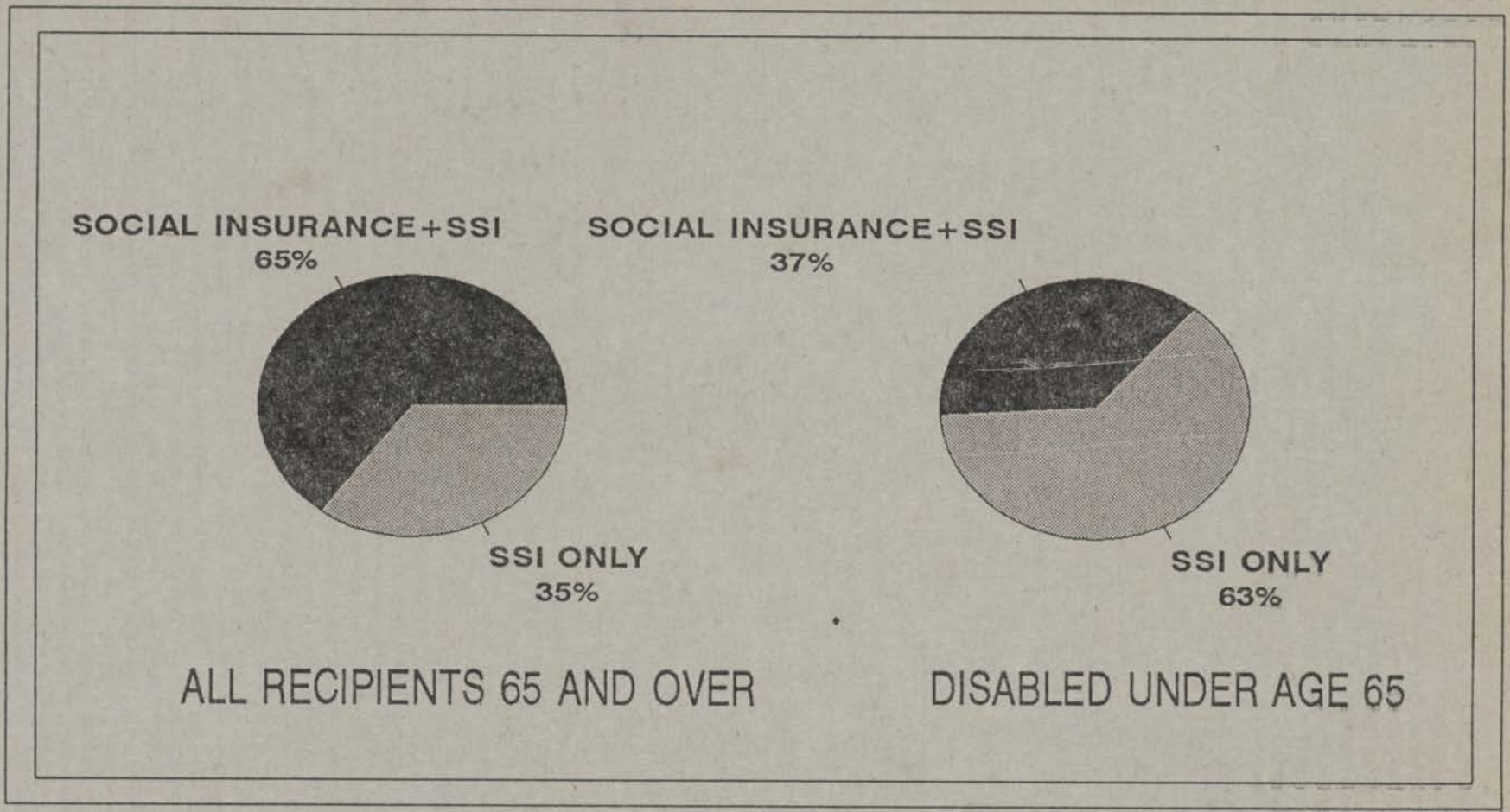
The SSI program has become a vital supplement to the retirement, survivors and disability insurance programs of the social security system. About 65 percent of persons 65 and over receiving an SSI benefit also receive a social insurance benefit. Among the disabled under age 65 who receive SSI, 37 percent also receive a social insurance benefit.

While a smaller portion of the disabled than aged receive a social insurance benefit, approximately 80 percent of those becoming SSI eligible as adults have worked in covered employment. Even among SSI eligible children, about 7.5 percent receive a social insurance benefit and a very high number live with a parent who has worked in employment covered by Social Security.

Thus SSI supplements individual benefits when a lifetime of work produces a low social insurance benefit. It also supplements the overall program for the disabled by taking care of those who have not worked long enough or recently enough to get disability benefits and those disabled children whose parents are still working but at very low income levels.

BILLING CODE 4190-29-M

SSI RECIPIENTS RECEIVING SOCIAL INSURANCE BENEFITS FOR RETIREMENT, SURVIVORSHIP AND DISABILITY, DECEMBER 1988



Recipients aged 65 and over includes blind and disabled recipients aged 65 and over.
Disabled recipients under age 65 also includes blind recipients

BILLING CODE 4190-29-C

B. Project Activities

Commissioner Gwendolyn S. King asked the experts to create a dialogue that would provide a full examination of how well the SSI law, and the policies developed by SSA to implement the law, serve people with very low or no income who are over 65 or blind or otherwise disabled. Their initial goal was to exchange ideas and information about the program and to promote the sharing of ideas. The Project held public meetings in Baltimore, MD; Washington, DC; New York, NY; Chicago, IL; Los Angeles, CA; Montgomery, AL; Atlanta, GA; and Falls Church, VA. During these meetings, the public as well as the experts expressed their individual views and concerns about the SSI program.

From late June 1990 to July 1991 more than 400 individuals, including current and former SSI recipients, representative payees, representatives from professional organizations, advocacy groups, legal services organizations, institutions, private agencies and Federal, State and local governments, provided oral and/or written comments. The Chairman and other representatives from among the experts met with SSA employees in regional offices in all 10 regions of the Department of Health and Human Services across the country. They also met with State disability determination services employees in five States, and with staff in a hearing office.

In addition, there were discussions with others—representatives of non-profit organizations, State agencies, legal aid attorneys, health care providers, and representative payees, as well as field office staff of the Social Security Administration who have to apply program provisions to actual case situations.

C. The Experts' Findings and Priorities

Highlights From What the Experts Heard

The experts were told repeatedly that SSI benefits are not adequate to provide a dignified quality of life. People are forced to make difficult choices whether to pay for food or shelter. Housing costs sometimes absorb most or all benefits, but the program penalizes people for trying to live together to make ends meet.

A health care professional described the situation eloquently: "The SSI eligibility limits and living-expense allowances can be dangerous to health, in my view. The program excludes too many needy persons and gives too little to those it includes * * *. To eat nutritiously, some may scrimp on necessities of life other than food. Some often try to stretch out their drug supplies by taking less than the recommended doses. They live in dangerous housing: accidents are waiting to happen because of poorly maintained structures and poor lighting. At risk of hypothermia, they have trouble paying the bills for cooling and auxiliary heating. They have heart trouble and they live in walk-ups. Taking a bus ride is risky and taxis are too expensive if they need to reach a medical clinic."

One of the experts described results of research completed in the internationally sponsored Luxembourg Income Study which illustrate the inadequacy of assistance programs in the U.S. The study set the poverty line at 40 percent of median income in each country studied. (This was very close to the U.S. poverty line definition.) The study found that, in the mid to late 1980s, the poverty rate for the elderly (those age 65 or over) in the U.S. was 3.8 times the rate in the other countries studied (Australia, Canada, Netherlands, Sweden, France, Germany, and Britain). It attributes this fact to a failure of income security policy in the U.S. compared to policies in the other countries studied which were very different and much more effective at fighting poverty through public programs.

In addition, the experts heard that, as people attempt to establish their entitlement to benefits, they are required to respond to invasive questioning about how they live. Some current provisions of statute work against family members and friends assisting each other. Some have the effect of undermining basic human dignity. Still others deter efforts to save for emergencies, and, therefore, have anti-savings consequences.

The experts believe that, in other areas of public policy, the Federal Government provides incentives for people to live at home with policies that support and encourage self-sufficiency of the household unit. They heard that the SSI program, on the other hand, penalizes people for attempting to do these things.

The Experts' Findings and Priorities

The experts' review resulted in over 50 options for change which a majority believes make good sense and will lead to improved effectiveness of the SSI program. In arriving at these options, the experts noted that: (1) Changes should be consistent with the purpose of the program; (2) the SSI eligibility process should be simplified; and, (3) procedures that are unreasonable, demeaning, and harsh should be eliminated.

Individual experts differ on how far they want to go on changes, and how fast to go. However, most conclude that there are four top priorities of equal importance:

- Increase SSA staffing;
- Increase the Federal benefit standard;
- Stop counting, as income, in-kind support and maintenance; and
- Increase the resources limits, while streamlining the resources exclusions.

Staffing increases. Throughout the hearings, the experts heard repeatedly from claimants and advocates about the need for more face-to-face contact between SSI claimants and SSA staff. Claimants far too often failed to receive the personalized help they needed in pursuing their right to benefits.

In describing the need for improved access to the program, an advocate for the mentally ill stated, "* * * it is almost mandatory that confused or feeble elderly and mentally ill persons have a relative, friend, or other responsible party assist them * * *. When one considers that the mental illness that leads one to be eligible for benefits does so by virtue of the person's inability to concentrate, to problem solve, to tolerate ordinary stresses, it is antithetical to expect such a person to wait hours—often days—in lines and waiting rooms and fill out voluminous forms, produce long lost documents, and answer questions the brain is often too ill to comprehend * * *. It is necessary that specially trained staff be available to interview and assist those unable to tolerate the stresses of application for benefits. Yes, in the short run, we are talking more money in staff increases * * *. Is it equitable that only those persons with family or community support are able to obtain subsistence?"

The experts also became aware of a multitude of situations in which people encounter unwarranted delays in receiving disability benefits to which they are entitled—delays during which, at times, death occurs before an entitled person receives benefits which are due. The experts noted that the Administration's fiscal year 1993 budget proposal will result in a backlog of 1.4 million disability cases (social insurance and SSI) at the end of 1993. (A normal backlog would be 400,000 cases.) Thus, the program will become less accessible to those in need as economic conditions create more and more individuals who are eligible.

Additionally, the experts heard from SSA staff working on the front lines and perceived that staff has deep and sincere concerns for the welfare of the

SSI eligible population. They heard staff describe their frustrations in attempting to meet many needs with limited staff resources to do so, and the need to be constantly on guard so that their high workloads do not have a negative effect on claimants.

The experts stress in Chapter VI that an immediate staffing increase of 6,000 in SSA is necessary. This would constitute a first step in eliminating growing backlogs and enabling the agency to move toward providing the level of personalized services which many of the SSI population so sorely need.

Benefit increases. Recognizing that the goal of the Senate Finance Committee was to bring the income floor for the SSI population to the poverty level, a majority of experts believe that this should be among the top priorities for program improvements. These experts believe that the Federal floor should be increased over a period of five years, and that it should reach 120 percent of the poverty guidelines by the fifth year.

During their public meetings, the experts heard from an extremely large number of people concerning the inadequacy of the present benefit standard. Nearly 14,000 individuals and organizations attested to this in response to their issues and options paper which was published in the **Federal Register**.

The income floor as set by the Federal benefit standard was initially established below the poverty level; and to this day, it has continued below the poverty line. The benefit standard's real (and relative) value remains largely unchanged. In 1992 the standard for an individual is roughly 75 percent of the poverty guideline for an individual and the standard for a couple is roughly 83 percent of the poverty guideline for two people.

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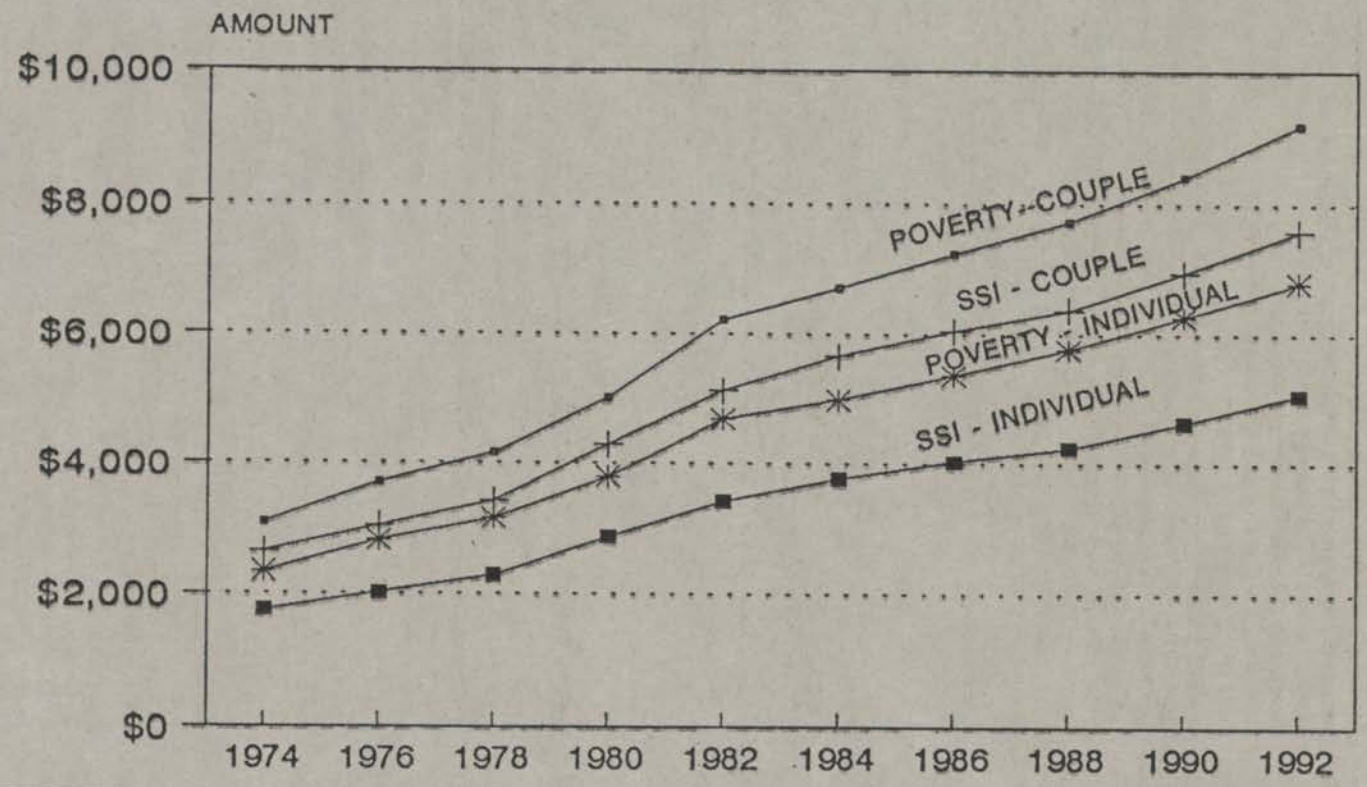
COMPARSION OF THE SSI BENEFIT STANDARDS WITH THE POVERTY INCOME GUIDELINES
FOR COUPLES AND INDIVIDUALS, 1974 - 1992



POVERTY COUPLE	$3,070	$3,700	$4,160	$5,010	$6,220	$6,720	$7,240	$7,730	$8,420	$9,190
SSI COUPLE	$2,628	$3,021	$3,409	$4,284	$5,117	$5,664	$6,048	$6,384	$6,948	$7,596
POVERTY (INDIV)	$2,330	$2,800	$3,140	$3,790	$4,680	$4,980	$5,360	$5,770	$6,280	$6,810
SSI INDIVIDUAL	$1,752	$2,014	$2,273	$2,857	$3,412	$3,768	$4,032	$4,248	$4,632	$5,064

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In addition, a majority of the experts view the existing poverty measures as inadequate and outdated. These experts view it as imperative that benefits be raised to 120% of the outdated poverty level. One expert pointed out that Congress already has lifted the criteria for program access to this level or more for some fifteen programs for the poor. Some experts stated that it is unconscionable that this program which serves all generations is not adequately providing the safety net which was envisioned when it was enacted and that the poorest of the poor among aged, blind and disabled people are still living in poverty.

The experts supporting this option are adamant that the Federal benefit standards must be increased since those in effect leave beneficiaries unable to meet their expenses for food, clothing, and shelter. In recognition of the cost of increasing the benefit standard to 120 percent of the poverty line and their three other priorities, they propose that the increase be phased in over a 5-year period, as set forth in Chapter II.

Treatment of in-kind support and maintenance. Most experts believe that the law which requires that receipt of in-kind support and maintenance (food, clothing, and shelter) must be considered as income is particularly demeaning and should be repealed.

As a direct result of statutory language, if a beneficiary moves into someone else's household and receives in-kind support and maintenance, the benefit is reduced by one-third.

Others who receive food, clothing, or shelter also are subject to benefit reduction under the law, even if they do not live in another person's household. (For more information, see Chapter III.)

All the experts are convinced that experience has too long shown that the actions required (questioning, verification, computations, etc.) to determine whether a person receives such income (and, frequently, the amount to be charged) take up a great deal of staff time and are demeaning to claimants. Many SSA claims representatives alleged that they spend between one-fourth and one-third of their time on this issue. It has grown to be a complex area and the effects of the rules are difficult for people to understand. In fact, the program instructions comprise 150 pages of the manual.

The complexity stems from efforts both by Congress and by SSA to achieve equity, but most experts believe that the effect of considering in-kind support and maintenance as income is in conflict with other national objectives. They believe it is definitely anti-family and contrary to the concept of encouraging voluntary support by others. Even though some beneficiaries are fortunate enough to move into the households of family or friends, they should not be penalized by the Federal Government by having their benefit reduced for this reason. They are still truly needy. Further, almost all of the experts concluded that it is inequitable to count this type of support while others receive similar support at public expense (e.g., housing assistance, energy assistance) with no benefit reduction as a result.

A priority of the experts as set forth in Chapter III is to change the treatment of in-kind support and maintenance. Most experts support the elimination of the receipt of in-kind support and maintenance from consideration under the program. This would remove a harsh and demeaning provision and it would further the goal of simplification.

Resources. Most experts believe that the resources test does not efficiently or effectively identify those who are truly needy; it should be changed from $2,000 for an individual and $3,000 for a couple to $7,000 for an individual and $10,500 for a couple and the exclusions should be streamlined.

Initially, the resource limits were $1,500 for an individual and $2,250 for a couple. Congress has taken action only once to increase these amounts, providing for incremental changes (of $100/$150 for an individual/couple) in each of five years (January 1985 through January 1989). The program currently allows a person to retain a "nest egg" of $2,000 or less ($3,000 for a couple).

Almost all of the experts concluded that a person with little or no income and only $2,100 of countable resources, or a couple with little or no income and only $3,100 of countable resources, is still truly needy. Further, the experts supporting this option concluded it is not appropriate to require an otherwise eligible individual, who has little or no income, to spend down a lifetime of meager savings to $2,000. Needy veterans can qualify for a VA pension and retain $35,000. The Administration has proposed raising the limit for families receiving Aid to Families with Dependent Children (AFDC) from $1,000 to $10,000 "to encourage self-support by families on AFDC * * *."

Therefore, almost all of the experts—adopting a middle ground as described in Chapter III—concluded that the resource limits should be raised to $7,000 and $10,500 for individuals and couples respectively so that people can retain a small, but more appropriate, "nest egg." These experts also said that, concurrent with increasing the resource limits, the resource exclusions should be streamlined. This would make the rules easier for beneficiaries to understand and give them more flexibility in the use of funds while simplifying program administration.

D. Other Considerations

Work Incentives

Most of the experts are in agreement on the absolute necessity of changing the law and regulations to strengthen the provisions for work incentives for persons drawing disability benefits. They believe that it is necessary not only to increase the benefit levels for disability beneficiaries, but also to increase the numbers of persons who leave the disability rolls in order to join the workforce. They also believe that the incentives for work should be extended to older persons who qualify for SSI because of age.

The National Perspective—Needy Children

While the SSI program is growing rapidly in terms of the children it serves, many nondisabled but needly children across the nation are unserved or underserved. The National Commission on Children documented those needs in its final report: Beyond Rhetoric: A New American Agenda for Children and Families.

In 1972, when Congress enacted SSI, it did so after it failed to pass legislation which would have provided all persons, including children, with an income floor. As this nation moves forward to improve the SSI program so that it meets the needs of the poorest of the poor among aged, blind, and disabled people, it must also improve another social security program, namely AFDC, and meet the needs of children it failed to assist in 1972. All the experts expressed their view that one group of needy people should not take priority over another.

Financing Improvements

As the experts completed this review of the SSI program, they recognized that most of their ideas for change would require increased expenditures. Many experts believed that the identification of potential sources of financing program improvements should be under the purview of persons with expertise in public finance; and they, in general, are not such experts. Thus, the Commissioner of Social Security has asked the Chairman to chair a group of public finance experts to develop options for financing the improvements identified in this report and to complete their work in six months.

Additional Views

One expert has provided a statement which addresses the definition of disability and provides suggestions for modernizing the definition for the social insurance disability program as well as for SSI. This statement may be found at the end of the chapter on "Disability & Work Incentives."

Another expert has submitted a statement of personal views concerning priorities and financing. That statement, which includes a cost-neutral proposal for restructuring benefits and improving program administration, appears at the end of this report.

Five experts have submitted a joint statement of "additional views." They express hope that the report will increase significantly the attention given to the SSI program. They also describe their concerns about the need for a balance between the needs of the SSI program and other domestic needs in light of the present fiscal situation. This statement also appears at the end of the report.

Chapter II—Benefit Payment Issues—Including Proposed Increases in the Federal Income Floor

A. Preamble to Chapter

The National Perspective

The SSI program serves a population requiring assistance in obtaining at least the most basic of human needs: food, clothing, and shelter. Some may require only cash assistance while others may require help in getting SSI benefits for which they are eligible and/or in reaching other kinds of help in the form of medical care, nutrition, social services, or management of benefits.

In undertaking their broad-based review of the SSI program, the experts endeavored to make choices that would enable people who are aged, blind, or disabled to live their lives with dignity. In so doing, the experts saw the need to address a number of areas which are interrelated and contain issues with respect to payment amounts and the way in which they are determined.

SSI and Poverty

Federal SSI benefits were designed to provide a nationally uniform income floor for people who have little or nothing on which to live. For this reason, efforts to measure the adequacy of benefits and related issues usually focus on such comparisons as poverty measures and benefits provided by other poverty-related programs. With this in mind, the experts were concerned with the effectiveness of SSI benefits in providing an acceptable standard of living.

The September 26, 1972 Report of the Senate Finance Committee stated that the legislation which established the SSI program would "create a new Federal program administered by the Social Security Administration, designed to provide a positive assurance that the Nation's aged, blind and disabled people would no longer have to subsist on below-poverty-level incomes." The initial Federal SSI benefit standard specified that all individual benefits would be determined on the basis of their relationship to a uniform Federal floor. However, the statutory income floor for 1974 was below the poverty line and has been so ever since.

B. Benefit Adequacy

Background Information

Measures of poverty. There are two slightly different versions of the Federal Government's poverty measure. The Census Bureau's proverty thresholds are the official Federal definition of poverty for statistical purposes. The Department of Health and Human Services' poverty guidelines are a simplification of the poverty thresholds for administrative purposes. The guidelines are generally considered easier to use in such programmatic contexts as establishing benefit eligibility. The guidelines are updated annually to reflect changes in prices. However, the thresholds (and, by extension, the guidelines derived from them) have been subject to criticism because they do not take into account changes in consumption patterns over the past several decades.

SSI benefit standards and poverty guidelines. The 1992 Federal benefit standard or income floor for one eligible person (adult or child) is $422 per month while the floor for a couple, both of whom are eligible, is $633 per month. (In December 1991, nearly 10 percent of the adults who received SSI and/or federally-administered State supplementary benefits did so as members of couples.) The following table compares the poverty guideline for a 1-person unit with the annual Federal SSI benefit standard for an individual and the guideline for a 2-person family with the standard for a couple:

1992	Poverty guidelines	SSI standard	Percentage
Individual	$6,810	$5,064	74.4
Couple	9,190	7,596	82.7

Other programs' standards and poverty guidelines. A number of Federal programs use eligibility criteria which involve some percentage of the poverty guidelines. Because of differences in what indicates "need" for various kinds of assistance, 100 percent of the poverty guideline is not always considered adequate. For example, a number of food programs use 130 percent of the poverty guidelines as a cutoff for eligibility while several health service programs use a sliding fee schedule for persons with incomes up to 200 percent of the guidelines. See Appendix i (at the end of this chapter) for some Federal programs using a percentage of the guidelines which is more than 100 percent.

Areas Where Issues Arise

Federal benefit standard for an individual. As indicated above, the 1992 Federal SSI benefit standard for an individual is approximately 75 percent of the poverty guideline. This percentage has remained essentially unchanged since the program began in 1974.

Federal benefit standard for a couple. An eligible individual and his or her eligible spouse are paid based on a benefit standard which is 150 percent (rather than 200 percent) of the standard for an individual. As a result, members of couples receive lower SSI benefits than would two eligible individuals. However, as shown above, the benefit standard for a couple is a higher percentage of the applicable poverty guideline than is the standard for an individual. (See C. below for more information concerning treatment of eligible individuals and their spouses.)

Experts' Discussion of Benefit Adequacy Issues

Adequacy of Federal benefit standard. All of the 20 experts who took a position concerning the benefit standard viewed the current standard as inadequate and said that it should be increased at least to 100 percent of the poverty guideline. While they expressed several viewpoints concerning the amount and timing of an increase, most of them said that increasing the standard should be one of their highest priorities.

Benefit standard for an individual. The experts considered several approaches to increasing the adequacy of an individual's SSI Federal benefit standard (i.e., the national income floor). These approaches ranged from increasing the standard to 100 percent of

the poverty guideline over a 7-year period to increasing it to 120 percent of the guideline over 3 years.

A majority of the experts favored increasing the individual's Federal benefit standard to 120 percent of the poverty guideline because they said the nation's neediest people who are aged, blind, or disabled could not attain a minimally decent standard of living at 100 percent of the guideline. One pointed out that often people with incomes at levels between 100 and 125 percent of poverty suffer the most because they become ineligible for important ancillary benefits such as Medicaid or Food Stamps. However, in order to soften the cost impact in the current fiscal climate, most preferred a 5-year phase-in period to a shorter one or to a significant one-time increase.

Benefit standard for a couple. All but one of the experts expressing a view on the point favored maintaining the couple's benefit standard at the current 150 percent of the standard for an individual. Setting the couple's standard at a percentage of the poverty guideline (as described above for an individual)—even though it would mean increasing the benefit amount—would also have the effect of reducing the couple's standard from 150 percent to 134.9 percent of that for an individual. The majority saw such a result as inequitable since it would ignore all the testimony that people living together cannot share certain expenses, such as food or medicine, and some couples would experience actual decreases in benefits.

Impact of increased benefit standards. It is the experts' understanding that increasing the Federal benefit standards for individuals and couples, as described above, would result in 2,128,000 new Federal SSI recipients by the end of fiscal year 1997.

Measure of adequacy. A number of the experts were concerned over the need to update the indices used to compute the poverty guidelines. They recalled public testimony to the effect that, unless the poverty level were "modernized"(i.e., increased in real terms by being recalculated using post-1950s consumption data), not even 100 percent of that level would be sufficient to provide a proper diet or maintain health. These experts concluded that the poverty guideline understate considerably the true cost of a minimal standard of living. Nevertheless, they accepted the poverty guidelines as a useful benchmark because they are widely recognized and easy to use.

Recapitulation of Experts' Opinions on Benefit Adequacy

Option	Experts supporting
1. Increase the benefit standard for an individual, in equal annual increments, to:	
a. 120 percent of the poverty guideline over 5 years	12
Comment: One of these experts also would support increasing the standard to 100 percent over 5 years if the poverty line were updated.	
b. 120 percent of the poverty guideline over 3 years	2
Comment: One of these experts, while preferring the 3-year phase-in, would also support a 5-year period and is included in the count for a. as well as for b.	
c. 110 percent of the poverty guideline over 3 years	1
d. 110 percent of the poverty guideline over 10 years	1
e. 100 percent of the poverty guideline over 3 years	3
Comment: One of these experts also supports a longer (unspecified) period if required by competing priorities.	
f. 100 percent of the poverty guideline over 7 years	1
General Comment: Several experts, most of whom support increasing the benefit standard beyond 100 percent of poverty, also support reconsideration of other SSI priorities once the standard reaches 100 percent of the poverty guideline.	
2. Keep the Federal benefit standard for a couple at 150 percent of that for an individual	13
Comment: One expert disagrees, saying that the couple's standard should be set at the same percentage of the two-person poverty guideline as an individual's standard would be of the one-person guideline.	

C. Couples

Background Information

The "couple" as an eligibility unit. The statute distinguishes between eligibility and payment determinations for an eligible individual with an eligible spouse (a "couple" for SSI purposes), and all other eligible individuals, including those with ineligible spouses and those who are children. Being a "couple" means that each spouse is eligible to receive SSI benefits; i.e., each is aged, blind, or disabled and their combined countable income and resources do not exceed limits which are 150 percent of the income and resources limits for an individual.

The couple as an eligibility unit is a concept that carries throughout the program. When both members of a couple apply for SSI, they do so with a single application. In determining eligibility for the members of a couple, SSA deducts their combined countable income from the couple's benefit standard to determine the total payment amount; that amount is then divided equally and paid in separate checks.

When members of a couple separate, they are treated as individuals the month following the month of separation. If the members of a couple separate and reunite frequently, SSA must make adjustments in payment and eligibility status.

When one spouse is ineligible. If an eligible individual has an ineligible spouse, only the former can receive SSI benefits, thus qualifying automatically (in most States) for Medicaid. However, the statute requires that, under certain circumstances, the eligible individual's income and resources be deemed to include the income and resources of the ineligible spouse. This is a carryover of States' "relative responsibility" laws used in the antecedent assistance programs. It says that one spouse has some financial responsibility for the other spouse, even if they are not legally married. (See "Definition of 'spouse' " below.)

The statue sets the resource limit at $3,000 for a person who has a spouse, whether or not that spouse is also eligible. The income limit for a person whose spouse is ineligible can be the same as for a person with an eligible spouse, depending on the results of the deeming formula.

Areas Where Issues Arise

Couple's income and resources standards. Using income and resources standards for spouses which are 50 percent, rather than 100 percent, of those for individuals can be traced to the social insurance programs under which a spouse is entitled to a benefit equal to half the benefit paid to the wage earner. Today's use of such a ratio in the means-tested SSI program also reflects a premise that two people can live together more economically than they could live separately, but only if they are spouses. As a result, an eligible couple receives combined SSI benefits which are less than the benefits payable to two eligible nonspouses (e.g., an aged mother and her disabled son) who may live together.

Couple's income and resources exclusions. Income exclusions apply differently to couples than to individuals. Each individual receives a $20 general income exclusion and a $65 earned income exclusion. In contrast, a couple, as a unit, receives one $20 general exclusion and one $65 earned income exclusion.

With respect to resources exclusions, couples also receive treatment which differs from that given two eligible individuals. For example, a couple can have only one automobile excluded for necessary transportation and have a total of $2,000 excluded in household goods and personal effects. In contrast, two individuals who are not spouses may each have an automobile excluded and may each have $2,000 in excluded personal items even though they live in the same household.

Definition of "spouse". The SSI statute considers a formally married husband and wife to be spouses. However, the statute also requires that two people who are not legally married but who hold themselves out to the community as married be treated as spouses, whether one or both are eligible. This provision is known as "holding out."

Some effects of "couple" rules. When two people, each of whom is receiving disability social insurance benefits as well as SSI benefits, wish to marry, they may face a substantial reduction in combined income. Each remains entitled to the same full disability insurance benefit as before because entitlement to these benefits is not subject to a "means" test. However, marriage could make them both ineligible for SSI benefits and, often, for Medicaid.

Examples of effects of "couple" rules. Betty Barnes and Samuel Short each received $350 in disabled adult child social insurance benefits before marriage and each was eligible as an individual for an SSI payment of $92 (at 1992 standards). When they married, they became subject to the SSI "couple" rules. Since their combined social insurance benefits ($700 less $20 general income exclusion = $680) exceeded the $633 Federal benefit standard for an SSI couple, their total income dropped from $884 a month to $700. Losing their SSI eligibility caused a loss of Medicaid as well.

On the other hand, some people benefit from the "couple" rules. This can happen when a person with significant income is married to someone with little or no income. For example, Mr. Johnson is 63 and receives a social insurance retirement benefit of $550 monthly; however, because of his income, he is not eligible for SSI or Medicaid. He cannot receive Medicare because he is neither age 65 nor disabled. His 57-year-old wife is disabled but does not qualify for a wife's benefit (she would have to be at least 62 or have a child in her care) and has no income. As an individual with an ineligible spouse, Mrs. Johnson is eligible for an SSI monthly cash payment of $103, giving the Johnsons combined cash income of $653. She is also eligible for Medicaid. When Mr. Johnson turns 65, he becomes eligible for SSI and they are an SSI "couple". While there is no change in their combined cash income, Mr. Johnson is now eligible for Medicaid as well as for Medicare.

Experts' Discussion of Couples' Issues

Definition of "spouse". A majority of the experts favored retaining the existing concept of a "spouse" (for both "couple" and spouse-to-spouse deeming purposes) with just one modification. They said that the "holding out" provision should be eliminated so that only legally married persons would be considered spouses. The experts did not view favorably having a Federal statutory provision that considers people to be married simply because they live together. They saw no useful SSI purpose being served through establishing the existence of what is, in effect, a common-law relationship. The experts objected to the SSI "holding out" provision as having adverse and disturbing effects both with respect to claimants' personal privacy and to the administrative process.

The experts discussed briefly, but gave no support to, the possibility of permitting people to choose whether to be treated as spouses or as individuals. One expert remarked that both the Internal Revenue Service and the social security insurance programs give people such a choice. However, all of the experts taking a position on this issue felt that, for SSI purposes, such a choice would be prone to inequities because of the complex program rules and the linkages with programs such as Medicaid.

Income and resources exclusions. Most of the experts favored giving each member of a couple a full set of earned income exclusions. They stated that this would provide a greater incentive for both members of a couple to work, particularly if both are disabled. It would also help compensate for the higher costs generally experienced by members of a couple with both members aged, blind, or disabled as compared with costs for younger, nondisabled couples.

In view of the support for increasing the resources limits (see part D of chapter III), the expert did not entertain any options for changing resources exclusions with respect to couples.

Recapitulation of Experts' Opinions on Couples

Option	Experts supporting
Definitions of "spouse" and "couple"	
1. Eliminate the concept of "holding out"	14
2. Eliminate the concept of "spouse" and treat everyone as an individual	2
3. Treat any two adult individuals who live together as a couple	1
Couple's income exclusions.	
1. Give each member of a couple a full set of earned income exclusions; leave the unearned income exclusions unchanged	18
2. Give each member of a couple a full set of earned and unearned income exclusions	2

D. State Supplementation With an Increased Federal Benefit Standard

Background Information

Federal/State roles with respect to benefit levels. When designing the SSI program, Congress was aware that SSI beneficiaries might have special needs and appreciated the appropriateness of augmenting the Federal benefit level to account for those needs as well as for geographic variations in the cost of living. However, Congress viewed the Federal responsibility as limited to provision of a basic benefit and that benefit has been generally regarded as geared toward meeting a person's basic needs of food, clothing, and shelter. Payments for higher living costs or special needs were left to the States.

The role of State supplementation. States use optional supplementary payments to achieve more nearly adequate benefits for people who are aged, blind or disabled. Supplementary payments allow a State to provide an income "floor" that takes into account geographic differences in living costs and individualized special needs in a manner that is not possible with a nationally uniform Federal benefit standard. In many States, supplementary payments serve as a link to Medicaid eligibility. In March 1992, more than 2.2 million SSI recipients received State supplementation while nearly 3 million did not.

The amount of optional supplementation varies significantly from State to State as do the conditions under which States provide supplementation. For example, California has a number of supplementation levels and supplements nearly all of its SSI recipients in a variety of living arrangements. In that

State, most total benefits, SSI plus State supplement, exceed the Federal poverty level. On the other hand, Texas does not have any supplementation program while several other States supplement only persons in certain protected living arrangements variously known as "domiciliary care" or "board and care". In addition to basic meal preparation and laundry, these living arrangements may provide such services as minimal social supervision or personal care assistance. Outside of this kind of living arrangement, few State supplements increase the benefit standard above the Federal poverty level.

Administration of supplementation programs. States may administer their own supplementation programs or have SSA do so. When SSA administers a State's supplementation program, the Federal Government absorbs all related administrative costs while the State pays only the cash benefit amount. At present, 26 States administer their own optional supplementation programs while SSA does so for 17 States and the District of Columbia. There are 7 States which do not have optional supplementation programs.

Areas Where Issues Arise

Statutory supplementation requirement. Soon after the SSI program began, some States reduced their costs by reducing their optional supplementation when SSI benefits were adjusted for the cost of living. The result was that some recipients were no better off after a Federal benefit increase than they had been before. To avoid this benefit erosion, the SSI statute was amended in 1976 to require States to pass along any SSI increases. That is, States must maintain their supplementary payment levels, or the total amount of supplementation, that they pay from year to year regardless of any SSI benefit adjustments for the cost of living. If a state fails to do so, it loses Federal matching funds under its Medicaid program.

Federal administration of supplementation. Under Federal administration, a State may have up to 18 different payment level variations: 3 based on geographic distinctions, 6 based on living arrangements, and 9 categorical variations such as aged individuals, blind couples, etc. Thus, SSA's agreement to administer such varied supplementary payments entails such administrative difficulties as the need to do additional living arrangement development, maintain State-specific operating instructions which are updated at least annually, provided detailed systems coding, and issue specialized notices to recipients. All this raises the cost of administration borne by the Federal Government.

Experts' Discussion of State Supplementation Issues

Statutory supplementation requirement. The experts discussed possible changes in the role of State supplementation as the Federal benefit standard approaches or exceeds the Federal poverty line. (See B. above on benefit adequacy.) All but one of the experts taking a position on the issue favored giving States greater flexibility in use of funds, particularly considering that some States' costs of living are lower than the national poverty level. These experts concluded that States should be able to use funds, now required for cash supplementation, to provide their SSI populations with assistance in such other areas as social services, medical care, or nutrition once the Federal benefit standard reaches at least 100 percent of the poverty line. These same experts supported requiring States to "grandfather" existing supplementation levels for any beneficiary who would otherwise experience a net decrease in the amount of combined Federal/State benefits.

Alternative uses of supplementation funds. A majority of the experts also said that States should be required, for some period, to spend the amount "saved" on supplementation to provide other services to their SSI populations. One of these experts supported a specific and permanent requirement for States to continue to spend some funds either on supplementation or on other services for their SSI populations; however, the amount so spent would not have to be at the full rate required under current law. Another expert favored continuing to require States to maintain current supplementary payment levels.

None of the experts supported permitting States to reduce or eliminate supplementation levels until the Federal benefit standard increases at least to the poverty line. However, if States were allowed to eliminate supplementation without such an increase, three of them endorsed a variable Federal benefit standard tied to geographic living costs following Bureau of Labor Statistics indices. One of these experts observed that this option should be relatively easy to administer since SSA already administers some geographically variable State supplementary payments.

Simplifying Federal administration of supplementation. A majority of the experts supported simplifying, and reducing SSA's costs for, Federal administration of State supplements by reducing the number of possible State payment level variations. Specifically, they concluded that allowable living arrangement variations should be reduced from 6 to 3 (not counting supplementation of the $30 payment limit) and categorical distinctions from 9 to 6; the b allowable variations would consist of up to 3 for individuals and 3 for couples. Because of the dramatic differences in living costs, even within a State, the experts supported continuation of the existing three permissible geographic variations. Most of them said that, within a specified timeframe, States should be given the choice of limiting their payment level variations as described, paying SSA for administering them, or taking over the administration themselves.

Recapitulation of Experts' Opinions on State Supplementation

Option	Experts supporting
1. Permit States to reduce or terminate supplements once the Federal SSI benefit standard increases to 100 percent of the poverty line. "Grandfather" extant supplementation levels for current beneficiaries (but not new eligibles) who would otherwise experience a net benefit decrease. Require States, for at least 3 years after reduction or termination of supplementation, to spend any "freed up" supplementation funds for other services to their needy residents who are aged, blind, or disabled	18
2. Require States, by July 1, 1995, to do one of the following:	16
a. Have no more than 3 supplementary payment level variations based on living arrangements (in addition to one, if desired, for people subject to the $30 payment limit) and no more than 6 variations based on categorical distinctions: up to 3 each for individuals and for couples; plus the existing limit of 3 variations based on geographic areas; or	
b. Pay SSA for administering their supplements; or	
c. Administer their own supplements.	
Comment: The President's budget for fiscal year 1993 includes a proposal to charge States for the cost of administering State supplementation programs.	

E. Payment Limits for People in Institutions

Background Information

Residents of most public institutions. Individuals who reside in public institutions throughout a month generally are not eligible for SSI. This ineligibility rule applies because Congress has not wanted the Federal

Government to assume the traditional responsibilities of State and local governments for residents of their institutions. Historically, Congress has shown some concern about subsidizing institutions if the Federal Government has no control over the quality of care.

Residents of certain public institutions. There are exceptions to the general ineligibility rule for residents of certain public institutions. Exceptions to the ineligibility rule relate to persons in public emergency shelters for the homeless, publicly operated community residences for 16 or fewer residents, public institutions for educational or vocational training, and, when certain conditions are met, persons in medical or psychiatric facilities, provided they were receiving SSI under the provisions of section 1619 (see part C of chapter IV) or are expected to have stays of limited duration. Also, certain residents of public medical facilities may be eligible but their SSI payments cannot exceed $30 a month (see material on issues below).

Residents of private institutions. There is no statutory rule prohibiting eligibility for residents of private institutions. However, the $30 payment limit may apply to a person in a private medical institution when the Medicaid program is paying a substantial portion of the cost of his/her care.

Supplementation of limited payment. Sixteen States supplement the limited SSI payment in amounts ranging from $5 to $45 for an individual. Nine of these supplements are administered by the Social Security Administration.

Areas Where Issues Arise

Amount of payment limit. Residents of public or private institutions for whom Medicaid is paying more than 50 percent of the cost of care are subject to a monthly Federal payment limit of $30 (minus any countable income). This limited amount is for the purpose of meeting incidental personal needs (e.g., toiletries, soft drinks and entertainment) not met by the institution. The amount of the maximum payment has changed only once since the creation of the SSI program—from $25 to $30. Automatic cost-of-living adjustments are not applicable to the $30 payment limit.

Applicability of payment limit. The payment limit described above applies since most of the individual's subsistence needs are met by the institution, which is being paid by Medicaid, another Federal assistance program. However, in other situations where most of a person's needs are being provided by a third party (e.g., a State or local government, a relative, or private health insurance), that person remains ineligible, if in a public institution, or remains eligible at the full benefit rate, if in a private institution.

Experts' Discussion of Payments to Residents of Institutions

Amount of payment limit. Nearly all of the experts said that there should be an increase in the $30 payment limit for institution residents for whom Medicaid is paying more than 50 percent of the cost of care. There was discussion regarding the appropriate amount and whether an increase should be one time only or yearly, based on cost-of-living increases.

One expert indicated that a one-time raise to $35 a month would eliminate the complications of cost-of-living adjustments and would be less costly than yearly increases. Another expert suggested combining the two approaches; that is, increase the payment limit to $35 initially, and increase the limit yearly thereafter, based on the cost-of-living adjustment. This suggestion received the support of nearly all of the experts.

Applicability of payment limit. The experts discussed the possibility of expanding the applicability of the $30 payment limit to institutionalized individuals for whom cost of care is being paid by any source [e.g., Medicare, private insurance, family members, charitable organizations or State funds) other than the individual's own income or resources. It was explained that this option would remove the prohibition against eligibility for residents of public institutions who otherwise meet the eligibility criteria; payments would be limited to no more than $30. Additionally, some residents of private institutions who are currently eligible for the full SSI payment would become subject to the $30 payment limit.

A few experts expressed the opinion that an expansion of the applicability of the $30 payment limit would not be desirable because, in combination with the rules for computing income, ineligibility could result for some individuals in private institutions who, under current rules, are eligible for benefits without the payment limit. The experts considered a variation of the option which would address only the eligibility of people in public institutions who are now barred from receiving payments. Under the modified option, SSI eligibility would be possible for residents of public institutions without regard to payment for the cost of care; such payments would be limited to $30. This option would allow limited payments to any otherwise eligible person who happened to be residing in a public institution, such as a county home, even though Medicaid is not paying a significant share of the cost. This option would not disadvantage anyone now on the SSI rolls. Neither option appealed to most of the experts.

Recapitulation of Experts' Opinions on Payments to Residents of Institutions

Option	Experts supporting
1. Increase the $30 payment limit to $35, indexing annually thereafter based on the cost of living, and rounding to the next higher dollar	19
Comments: One expert, while supporting this option, prefers an initial increase to $40. Another expert supporting this option also favors computing the cost-of-living adjustment retroactively to the beginning of the program, or at least to July 1, 1988 when the payment was increased from $25 to $30.	
2. Expand the applicability of the $30 payment limit to apply to institutionalized individuals for whom more than 50 percent of the cost of care is being paid by any source other than the individual's own income or resources	1
3. Allow SSI eligibility for residents of public institutions without regard to payment of the cost of care by an outside source, but limit the payment to $30	1

F. Accounting Periods

Background Information

The Federal benefit standard functions as a limit on countable income. Thus, after applying all appropriate exclusions to arrive at countable income, the benefit to be paid is the amount by which countable income falls short of the benefit standard. Actual payment amounts are affected by the accounting period prescribed by statute. From 1974 to 1982, SSI benefits were computed using a quarterly prospective system. That is, income and benefit amounts were estimated prospectively for each calendar quarter and paid in equal increments for each month of eligibility in the quarter. A prospective accounting system makes it possible to respond promptly to changes in income. However, because income and benefits were spread over 3 months, the quarterly aspect of the arrangement also entailed overpayments and underpayments and produced situations which were complicated to explain to recipients.

In 1982, a new statutory provision changed the accounting period and ever since SSI benefits have been determined on a monthly retrospective basis. Generally speaking, the benefit payment is now determined separately for each

month using countable income from 2 months earlier. However, there are special rules for new eligibles and for recipients who lose eligibility for one or more months and then regain it. Certain aspects of the retrospective monthly accounting rules are considered by many observers to be inequitable.

Areas Where Issues Arise

The accounting period. The 1982 change to retrospective monthly accounting was intended to allow time for people to report changes so that benefit payments could be made with greater accuracy. However, retrospective accounting is often less responsive to immediate need since it takes 2 months for payments to change in response to decreases in, or losses of, other income.

Triple counting and termination of income. Under the rules of retrospective monthly accounting, the current month's payment amount is usually based on the beneficiary's income from 2 months earlier. However, when a beneficiary becomes eligible for SSI benefits, either initially or after a period of ineligibility, any countable income received in the first month of new or regained eligibility is used to compute the payment amount for the first, second, and third months. This is true even when income terminates after the first month. In initial eligibility cases, the individual may have to choose between delaying the month of eligibility or taking a reduced benefit for 3 months. There is no way to avoid the benefit reduction in renewed eligibility situations.

Similarly, when a beneficiary with countable income experiences reduction or termination of that income, the SSI payment continues to be reduced for 2 more months. This can leave the person with total income which may be far below the income floor.

Varying numbers of paydays in a month. A beneficiary (or a parent or spouse whose wages are deemed available to the beneficiary) earning wages close to the eligibility limit may be paid every other week or once a week. For two- or four-payday months, income remains under the eligibility limit. However, under a monthly system, the extra earnings in a three- or five-payday month are enough to result in ineligibility. While less common, similar situations can arise with unearned income such as unemployment benefits which may be paid weekly or biweekly.

The most serious consequence of the "extra payday" phenomenon is the loss of Medicaid coverage. Blind or disabled recipients who are working, and would be eligible except for their earned income, continue to be entitled to Medicaid under the provisions of section 1619(b) of the Social Security Act (see part C of chapter IV). However, this protection is not available to a recipient who receives unearned, rather than earned income, nor does it extend to aged beneficiaries.

Monthly verification of wages. Because eligibility is determined monthly and benefits are computed monthly, it is necessary for SSA to know the amount of monthly earnings a claimant received. The law states that "relevant information will be verified from independent or collateral sources * * *." Thus, SSA requests monthly wage information from employers when a worker does not have pay slips.

The verification requirement has proven burdensome, particularly for employers who may not maintain their records in the format needed by SSA. Employers provide wage information to SSA for retirement and survivors insurance and income tax purposes and often resent the need to provide yet a different (monthly) breakout for SSI purposes.

State supplementation payments computation. SSA administers supplementary payments for some States. However, persons whose incomes are too high to receive Federal SSI benefits but low enough to qualify for federally-administered State supplementary payments are not "eligible" for Federal SSI under the law. This can lead to some unusual payment computations that are very difficult to explain either orally or in written notices.

For example, an individual may be receiving both a partial Federal payment and a full State supplementary payment. The individual's income may increase to the point that it exceeds the Federal benefit standard, but is below the combined Federal plus State supplementary payment level. In this instance, the individual will receive no Federal payment because s/he is not eligible for one, but s/he will still receive a full State supplementary payment, because the computation for the State payment is based on income from 2 months ago. Only after 2 months will the State payment be reduced. In this situation, one change in income produces 2 payment changes. Such payment changes result in confusing notices to some people in States where SSA administers the supplement.

Experts' Discussion of Accounting Period Issues

The accounting period. All of the experts who took a position on the accounting period favored keeping a monthly accounting system but making it prospective instead of retrospective. The experts noted that prospective monthly accounting solves the payment computation problems of triple counting, termination of income, and State supplementation. They also concluded that prospective monthly accounting could be more responsive to current needs by making timely adjustments in benefit payments.

Some experts felt that, in theory, annual accounting might solve the problems currently identified with retrospective monthly accounting. However, they acknowledged that annual accounting may result in new problems and adversely impact some beneficiaries. Therefore, they believed that extensive testing prior to seeking enactment of annual accounting would be appropriate. Other experts expressed concern that even testing this option suggests support for it which may not exist.

Varying numbers of paydays in a month. Because of the preference for retaining a monthly accounting system, the experts recognized that there would continue to be certain months in which some people would lose eligibility due to an extra payday. A majority of the experts viewed the principal problem in these situations as the loss of Medicaid eligibility. Therefore, they concluded that Medicaid coverage should continue whenever there is a loss of SSI eligibility due solely to calendar-related income fluctuations.

Monthly verification of income. A majority of the experts said that beneficiaries, employers, and SSA staff would all benefit from some easing of the requirement for income verification. These experts concluded that, when it is not cost-effective, SSA should not be required to verify income.

Recapitulation of Experts' Opinions on Accounting Period

Option	Experts supporting
1. Change from retrospective monthly accounting to prospective monthly accounting	19
2. Continue Medicaid coverage when SSI eligibility is lost solely due to a calendar-related income fluctuation	19
3. Do not require income verification when it is not cost effctive	19
4. Define eligibility for SSI in terms of income below the combined Federal/State payment level for beneficiaries in States for which SSA administers the supplement	16

Option	Experts supporting
Comment: One expert expressed concern that, by supporting minor or "technical" improvements, such improvements might be perceived as sufficient and so blunt the impetus for prospective monthly accounting.	
5. Test one or more methods of annual accounting, beginning with prospective annual accounting, by running a computer simulation of the method or methods proposed	13

G. Options Preferred by a Majority of Experts—Summary and Cost Estimates

Federal Benefit Standards

Nearly all of the 20 experts who took a position on this issue view increasing the Federal benefit standard as one of the program's top priorities. A majority of these experts favors increasing the Federal benefit standard for an individual to 120 percent of the poverty guideline for one person and doing so in five equal annual increments.

At the same time, a majority of the experts also supports keeping the Federal benefit standard for a couple at 150 percent of the standard for an individual. They say that reducing the couple's standard to 135 percent of the individual's standard (the result of using 120 percent of the poverty guideline for a two-person family) would decrease benefits to some couples and ignore testimony concerning the fact that, even though people may live together, they cannot share expenses such as those for food or medicine.

The experts want to see the SSI program live up to the vision of the 1972 report of the Senate Finance Committee. They feel a sense of urgency about assuring those who are aged, blind, or disabled that they will no longer have to live in poverty. The experts agree with public testimony that it is unfair to provide a benefit which keeps such an at-risk population poor and on the brink of homelessness; that it is a national responsibility to provide sustenance to these people who cannot provide it for themselves—and to provide it in a measure that affords dignity and security to each life.

ESTIMATED COST

[In millions]

Fiscal year	SSI program	SSI administrative	Medicaid program
1993	$2,567	$250	$435
1994	7,092	710	1,625
1995	12,706	460	2,950

ESTIMATED COST—Continued

[In millions]

Fiscal year	SSI program	SSI administrative	Medicaid program
1996	19,527	470	4,310
1997	27,707	510	5,995

* * * * *

Couples: Definition of "Spouse"

A majority of the experts supports the existing definition of a "spouse" (for purposes both of couples' determinations and of spouse-to-spouse deeming)—with one exception. They say that the SSI program should not view a person as another person's spouse simply because they hold themselves out to the community as such.

This majority favors continuing the concept of an individual and spouse, eligible or ineligible, as an eligibility unit, using the combined income and resources of both spouses. However, they are concerned that the "holding out" provision represents an unacceptable invasion of people's personal lives and presents administrative complications to no useful end. These experts say that this is an area where SSI should differ from the social insurance programs under which establishing a common-law relationship can be beneficial.

ESTIMATED COST

[In millions]

Fiscal year	SSI program	SSI administrative	Medicaid program
1993	$2	Negligible	Negligible.
1994	3	Negligible	Negligible.
1995	3	Negligible	Negligible.
1996	4	Negligible	Negligible.
1997	4	Negligible	Negligible.

* * * * *

Couples: Income Exclusions

All of the experts who expressed a view on this issue support giving each member of a couple a full set of earned income exclusions. They see this as an important adjunct of providing incentives for people to work, especially in helping compensate for the higher expenses of a working person who is aged, blind, or disabled.

ESTIMATED COST

[In millions]

Fiscal year	SSI program	SSI administrative	Medicaid program
1993	$1	Negligible	$5
1994	2	$10	20
1995	3	Negligible	25
1996	3	None	25
1997	3	Negligible	35

* * * * *

State Supplementation: Reduction/Termination

Nearly all of the experts say that States should be permitted to reduce or terminate their supplemental payments once the Federal benefit standard reaches 100 percent of the poverty guideline; however, this should be coupled with grandfathering any current recipient who would otherwise experience a net benefit reduction. As part of this option, States would be required, for at least 3 years after reducing or terminating supplementation, to use their "freed up" funds to provide other services to their SSI populations.

This large majority says that States should be allowed the flexibility to assume new roles with respect to their needy populations and to use limited funds for purposes other than supplementation of SSI. These experts conclude that, once the Federal benefit standard reaches the poverty line, benefits in some States will move above local costs of living; therefore, other kinds of assistance for needy people may be more helpful than cash supplementation of the Federal benefit.

ESTIMATED COST

[In millions]

Fiscal year	SSI Program	SSI administrative	Medicaid Program
1993	None	(*)	$435
1994	None	(*)	1,825
1995	None	(*)	1,995
1996	None	(*)	2,195
1997	None	(*)	2,410

* Unable to estimate.

* * * * *

State Supplementation: Federally Administered Variations

A majority of the experts supports requiring each State whose optional supplementation program is administered by the Federal Government, by July 1, 1995, to: (a) Have no more than 3 living arrangement

variations—not counting a supplementation level for persons subject to the $30 payment limit, no more than 6 categorical variations (3 each for individuals and couples), and up to 3 based on geographic distinctions; or (b) pay SSA for administering the supplementation program; or (c) administer its own program. They view the federally-administered supplementation programs as having become overly complex and costly for Federal administration and say that an increased Federal benefit standard should reduce the need for so many variations.

ESTIMATED COST

[In millions]

Fiscal year	SSI Program	SSI adminis-trative	Medicaid Program
All	None	(*)	None.

* Unable to estimate.

* * * * *

Limited Payment to Residents of Institutions

All of the 19 experts who expressed a view on this issue support an increase in the current $30 payment limit applicable to certain residents of medical institutions. These experts say the payment should be increased to a maximum of $35, followed by annual cost-of-living adjustments rounded to the next higher dollar.

This majority of experts views an initial increase of $5 as necessary recognition of ongoing increases in the costs of the comfort items for which the limited payment was intended. Thereafter, annual adjustments would keep the payment limit in alignment with living costs. They also say that applicability of the payment limit should apply as it does now: to persons experiencing lengthy stays in public or private medical treatment facilities where the Medicaid program pays a substantial part of the cost of their care so that SSI should continue to fill in only in terms of personal incidentals not provided by the institution or Medicaid.

ESTIMATED COST

[In millions]

Fiscal year	SSI Program	SSI administrative	Medicaid Program
1993	$8	None	Negligi-ble.
1994	16	Negligible	Negligi-ble.

ESTIMATED COST—Continued

[In millions]

Fiscal year	SSI Program	SSI administrative	Medicaid Program
1995	20	None	Negligi-ble.
1996	23	None	Negligi-ble.
1997	27	None	Negligi-ble.

* * * * *

Accounting Periods: Prospective Monthly Period

Almost all of the experts support use of a prospective monthly accounting period for purposes of determining SSI eligibility and payment amount. The experts want an SSI accounting period that is as responsive as possible to changes in recipients' financial circumstances, that simplifies program administration, and that produces easily understood results in terms of eligibility and payment amount. They also want to protect Medicaid eligibility for those people affected by variations in the number of regular paydays per month. These experts conclude that, except for calendar-related income fluctuations which can occur under any kind of monthly system, a monthly prospective accounting period would meet all of the criteria more effectively than the present retrospective system.

ESTIMATED COST

[In millions]

Fiscal year	SSI Program	SSI administrative	Medicaid Program
All	(*)	Negligible	(*)

* Unable to estimate.

* * * * *

Accounting Periods: SSI Eligibility Definition

For as long as the existing monthly retrospective accounting period remains in existence, a majority of the experts concludes that SSI eligibility should be defined in terms of the combined Federal/State supplementary benefit level for those States where SSA administers the supplement.

ESTIMATED COST

[In millions]

Fiscal year	SSI Program	SSI administrative	Medicaid Program
1993	$4	Negligible	Negligi-ble.

ESTIMATED COST—Continued

[In millions]

Fiscal year	SSI Program	SSI administrative	Medicaid Program
1994	5	Negligible	Negligi-ble.
1995	5	Negligible	Negligi-ble.
1996	5	Negligible	Negligi-ble.
1997	5	Negligible	Negligi-ble.

* * * * *

Accounting Periods: Annual Period Simulation

A majority of the experts, all of whom support a change to monthly prospective accounting, also favors computer simulation testing of methods of annual accounting, beginning with a prospective annual period. They wish to determine whether an annual period might be justified as simpler and more understandable than a monthly or quarterly one.

ESTIMATED COST

[In millions]

Fiscal year	SSI Program	SSI adminis-trative	Medicaid Program
All	None	(*)	None.

* Unable to estimate.

* * * * *

Accounting Period: Income Fluctuations

Almost all of the experts favor continuing Medicaid coverage when a calendar-related income fluctuation causes loss of SSI eligibility. They see this as consistent with the statutory linkage between SSI and Medicaid, more equitable, and easier for the public to understand.

ESTIMATED COST

[In millions]

Fiscal year	SSI Program	SSI administrative	Medicaid Program
All	None	Negligible	Negligi-ble.

* * * * *

Accounting Period: Income Verification

Nearly all of the experts also favor eliminating income verification in situations when such verification would not be cost-effective. They say that this would be an administrative

simplification with little financial risk attached if the criteria for cost-effectiveness are carefully drawn.

ESTIMATED COST

[In millions]

Fiscal year	SSI Program	SSI administrative	Medicaid Program
All	(*)	(*)	(*)

* Unable to estimate.

* * * * *

Chapter II, Appendix i—Other Federal Programs' Eligibility Standards as a Percentage of the Poverty Guidelines

The following Federal programs are chief among those which, by statute (or regulation), use more than 100 percent of the poverty guidelines in establishing income cutoffs for eligibility and/or for offering sliding fee schedules for services.[1]

Program and Poverty Guidelines Percentage

Medicaid: Qualified Medicare Beneficiaries 1991–92: 100%, 1993–94: 110%, and 1995 on: 120%.

Children under 6, infants, and pregnant women—133% but State may go to 185%; 23 States are at 185% and 6 others are between 133% and 185%.

Spousal impoverishment, minimum protected income—1989–91: 122% of amount for 2 people; 1991–92: 133%; 07/92 on: 150% of amount for 2 people.

Food Stamps: 130% for households w/o elderly or disabled member.

Special Supplemental Food Program for Women, Infants, & Children—Set by States but cannot exceed 185%.

Commodity Supplemental Food Program—130% (elderly only).

National School Lunch Program; School Breakfast Program; Child/Adult Care Food Program; Special Milk Program for Children—Free meals: 130%; Reduced-price meals: 130% to 185%.

Food Distribution Program on Indian Reservations—130%.

Food Commodities Program—Set by States. Often 130% but may be higher.

Community Services Block Grants; Community Food and Nutrition—Usually 100% but States may go to 125%.

Low-Income Energy Assistance—Greater of 150% of the guidelines or 60% of State's adjusted median income.

Weatherization Assistance for Low-Income Persons—125%.

Community Health Centers; Migrant Health Centers Grants; National Health Service Corps—Sliding fee schedule for those between 100% and 200%.

Family Planning Services—Sliding fee schedule between 100% and 200% (or 250% in some cases).

Senior Community Service Employment Program—125%.

Foster Grandparent Program; Senior Companion Program—Higher of 125% or of 100% + SSI State supplement.

* * * * *

Note: Benefits for SSI recipients are considerably higher than those for AFDC recipients but are generally lower than benefits provided to retired or disabled workers under the social insurance programs. (AFDC legislation does not refer to poverty guidelines although a few States have chosen to use a less-than-100-percent level of the guidelines.) SSI benefits for children with disabilities are basically the same as benefits for adults.

Chapter III—Needs-Based Issues—Including the Elimination of In-Kind Support and Maintenance and Raising the Resources Limits While Streamlining the Exclusions

A. Preamble to Chapter

Precursors to SSI—the National Perspective.

Historically, one objective of the Social Security Act was to establish a social insurance program as the first line of defense against the future loss of income for persons who work. However, some persons were ineligible for social insurance benefits due to insufficient work history, and some received benefits which were inadequate to provide a basic living. Therefore, the Act provided incentives (in the form of matching funds) to the States to establish and maintain means-tested programs of assistance to persons who were aged, blind, or disabled.

For these Federal/State grant programs, the statute required that a person's income and resources be considered in determining need. However, neither the statute nor Federal regulations provided a definition of income or resources, or specified income levels or resource limits which would apply. Each State specified the amount that represented basic needs and defined those needs. All States recognized food, clothing, shelter, fuel and utilities as "basic" consumption items needed by everyone. Most States also included other items (e.g., personal care items, medicine chest supplies, household supplies, etc.).

The Act mandated certain disregards (exclusions) relating to earned income. States were given options in designing their measures of need; some options were to disregard a limited monthly amount of "any income" and to provide for some form of "relative responsibility."

Federal rules required States to specify the amounts and types of real and personal property, including liquid assets, that might be retained to meet current and future needs. In addition to the home, personal effects, automobile and income-producing property allowed by the State, the amount of real and personal property, including liquid assets, that could be reserved for each individual recipient was limited to $2,000. States also were permitted to allow "reasonable" proportions of income from business or farms to be used to increase capital assets, so that a person's income might be increased.

Needs Tests Under SSI

When the SSI program was enacted, its primary objective was to provide a nationally uniform income floor for persons who are aged, blind, or disabled and have little or nothing on which to live; i.e., those who are "needy." There were efforts to provide objective and nationally uniform rules, to remove the "stigma" of welfare, and to provide individuals with cash which could be used at their own discretion. At the same time, some of the adult programs' basic income and resource schemes carried over to the SSI program in addressing measures of need.

As with the former State programs, the SSI program uses two measures of need: Income and resources. To be sufficiently "needy" to receive SSI benefits, a person must meet both the income test and the resources test. For someone who is eligible, the amount of his/her income also affects the amount of any SSI benefit which may be paid.

The Federal benefit standard functions as a limit on countable income which a person may have and still be eligible to receive Federal SSI benefits. Income which is counted is subtracted from the Federal benefit standard to arrive at the amount payable to an otherwise eligible person. This approach bears some similarity to the approach under the former programs. A discussion of the adequacy of the Federal benefit standard as a measure of income necessary to support a person's needs for food, clothing, and shelter, is provided in part B of chapter II. That chapter also contains information concerning the computation of benefits (in part F).

This chapter addresses basic rules regarding what is considered to be income or resources; how much income should be counted against the Federal benefit standard, and the role of resources in efficiently and effectively identifying those who are needy. Although in-kind support and maintenance is a type of income, it is addressed separately (in part C) since it has unique characteristics and has been

[1] Except for Medicaid, based on excerpts from "Federal Programs Using the Poverty Guidelines * * * as an Eligibility Criterion or to Target Assistance or Services", Gorden M. Fisher, ASPE/DHHS.

frequently identified as one of the most complex and troublesome program areas.

B. Income

Background Information

Meaning of income. For SSI purposes, there is a national definition of "income." In general, "income" means anything a person receives that can provide food, clothing, or shelter. Sometimes income takes the direct form of food, clothing, or shelter. More often, it comes in the form of cash (including checks and electronic funds transfers).

Income, under the statute, is either "earned" or "unearned." Earned income comes from wages, self-employment, and similar sources. Unearned income is every other kind of income. Examples of common types of unearned income are social insurance benefits, veterans benefits, rental and lease income, interest and dividend income, and "in-kind support and maintenance" (food, clothing, and shelter).

Exclusions from income. Income exclusions provide a financial advantage to persons who receive certain kinds of income (see "countable income"). The Social Security Act provides many exclusions from income. In addition, a number of other specific exclusions have been written into statutes governing other programs, such as housing subsidies and earned income tax credits. There are more than 50 income exclusions provided by statute.

Countable income. Countable income is the amount of income remaining after all appropriate exclusions are applied to income. It is the amount actually subtracted from the Federal benefit standard to determine eligibility and to compute the monthly benefit amount.

Areas Where Issues Arise

Earned income exclusions. Some program rules relating to earned income address a program objective other than need: incentives and opportunities for SSI eligible persons who are able to work, or to be rehabilitated, to enable them to increase their independence. In designing the SSI program, the Congress recognized that some needy people, including the aged, would continue to work and attempt to be self-supporting long after others would have stopped. To encourage these attempts, Congress reasoned that those who work should find that their work resulted in a higher level of income than could be had without working. Therefore, the statute provides that, in determining eligibility for and the amount of SSI benefits, significant amounts of a worker's earnings are to be excluded. The experts' individual views concerning the income provisions related to such exclusions are addressed in part C of chapter IV.

The $20 monthly general income exclusion. The first $20 of monthly income does not count. The $20 was set at the beginning of the program. This exclusion was intended to assure that persons who had previously worked in the labor force would receive somewhat higher monthly income than those who had not. It was believed that the exclusion would most often apply to social insurance benefits; however, it could apply to income from any source except need-related income.

The amount of the exclusion has never been increased, although the Federal benefit standard has more than tripled since it was first set in 1972. The $20 is subtracted first from any unearned income a person has. If the person has less than $20 in unearned income (or none at all), any remaining amount of the $20 is subtracted from any earned income.

During the experts' meetings, they heard people state that this exclusion has lost much of its value and should be increased to reflect the increased cost of living since 1972 and it should be indexed for inflation. Some also said that if the exclusion were applied only to unearned income, it would be more understandable to the public.

Interest and dividends. The amounts of interest and dividends received by SSI beneficiaries usually are quite small. (The amounts are limited, in effect, by the program's eligibility limits on the resources that generate such income.) These amounts count as income unless they can be excluded under a provision that allows for exclusion of income that is "infrequent or irregular" or under the $20 monthly general income exclusion.

Often, the "infrequent or irregular" exclusion cannot apply, even when the amount of the interest or dividend is very small. This is because interest and dividends often are received both "regularly" and "frequently." To be considered "infrequent," the income must be received no more than once in a calendar quarter and in an amount not greater than $20.

The experts heard people state that there are inequities in the treatment of interest and dividends because some are excluded under the "infrequent or irregular" exclusion and others must be counted; sometimes the only difference is how often the bank or company chooses to pay its interest or dividends. Some people said that excluding interest and dividends would simplify program administration and it would reward SSI recipients who are thrifty and try to save money.

Income "deemed" from an ineligible spouse or parent. When a married person whose spouse is ineligible applies for SSI benefits, part of the spouse's income may be considered to belong to the applicant. Similarly, if a child applies for SSI benefits, part of the income of an ineligible parent(s) in the household may be considered to belong to the child. This process of considering some of a spouse's or parent's income is called for by statute; it is referred to as "deeming," because the SSI program "deems" part of the relative's income to be available for the support of the applicant or beneficiary. The Secretary of Health and Human Services determines, through regulations, how much of the income of an ineligible spouse or parent(s) to deem as income.

The regulations provide three different formulas for deeming income from a parent(s) to a child. In all three formulas, an amount for each ineligible child in the household is excluded from the parent's income. This recognizes the need for the parent to support such other children. After this exclusion is applied, one of the three formulas is used, depending on whether the remaining income of the parent is earned income, unearned income, or a mixture of earned and unearned income.

Experience has shown that the three formulas do not always produce equitable and reasonable results. Often, a slight change in the nature of the parent's income (e.g., from a mixture of earned and unearned income to only unearned income) can produce a major increase in the amount of income deemed to the SSI child. This happens because of the differences between the formulas used in these two situations.

On July 8, 1991, the Secretary of Health and Human Services published a Notice of Proposed Rulemaking in the **Federal Register** (56 FR 30884) to change the rules so that the formula in use for situations where the parent(s) has both earned and unearned income would apply in all situations. A final regulation has not been published to date.

Other issues related to parent-to-child deeming of income were raised by the public in response to the issues paper which the SSI Modernization Project published in the **Federal Register** on July 31, 1991. People commented that unusual expenses incurred by parents for a disabled child should be deducted before deeming the parents' income to that child. Examples of such special expenses ranged from smaller items, such as disposable diapers needed by a child who is incontinent, to major

investments, such as structural changes to a home to accommodate a child who uses a wheelchair. Money spent on such items is not available for the child's food, clothing, and shelter needs.

Some people also commented that certain types of income received by a parent who is no longer able to work due to disability or unemployment should be treated as earned, rather than unearned, income. Examples mentioned of such types of income are: unemployment compensation, workers' compensation, and disability and survivorship social insurance benefits. It was stated that, despite a substantial loss in household income, a child can actually lose entitlement to SSI, and possibly Medicaid, when wages stop and these other benefits begin. The problem arises because earned income is treated more favorably than unearned income.

Income from individually held Indian trust land. Many Federal statutes provide for the exclusion from income of payments made to members of Indian tribes and groups. There is, however, no specific exclusion that applies to income derived from individually held Indian trust lands.

Individually held Indian trust land is managed by the Bureau of Indian Affairs for the benefit of individual Indian landowners. It may generate income, typically from agricultural leases. Indians receive a portion of the lease income in proportion to the amount of land they own.

The experts were told during the public meetings that the SSI treatment of this lease income creates serious problems for tribal elders because receipt of the income is virtually always unpredictable and it may be received in 6 or 8 different months of the year. It was stated that the program pays monthly benefits based on estimates of such income which (of necessity) are highly unreliable; this too often leaves the tribal elders with little or no income.

Experts' Discussion of Unearned Income Issues

The $20 monthly general income exclusion. Several of the experts cited the historical purpose of the general income exclusion: to reward beneficiaries who receive social insurance benefits. Without such an exclusion, some persons who have worked and earned social security coverage would be no better off than SSI recipients who have never worked.

Some experts questioned whether, with an adequate Federal benefit standard, it would be appropriate to exclude a significant amount of other income and so lift SSI beneficiaries with other income significantly above the benefit standard. These experts pointed out that the need for a high general income exclusion is greater while the benefit standard remains low but diminishes as the benefit standard becomes more nearly adequate.

A number of experts said the cost of increasing the exclusion to one-seventh of the Federal benefit standard (the ratio at the beginning of the program) is prohibitively high, at least in the early years as the higher benefit standard is being phased in. Most experts agreed that achieving the higher benefit standard should take priority over an increase in the general income exclusion.

Several experts spoke in favor of restricting the exclusion to unearned income only. They agreed that this change would simplify the program. If accompanied by an increase in the basic earned income exclusion, the restriction would not cause any recipient to lose SSI benefits.

One expert suggested a different simplification: Replace the general income exclusion and the earned income exclusions with a $200 exclusion for any combination of earned and unearned income. Exclude one-half of the balance; and index the basic ($200) exclusion to the cost of living, increasing the exclusion when a change in the cost of living would raise the exclusion by a $50 increment.

Another expert suggested an immediate increase in the existing exclusion to $30, to be followed by a phased-in increase to one-seventh of the benefit standard only after the benefit standard reaches 120 percent of the poverty line. A majority of the experts, however, expressed a preference for a one-time increase in the exclusion to $30, and restricting it's application to unearned income.

Interest and dividends. Many experts expressed the view that the present requirement to count very small amounts of interest and dividends is undesirable. It discourages beneficiaries who have only modest amounts of savings, and it adds unnecessary complexity to the management of the SSI program.

However, the experts were concerned that a blanket exclusion of all interest and dividends might be inappropriate in an SSI program with a significantly higher limit on assets (see part D). Such an exclusion would benefit most those with the highest assets. In view of this concern, an expert suggested an annual exclusion of $200 of interest and dividends; all additional interest and dividends would be counted. Most of the experts agreed with this suggestion.

Parent-to-child deeming. Most of the experts said that the present three formulas should be reduced to one. They said that the current formula which is used when the parents have both earned and unearned income should be used in all cases, regardless of whether the income is earned, unearned, or a mixture.

A majority also believed that itemized special expenses of the disabled child should be deducted from parental income before income is deemed to the child. This would recognize the need for parents to be able to provide for special needs directly related to the child's disabling condition. These experts also stated that income received by a parent because she is no longer able to work should be treated as earned income so as to avoid a benefit decrease when income drops substantially.

Individual Indian trust income. One expert familiar with the problems of SSI beneficiaries who are Indians stated that, because income from individually held trust lands can be very irregular and unpredictable, the lease payments often cause SSI overpayments. The expert said that some Indians have given up on SSI because of frustration with these overpayments over which they have little or no control.

The same expert explained that proposed legislation (S. 754), which would provide a $4,000 annual exclusion of income from individually held Indian trust lands, is intended to protect the large majority of affected SSI beneficiaries who receive this amount or less each year. Those few who receive more than $4,000 per year would continue to have the excess amount counted for SSI purposes.

Another expert from a State with a large Indian population said that, because many Indians live in communities with non-Indian SSI beneficiaries, an annual exclusion of $4,000 for some SSI beneficiaries might be resented by those who must rely on SSI alone. This expert suggested, as a compromise, an annual exclusion of $2,000, since most income from individually held Indian trust land totals less than $2,000 annually, and the Alaska Native Claims Settlement Act provides for a similar exclusion of up to $2,000 per year of cash for certain Alaskan natives. The experts who supported an exclusion preferred this $2,000 amount.

Recapitulation of Experts' Opinions on Unearned Income

Option	Experts supporting
The $20 general monthly income exclusion:	
1. Increase the exclusion to $30 but apply the exclusion only to unearned income	16
Comment: One expert supporting this option also supports indexing the exclusion for inflation by setting its value at one-seventh of the Federal benefit standard and rounding to the nearest multiple of $10. A second expert supporting this option also supports such indexing, but prefers that the value be rounded to the nearest multiple of $5.	
2. Replace the general income exclusion and the earned income exclusions with a $200 exclusion for any combination of earned and unearned income. Also exclude one-half of the balance. Index the basic ($200) exclusion to the cost of living, increasing the exclusion when a change in the cost of living would raise the exclusion by a $50 increment	1
Interest and Dividends:	
1. Exclude from income an annual amount of $200 of interest and dividends. Count any interest and dividends in excess of this annual amount	17
Comment: One expert supporting this option also supports counting interest and dividends, but only if the resource limits are increased significantly or the Federal benefit standard is increased at least to the poverty line.	
2. Continue to count interest and dividends, as at present, regardless of the resource limit and Federal benefit standard	1
Parent-to-child deeming:	
1. Adopt, for use in all parent-to-child deeming situations, the current formula used when the parents have both earned and unearned income	16
2. Deduct itemized special expenses of the disabled child before deeming parental income to the child	16
3. In parent-to-child deeming, treat unearned income that is intended to replace a parent's earnings (such as unemployment compensation, workers' compensation, and disability and survivorship social insurance benefits) as earned income	16
Individual Indian trust income:	
1. Exclude up to $2,000 per year per individual of income derived from individually held Indian trust land	16
Comment: One expert in favor of this option also supports indexing the $2,000 amount of the cost of living and increasing the exclusion when a change in the cost of living would increase the exclusion by an increment of $500.	
2. Continue to count all income derived from individually held Indian trust land	1

C. In-Kind Support and Maintenance

Background Information

One type of income that the SSI program considers is "in-kind support and maintenance." In-kind support and maintenance is not cash but is actual food, clothing, or shelter that is given to a person or that the person receives because someone else pays for it. Shelter means room, rent, mortgage payments, real property taxes, heating fuel, gas, electricity, water, sewerage, and garbage collection services. There are two rules for valuing in-kind support and maintenance: The one-third reduction rule and the presumed maximum value rule.

One-third reduction rule. The statute provides for reducing the SSI benefit rate by one-third instead of determining the actual dollar value of items received when the individual or couple lives in another's household and receives in-kind support and maintenance from that person. This has been interpreted to mean that a person in the household of another must receive both food and shelter from others in the household before the one-third reduction can apply.

An SSI claimant is not living in another person's household if s/he owns, or has rental liability for, the living quarters or is in a noninstitutional care arrangement such as foster or family care. Such a claimant is not subject to the one-third reduction.

An SSI claimant is not receiving both food and shelter from anyone else in the household if s/he pays a pro rata share of household operating expenses, lives in a household in which all members receive public assistance, or receives food or shelter (but not both). Therefore, such a claimant is not subject to the one-third reduction even if s/he lives in another person's household.

Presumed maximum value rule. When an SSI claimant receives food, clothing, or shelter (from someone with whom s/he lives or does not live) but the one-third reduction rule does not apply, the presumed maximum value rule is used. The value of any food, clothing, or shelter received is presumed to be worth a maximum of one-third the Federal benefit rate plus the amount of the general income exclusion ($20). [This value results in the same benefit which would be payable to a person with no other income and subject to the one-third reduction.]

This amount is unearned income unless the presumed maximum value is higher than the actual value of the food, clothing, or shelter received. In such a case, the actual amount received is unearned income.

Discovering in-kind support and maintenance. When a person applies for SSI, and periodically thereafter when eligibility is redetermined, s/he must answer many personal questions about her/his living arrangements. These include questions about the household operating expenses, the number and relationship of other household members, and any help the household may receive to meet expenses. Questions are also asked of—and statements obtained from—other household members, even though these other people may not be applying for SSI benefits themselves.

Testimony received. Many members of the public provided oral and written statements to the experts concerning the adverse effects of the current program treatment of in-kind support and maintenance. Such testimony came from officials of local government agencies as well as representatives of private non-profit organizations and advocacy groups, and recipients themselves.

Many people reported that the program's attempts to discover, and assign a value to, in-kind assistance provided to an SSI claimant are harsh and demeaning, a disincentive to family members helping each other, and in direct conflict with other government programs which encourage family involvement.

Some said that the application of these provisions discourages caregiving by family members and use of housing alternatives which are beneficial to the individual and to society. One person said, "The poorest and sickest of the elderly live with poor families who assist in caring for them." Another commented, "Informal caregiving provided by friends and relatives provides valuable assistance to the elderly. It is estimated that relatives represent 84 percent of all caregivers * * *. [The provisions] only serve to create further financial hardship for the family of the elderly or disabled and discourages family support * * * [and] encourages institutionalization, which is a much more expensive alternative to home caregiving."

It was stated that the pro-rata share analysis is inequitable since it assumes that all household members consume or otherwise benefit from equal portions of the food and shelter expenses of a household. This does not necessarily correlate to the facts of any given household situation.

A recipient commented, "There are as many reasons as there are people for having to live with [SSI]. No one expects

government to pay them to live in luxury * * * but it would be nice to be able to accept a gift at Christmas or on your birthday without having to report it and have the small check you receive reduced because these things are considered 'in-kind income.' "

Others stated that it is inequitable that in-kind support provided by a nonprofit organization is not counted, but help from within a family reduces the benefit. Similarly, some stated that it is inequitable that those who receive public housing are not charged with income because of it, but those whose family members help with housing costs receive a benefit which is reduced because of that help.

Field office employees reported that the process of gathering information and decisionmaking regarding the existence and value of in-kind support and maintenance is one of the most complex and time-consuming tasks they face. They said that evaluating in-kind support and maintenance is subjective, and even experienced employees have difficulty in making the necessary judgments. They also viewed the provisions as inequitable, time consuming to administer, and error prone. Some also said that it is difficult for recipients to understand why they are being charged the determined amounts. Nearly all stated that an inordinate amount of the time they spend processing SSI claims is devoted to this area.

Other programs. Other income maintenance programs supported by the Federal Government do not require that a person's benefit be reduced due to the in-kind receipt of food, clothing, or shelter. With respect to the Aid of Families with Dependent Children program, States have the option of disregarding in-kind income which is not earned income. While there is no central data source on the matter, it appears that most States, in recognition of the difficulty of valuing it, to disregard such income.

The VA, with respect to its needs-based cash benefit programs, looks to the source and purpose of an in-kind gift. If the purpose of the gift is to provide basic sustenance needs (e.g., food, clothing, and housing), it is not counted as income, even when received from a private party such as a friend or relative.

Experts' Discussion of In-kind Support and Maintenance

None of the experts who addressed this issue was satisfied with the status quo. Each one favored some modification of the in-kind support and maintenance rules. Each also said that modification of these rules should be one of the top priorities.

Nearly all of the experts indicated that, as a result of public testimony and discussions with field office staff, SSI recipients, and others, the only option they felt they could support was to eliminate counting in-kind support and maintenance. They stated that efforts over the years to clarify or change the rules on counting in-kind support and maintenance have not succeeded, and have only made the policy more confusing and troublesome to recipients and SSA employees alike.

One expert stated that the proposal to eliminate counting in-kind support and maintenance would be too costly and, for this reason, the Congress probably would not support such a change to the program. This expert suggested that the better approach would be to replace present rules for addressing in-kind support and maintenance with a provision for a 25 percent reduction in benefits for any person residing in a household with another person who is an adult. The expert also favored including measures which would protect current recipients against a benefit reduction due to the operation of such a provision. This expert believed that this option would result in program savings, and stated that such savings should be used to improve the SSI program, rather than reverting to the general budget. (For more information, see "Additional Views" at the end of this report.)

Recapitulation of Experts' Opinions on In-kind Support and Maintenance

Option	Experts supporting
1. Eliminate consideration of in-kind support and maintenance as income	17
2. For new beneficiaries, eliminate the current provisions regarding in-kind support and maintenance. The benefit for a person living in a household with another person who is an adult (whether or not an SSI beneficiary) would be based on 75 percent of the benefit for an individual living alone	2

D. Resources

Background Information

Resources: Eligibility with respect to resources is determined based on a person's resources as of the first moment of each calendar month and the determination is applicable to the entire month. Thus, a person is determined to be resources eligible or ineligible for an entire month at a time.

If countable resources (see below) do not exceed the applicable limit, the person is resources eligible; there is no effect on the amount of SSI payments. If countable resources exceed the limit, the person is ineligible. A basic premise of the resources test is that people whose resources exceed the applicable limit (currently $2,000 for individuals and $3,000 for couples whether or not both spouses are eligible) should use the excess to meet their needs before becoming eligible for SSI benefits.

Meaning of resources: Resources are cash, other personal property, and real property that an individual owns and has the right to turn into cash to use for his/her own basic needs of food, clothing, and shelter. Not everything a person owns is a resource. A person may own something that s/he does not have the right to turn into cash or use for basic needs. Such things are not resources for SSI purposes.

Certain statutory provisions of the SSI program are based on a presumption that other people share financial responsibility for an individual or couple. Thus, resources of certain other people, particularly an ineligible spouse, or ineligible parent of a child under age 18, are considered to be resources of the individual. This is referred to as "deeming of resources" and is addressed further under "Resources of an ineligible spouse or parent," below.

Excludable and countable resources. The statute provides that certain items shall be excluded from resources when determining whether an individual (or couple) meets the applicable resource limit. These items are referred to as "excludable" resources. This term applies to such things as: the home; household goods and personal effects; an essential automobile; burial spaces and burial funds; life insurance; lump sum retroactive payments of SSI or social insurance benefits (time-limited exclusions); property essential to self-support; and resources set aside as part of a plan for achieving self-support.

Resources that are not excluded count against the statutory limits and are referred to as "countable" resources. Examples of common types of countable resources are cash, nonhome real property, checking and savings accounts, time deposits, stocks and bonds, and property agreements and property rights.

Reasons for resource exclusions. The SSI statute and regulations single out certain resources for special treatment (exclusion). The idea behind the resource exclusions is that certain property is so essential to one's well-being (for example, the home a person lives in) that its owner should not be expected to sell it and use the cash to

meet day-to-day living expenses. In addition, certain funds which are provided for, or set aside for, special purposes are not counted in the SSI program (for example, money paid to a victim of a crime or set aside for burial expenses).

Areas Where Issues Arise

The resources limits and exclusions. The original resources limits established by statute were $1,500 for an individual and $2250 for a couple. These remained the same for 10 years. Effective January 1985, and in each of the next 4 years, the limits were increased by $100 for an individual and $150 for a couple. By January 1989, the limits were $2,000/$3,000 and they have remained at these levels.

Questions frequently arise concerning what should be regarded as a resource, particularly with respect to trusts, and transfers of resources at less than market value.

Treatment of trusts. Money or other property in a trust is treated according to the basic rules concerning what is a resource and which resources count. In order for a trust fund to be considered a person's resource, the person must own the property in the trust and be legally able to access the trust and use the money for support. If the person cannot legally do so, the trust fund is not considered to be a resource. These rules allow a third party to set aside money in any amount in a trust for the benefit of an individual without it being counted as a resource for that individual.

Transfer of resources. If a person gives away something s/he owns, or sells it for less than it is worth, there is no effect on SSI eligibility. (Before July 1, 1988, if a person gave away something or sold it for less than it was worth, the difference between the fair market value and what the person received was counted under the SSI program as the person's resource for 24 months.) However, the Medicaid statute provides that if a person gives away a resource or sells it for less than its value, s/he may not be eligible for Medicaid-covered nursing home services for up to 30 months from the time of the transfer.

During the public meetings, people said that the resources limits are too low and keep people who are very needy from receiving benefits. Some pointed out that the limits prevent people from being able to save sums sufficient to provide for emergencies (e.g., repair of a roof, replacement of a heater or refrigerator, etc.). Others said that the resource exclusions lend complexity to the program—those who understand exclusions are able to make optimal use of the rules to gain eligibility while those who have total resources of equal or lesser value but do not understand (or receive knowledgeable help) are resources ineligible.

Time-limited resources exclusions. Some resources are not counted for a limited number of months, ranging from 1 to 9 months. These time-limited exclusions give people extra time to use the resources before they are counted toward the SSI limit. Examples of time-limited exclusions are: (a) retroactive payments of SSI, and retirement, survivors, and/or disability social insurance payments are excluded for 6 months; (b) payments from a fund established by a State to aid victims of crime, and certain relocation assistance provided by a State or local government, are excluded for 9 months.

Overpayments due to excess resources. When a person's resources exceed the limit at the beginning of a month for which s/he receives an SSI payment, the entire benefit paid for the month(s) represents an overpayment. In such a situation, if the individual requests waiver and is found to be without fault in creating the overpayment, recovery of a portion of the overpayment may be waived. However, the person must repay an amount equal to (a) the difference between his/her total resources and the resources limit or (b) the total overpayment, whichever is less. An exception applies in situations where the resources exceed the limit by $50 or less. In such situations, the person does not have to pay back any amount unless the failure to report the excess resources in a timely manner was willful and knowing.

Resources of an ineligible spouse or parent. The value of all countable resources of an ineligible spouse is added to the value of the eligible individual's own countable resources. As long as the total value of those resources does not exceed the resource limit for a couple (currently $3,000), the individual is resources eligible.

In general, if a child under age 18 lives in a household with both parents, the value of all countable resources of the parents which exceed the resources limit for a couple (currently $3,000) is deemed to be a resource of the child. If only one parent is in the household, the value of all countable resources of that parent which exceed the resources limit for an individual (currently $2,000) is deemed to be a resource of the child. There is no provision for an exclusion(s) for an ineligible child(ren) in the household. (If there is more than one SSI eligible child under age 18 in the household, the deemed parental resources are divided equally among the children.)

The child's countable resources include deemed parental resources in addition to his/her own resources. As long as the child's total resources do not exceed the resource limit for an individual, the child is resources eligible.

Experts' Discussion of Resources Issues

Resources limits and exclusions. Most experts, affirming the views of most public commenters, said that the resources test needs to be changed.

During the course of their public meetings, the experts were concerned with a total review of the asset test to determine whether the test is useful, and if so, whether it effectively and efficiently identifies those who are truly needy. Various experts posed, for discussion purposes, a variety of different approaches to the resources test. One approach would have eliminated the test, creating incentives to place resources in an income producing mode while retaining rules which provide for counting the income. Most experts believed that this would open the program to potential abuse.

Other approaches were to increase the limits to various levels with alternatives as to whether current exclusions would be retained. Some experts introduced, for discussion, concerns over current program rules which: allow money to be set aside in trusts; ignore transfers of resources to others for less than full value; and, in effect, create the need to "pigeonhole" resources in order to take full advantage of the available exclusions.

Many experts said that increased resources limits are needed in order to enable people to set money aside to meet emergencies. Further, some contended that current limits make it impossible for people to save enough money to eventually achieve independence from public assistance. They believed that higher limits would improve the potential for people to do this.

The experts discussed what resources limits would be appropriate, taking into consideration the estimated costs of increasing the limits to various levels, and possible tradeoffs between increases in the limits and elimination of some current exclusions. A few experts expressed concern that the elimination of exclusions for such things as life insurance and burial funds would mean that some recipients would have to dispose of assets in order to remain eligible to receive SSI benefits. However other experts pointed out that adequate increases in the limits would allow beneficiaries with such currently excluded resources to keep them. Eliminating specific exclusions while increasing the limits would simplify the

program and provide people with greater flexibility in their conservation and use of funds.

One expert commented that the need for increases in the resources limits is overshadowed by the need for increased benefit levels and, therefore, the resources limits should remain as they are until benefits are more nearly adequate. Another expert said that the current limits impose restrictions on people which cannot be ignored. This expert stated it would be legitimate to consider some trusts as resources, but not those established by third parties in an effort to provide beneficiaries with things which are not considered to be income.

A majority of the experts supported increasing the resources limits to $7,000 for an individual and $10,500 for a couple and simplifying the resources test by streamlining the exclusions. The home, an essential car, business property essential for self-support, and household goods and personal effects would (continue to) be excluded. All other exclusions, including the exclusions for life insurance and burial funds would be eliminated. Assests not readily convertible to cash, such as real property, would not be counted. However, funds in a trust established with an individual's (or spouse's) own money, and funds in a trust established with judgment payments when the settlement order requires that the funds be made available for general needs, would be counted as resources. The experts did not propose changes to the SSI program regarding transfer of assets, recognizing that this is an issue more for the Medicaid program than for SSI.

Several experts supported the streamlining of the exclusions, as described above, but favored larger increases to the resources limits. They would set the limits at $12,000 for an individual and $15,000 for a couple. Two more experts, while not objecting to increasing the resources limit, believed that other priorities should be addressed first.

In general, most experts supported increases in the resources limits with streamlined exclusions. The experts favored the above approaches over an option to triple the resources limit, without changing the exclusions. They said that streamlining the exclusions would remove present inequities (i.e., differences in how much people can retain, depending on the manner of retention); and it would make the program easier for beneficiaries to understand and for SSA to administer. A majority of experts said that the change in the resource limits, while streamlining the exclusions, should be one of the top priorities.

Another option considered was to set the resources limit for a couple at an amount equal to twice the limit for an individual. However most experts did not choose to pursue this. They also generally declined to support indexing the resources limits for cost-of-living increases, in favor of establishing new, higher limits and streamlining the resources test. One expert stated that the resources limits should be reviewed again in 5–10 years following an increase to determine whether changes in the cost of living had created a need for further increases in the limits.

Time-limited resources exclusions. Most experts concluded that it is reasonable to allow people time to dispose of certain resources, and uniform time limits would make the resources rules easier for the public to understand and easier for field offices to administer. For those exclusions which have time limits, they favored a limit of 12 months.

Treatment of excess resources. The experts discussed concerns over the "notch" effect created by the present resources eligibility test. That is, if resources exceed the limit by as little as one dollar, a person becomes ineligible to receive benefits. This can be troublesome in initial claims as well as for people who are on the rolls. In an initial claim, the person must spend down to become eligible. A person already receiving benefits can be removed from payment status because of a change in resources which is relatively small, such as interest added to a bank account. Several experts spoke in favor of a sliding scale approach such that resources in excess of the limit would, on a graduated basis, reduce the benefit amount (in much the same way as countable income reduces the benefit amount). Most of the experts believed that this would introduce a new complexity to the program and would be of limited value since it would be so hard for beneficiaries to understand.

Most experts believed that they could alleviate the problem related to ongoing eligibility of people on the rolls by changing the method for calculating overpayments that result from excess resources. Under the favored policy change, the amount of an overpayment resulting from excess resources would not be greater than the maximum amount by which the person's resources exceeded the resources limit. This would remove the current onus on the beneficiary to request and justify waiver of recovery of the excess amount.

Parent-to-child "deeming" of resources. Most experts favored a policy change that would provide for a resources exclusion for an ineligible child(ren) in the household, along the lines of the current parent-to-child income deeming rules. Under the favored approach, when the amount of resources to be deemed from a parent(s) to an eligible child was determined, $2,000 for each ineligible child in the household would be excluded.

Recapitulation of Experts' Opinions on Resources

Option	Experts supporting
RESOURCES LIMITS	
A. Increasing the limits:	
1. Increase resources limits to $7,000 for an individual and $10,500 for a couple and simplify the resources test by streamlining the exclusions. The home, an essential car, business property essential for self-support, and household goods and personal effects would be excluded. All other exclusions (except the time-limited exclusions) would be eliminated. Funds in a trust established with an individual's own money, and funds in a trust established with judgment payments when the settlement order requires that the funds be made available for general needs, would be counted as resources	16
Comment: One experts who supports this option also favors increasing the limit for a couple to an amount which would be twice the limit for an individual.	
2. Increase resources limits to $12,000 for an individual and $15,000 for a couple. Streamline the resources exclusions as in option 1 above	3
Comment: Two experts supporting this option also support option 1 above and are included in that count.	
3. Increase resources limits, establishing reasonable levels based on the funds available and other priorities	1
4. Do not change the resources limits until the benefit levels are increased significantly	1
B. Indexing the resources limits:	
1. Index new, higher resources limits to yearly increases in the cost of living	3
Comment: One expert who supports this option also support(s) indexing the current limits to yearly increases in the cost of living.	
2. Index the resources limits to the cost of living when a rise in the cost of living would result in raising the resources limit by an increment of $500	2
Comment: One expert supporting this option would support, as a second choice, indexing the current limits to yearly increases in the cost of living. This expert, while favoring higher limits, does not support indexing such new higher limits.	
TIME-LIMITED RESOURCES EXCLUSIONS	
1. Change the current periods for the time-limited exclusions to 12 months	15

Option	Experts supporting
2. Keep the current periods for the time-limited exclusions	1
TREATMENT OF EXCESS RESOURCES	
1. Change the method for calculating overpayments that result from excess resources. The amount of an overpayment resulting from excess resources would not be greater than the maximum amount that the person's resources exceeded the resources limit	17
2. Implement a "sliding scale" approach. Resources over the limit would reduce SSI benefits in proportion to the amount of excess resources, as opposed to across-the-board ineligibility	3
Comment: The three experts supporting this option also support option 1 above and are reflected in that count.	
PARENT-TO-CHILD DEEMING OF RESOURCES	
1. In determining the amount of resources to be deemed from a parent(s) to a child, exclude $2,000 for each ineligible child in the household	14

E. Options Preferred by a Majority of Experts—Summary and Cost Estimates

In this chapter, the experts have made it clear that a majority favors the elimination of in-kind support and maintenance, including the reduction of benefits by one-third when a beneficiary moves into the household of a family or friend; and a majority favors an increase in the amount of resources people can retain—from $2,000 for an individual and $3,000 for a couple to $7,000 and $10,500 respectively—while streamlining the resources exclusions.

An elaboration of these and other views follows.

The $20 Monthly General Income Exclusion

A majority of experts supports increasing the general income exclusion to $30 and applying it only to unearned income. These experts believe that it will simplify the program to apply this exclusion only to unearned income, and the option to increase the earned income exclusion (see Part C of Chapter IV) will prevent any person from being disadvantaged. These experts also believe that an initial increase in this exclusion will ameliorate the effects of inflation on the exclusion, but further increases are not needed in view of the option to increase the Federal benefit standard to 120 percent of the poverty guideline, as supported by a majority of experts. They stated that it is more important to increase the benefit rate than to exclude additional amounts of income, since the benefit increase will help those with the greatest need—those with no other income.

ESTIMATED COST

[In millions]

Fiscal year	SSI program	SSI administrative	Medicaid program
1993	$203	$150	$260
1994	303	370	935
1995	321	40	1,105
1996	338	30	1,280
1997	355	30	1,475

* * * * *

Interest and Dividends

Most experts support excluding from income an annual amount of $200 of interest and dividends. This would encourage beneficiaries who have modest savings, and it would simplify administration of the program. The cost of this option would be limited by the $200 ceiling on the exclusion; the ceiling also avoids a potential problem of a blanket exclusion which would provide the most help to those with the highest assets.

ESTIMATED COST

[In millions]

Fiscal year	SSI program	SSI administrative	Medicaid program
1993	$3	None	$5
1994	4	Negligible	5
1995	5	None	5
1996	5	None	5
1997	5	None	5

* * * * *

Parent-to-Child Deeming: Income Formula

A majority of experts supports the use of a single formula in all parent-to-child deeming situations. The formula should be that currently used when the parents have both earned and unearned income. This would avoid inequities which now occur due to the use of other formulas in some situations. It would also help to simplify the program and make it more understandable to the public.

ESTIMATED COST

[In millions]

Fiscal year	SSI program	SSI administrative	Medicaid program
1993	$11	Negligible	Negligible.
1994	15	Negligible	Negligible.
1995	15	Negligible	Negligible.
1996	15	Negligible	Negligible.

ESTIMATED COST—Continued

[In millions]

Fiscal year	SSI program	SSI administrative	Medicaid program
1997	16	Negligible	Negligible.

* * * * *

Parent-to-Child Deeming: Special Expense Deduction

A majority of experts supports the option to deduct itemized special expenses of a disabled child before deeming parental income to the child. This would recognize that the parents incur unusual expenses related to the child's disability and money spent on such items is not available for the child's food, clothing, and shelter needs.

ESTIMATED COST

[In millions]

Fiscal year	SSI Program	SSI administrative	Medicaid Program
1993	$10	Negligible	Negligible.
1994	15	Negligible	Negligible.
1995	17	Negligible	Negligible.
1996	18	Negligible	Negligible.
1997	20	Negligible	Negligible.

* * * * *

Parent-to-Child Deeming: New Treatment of Certain Income

A majority of experts supports a change in the treatment of certain types of income received by parents when they are no longer able to work due to disability or unemployment. Such unearned income (e.g., unemployment compensation, workers' compensation, and disability and survivorship social insurance benefits) should be treated as earned income.

ESTIMATED COST

[In millions]

Fiscal year	SSI Program	SSI administrative	Medicaid Program
1993	$18	Negligible	Negligible.
1994	27	Negligible	Negligible.
1995	29	Negligible	Negligible.
1996	32	Negligible	Negligible.

ESTIMATED COST—Continued

[In millions]

Fiscal year	SSI Program	SSI administrative	Medicaid Program
1997	35	Negligible	Negligible.

* * * * *

Individual Indian Trust Income

Nearly all the experts favor excluding up to $2,000 per year (per individual) of income derived from individually held Indian trust land. This would protect those who receive small amounts of income from individually held trust lands on an irregular and unpredictable schedule. The amount protected would be consistent with a similar exclusion of cash under the Alaska Native Claims Settlement Act.

ESTIMATED COST

[In millions]

Fiscal year	SSI Program	SSI administrative	Medicaid Program
All	Negligible	Negligible	Negligible.

* * * * *

In-Kind Support and Maintenance

A majority of experts supports, as a high priority, the elimination of in-kind support and maintenance from consideration as income. They believe the current provisions are harsh, demeaning, inequitable, an invasion of privacy, subject to manipulation, and contrary to principles which most programs endorse (e.g., support of the family unit, encouragement for voluntary assistance, etc.). Additionally, they view the provisions as inordinately complex to administer. Many past efforts to ameliorate the problems have been unsuccessful and, in some cases, have added to the complexities. Elimination of in-kind support and maintenance from consideration as income is one of the four top priorities of most of the experts.

ESTIMATED COST

[In millions]

Fiscal year	SSI Program	SSI administrative	Medicaid Program
1993	$600	$60	$140
1994	1,003	170	510
1995	1,066	0	600
1996	1,122	(4)	695

ESTIMATED COST—Continued

[In millions]

Fiscal year	SSI Program	SSI administrative	Medicaid Program
1997	1,178	(4)	805

* * * * *

Resource Limits

A majority of experts supports increasing the resource limits to $7,000 for an individual and $10,500 for a couple, while eliminating most of the resource exclusions. The home, an essential car, business property essential for self-support, and household goods and personal effects would continue to be excluded. Assets not readily convertible to cash, such as real property, would not be counted. However, funds in a trust established with an individual's (or spouse's) own money, and funds in a trust established with judgment payments when the settlement order requires that the funds be made available for general needs, would be counted as resources.

These experts see these changes as making the program simpler and more equitable. The increased resource limits, with fewer exclusions, would more efficiently and effectively identify the truly needy among persons who are aged, blind, or disabled. Also, the increases in the resource limits would be sufficient to assure that currently eligible persons with resources which are excluded would not be made ineligible due to the elimination of the exclusions. These changes are among the top four priorities of a majority of the experts.

ESTIMATED COST

[In millions]

Fiscal year	SSI Program	SSI administrative	Medicaid Program
1993	$55	$40	$75
1994	191	100	265
1995	215	10	315
1996	236	10	365
1997	257	10	420

* * * * *

Time-Limited Resource Exclusions

Nearly all of the experts who expressed an opinion favor making all of the time-limited exclusions available for 12 months. This would recognize that there are certain situations in which it is reasonable to allow individuals time to dispose of certain resources, and, at the same time, make the program easier for the public to understand and easier for field offices to administer.

ESTIMATED COST

[In millions]

Fiscal year	SSI Program	SSI administrative	Medicaid Program
All	Negligible	Negligible	Negligible.

* * * * *

Treatment of Excess Resources

Most experts support a change in the method for calculating overpayments so that the amount considered overpaid would never exceed the maximum amount that the person's resources exceeded the resource limit. This would alleviate an unreasonable effect of current rules which require that a beneficiary request and justify waiver of an overpayment amount in excess of the amount by which his/her resources exceeded the limit.

ESTIMATED COST

[In millions]

Fiscal year	SSI program	SSI administrative	Medicaid program
1993	$3	Negligible	Negligible.
1994	3	Negligible	Negligible.
1995	3	Negligible	Negligible.
1996	3	Negligible	Negligible.
1997	3	Negligible	Negligible.

* * * * *

Parent-to-Child Deeming of Resources

A majority of experts supports a change in regulations governing deeming of resources from a parent to a child. The change would provide a resource allocation of $2,000 per ineligible child in the household. This would recognize the parents' obligation to provide for needs of other children in the household.

ESTIMATED COST

[In millions]

Fiscal year	SSI program	SSI administrative	Medicaid program
1993	$7	Negligible	(*)
1994	11	Negligible	(*)
1995	12	Negligible	(*)
1996	13	Negligible	(*)
1997	14	Negligible	(*)

(*) Unable to estimate.

* * * * *

Chapter IV—Disability & Work Incentives

A. Preamble to Chapter

The Historical Perspective

National policy has moved slowly but steadily in the direction of providing broad-based help in solving the problems of people with disabilities—including problems related to employment. This chapter is devoted to changes in practice and law which the experts believe will contribute to the solution of vital problems.

The first Federal step toward assisting those with disabilities came with the 1950 enactment of a Federal-State grant program called Aid to the Permanently and Totally Disabled. This program, under title XIV of the Social Security Act, had a minimum age limit of 18. Title XIV was followed in 1956 by enactment of the original title II disability social insurance provisions; those provisions covered only disabled workers who were age 50–64 and had substantial recent work histories, plus coverage for certain disabled adult children.

The following years saw legislation to eliminate the age requirement in the insurance program and eventually to establish SSI. The latter had the effect of joining SSI to the social insurance programs to form a national income maintenance safety net for the aged and blind as well as for those with disabilities. As recently as 1990, the U.S. Supreme Court, by its decision in *Zebley* v. *Sullivan*, ensured inclusion in the SSI program of all needy children with disabilities while Congress' passage of the Americans with Disabilities Act, which prohibits discrimination against persons with disabilities, closed many of the remaining gaps.

The experts have endeavored to express their views in a manner that is consistent with the ever-broadening approach taken in congressional and judicial actions over the years and especially within the past decade.

More Recent Legislative/Judicial Actions and Their Effects

By law, State agencies (called disability determination services), under contract to SSA, make medical determinations of disability. During the Chairman's visit to some of these agencies, their staffs reported significant changes in the adjudication of disability cases. They said that, when the SSI program began in 1974, they were taught to adjudicate claims with the presumption that a claimant was eligible when the preponderance of evidence so indicated. They also reported that subsequently it had become the responsibility of the claimant to establish eligibility beyond any doubt.

It is true that data reflect a decrease in SSI program disability allowance rates between 1977 and 1982. However, in 1982, the allowance rates began to rise and by 1991 were nearly back to their 1977 levels. (See Appendix i to this chapter for actual figures.) Although specific causes of these variations have not been identified with certainty, the continuing upward trend of the period 1982–1991 is consistent with a series of Federal court decisions and congressional actions which took an increasingly comprehensive view of the meaning of disability and of how to arrive at decisions concerning its existence. It is a trend endorsed by a majority of the experts.

The Federal Courts

The period from 1981–1991 saw a number of U.S. district and circuit (appeals) court decisions which had such significant results as legislation on medical improvement; a ruling clarifying agency policy on evidence of pain; new regulations on evaluating disability in children and in widows/widowers; expedited processing of claims based on AIDS/HIV infection; and changes in the way SSA evaluates mental impairments.

Court decisions, combined with legislative history, also resulted in SSA's becoming the first Federal agency ever to publish regulations governing its policies on formal acquiescence with U.S. circuit court decisions which are not consistent with existing national policy. Under regulations signed by Secretary Sullivan, "acquiescence rulings" apply within the circuit(s) involved in the litigation. This can result in different policies in different parts of the country, a situation which can be resolved judicially only if the Supreme Court takes jurisdiction. The situation can also be resolved by the Secretary's declaring that one of the circuit court decisions will become national policy. The experts heard some public testimony on acquiescence and, as a result, it is believed to be important that all concerned understand that a new policy is now in effect. The experts are supportive of all efforts to clarify and formalize SSA's acquiescence policy.

The Congress

Some of the litigation described above was relevant to significant congressional actions over this same decade:

The Social Security Disability Amendments of 1980. Important provisions included work incentives, some of which applied to initial claims (and so may have affected allowance rates) while others were restricted to SSI posteligibility situations. One provision established a new section 1619 of the Social Security Act which allows working SSI recipients to maintain eligibility for SSI and/or Medicaid despite performance of substantial gainful activity. (For more information, see part C below.) The 1980 amendments also modified the requirements for "deeming" parental income and resources to be available to a blind or disabled child and authorized the government to pay for medical evidence and certain travel expenses incidental to required medical examinations.

The Social Security Disability Benefits Reform Act of 1984. These amendments established new requirements relating to cases involving mental impairments, consultative examinations, and medical records. They also established a new medical improvement standard for determining continued disability. In addition, the conference report on these amendments was instrumental in the formalization of SSA's policy on acquiescence, described above under "The Federal courts".

B. Disability

Background Information

Disability caseloads in SSI. The category of "disability" is the largest and fastest growing of the three SSI eligibility categories (the other two being "age" and "blindness"). Since the program began in 1974, there has been an overall growth of approximately 169 percent in its disability caseload. For 1993, the President's budget projects an increase in SSI disability claims of nearly 59 percent just since 1989. It also projects a backlog of 1.4 million SSI and social insurance disability cases by the end of 1993. While the growth began early in the program, there has been a recent surge. One result of that surge is a substantial backlog, due in large part to lack of adequate staff, in many of the State disability determination services which, by law, make medical determinations for SSA for which they are reimbursed solely with Federal funds.

Relationship of SSI disability to disability social insurance. As enacted in 1972, the SSI disability program rested on the same basic concepts which underlay the disability social insurance program enacted nearly two decades earlier. Specifically, it was intended that the "disability test" for

SSI and for the disability insurance program be essentially the same so that SSI payments could more easily serve to supplement income for those persons whose disability insurance benefits, in the absence of significant other income, were low or nonexistent.

Despite the intended overlap, the two disability programs serve what are often significantly different segments of the population with disabilities. The social insurance disability provisions relate to people who have significant work histories. The SSI disability program, on the other hand, assists persons who are disabled and are in need, regardless of their work histories. Therefore, while conformity between the two programs is desirable in many respects, total parallelism may not be appropriate. Nevertheless, as testimony pointed out, differing rules can be confusing, particularly for those who may be eligible under both programs. For example, SSI offers special assistance and incentives to people who work despite being blind or disabled, while work at a substantial level can result in complete loss of benefits under the disability insurance program.

Some characteristics of the SSI population with disabilities. The nature of the SSI population whose eligibility is based on disability (but not blindness) has changed significantly over the program's eighteen years of operation. For example, children under age 18, none of whom would have been eligible under the pre-1974 Federal/State programs unless they were blind, now constitute 13 percent of SSI recipients with disabilities. In addition, more than 2 in 3 of all adult recipients are under age 50 (compared with 1 in 5 in 1976). This means that, on the average, adult recipients under 65 have become younger.

Areas Where Issues Arise

Definitions. The statute defines "disability" as the inability to engage in any "substantial gainful activity" by reason of any medically determinable physical or mental impairment(s) which can be expected to result in death or which has lasted or is expected to last for a continuous period of not less than 12 months.

Note: The SSI statute categorizes the blind separately from those with other disabilities; therefore, discussions of "disability" in the SSI program do not apply to the blind unless specifically stated otherwise.

The Secretary defines substantial gainful activity as any significant physical or mental activity in employment or self-employment. Generally, earnings above a specific amount function to delineate whether a person is able to work and, therefore, whether s/he is disabled. Originally a flat $50 per month, the substantial earnings figure is now $500 after deducting the cost of impairment-related work expenses and disregarding the value of earnings subsidies. For purposes both of disability social insurance and of SSI disability initial claims, work at or above the specified level means that the worker is not disabled. Thus, a person who is working and earning above $500 cannot become eligible in the first place under either program.

Unlike the disability social insurance program, once SSI eligibility has been established on the basis of disability (and assuming medical improvement has not occurred), work has a direct effect on SSI posteligibility situations only from the standpoint of benefit offset due to countable income. That is, SSI payments are offset $1 for every $2 of earned income after applying appropriate income exclusions. However, work can be a sign of medical improvement and may trigger a review of continuing disability.

Disability claims process. Claims for SSI disability benefits are usually initiated through applicant contact with a teleservice center. The teleservice center, in most instances, mails a Disability Report form to the claimant for completion and schedules an interview at the local field office. A field office claims representative conducts the interview in person or by telephone. The interview consists of completing the basic application forms, reviewing them with the claimant, and obtaining permission to contact any treating sources. The claims file then goes to the State disability determination services for review and a determination concerning disability. Although they are State organizations, the disability determination services are funded by SSA and use SSA rules on disability.

Presumptive disability. It is possible to make SSI payments based on a presumption of disability or blindness, even though a formal medical determination has not yet been made, provided the claimant meets all other eligibility requirements. This cannot be done under the social insurance, or title II, provisions of the Act. These payments can be made for no more than 6 months. They do not have to be repaid even if the later formal determination is that the presumption was erroneous and the claimant is not disabled or blind.

A presumption of disability may be made by a field office claims representative when there are readily observable severe impairments such as amputation of extremities. The field offices also have the authority to make a finding of presumptive disability for claimants with HIV infection whose disease manifestations are of a severity listed in the regulations. In addition, presumptive disability findings may be made for any claimants by the examiners in the State agencies when available medical and other evidence indicates a high probability of disability.

Very young children. In establishing medically determinable impairments in very young children, SSA gives greater weight to the functional impact of impairments than to a precise definition or naming of their causes. Some children are too young to be tested formally to establish laboratory findings (e.g., to establish a precise reading of visual acuity), and it may not even be possible to attach a specific diagnosis to a recognized medically determinable impairment. For these children, medical findings are often presented in terms of the child's functioning in relation to age. In these cases, once it is established that there is a medically determinable impairment, SSA makes a disability determination based on all available evidence about the child's development and functioning, on knowledge of the course of the disease or disorder (if a diagnosis has been established), and on informed clinical observation and judgment.

As of May 1992, under new childhood disability regulations (to implement the Supreme Court's decision in *Zebley*), the initial allowance rate for children age 5 and under was 65.1 percent of the applications filed for those in this age group. Children under age 1 (the hardest to test) were being paid at the initial decision level at a rate of 75.6 percent.

Appeal of disability decisions. Each time a decision is made on an initial claim for benefits, or on continued eligibility, a written notice is sent to the individual. An individual who does not agree with the decision has the right to appeal. There are three appeals steps in the administrative review process and an individual usually has 60 days from receipt of a notice to appeal the decision.

1. If dissatisfied with the medical decision made by a State agency, an individual can request reconsideration. This is a review of all available evidence by State employees other than the team who made the initial decision. Reconsideration usually does not involve a personal interview with the individual.

2. An individual who is not satisfied with reconsideration results may request a hearing before an

administrative law judge. Such a hearing does involve a face-to-face interview and may also involve a representative for the individual as well as witnesses and new evidence.

3. The third step for a dissatisfied individual is to request a review of the administrative law judge's decision by the Appeals Council. If the request is granted, the Appeals Council will issue a decision or will remand the case to the administrative law judge. Also, the Appeals Council, on its own motion, may decide to review a hearing decision which is not appealed. Whatever it does, the Appeals Council sends the individual a notice explaining the action. If still dissatisfied, the individual may bring action in Federal district court.

Time limits on disability claims and appeals. There are no statutory time limits applicable to SSA actions with respect to initial disability decisions or to most decisions on claims under appeal. Claimants, who have 60 days to file appeals at each of the three levels described above, may have a long wait for a final decision.

Experts' Discussion of Disability Issues

Definitions. All of the experts who took a position in this area agreed with public commenters that, for SSI purposes, the definition of "substantial gainful activity" should be changed to recognize that persons with disabilities may work and also become eligible for SSI. The experts said that an SSI individual who works by virtue of receiving significant support services should not be viewed as engaging in substantial gainful activity. However, the SSI means tests (limits on income and resources) would remain in place and earnings could result in ineligibility if countable income (or resources) exceeded the limit. While the experts cited on-the-job attendant care and job-related support services as examples of "significant support services", they did not wish to limit the scope of the term by suggesting a specific definition.

One of the experts submitted for consideration an option addressing the definition of "disability" itself. (For more information, see appendix ii at the end of this chapter.) This option urged use of functional measures of mental/physical impairments—not substantial gainful activity—to define disability in both the SSI and the social insurance programs.

The expert offering the option pointed out that this is essentially what SSI already does in determining childhood disability as well as blindness and said it should be viewed as important to have a better parallel between the SSI and social insurance programs in order to deal equitably with the "notch" effect. This effect, which occurs under current rules when a social insurance program beneficiary (under title II) works, is as follows. So long as the beneficiary's earnings are below the substantial gainful activity level, there is no reduction in insurance benefits. However, if the beneficiary completes a trial work period and begins to work at a level that constitutes substantial gainful activity, s/he loses all social insurance cash benefits rather than encountering a gradual reduction as would be the case under SSI.

A number of the experts agreed with the philosophy outlined above but were concerned about the possible impact on the administration of the disability social insurance program. They pointed out that, unlike SSI, the social insurance disability program does not apply any means limitation in the form of an "income" test or other mechanism. Most of them agreed that a feasibility study would be a better course. By way of clarification, one of them noted that it should be made clear that this option does not contemplate relying solely on medical listings to establish disability since that could be a more rigorous test than applies under current policy.

In their discussion, the experts took particular note of repeated testimony concerning the need to update medical criteria used to determine disability of persons with Parkinson's disease. The experts learned that SSA was reviewing its neurological Listing of Impairments and that the export group established for that purpose included a specialist in Parkinsonian syndrome. Therefore, the modernization experts concluded that further consideration on their part was not necessary.

In response to some public comments on the July 31, 1991 **Federal Register** issue paper publication, the experts considered a change in the definition of disability to encompass those not fully functional but not fully disabled. Most of the experts said they were not prepared to endorse such a program. A number of the experts, however, indicated their strong support for a "functional" test of whether or not a person is disabled as contrasted with the continuation of a "work" test.

Disability claims process. The experts acknowledged the many public comments concerning need for specially-trained staff to conduct informed, sensitive initial disability claims interviews in order to provide the State agencies with claims information that is both complete and accurate. The experts said that this kind of specialized staff would contribute significantly to faster, more accurate disability determinations. In this context, the experts considered whether it would be better for such staff to be attached to the SSA field offices or to the State disability determination services and whether the actual interviews should be moved from field offices to State agencies.

A number of the experts expressed the view that the real problem was the budget-driven underfunding of agency operations. This, they concluded, results in a chronic lack of resources necessary to do a quality job. These experts said that, without added resources, lasting improvements are not possible no matter how much effort is directed toward altering administrative processes or reassigning priorities which, in turn, can only reduce backlogs at the expense of other program necessities. (For more information, see chapter VI.)

A majority of the experts favored keeping responsibility for initial disability interviews in the field offices provided funding were made available for intensive trainings of their staffs in disability claims-taking. The experts preferred use of field offices because this would keep intact their traditional responsibility for maintaining a full and continuing relationship with each claimant whereas the State agency responsibility is that of making medical determinations. They pointed out, too, that the greater number of field offices makes them more easily accessible to the public. The experts also noted that, prior to SSA's staff downsizing, field offices had had disability specialists, similar to the kind of staff under discussion, and concluded that a return to such staffing would be the most appropriate route to faster, more accurate disability determinations.

A majority of the experts also said that using State agency staff to perform the interview function, even if those staff were outstationed in SSA field offices, could further overextended State staffs and change their long-standing basic role of making medical determinations. One expert, who preferred the majority view but found use of State agency personnel acceptable, said that the most important thing was having sufficient personnel with adequate specialized expertise, and not whether these staff are assigned to field offices or State units. One expert who disagreed with the majority was concerned that the workload would be too much for field offices to absorb without funding for a new, specialized staff and questioned the need to build the disability determination services'

kind of expertise at some other level of the organization.

Very young children. The experts considered a number of public comments concerning the need for disability criteria that would more easily permit an assumption of disability in very young children, thus providing early access to Medicaid in most States. They recognized that SSA does not necessarily follow the same process used to determine disability in adults because the emphasis for children is on whether their functioning is age-appropriate. A majority of the experts concluded that SSA should develop appropriate criteria for making an assumption concerning the existence of disability in children under the age of 4. They said that payments based on such an assumption should not be limited to the 6-month period allowed under the existing "presumptive disability" provision but, like the existing presumptive payments, they would not be overpayments when and if the children were found not to be disabled based on later testing and diagnosis.

Appeal of disability claims. A number of the experts expressed support for the principle of offering a claimant a face-to-face interview prior to denying a claim based on disability; they also supported the concomitant elimination of the reconsideration level of appeal. These experts were strongly opposed to the current procedures which do not provide claimants with the opportunity to be seen. One expert stated that it was "morally unacceptable * * * that there are people who are eligible for this program who are not getting it simply because the procedures basically freeze them out."

Time limits on disability claims and appeals. A majority of the experts favored establishment of 90-day time limits, not only for completing SSI cases under appeal, but also for making initial determinations on new SSI claims based on disability. They agreed that failure to reach a decision within the prescribed time should mean that SSI payments would begin without a final determination and that any benefits paid on this basis would not later become overpayments even if an individual were later determined not to be disabled.

One expert proposed, and most of the others agreed, that any time limits enacted should be studied after four years of experience with them.

Recapitulation of Experts' Opinions on Disability

Option	Experts supporting
Definitions:	
1. Change the definition of "substantial gainful activity" in the SSI program to recognize that persons who work by virtue of substantial support services (such as on-the-job attendant care, use of a job coach in a sheltered employment situation, or employer accommodations which create a highly specialized environment) are not performing substantial gainful activity and so are still disabled	19
2. Study the feasibility of: (a) Eliminating use of substantial gainful activity for determining disability in both the SSI and the disability insurance programs; and (b) formulating disability criteria in terms of being disadvantaged in participating in major life activities, of which work may be one. This study would be undertaken immediately and completed as soon as possible	17
3. Change the definition of "disability" to cover those neither fully functional nor fully disabled under existing rules	1
Disability claims process:	
1. Use specially trained disability experts assigned to field office staffs to conduct initial disability claims interviews	16
2. Use State disability determination services staff, outstationed in SSA field offices, to conduct initial disability claims interviews. (This would provide claimants with a face-to-face interview as described below in connection with appeals.)	2
Very young children:	
1. Develop appropriate criteria for making an assumption concerning the existence of disability in very young children. Permit continued payment, based on such an assumption, up to the age of 4 without creating an overpayment even if later testing and diagnosis result in a finding that the children are not disabled	14
Appeal of disability decisions:	
1. In both the SSI and the insurance programs: (a) eliminate the reconsideration level of appeal; and (b) provide claimants the opportunity for face-to-face interview with the decisionmaker prior to issuing a denial based on a disability issue	17
2. In both the SSI and the insurance programs, eliminate the reconsideration level of appeal in disability issues but without adding a face-to-face predenial interview	1
Comment: One expert, who did not take a position on this issue, suggested, as a means of controlling backlogs and costs, giving applicants written notice of pending denials and offering the opportunity to present additional medical evidence within a specified timeframe	
Time limits on disability claims and appeals:	
1. Establish 90-day time limits which, if exceeded, would result in benefit payments which would not be considered overpayments even if the recipient were later found ineligible. Study the effects after four years of experience.	
Apply such limits to:	
a. making initial determinations on new SSI claims on the basis of disability	13
b. completing cases at the administrative law judge level of appeal	15
Comment: One expert, who supports a time limit but does not support this option, says that considered action at this level of appeal requires 120 days	
c. completing cases at the Appeals Council level of appeal	15

C. Work Incentives

Background Information

Role of work incentives. Work incentives play a dual role in the SSI program. First, they offer the working individual emotional and psychological reward in the form of a sense of independence and self-worth. In addition, they seek to provide a meaningful net increase in the worker's income, thereby reducing or eliminating reliance on public and private assistance. In order to be successful, work incentives must overcome work disincentives in the form of fear of losing needed assistance before someone is secure in believing that s/he has the capacity for self-support. The beneficiary must also be assured that, if his/her job terminates, s/he will not, in many instances, go through the long process of reestablishing eligibility for disability payments.

While less than 3 percent of SSI recipients (almost none of them disabled) received income from working in 1974, by September of 1991 the figure had risen to more than a quarter of a million representing 6.3 percent of all recipients with disabilities. Of the disabled who were working in 1991, some 50,000 were benefiting from special work incentive provisions passed by the Congress and available figures show a strong upward trend in this area.

Section 1619 provisions. The SSI statute has certain work incentives which do not affect the benefit amount. The most significant of these provisions appear in section 1619 of the Social Security Act and allow working SSI recipients to maintain eligibility for SSI and/or Medicaid. In 1982, the first year in which the provisions were effective,

approximately 5,800 people benefited from them. In September 1991, the number had risen to 40,443—an eightfold increase.

To establish SSI eligibility on the basis of disability, a person cannot be performing substantial gainful activity (see part B above). However, a person who has received at least one month of "regular" SSI benefits can qualify to receive "special" benefits under section 1619(a) when earnings indicate substantial gainful activity—provided s/he has not recovered medically and still meets all other SSI requirements.

If a working SSI recipient's total income becomes too high to allow a payment, the recipient may continue to qualify for Medicaid under section 1619(b). To qualify for Medicaid, the person's unearned income must be low enough that the person would receive an SSI payment if s/he were not working. The person must also need Medicaid in order to work and not have enough earnings to replace certain benefits s/he would receive absent the earnings (i.e., SSI, Medicaid, and publicly-funded attendant care).

Special income and resources provisions. In addition to the SSI work incentives described above, there are many others which take the form of exceptions to the regular income and resource counting rules. Under the work incentive rules, portions of a working recipient's income and resources are excluded. Specifically, the Act allows for exclusion of:

The earned income of a child who is a student, subject to limits set by the Secretary (currently $400 per month and $1,620 per year).

The first $65 of a person's earned income, plus any portion of the $20 general income inclusion not applied to the person's unearned income.

Amounts of the earned income, of a person who is disabled, used to pay for certain work expenses the person has because of the disability. These expenses are known as impairment-related work expenses and may include things like special equipment or certain transportation costs.

Half of a person's remaining earned income after the above exclusions are applied.

Any portion of the earned income, of a person who is blind, which is used to pay expenses related to earning the income. These are called blind work expenses. The expenses do not have to be related to the person's blindness; they only have to be work-related. Examples of these expenses include taxes, dog guide expenses, meals bought during work hours, etc.

Income (earned or unearned) and/or resources, which a person who is blind or disabled, uses to fulfill an approved plan for achieving self-support. This is a plan written specifically for the individual. The plan allows the person to set aside income or resources for a period of time to pay for things needed to reach a job goal. A plan may be used to pay for things like training, education, job coaching, equipment, etc.

Areas Where Issues Arise

State Medicaid rules and 1619. In most states, SSI eligibility, including eligibility under section 1619, automatically makes a person eligible for Medicaid. However, a few States make their own determinations of Medicaid eligibility using criteria that are more restrictive than those used under SSI. In such States, a working recipient could lose Medicaid eligibility because of earnings before those earnings reach the substantial gainful activity level. Such States are only required to continue Medicaid under section 1619 if the person was eligible for Medicaid under State rules in the month prior to attaining 1619 eligibility. Therefore, the 1619 provisions offer only limited protection to residents of those States.

Deeming rules and Medicaid eligibility under 1619(b). In determining continued Medicaid eligibility under section 1619(b), SSA uses the same methodologies that apply to regular SSI and Medicaid eligibility determinations. Therefore, a working person's unearned income is considered to include any income deemed available from an ineligible spouse. In some cases, this means that the worker who is blind or disabled does not qualify for continuation of Medicaid even though his/her own income alone is low enough to meet the requirements.

State supplementation and 1619. States are not required to make supplementary payments to someone who receives benefits under section 1619(a). Currently, most States which supplement regular SSI payments also supplement section 1619(a) payments. Eight do not.

Disability definition and 1619. The discussion of definitions under part B above explains the "notch" effect which occurs when a person's social insurance disability benefits result in too much income for him/her to receive SSI payments. If this person should begin to work at a level considered indicative of substantial gainful activity, s/he would no longer be disabled and would lose all disability insurance benefits. At the same time, s/he could not become SSI eligible because the SSI statute does not permit use of section 1619 provisions in adjudication of initial claims; the provisions apply only in posteligibility situations.

Experts' Discussion of Work Incentives Issues

Need for expanded work incentives: A majority of the experts said that SSA should begin at once to seek legislation authorizing use of expanded work incentives (detailed below under option 1). An even larger majority favored SSA's conducting a national demonstration in order to make the expanded incentives available as quickly as possible. Most of these experts also supported seeking legislation to make the incentives permanent—ideally without any "moratorium" on the incentives between completion of the demonstration and implementation of permanent provisions. They said that demonstration results should be helpful in establishing the value of such legislation.

Recognizing that it may take more time to obtain legislation than would be possible to devote to a demonstration, most of these same experts also favored some kind of "grandfathering" arrangement so that earnings would not cause demonstration participants to lose benefits when the project ended. One expert commented that, without grandfathering, the demonstration cannot truly test the incentive value of the prospect of retaining the incentives.

Time limits for approval of self-support plans. One of the experts said that, all too often, SSA field offices do not make timely decisions on plans for achieving self-support which are submitted for approval. The result can be inordinate delays in eligibility. All of the experts taking a position on work incentives agreed that there should be a 30-day time limit for such decisions and that, lacking a decision, the proposed plan should be deemed approved; i.e., resultant payments, which should begin at once based on application of the plan exclusions, would not become overpayments if the plan were subsequently disapproved.

State rules and Federal "disability" definitions. A majority of the experts expressed concern over, and supported correction of, two technical problem areas involving other programs. One of these problem areas was national while the other was limited to certain States. The areas were: (a) Loss of social insurance disability benefits due to work which also prevents initial SSI eligibility, despite having little or no income; and (b) lack of State

supplementation or Medicaid eligibility for persons who are, or are considered to be, SSI-eligible under section 1619 (a) or (b). All of the experts who expressed a view on work incentives said that efforts to work should be encouraged as much as possible. A majority of them concluded that there was a need for changes in the rules governing interprogram relationships to permit initial SSI eligibility despite performance of substantial gainful activity and to provide Medicaid and State supplementation to eligibles under section 1619.

Nonselected options. The experts considered, but did not support, the idea of establishing a work attempt period during which all of an individual's earnings would be excluded. It was their view that recipients who work should recognize the effect of that work and earnings on their benefits.

There was also discussion of allowing a working recipient to put some earnings in an excluded "independence account" which could be used only for specified purchases, such as a home or a vehicle. Two experts supported this idea but the others who took a position said that it was not necessary in light of the options for increasing the resource limits (see chapter III).

Recapitulation of Experts' Opinions on Work Incentives

Option	Experts supporting
1. Begin at once to seek legislation, where needed, to authorize permanently all of the following work incentives	12
a. Raise the earned income exclusion from $65 to $200 and reduce the SSI benefit by $1 for every $3 (instead of the current $1 for every $2) of earned income over $200. The increased exclusion amount would be intended to compensate the recipient for his/her work expenses. Therefore, this exclusion would replace all of the existing earned income exclusions except for the student earned income exclusion and plans for achieving self-support. Individuals whose actual work expenses are more than the amount of earnings excluded (i.e., more than $200 plus two-thirds of the remaining income) could have an individual exclusion computed which would consider the person's actual work expenses. All work-related expenses would be excluded, regardless of whether they are disability related, similar to the current blind work expense exclusion, and this exclusion would be available to all working SSI recipients.	
b. Eliminate continuing disability reviews triggered by work activity and defer scheduled medical reviews for working recipients for 3 years after beginning work.	
c. Treat unemployment compensation, workers' compensation, sick pay, and other similar benefits received because of recent work activity as earned income rather than as unearned. *Comment:* Some experts question whether treating these kinds of benefits as earned income would be an incentive to work.	
d. Eliminate the regulatory time limit for completing a plan for achieving self-support.	
e. Make individuals who receive benefits based on age eligible for all work incentives. *Comment:* The experts recognize that, even under present conditions, the nation is confronted with worker shortages in certain occupations which could be filled by older persons. These shortages are likely to increase in the future.	
2. Simultaneous with the legislative effort in option 1, conduct a national demonstration of the work incentives listed in that option. Use the demonstration results to reinforce legislative efforts. *Comment:* Six of those who support a work incentives demonstration are withholding judgment on specific legislative proposals until demonstration results are available. Another expert favors seeking legislation without a demonstration.	18
3. Provide a "grandfathering" arrangement for demonstration participants so they can continue to receive benefits upon expiration of the project (assuming that legislation is not yet in place). *Comment:* Five of the experts who support a demonstration do not support a grandfather provision while another expert, who does not favor a demonstration, views a grandfather provision as essential if a demonstration were to be conducted.	14
4. Disregard deemed income of an ineligible spouse when determining continued Medicaid eligibility under section 1619(b).	18
5. Require SSA to make a decision on a plan for achieving self-support within 30 days. Lacking a decision within that time, assume the plan to be acceptable.	18
6. Require States which supplement regular SSI payments to supplement payments under section 1619(a).	18
7. Provide Medicaid under section 1619 to all working persons who are blind or disabled in States not using SSI criteria for Medicaid eligibility purposes.	17
8. Provide SSI benefits for individuals who lose their social security benefits due to substantial gainful activity.	17
9. Do not permit States to count resources set aside under a plan for achieving self-support when determining Medicaid eligibility using their own rules.	14

D. Summary of Options Preferred by a Majority of Experts

Many persons who are truly disabled fail to qualify for disability benefits. Many who are on the disability rolls fail to have the opportunity of realizing their highest possibilities in the work force.

The changes in this chapter which are supported by a majority of the experts deal with both problems. They are designed both to add to, and to subtract from, the beneficiary rolls numbers of persons with disabilities.

The options that the experts favor on the definition of disability support both goals.

The experts favor a change in the definition of "substantial gainful activity" which the SSI law requires as a test of disability. This change would recognize that working persons are disabled if they are unable to work without support services such as on-the-job attendant care or job-related support services such as those furnished through transitional employment programs for persons with mental illness.

The experts want to encourage persons with disabilities to work. The present "substantial gainful activity" definition is seen as detrimental to that objective. These experts see it as highly desirable to encourage work, particularly on the part of persons with disabilities so severe that they are able to work only by virtue of special supportive services. The experts want to see these people qualify for, and continue receiving, disability payments until such time as their total income exceeds the SSI standard, assuming there is no medical recovery before that time. Therefore, they support encouraging persons with disabilities to use their abilities to work instead of encouraging them not to work.

In addition to the SSI change described above, a majority of the experts would like to see the Social Security Administration undertake a study of the feasibility of eliminating "substantial gainful activity" as a test of disability in both the SSI and disability insurance programs. In place of ability to work, they wish to see tested a disability standard based on inability to perform certain mental or physical processes in order to participate in major life activities, of which work may be one. Such a change in definition might add some persons to the disability rolls. This study should begin immediately and be completed as soon as possible.

Next, the preferred options deal with a consideration of the manner in which applications from disabled persons are

handled. They are changes which, if adopted, would undoubtedly add persons to the beneficiary rolls.

A majority of the experts supports the view that claims interviews should be conducted initially by trained disability experts who are SSA field office employees rather than by State disability determination services interviewers outstationed in field offices. These experts are convinced that it is sound procedure to equip the 1,300 SSA field offices with trained personnel who are able to deal with the full range of the SSA-administered income maintenance programs.

While conducting initial disability interviews in field offices is the procedure currently in use, the experts are concerned that the lack of adequate staff prevents SSA from conducting in-depth, high quality interviews with individuals who have disabilities.

A majority of the experts favors a requirement for a face-to-face interview before a claim at the initial level can be denied on the basis of disability. Such an interview can prevent the rejection of a claimant who is clearly eligible and would establish an essential step in providing due process.

The same majority of experts has paired the face-to-face interview prior to a denial with the elimination of the reconsideration level of appeal which would no longer serve a significantly useful purpose. An appeal of a denial after a face-to-face interview would go directly to an administrative law judge.

A majority of the experts concludes that SSA should develop appropriate criteria for assuming the existence of disability in a very young child. These experts favor continuing payments based on such an assumption (until the child reaches four or, if sooner, until a formal disability determination is possible) without creating an overpayment. These experts believe that early access to cash benefits and to medical care is essential in helping these children become adults who are, as much as possible, healthy and productive.

The experts are very much concerned with the current backlog of 762,000 disability cases. This is estimated by the President in his budget message for the fiscal year 1993 to be 1.4 million at the end of that year. The experts want to commend Commissioner King for the increase in the processing rate for these cases. However, if the estimate in the 1993 budget proves valid, they see it as a reasonable assumption that a doubling of the backlog would have a material effort on processing time.

The experts are aware that Commissioner King, in testimony before the Congress, has stated that prevention of the projected significant backlog increase would require the processing of an additional 500,000 claims. That, in turn, would take 5,000 workyears at a cost of $500 million. This supports the experts' view (see Part B of Chapter VI) that the Social Security Administration staff should be increased, as a first step, by 6,000 people.

A majority of the experts believes that, if a claim on the basis of disability has not been decided within 90 days of filing, payments should begin. Such payments would not be regarded as overpayments should the applicant ultimately be found ineligible. The 90-day rule would apply to cases at the administrative law judge and Appeals Council levels of appeal as well.

Those favoring this option believe that it would encourage Congress and the Administration to obtain adequate staff, thereby preventing situations such as currently exist with large backlogs leading to significant delays in many claims for disability benefits.

Long delays often occur in appeals that are made to administrative law judges and to the Appeals Council. These delays are frequently due to a lack of resources. The procedures should be examined very closely to see if they can be shortened without affecting the high quality of decisions made by administrative law judges and the Appeals Council. The experts pointed out that justice delayed can be justice denied.

The number of appeals and the time it takes to handle them should be affected favorably by the Secretary's policy on acquiescence. The Chairman has examined the agreement in the *Stieburger* case in New York dealing with the policy of acquiescence. He believes the Department was wise in entering into the court-approved agreement with the plaintiffs. He believes further that the agreement is consistent with the Secretary's policy and could be applied to the rest of the country.

In addition to the change in the definition of disability, experts discussed how people could ultimately earn enough income to leave the rolls by providing an increasing number of the beneficiaries with the incentives they need to join the workforce. Here are some of the options.

A majority of the experts favors beginning at once to seek legislation to provide expanded work incentives in the form of increasing the monthly earned income exclusion to $200 plus two-thirds of dollars earned over $200; eliminating continuing disability reviews triggered by a return to work even on a part-time basis, and deferring scheduled medical reviews for workers for three years after work begins; treating benefits received because of recent work activity (e.g., unemployment compensation, worker's compensation, sick pay, etc.) as earned income rather than unearned income; eliminating the time limit for completion of a plan for achieving self-support and requiring action on a plan within 30 days or else the plan would be assumed to have been approved.

A majority of the experts also favors extending all work incentives to older persons as well as to the blind and disabled.

A larger majority of the experts supports conducting a national demonstration involving the work incentives described above while legislative efforts are under way. Most of the experts also support permitting demonstration participants to retain their demonstration incentives when the project ends if new legislative provisions are not yet in place.

With respect to Medicaid coverage in all States, a majority of the experts supports mandating the disregard of income of an ineligible spouse when determining Medicaid eligibility under section 1619(b). A majority also supports requiring States using more restrictive eligibility criteria than those applicable to the SSI program to disregard resources set aside under a plan for achieving self-support. They also support the provision of Medicaid to all working individuals who are eligible under section 1619.

In addition, there is majority support for required supplementation, by States which supplement benefits to recipients of regular SSI benefits, for those who receive "special" SSI benefits under section 1619(a). Finally, a majority of experts supports provision of SSI disability benefits to workers who lose their social insurance disability benefits due to substantial gainful activity, provided they have not recovered medically and that they meet the SSI income and resources limits.

All of the preceding opinions further reinforce the experts' support of the proposition that it is good public policy to encourage persons with disabilities to work. The disability program should have written into it incentives, not disincentives, for work.

E. Cost Estimates on Options Preferred by a Majority of Experts

Disability: Definitions

1. Change the SSI program's definition of "substantial gainful activity" to

recognize that persons who work by virtue of substantial support services are not performing substantial gainful activity and so are still disabled.

ESTIMATED COST

[In millions]

Fiscal year	SSI Program	SSI administrative	Medicaid Program
All	(*)	(*)	(*)

* Unable to estimate.

* * * * *

2. Study the feasibility of: (a) Eliminating use of substantial gainful activity for determining disability in both the SSI and the disability insurance programs; and (b) formulating disability criteria in terms of being disadvantaged in participating in major life activities, of which work may be one. This study is to be completed as soon as possible.

ESTIMATED COST

[In millions]

Fiscal year	SSI Program	SSI administrative	Medicaid Program
All	None	(*)	None.

* Unable to estimate.

* * * * *

Disability: Claims Process

Use specially trained disability experts assigned to field office staffs to conduct initial disability claims interviews.

ESTIMATED COST

[In millions]

Fiscal year	SSI Program	SSI administrative	Medicaid Program
1993	(*)	(20)	Negligible.
1994	(*)	(20)	Negligible.
1995	(*)	(20)	Negligible.
1996	(*)	(30)	Negligible.
1997	(*)	(30)	Negligible.

* Unable to estimate.

* * * * *

Disability: Very Young Children

Develop appropriate criteria for making an assumption concerning the existence of disability in very young children. Permit continued payment, based on such an assumption, up to the age of 4 without creating an overpayment even if later testing and diagnosis result in a finding that the children are not disabled.

ESTIMATED COST

[In millions]

Fiscal year	SSI Program	SSI administrative	Medicaid Program
1993	$8	$0	$5
1994	31	10	20
1995	35	0	20
1996	38	0	25
1997	42	0	25

* * * * *

Disability: Appeal of Decisions

In both the SSI and the insurance programs: (a) eliminate the reconsideration level of appeal; and (b) provide claimants the opportunity for a face-to-face interview with the decisionmaker prior to issuing a denial based on a disability issue.

ESTIMATED COST

[In millions]

Fiscal year	SSI Program	SSI administrative	Medicaid Program
All	(*)	(*)	(*)

* Unable to estimate.

* * * * *

Disability: Time Limits on Claims and Appeals

Establish a 90-day time limit which, if exceeded, would result in benefit payments which would not be considered overpayments even if the recipient were later found ineligible. Apply this time limit to making initial determinations on SSI disability claims as well as to completing cases at the administrative law judge and Appeals Council levels of appeal.

ESTIMATED COST

[In millions]

Fiscal year	SSI Program	SSI administrative	Medicaid Program
All	(*)	(*)	(*)

* Unable to estimate.

* * * * *

Work Incentives: Legislation

Seek legislation, where needed, to authorize permanently: (1) Increasing the earned income exclusion to $200 plus two-thirds; (2) eliminate continuing disability reviews triggered by work and defer scheduled medical reviews for 3 years after beginning work; (3) treat as earned income unemployment compensation, worker's compensation, sick pay, and similar benefits received because of recent work; (4) eliminate the regulatory time limit for completing a plan for achieving self-support; and (5) extend all work incentives to the aged.

1. Increase earned income exclusion:

ESTIMATED COST

[In millions]

Fiscal year	SSI Program	SSI administrative	Medicaid Program
1993	$149	$80	$140
1994	328	200	510
1995	351	20	605
1996	370	20	695
1997	388	20	805

2. Modify requirements for continuing disability reviews and scheduled medical reviews:

ESTIMATED COST

[In millions]

Fiscal year	SSI Program	SSI administrative	Medicaid Program
All	(*)	Negligible	(*)

* Unable to estimate.

3. Treat certain work-related benefits as earned income:

ESTIMATED COST

[In millions]

Fiscal year	SSI Program	SSI administrative	Medicaid Program
1993	$10	Negligible	Negligible.
1994	14	Negligible	Negligible.
1995	15	Negligible	Negligible.
1996	16	Negligible	Negligible.
1997	16	Negligible	Negligible.

4. Eliminate time limit for completing a self-support plan:

ESTIMATED COST

[In millions]

Fiscal year	SSI Program	SSI administrative	Medicaid Program
All	(*)	Negligible	(*)

* Unable to estimate.

5. Extend all work incentives to the aged:

ESTIMATED COST

[In millions]

Fiscal year	SSI Program	SSI administrative	Medicaid Program
All	(*)	(*)	(*)

* Unable to estimate.

* * * * *

Work Incentives: Demonstration

1. Conduct a national demonstration project involving all of the incentives listed above while seeking legislation.

ESTIMATED COST

[In millions]

Fiscal year	SSI Program	SSI administrative	Medicaid Program
All	None	(*)	Negligible.

* Unable to estimate.

2. Permit demonstration participants to retain incentives.

ESTIMATED COST

[In millions]

Fiscal year	SSI Program	SSI administrative	Medicaid Program
All	(*)	(*)	(*)

* Unable to estimate.

* * * * *

Work Incentives: Additional Legislation

1. Disregard deemed income of an ineligible spouse when determining Medicaid eligibility under section 1619(b):

ESTIMATED COST

[In millions]

Fiscal year	SSI Program	SSI administrative	Medicaid Program
All	None	Negligible	Negligible.

2. Require SSA to make a decision on a proposed self-support plan within 30 days or else assume it is acceptable and begin payments accordingly:

ESTIMATED COST

[In millions]

Fiscal year	SSI Program	SSI administrative	Medicaid Program
All	None	Negligible	Negligible.

3. Require States which supplement regular SSI payments to supplement section 1619(a) payments:

ESTIMATED COST

[In millions]

Fiscal year	SSI Program	SSI administrative	Medicaid Program
All	No Federal program cost and negligible State cost.	Negligible	Negligible.

4. Provide Medicaid under section 1619 to all working persons in States not using SSI eligibility criteria:

ESTIMATED COST

[In millions]

Fiscal year	SSI Program	SSI administrative	Medicaid Program
1993	None	Negligible	$10
1994	None	Negligible	15
1995	None	Negligible	15
1996	None	Negligible	15
1997	None	Negligible	15

5. Provide SSI benefits to those who lose disability social insurance benefits due to substantial gainful activity:

ESTIMATED COST

[In millions]

Fiscal year	SSI Program	SSI administrative	Medicaid Program
All	(*)	(*)	(*)

* Unable to estimate.

6. When States determine Medicaid eligibility using their own rules, do not permit them to count any resources set aside under a self-support plan:

ESTIMATED COST

[In millions]

Fiscal year	SSI Program	SSI administrative	Medicaid Program
All	None	(*)	Negligible.

* Unable to estimate.

Chapter IV, Appendix i

DISABILITY ALLOWANCE RATES—SSI ONLY

Fiscal year	Percent allowed		
	Initial	Reconsideration	ALJ
1977	47.7	21.1	45.0
1980	32.5	14.4	51.0
1982	29.4	11.2	46.0
1985	37.5	15.3	47.0
1990	41.1	18.9	56.0
1991	44.8	19.2	60.0

Note: The data do not reflect rates applicable to concurrent claims for SSI and disability social insurance benefits.

Chapter IV, Appendix ii

Definition of Disability

by Elizabeth M. Boggs

The July 1991 **Federal Register** issue paper included no specific reference to the disability definition used in the SSI program. However, two of the topics in that paper have direct bearing on the matter: Work Incentives and Substantial Gainful Activity.

In approaching this topic, it is well to recall Commissioner King's request that we review present practice in the light of the original intent of the SSI program. In doing so, a posture similar to that taken toward the Constitution may be helpful: Maintain the principles but interpret them in terms of contemporary conditions.

Principles Underlying 1974 Legislation

Among the relevant principles are:

1. Social insurance programs should increasingly become the basic universal guarantees of income replacement for workers and their dependents when they are not expected to work because of age or incapacity.

2. SSI should supplement social insurance for those among the elderly and disabled for whom social insurance benefits (together with other resources) are insufficient to assure a minimally acceptable standard of living.

3. The supplement should be sufficient to keep recipients out of "poverty". This would be the standard for individuals or couples having no other income.

4. For those retired or disabled workers who have contributed to their own retirements, whether through savings or through a public or private retirement system (including social insurance), a higher allowance would be effected through an unearned income disregard.

5. In principle, SSI was to complete a basic nationally uniform, uncomplicated underlying system of cash benefits (with associated medical benefits), with the States retaining authority and responsibility for fine tuning allocations to meet individual special needs, whether for cash or social services.

At that time and until the 1980s, Federal financial participation (FFP) in the States' costs of social services was closely tied in with eligibility for federally supported means-tested programs; these were locally administered with a substantial targeted Federal subsidy. Such State assistance, whether in cash or in kind (e.g., social or medical services), if based on need as State determined, was not to be counted as income for SSI purposes. In recent years this rule has been generalized so that contributed in-kind goods and services that cannot be applied or converted to food, clothing or shelter are disregarded regardless of source. The block granting of Title XX in the early '80s deprived SSI recipients both of their priority for federally-funded social services and of the open ending that permitted States to expand those services in proportion to evident need in the growing younger population.

Significant Changes Since 1974

Overall, the SSI system as set up in 1974 was designed primarily for people over 65. The manuals were written with them in the forefront. Seniors were then in the majority (58 percent) of all SSI recipients. The disability program was seen as largely composed of people over 50 who had found it necessary to retire early because of chronic illnesses, such as heart disease and arthritis. For them, as for those somewhat older, replacement of income and access to medical care appeared to be the highest priorities.

Today those receiving SSI (including federally-administered State supplements) based on being age 65 or older constitute only 28 percent of the total number of recipients. The median age of adults under 65 on SSI has declined significantly. In 1976 only one in five of all adult recipients was under 50 whereas today more than two in three fall in the younger group. The majority of those under 35 have been disabled since childhood and have little or no work history or credits; they represent an increased survivorship among children with conditions such as spina bifida, traumatic brain injury, and certain syndromes associated with moderate, severe, or profound mental retardation. In addition, the distribution of other etiologies of later onset has shifted significantly, with spinal cord injury and adult traumatic brain injury survivors being more numerous than in 1974. Chronic mental illness among young adults and, more recently, AIDS have further changed the picture. These younger people are not only not looking for nursing home care, they are actively resisting it. They would rather have a relatively small amount of cash in hand with which to purchase supportive social services such as personal assistance than depend on Medicaid for an institutional package. Clearly, stereotypes have to be changed to include new images while recognizing that the traditional populations are still with us.

Modernizing the Definition

The postulates laid down in 1974 required, among other things, that the definition of disability used in the new title XVI (SSI) be the same as that used under title II for Social Security Disability Insurance (SSDI). They have remained very similar but not identical. Although some people believe that the definition of disability should be more liberal for SSI than for SSDI, this discussion recognizes the merits of a single definition and seeks to remedy the dilemmas it creates in either system. When SSI was implemented in 1974, replacing the myriad State definitions with a uniform Federal one, there were already 15 years of Federal experience with the disability insurance (DI) definition and some revisions of it. These years have been followed by a further 15 years of refinement through regulation to interpret the statutory language concerning "physical or mental impairment" and "substantial gainful activity" (SGA). The former has provided us with a viable tool for an alternative definition using functional capacity; the latter (SGA) has become less and less useful as actual gross wages have become more and more distorted as measures of productive capacity.

The inappropriateness of both the concept of SGA and the use of a monetary value as an index has been increasingly apparent in the last decade as attempts have been made to adjust SGA (expressed as dollars of earnings) in the light of various forms of support or wage subsidy or accommodation for a person with a severe continuing disability who (with accommodation) can make a net contribution to the gross national product (GNP). These problems will only become worse as The Americans with Disabilities Act (ADA) is implemented. While the intentions are laudable, the rules for carrying them out have become a jungle, a direct challenge to the "simplicity principle". In addition, the levels of SGA that have been set over the years by a succession of DHEW and DHHS Secretaries have been well below the minimum wage, creating real problems for those who attempt to make a transition from no work to full employment. The disengagement of SGA as a criterion for an individual on SSI who attempts work while continuing to meet the medical criteria has been a major improvement in both principle and practice but it has not gone far enough.

On the other hand, the functional measures of mental/physical impairments now in use (functional limitations plus consideration of age, education and vocational factors—see 20 CFR part 404, subpart P, appendices 1—Listing of Impairments—and 2—Medical-Vocational Guidelines), although necessarily detailed (49 pages) and complex, are based on a relevant body of knowledge that has produced credible indicators of "work disability" derived from the (nonworking) individual's observable ability (or lack of it) to function in major life activities. These concepts have recently been validated in the successful compliance by SSA with the Supreme Court mandate to write the disability criteria for children in a manner equivalent to the "work disability" criteria used for adults. An additional example is provided in section 1614(a)(2) of the Social Security Act (Act) where blindness is considered separately from other disabilities and is defined entirely in terms of explicitly stated functional limitations, omitting any reference to SGA. (For purposes of Title II, earnings of blind beneficiaries are, in effect, limited by the same "retirement tests" that apply to the elderly.)

Recommendations

I propose to build on these findings to redefine disability (for both SSDI and SSI) in a way that will not significantly change the level of severity associated with the SSA programs but will permit and encourage more of the younger men and women with continuing severe impairments who want to work to do so without being worse off than when not working. While continuing on the rolls in some cases, they will draw down reduced benefits.

These incentives are made equally available to SSI recipients and applicants of all ages; however, experience has shown that people over 55 make relatively little use of them.

The effect of the proposal on the SSI program will be minimal in that it will adopt the same standard for initial eligibility as is now in effect for continuing eligibility of an individual who works despite continuing severe functional limitations. The extension of the same definition to initial and continuing eligibility for social security benefits based on disability will require some structural changes in title II as described below.

Basic Change

Eliminate references to "substantial gainful activity" in Title II and in Title XVI; reformulate the criteria for disability in terms of disadvantage in performing or participating in major life activities—of which work may be one. This step has already been taken, in effect, for SSI continuing eligibility purposes and is under consideration for initial award as well.

In order to secure adoption of this concept in the statutory definitions (sections 223(d) and 1614(a) of the Act), it will be necessary to consider the impact on SSDI. In the SSI program, as has already been demonstrated, even in the absence of a specified dollar limitation on SGA, benefits with earnings are self-limiting (by the formula for countable income) at a level that makes for a fairly smooth transition from reliance entirely on benefits to reliance entirely on earnings (or earnings plus other income). This effect is not found for substantial levels of SSDI benefits under title II. One of the major obstacles experienced to date for putting work incentives into title II comparable to those recently enacted for SSI (section 1619 of the Act) has been the recognition that the breakeven point (at which benefits are reduced to zero) for individuals with the highest earnings records would be unacceptably high unless a formula were introduced for gradual reduction in benefits as earnings increase, beginning well below the level protected by the presently specified SGA dollar limit. This would somewhat disadvantage some present SSDI beneficiaries who regularly earn something not far under $500 a month while

concurrently receiving full tax-free SSDI benefits without any reduction; disadvantaging any present beneficiaries is a step which members of Congress consider "off the table". Furthermore, a high breakeven point would tend to produce "induced filers". "Induced filers" are people with disabilities (who may or may not have heavy extraordinary disability-related expenses) who are well situated in good primary jobs where they have already accumulated generous Social Security credits and who (it is assumed) would, in the absence of an SGA limit, be induced to apply for SSDI benefits while continuing to work at the same or a similar job. These cases, although relatively rare, would require rather complex rules of the kind that we seek to avoid imposing on SSA. To come to grips with this issue, it would be necessary to differentiate between gross salary and net disposable income after legitimate disability-related expenses are assessed on an individual basis.

It is suggested that the appropriate place to counter these inappropriate incentives can be found in the IRS environment. A precedent has already been set for taxing some Social Security benefits and for calculating refunds owed to SSA by a retiree who has significant earned income. Annual calculations of individual medical expenses are also an IRS routine and similar protocols could be used to calculate disability-related costs that should be deductible by a disabled taxpayer in order to equalize his net income as compared to his peers. This arrangement could alleviate what is likely to become an increasingly burdensome task for claims representatives: calculating "real" (net) earnings on a monthly basis.

Additional Options

Option 1—Use the disability determination process to gather and record needed data about the nature and extent of functional impairments of individuals who qualify as disabled under title II and title XVI: The processes presently in place for determining the extent and severity of functional impairments associated with specified physical or mental conditions or disorders readily lend themselves to identifying also the extent of need for personal or other ongoing assistance of a nonmedical nature. Following the models used in practice by the US Public Health Service, three levels can be established: (a) Most severe—those requiring ongoing (frequent) assistance of another person in the activities of daily living; (b) very severe—those requiring some personal assistance but less frequently *or* those who require special transportation, special equipment, devices, vehicles, pharmaceuticals, adapted housing, etc., where maintenance and ongoing operation involve expenses substantially in excess of those experienced by nondisabled people; and (c) severe—those meeting the eligibility criteria currently in place as indicators of work limitation but who do not experience extraordinary need for ongoing nonmedical support.

Partly because of the increasing interest in maintaining people with disabilities in their own homes, the National Center for Health Statistics has in recent years given increased attention within its ongoing National Health Interview Survey to ascertainment of the prevalence of impairments in specific "activities of daily living" (ADL), primarily related to personal self care, and "instrumental activities of daily living" (IADL), primarily related to management of money, use of telephone, mobility outside the home and the like among people living in "households". Some of the results have been analyzed by Mitchell LaPlante (1988. Data on Disability from the National Health Interview Survey, 1983–1985. National Institute on Disability and Rehabilitation Research, U.S. Department of Education.) Among those age 18–69 reporting a limitation in amount or kind of work, about 7 percent reported that they needed personal assistance in IADL or ADL. These surveys also show different rates of prevalence of these impairments among persons of working age depending on age and income, along lines that might be anticipated. Clearly people eligible for SSI, being poorer, can be expected to have higher rates of need for personal assistance. An additional supplement to the NHIS, focused on disability, will be included in the 1993 and 1994 waves. Valuable as these surveys are, however, the interpretations that we can put on the results are limited both by the survey methodology and by their reliance on self reporting without clinical verification as to diagnosis or impairment.

On the other hand, there are upwards of 5 million individuals between the ages of 18–64 who are receiving either social security benefits or SSI, or both, based on their own work disability, each of whom has been subject to a professional clinical evaluation as to both the medical condition and the extent of functional impairment. Medical conditions by age are regularly coded and reported, although there are some missing data in older records.

It is recommended that impairments that limit major life activities (including self care, self management, communication, mobility, personal planning and decision making, as well as working) be documented prospectively as they are identified in the course of carrying out the routines now prescribed for disability determinations, and that the data be made available for analysis.

Option 2—Give consideration to establishing a specified Federal supplement (a percentage of the benefit, whether SSI or SSDI/DAC) associated with each of the two higher classifications of need for assistance; i.e., "most severe" and "very severe": The supplement would recognize some part of the incidental extra cost of living experienced by these individuals in the ordinary course of life, without detailed accounting (e.g., the food for a guide dog, the taxi to the station). It is recognized that such a standard supplement (which resembles the federally administered supplement given by some States to SSI recipients who live in boarding homes or similar non-Medicaid residential facilities) will not obviate the need of many recipients for substantial additional social services as indicated in the description of the "most severe" and "very severe" categories. These more costly services would continue to be allowed based on individual need and monitored for quality and cost under State and local supervision.

Chapter V—Definition of "Aged" Issue

A. Preamble to Chapter

The SSI statutory definition of an aged individual as one who is 65 or older perpetuates the age limit used in the Federal/State grant program of Old Age Assistance which was replaced by SSI. It is also currently the age at which full retirement benefits are payable under the retirement and survivors insurance program. The Medicare and Medicaid programs use age 65 as an entrance point for the nondisabled.

In other programs, different ages have a role in eligibility determinations. For example, under the retirement and survivors social insurance program, an insured individual can collect "early retirement" benefits at age 62, and older women and men may begin collecting widow(er)s' benefits at age 60. The Older Americans Act sets age 60 as the point of eligibility for programs it funds. On the other hand, beginning with the year 2000, the age for unreduced social insurance retirement benefits (age 65) will increase gradually until it reaches age 67 in the year 2022.

A review of six other countries (Australia, Austria, Canada, Finland, The Netherlands, and Switzerland) shows that all use age 65 for men as a criterion for entitlement to benefits. However, only three of the six use that age for women: Australia and Austria use age 60 while Switzerland uses age 62. In the United States, people are considered, by a variety of programs, to be "seniors" at points ranging from 50 to 65.

B. Lowering the Age Limit for "Aged" Benefits

Background Information

For SSI purposes, a person must be at least 65 in order to be considered "aged". Being under age 65 means that SSI eligibility is possible only for those who are disabled or blind. If a person who is becoming older, but is not yet 65, files for benefits on the basis of disability, both the SSI and the disability social insurance programs take age into consideration when assessing ability to work. That is, they recognize that age can affect a person's ability to adapt to a new work situation and to work competitively. However, being older does not, of itself, constitute being disabled.

A study of SSI disability applications received in 1989 from people between the ages of 50 and 64 gives some clues to the number of potential eligibles if SSI

had a lower limit for its "aged" population.

Category	Total	Age	
		50–59	60–64
Claimants meeting "means" test	266,748	191,879	74,869
Awarded benefits	158,464	109,091	49,373
Medical denials	108,284	82,788	25,496

Note: The figures above are only pointers, not definitive indicators of potential eligibles. They show only older people who were needy and who considered themselves disabled but did not meet the medical criteria for disability. For example, there could be many more than 25,500 new eligibles age 60–64 since not all needy people in that age group would have filed claims on the basis of disability.

One of the significant differences between eligibility on the basis of age and eligibility on the basis of disability or blindness relates to work incentives. Although employment can be an effective tool in preventing or reducing poverty among older Americans, most of the SSI work incentives apply only to those who are blind or disabled. For this reason, a majority of the experts support extending all work incentives to the aged (see part C of chapter IV).

Experts' Discussion of "Age" Issue

Most of the experts concluded that the age requirement for SSI eligibility should be lower than 65. A majority of them favored lowering the age requirement to 62 although a few experts preferred lowering it to age 60.

The experts who favored lowering the age requirement to 62 did so in order to provide a linkage with the retirement and survivors insurance programs which, in most instances, allow for reduced retirement benefits at age 62—although, for aged widow(er)s the age is 60. They believed an age 62 SSI requirement would provide a better economic safety net.

The same majority of experts favored phasing in the 3-year age reduction, from 65 to 62, one year at a time. They believed that a gradual change would be easier to administer and would permit phasing in the additional program costs.

The experts also discussed making the SSI age requirement as low as 50. They said this might provide a bridge for people, such as displaced homemakers and widows, who have been out of the workforce for a number of years and are unable to find work due to their age or lack of marketable skills. In general, the majority concluded that lowering the age requirement that much might reduce benefits under some State or local government programs. For example, general assistance programs sometimes provide a lower level of assistance to the elderly than to the nonaged. There was also concern that encompassing a larger group of "aged" eligibles might stretch limited funds to the point where, eventually, there would have to be restrictions on future benefits for the frail elderly age 80 and over.

Recapitulation of Experts' Opinions on "Age"

Option	Experts supporting
1. Lower the age requirement to age 62, phased in over 3 years	16
Comment: One expert, who supports this option, expressed a preference for reducing the age to 60 over a 5 to 10 year period, depending on other priorities.	
2. Lower the age requirement to age 60	2
3. Extend the SSI program to low income (unemployed or marginally employed) workers and spouses age 62–65 and widow(er)s age 60–65 who are eligible for a low social security insurance benefit	4

C. Option Preferred by a Majority of Experts Summary and Cost Estimates

Sixteen of the eighteen experts who took a position on the definition of "aged" believe that the age requirement should be lowered from the current 65 to age 62 and that the change should be phased in, 1 year at a time, over 3 years.

This majority of experts sees lowering the age limit as creating greater consistency with the social insurance retirement program and making it possible to provide SSI to older people who, though not technically disabled, have found it necessary to stop working for reasons of health.

ESTIMATED COST

[In millions]

Fiscal year	SSI Program	SSI administrative	Medicaid Program
1993	$40	Negligible	$20
1994	178	$10	115
1995	351	$10	255
1996	481	$10	390
1997	528	Negligible	460

* * * * *

Chapter VI—Agency Services Issues—Including Additional Staffing to Fulfill the Promise to Serve the Needy

A. Preamble to Chapter

The Social Security Administration role has expanded over the years to encompass: identifying individuals potentially eligible for benefits; ensuring their awareness of that potential eligibility; assisting the public by providing information and referral to other agencies for social services; helping the homeless, and recruiting representative payees when needed. This chapter addresses areas requiring additional resources and other necessary improvements to enable SSA to effectively and efficiently fulfill its service delivery role.

Members of the public have consistently stated that SSA's service to the SSI population is inadequate. Some said that this was due to SSA's downsizing over the past 10 years. Commenters said that processing initial applications, especially those based on disability, has taken too long. They also said that improvements are needed in the areas of information and referral, and outreach—including assistance to the homeless.

SSA's field office staff throughout the nation reported the effect downsizing has had on the agency since the early 1980's. Some staff stated that downsizing has hampered the agency's ability to provide consistent and adequate public service on a nationwide basis. Some also said that, while downsizing was taking place, the SSI population in need of services from SSA was constantly growing.

B. Staffing

Background Information

Between 1984 and 1990, SSA underwent a planned staff reduction in excess of 17,000 positions from approximately 80,000 to 63,000 positions. Although increased use of computers provided some basis for downsizing, in the judgment of the Chairman, the 21 percent cut was arrived at in, to use an expression often used by the courts, an arbitrary and capricious manner.

The downsizing ended in 1990 but current staffing levels remain approximately 21 percent below the pre-1984 levels. During the same period, SSA's ongoing workloads increased. SSI claims based on disability, for example, increased by more than 20 percent.

Currently there is a backlog of approximately 762,000 disability cases. For 1993, the President's budget projects a backlog of 1.4 million SSI and social insurance disability cases. On average, a person currently filing a claim for the first time waits up to 4 months to receive benefits.

The Chairman of the House Ways and Means Subcommittee on Social Security asked the Commissioner of Social Security how a staff increase of 6,000 would improve SSA's services. The Commissioner responded that funds for additional staff would be devoted to priority workloads such as processing

additional disability and appellate cases; processing additional workloads generated by provisions of recent legislation; reducing the busy rate on the 800 number service; and increasing time spent in field offices on new claims, postentitlement actions, and continuing eligibility reviews.

Public testimony. Many public commenters familiar with SSA's workload said there is a need for additional SSA staff in order to improve the agency's performance in meeting the public's expectation of service. For example:

> There is an urgent need for the hiring of additional staff at the district office level. * * * we receive complaints from the elderly and disabled regarding the length of time they have had to wait * * * before they were able to meet with a representative. Often times, they were told to come back and were given an appointment for a later date * * *. They rarely have sufficient monies to pay for transportation to and from the district office. If they were lucky enough to obtain transportation via a friend or family member, the latter may not be able to take another day off from work or child care duties so as to provide transportation * * *
>
> Some seniors show up at the office at 6 a.m. so they won't have to wait half a day or more. When you are old or sick, or have arthritis or other disabilities, you can't wait like that. You just give up on applying for benefits you're entitled to.
>
> Many of the staff people who cared the most about helping the needy aged and disabled recipients have become frustrated and disillusioned and moved on to different jobs. The ones who have stayed are stressed out and overwhelmed * * *. We believe the single most important change that can be made to humanize the SSI program is to increase staffing levels.
>
> "* * * the SSI recipient is being deprived of his initial Medicaid card and his benefits because of the [processing] time delay that [is] taking place * * *."

Other areas identified by the public as needing improvement include such things as eliminating delays in processing reports of changes which affect benefit amounts; doing a better job of assisting claimants in pursuing their rights, providing information and referral, conducting outreach, and processing applications which result from effective outreach. They also described the need for more staff training—including sensitivity training—and bilingual staff.

Field office staff members also spoke and wrote to the experts. In addition to addressing specific issues, some addressed the staffing situation:

> Not having enough staff has created low morale and feelings of despair. A workload is consisted of human beings—disabled, blind and aged. Human beings who call the claims representative asking when benefits will start. Many die, become sicker, or become homeless waiting for our agency to make a decision and process the claim * * *. The claims representatives in my office have worked long hours and half days on weekends to keep ahead of workloads. We have one claims representative that has nearly had a nervous breakdown, but she's trying to hang in there * * * I hope * * * she gets better, but in the meantime we all suffer with added workloads because her slot can't be filled.
>
> I beg to differ with the attitude that * * * SSA claims representatives no longer seem to want to help people. * * * In the 5 years I have worked in this district office I have: (a) Given mouth to mouth resuscitation to a heart attack victim in the front end interview area. (b) Assisted a pregnant SR who had collapsed at the public service counter. (c) Assisted a young man who was having an epileptic seizure on the floor of the reception area. I am not discussing these experiences because I want Kudos. I wish to emphasize that, although there are 'burn out' CRs who don't care, there are more of us who will take the extra step * * *. I am responsible to interview, process claims, process a multitude of post-eligibility items, answer phones, etc. But I must also, (a) Try to convince a young woman that life is worth living. (B) Talk to a representative payee about her retarded brother who wants to wander to Colorado. (C) Advocate to get emergency medical stickers for an elderly claimant. (D) Console a woman because her mother just died. (E) Phone the young woman to make sure she is alive. Discuss referrals to local agencies where she might find support/motivation. So, while there is dialogue about how involved we should get as SSI CRs, we are getting involved because our claimants NEED US NOW.
>
> I have thought of quitting many times. I keep telling myself 'who needs it—let someone else do it.' But I see faces. The mother who brought her son in for his redetermination interview. He is dying of aids. As the interview ended she looked at me with tears in her eyes and said 'thank you for being so patient with my questions and showing respect to my son.' Or the young woman in a wheelchair. She is completely disabled and has two disabled children, one who walks and one who lays across her lap. At the end of the interview she looks at me and says, 'thank you for not treating me like I am stupid'. So, I am still an SSI CR. I do not know how long I will stay. I have my bad days when I get cranky and am rude to coworkers and claimants alike. But I do CARE. That is why I stay . . . we need to remember that although this is a battleground—it is war against poverty, illiteracy, disease, apathy, etc.—the SSI CR is WITH the CLAIMANT not against the CLAIMANT."

Experts' Discussion of Staffing Issues

The experts view an improved staffing picture as integral to resolving a variety of the problems discussed in this report. Almost all agreed with the comments during the experts' public meetings that SSA needs more, better-trained staff in order to improve the timeliness and quality of its service to the public.

The subject of staffing arose during the experts' discussions of almost every issue. It was emphasized during every public hearing in connection with the need for more personalized service for many SSI claimants, and especially in connection with the mounting backlogs in the State agencies which make disability determination for SSA.

The experts view the disability backlogs in the State agencies as unacceptable. The average waiting period is up to 4 months, and some claimants and their representatives described much longer delays. The 1993 budget will increase the backlogs.

An expert commented that with the projected backlog increases, the average daily delay may be expected to increase substantially. This expert recalled that when the Commissioner of Social Security was asked recently by the subcommittee on Social Security what she would need to clear up the backlog of disability cases, she replied that it would require 5,000 persons and $500 million.

The experts recognized that behind all statistics regarding backlogs and processing times are hundreds, even thousands, of persons who are suffering. They also recognized that there are also thousands of career civil servants who are blamed for these delays. One expert said, "Now and then the public may have to deal with a callous civil servant. But the overwhelming majority of civil servants are eager to clear up the backlogs and are frustrated because of the shortage of staff."

The experts recognized that the disability backlogs are not the sole problem. One expert said that in the Omnibus Reconciliation Act of 1990, Congress required extensive changes in SSA's operations with respect to representative payees. This included more extensive investigations of potential payees; a variety of studies with reports due by dates specified; and the development of an extensive master file of representative payees which must be in place by October 1, 1992. The expert pointed out that currently, 5 million beneficiaries of social insurance and SSI have representative payees, and while there are fewer than 5 million different payees, creating this system is an enormous task. The expert noted that Congress has never appropriated a single dollar for the design and implementation of this very extensive system.

This same expert described other staffing problems related to SSA's installation of large telephone service

centers to handle an 800 number. The expert reported that the cost of doing this was absorbed by the budgets in the field offices; and when the large telephone service centers became operative, SSA directed phone calls to those centers. Recently the Congress has directed that the local SSA offices should once again publicize and use local phone numbers. The expert said that Congress has not provided resources to restore this service in local offices. The large telephone service centers with their attendant 800 numbers continue in place. The expert pointed out that the result is that local offices have been forced to absorb the costs of creating the telephone service centers and the costs of reestablishing telephone services in local offices.

For these, and other reasons, a majority of the experts also concluded that the restoration of 6,000 staff positions is not enough to do the job being asked of SSA. However, they viewed it as a reasonable and desirable first step.

A majority identified increased staffing as one of the top priorities for modernizing and improving the SSI program. Two experts viewed increased staffing as the single highest priority of all since they concluded it could eliminate, or greatly reduce, many of the other problems discussed.

The experts specified that funds provided for additional staffing must be used to improve staffing in the State disability determination services as well as in SSA. One expert, while agreeing that adding 6,000 positions was reasonable as an initial goal, urged that this number be doubled, at least, over a period of 2 to 3 years. Another urged placing emphasis on the need for near-future increases beyond the initial 6,000.

Nearly all the experts expressed the view that, with additional staff, SSA should place renewed emphasis on restoring more personal contact and individualized assistance to those it is intended to serve. One expert, while agreeing in principle, added that such emphasis should not be considered separately but viewed as an integral aspect of additional staffing.

Recapitalization of Exports' Opinions on Staffing Issues

Option	Experts supporting
1. Increase SSA's administrative budget, as quickly as possible, to provide for at least 6,000 additional positions as a first step toward adequate staffing	19

Recapitalization of Exports' Opinions on Staffing Issues—Continued

Option	Experts supporting
2. With additional staffing, place renewed emphasis on personal contact and individualized service	18

Comment: The one expert who did not favor this option said that the first priority of added staff should be the reduction of processing times in all areas.

C. Funding for Outreach Activities

Background Information

Historically—and especially following enactment of the SSI program—the Social Security Administration has assumed the obligation to provide people with information and other assistance in obtaining benefits for which they are eligible. At times the Agency has been admonished to do more in this regard, but rarely has there been any budgetary recognition that this type of work has an impact on agency resources.

Beginning in 1989, SSA made SSI outreach an ongoing agency priority. SSA has undertaken an outreach campaign through its field offices, working with community-based agencies. For example, offices have used other agencies' lists to send letters to potentially eligible individuals; workers regularly visit homeless shelters, facilities for the elderly, and other sites where needy individuals might be found; and computer matches between SSA and other agencies identify potential recipients. Information and referral agreements with advocacy and service groups have been a key aspect of outreach. However, many groups within the population, including the homeless, the frail isolated elderly, children, and Native Americans, have been underserved. (For additional discussion on this issue, see Parts D and E below concerning "Information and Referral" and "Helping the Homeless.")

In fiscal year 1990, Congress appropriated $3 million for SSI outreach demonstrations. SSA funded 33 outreach demonstration projects operating in 46 sites nationwide which tested or are testing methods of overcoming the barriers that prevent potentially eligible individuals from filing for SSI. In fiscal year 1991, Congress appropriated another $6 million to continue this outreach program. SSA published a grant announcement which closed on November 19, 1991, and SSA will fund additional cooperative agreements based on what has been learned from the first group of projects. The most successful methods from all of the projects will be incorporated into future outreach initiatives.

The experts noted that, although Congress has awarded outreach monies for cooperative agreements to outside organizations, it has not provided additional funds for SSA staff support. Out of necessity, staff support for outreach activities is being absorbed by SSA's existing staff. The experts said that this detracts from other SSA activities, and processing backlogs increase as a result.

Experts' Discussion on Funding for Outreach Activities

A majority of the experts agreed with the majority of public commenters that SSA should continue outreach activities. These experts concluded that many potentially eligible disabled and elderly individuals are not participating in the program.

Most experts agreed that the SSI administrative budget should be increased by some specific percentage and the additional amount should be dedicated to SSA staff outreach activities. Some of the experts were concerned that the option, as previously published, was not specific regarding the percentage of the budget which would be dedicated to outreach activities. They wanted to ensure that outreach activities would not be reduced. They reworded the option to state that the SSI administrative budget should be increased by at least 5 percent, with the increased amount dedicated solely to outreach. One expert commented that 5 percent seemed too high and suggested that 2.5 percent would be preferable with the remaining 2.5 percent allocated to increase personnel, and service improvement.

RECAPITULATION OF EXPERTS' OPINIONS ON FUNDING FOR OUTREACH ACTIVITIES

Option	Experts supporting
1. Establish specific funding for outreach by increasing the SSI administrative budget by at least 5 percent	16

Comment: Two of the experts indicated that SSA should not establish specific funding for outreach, but instead should use the 5 percent to invest in more staff and better service.

D. Information and Referral

Background Information

When Congress established the SSI program, it separated responsibility for income maintenance from that for social services. The new program placed responsibility for cash assistance payments delivery in SSA, and social service assessment and delivery in the hands of State and local governments and private nonprofit agencies. This separation of payment delivery and social service delivery was consistent with the historic operation of most States programs prior to the 1974 implementation of SSI.

SSA initiated information and referral activities to help link SSI claimants and beneficiaries with other public and private agencies which could meet other needs. This had previously been done for claimants and beneficiaries of the social insurance programs.

The Social Security Act requires SSA to provide referral to vocational rehabilitation programs for certain categories of SSI and disability social insurance beneficiaries. Also, the food stamp law requires SSA offices to inform SSI claimants that they may be eligible for food stamps and that food stamp application forms can be obtained at SSA offices; also, SSA staff is required to assist certain claimants in applying for food stamps.

SSA has committed to assisting the public in obtaining social services they need. By recognizing the importance of information and referral responsibilities, SSA acknowledges that people have needs beyond those met by SSA programs.

SSA field office staff reported during SSI Modernization Project meetings that, as a result of heavy workloads and inadequate staffing, information and referral is often shortchanged. They said that the public expects SSA to have the capacity to provide support to individuals in need of social services, but with the current level of staffing this is not realistic.

Models for expanded information and referral services which the experts considered are:

Expanded community liaison model. This model would broaden the scope of SSA's referrals to include more in-depth community liaison activities. This activity would provide linkage with community organizations and ensure that individuals receive assistance through other organizations; e.g., the mental health system, local charity or cultural groups and State agencies. SSA field offices would dedicate additional staff resources to contacting community agencies and institutions and to working with them on a continuing basis. The goal would be to use community organizations in concert with local SSA offices. Ongoing dialogue would keep SSA aware of changes in local service agencies. Feedback from the other organizations would help SSA improve its information and referral process.

Case manager model. Case management would further increase SSA's information and referral responsibilities. SSA would make referrals by contacting other organizations on behalf of the individual rather than providing the individual with information regarding whom to contact. SSA would follow up to ensure that referrals were effective and met the needs of the individual.

A still more comprehensive approach to the case manager model would have SSA work face-to-face with beneficiaries, their families and caregivers, taking responsibility for the progress of each person. Case management would provide for an active and ongoing link between people who want or need services and people who provide those services.

Experts' Discussion of Information and Referral

Generally, the experts believed that SSA's information and referral services should be expanded. They said that information and referral services are especially important to SSI claimants, many of whom are vulnerable and require special assistance in order to obtain needed services.

The Chairman concluded, based on his visits to SSA field sites, that there is room for more effective relationships between the telephone service centers and field offices.

A majority of the experts favored the expanded community liaison model for providing information and referral services. This was also favored by a majority of the public commenters who addressed this issue. The experts believed that, even though its use might require increased staffing, this model represents an appropriate increase in the scope of SSA field office responsibility for in-depth community liaison activities.

The experts believed SSA field office staffs could develop referral lists and expertise in identifying the particular resources which would be helpful to individual claimants. They also felt adoption of this model would be rewarding to SSA employees. One expert stated that a background in social services would be helpful to staff engaged in such activity.

Some experts stated emphatically that SSA should not become involved in the case management model. They also noted that case management is very labor intensive and would require a major increase in staff. One expert expressed the view that there would be potential for conflicts of interest and abuse of confidentiality if entitlement agencies were to perform social service functions.

RECAPITULATION OF EXPERTS' OPINIONS ON INFORMATION AND REFERRAL

Option	Experts supporting
1. Adopt the expanded community liaison model	14
2. Adopt the case manager model	1

Comment: An expert, who disagrees with this option, opposes SSA's getting into case management because it "violates the principle of allocating appropriate duties to appropriate levels of government. Federal aid is available to the States for this function through * * * other programs."

E. Helping the Homeless

Background Information

Provisions of law. Certain provisions of the SSI statute are intended to help prevent homelessness. They establish exceptions to provisions of the statute that prohibit SSI eligibility for people in public institutions and set a payment limit (currently $30 per month) with respect to a person who is confined to a medical facility when Medicaid is paying a substantial portion of the cost of his/her care. These provisions address:

Eligibility while in an emergency shelter for the homeless. Although an individual generally is not eligible for SSI benefits for any month throughout which he or she is a resident of a public institution, there is a statutory exception for persons in public emergency shelters. In any 9-month period, a qualified person may be eligible for SSI for any 6 months throughout which s/he resides in a public emergency shelter for the homeless. There is no similar limit on eligibility with respect to a resident of a privately operated shelter.

Continued payments during a medical confinement. Under certain circumstances, full SSI payments can be continued temporarily for individuals who are institutionalized (where payments would otherwise be reduced or suspended). Under one provision, the person must have expenses for maintaining a home, and a physician must certify that his/her confinement

will be for 90 days or less. Under a separate provision, the person need only to have been eligible for SSI under work incentive provisions prior to institutionalization.

Prerelease program. The prerelease program is designed to identify potentially eligible people who are about to be discharged from institutions and assist them in filing for SSI benefits before discharge. The goal is to expedite the processing of the application so that payments can begin as quickly as possible after the person is discharged.

Under the program, SSA offices establish agreements with interested and appropriate public and private institutions. The institution agrees to identify those persons who appear likely to meet the criteria for SSI eligibility and who could be released within 30 days of notification of potential eligibility. The SSA office takes applications from potentially eligible persons and determines each person's potential eligibility and payment amount based on his/her anticipated living arrangement upon release.

Existing procedures. SSA has procedures designed to ameliorate some of the difficulties homeless people encounter in establishing and maintaining their right to receive benefits. These include the following:

Outreach. Many SSA field offices have "homeless coordinators" who work with local service and advocacy group to help homeless persons receive benefits due them. As a result, many local social service agencies, soup kitchens, shelters, churches, etc., screen clients for possible SSA eligibility, refer those with potential eligibility to the local SSA field office, and help them through the system. In some areas of the country, SSA staff persons, sometimes assisted by State disability determination service staff, visit shelters for the homeless, clinics, and hospitals to take applications. SSA is investigating methods of continuous funding for these activities.

No fixed mailing address. SSA does not require a fixed mailing address for issuing a check. Persons who are homeless may pick up their checks at the local Social Security office, at a shelter, or any other location they choose.

Assistance in securing evidence. SSA has a policy designed to ensure that an individual's payments are not inappropriately terminated because of failure to respond to a request for evidence. SSA recognizes that a person's age or medical condition, or homelessness itself, may make it difficult for him or her to respond on a timely basis. Failure to furnish this information does not automatically result in loss of benefits. SSA tries to locate individuals, including contacting homeless shelters, to assist them in obtaining the necessary documents.

Barriers to receipt of benefits. During their public meetings, the experts heard from homeless persons and their advocates concerning the extraordinary barriers which such persons encounter with respect to establishing and maintaining eligibility for SSI. People testified that:

Access problems. Getting access to SSA, in itself, is difficult for a person who is homeless. Frequently, homeless people are not connected to any of the social agencies which routinely refer people to SSA offices. They have no transportation to go to SSA offices. The use of the 800 number also has presented difficulties.

Processing times. After an application is filed, long processing times present problems. Homeless people are in especially tenuous positions in terms of securing food and shelter while awaiting benefits. Some people who are seriously ill wait for SSI eligibility (with its concomitant eligibility for Medicaid) before seeking medical treatment.

No fixed mailing address. Because they have no fixed mailing address to receive notices or requests for evidence, homeless people frequently do not receive notices of appointments for consultative examinations or other notices. Therefore, despite efforts by SSA field office staff to contact them, they are subject to denial of benefits for failure to pursue their claims.

Other. The experts also were told that many mentally ill individuals are receiving SSI and continuing to live on the streets. When this becomes a habit, it is difficult to persuade such people to spend their monthly benefits on housing since it would absorb most of the benefit. (See Part F below regarding Representative Payment.)

Federal Task Force. On March 20, 1992 the Federal Task Force on Homelessness and Severe Mental Illness released a report on a national strategy designed to end homelessness among people with severe mental illness. According to that report, up to 600,000 people are homeless and about one-third of them suffer from severe mental illness. A significant portion of this population may meet requirements for SSI eligibility.

Experts' Discussion on Helping the Homeless

The experts urged SSA to continue expanding its efforts to help those who are homeless and prevent homelessness, as it has committed to do. This report contains numerous specific suggestions which would assist in helping the homeless as well as others. For example, actions which would shorten processing time and expand outreach in general would improve program access for the homeless. Improvements to the representative payee system would help to assure that, once eligibility is established, benefits are used to meet food and shelter needs. In addition, the experts have identified certain action items designed specifically to help prevent homelessness.

Emergency payments. Nearly all of the experts stated (as did the majority of public commenters) that emergency SSI payments should be provided to individuals who are homeless, as defined by the Stewart B. McKinney Homeless Assistance Act, and who, in the judgment of a qualified mental health professional, exhibit symptoms of severe mental illness. The McKinney Act defines a homeless person as someone without a fixed, adequate nighttime residence or whose primary nighttime residence is a shelter, a temporary holding place for individuals intended to be institutionalized, or a place not intended as sleeping accommodation for human beings.

These experts believed that applications from such persons should be processed for a final decision within 30 days or benefits continued until a final decision is reached. They said that the payments should not be considered overpayments if it is decided that these individuals are not disabled or blind.

One expert commented that these provisions are needed because severely mentally ill and homeless persons are not likely to stay in one location and pursue their claims through the normal adjudication period.

Continued benefits for people in medical facilities. Almost all of the experts concluded that there is a need to modify the provision which permits continued SSI payments for certain hospitalized individuals. They concluded that restrictions regarding a physician's certification and the requirement to provide evidence that the eligible individual needs continued payments to maintain his or her living arrangement should be removed for those entering hospitals. They believed that the requirements could be retained for those entering other medical institutions. An expert noted that many individuals, especially those suffering from mental impairments, are not able to provide the information required. This modification would help all SSI recipients who are hospitalized to maintain living arrangements in the

community to which they can return, reducing the likelihood of homelessness.

Benefits for people in public emergency shelters for the homeless. Nearly all of the experts stated that residents of public emergency shelters for the homeless should be eligible for SSI indefinitely, without the current restriction that eligibility is limited to any 6 months in any 9-month period. There was some discussion concerning the fact that residents of private shelters are not subject to this restriction on eligibility, and it was noted that the public shelter issue is localized in that in some areas there are no public emergency shelters.

Barriers to benefits. Almost all of the experts favored the expansion nationwide of outreach services currently being tested by SSA. Almost all of the experts concluded that SSA should develop a "backup" mailing address for homeless or mentally ill individuals. There was some discussion explaining that this provision refers to establishing a secondary address at the time of application, and not merely a post office box.

Recapitulation of Experts' Opinions on Helping the Homeless

Option	Experts supporting
1. Provide emergency payments to homeless persons with severe mental illness	16
Comment: One expert indicated that emergency payments should be left to State/local governments and private agencies	
2. Provide continued payment protection for all hospitalized individuals	18
3. Pay SSI benefits to individuals in public emergency shelters for the homeless without any time limit	17
Comment: One expert favored a 90-day eligibility rule for both public and private shelters. Another expert suggested that the current 6-out-of-9 month rule be extended to private shelters	
4. Expand nationwide the outreach services now being tested	15
5. Create backup mailing address locations for homeless and/or mentally ill persons	17

F. Representative Payment

Background Information

Most people entitled to social insurance or SSI benefits receive their payments directly. When a beneficiary cannot manage or direct the management of monthly payments because of severe mental or physical limitation, SSA appoints a representative payee to use the payment in the beneficiary's best interest.

Each month, SSA pays benefits to about 43 million SSI and social insurance beneficiaries. Of these, about 5 million are paid through representative payees who receive more than $1.6 billion monthly. Representative payments are made for about 27 percent of the SSI population.

Representative payees are required for beneficiaries who are children under 18, legally incompetent adults, and disabled persons receiving SSI payments because of alcoholism or drug addiction. In other cases, SSA determines that a beneficiary is incapable of managing funds based on evidence from the beneficiary's doctor and/or reports of persons who are familiar with the beneficiary's day-to-day activities.

Payee responsibility. A representative payee is required to use benefits in the best interests of the beneficiary, and to act on behalf of the beneficiary in dealing with SSA. For example, a payee must report changes which may affect the person's entitlement or benefit amount, and s/he must decide whether to appeal SSA decisions. In addition, a payee must account, annually, to SSA for the benefits received.

Payee recruitment. Most beneficiaries who need representative payees are served by family members or close friends. If a beneficiary does not have family or close friends, SSA must look to the community for a suitable payee. A custodial institution such as a nursing home or State hospital may be appointed as payee. State and private social service agencies likewise may be appointed. However, in some States, social service agencies are precluded by law or policy from serving as payees. In others, budget constraints prevent agencies from serving. When other sources are not available, SSA has the often difficult task of finding a volunteer payee. Persons most often in need of volunteer payees include those who are severely mentally ill, substance abusers, and the homeless.

Payment for services. Beginning July 1, 1991, the law permits certain nonprofit community-based social service organizations to collect fees for expenses incurred in performing payee services. Such organizations may deduct from a beneficiary's social insurance and/or SSI monthly payment the lesser of 10 percent of that payment or $25. This is a first-time authority to collect fees of any kind for payee services. It is a temporary authority which expires on July 1, 1994.

Payee monitoring. Certain State institutions are subject to onsite reviews of their payee functions by SSA representatives. All other payees are required to submit an annual accountability report. There is no routine audit of these reports and there are questions about their effectiveness in preventing and detecting misuse. However, use of sampling techniques to audit use of funds by payees has shown little misuse.

When a payee misuses a beneficiary's funds, the payee is liable to the beneficiary for restitution. Restitution of misused benefits is always sought from the payee who caused the misuse. In these cases, SSA usually appoints a new payee and tries to recover the misused funds from the former one. Effective November 1990, Federal legislation provides that SSA is liable for restitution of benefits in cases of misuse where it is determined that there was negligent failure by SSA to investigate or monitor a representative payee and the payee misuser has not refunded the misused benefits. Misuse cases may be referred for prosecution but referral and conviction levels are low.

Study. SSA commissioned the Administrative Conference of the United States, an independent Federal agency, to study procedural aspects of the representative payee program. The study findings were published in the **Federal Register** on July 24, 1991. Congress had addressed some of the procedural issues reviewed by the study as part of the Omnibus Budget Reconciliation Act of 1990.

Several of the recommendations by the Administrative Conference address issues similar to those discussed by the experts:

1. SSA should develop and promulgate regulatory criteria on monitoring and evaluation of representative payee performance.

2. SSA should search for appropriate representative payees by identifying organizations that offer representative payee services on a volunteer basis. After gaining experience with these organizations as representative payees, SSA should evaluate their performances in comparison with other payees.

3. SSA should evaluate the need for further use of organizations that serve as representative payees on a reimbursed or compensated basis.

4. Congress should authorize SSA to require payees who have misused funds to pay restitution and to impose civil monetary penalties.

SSI Modernization Project public meetings. During the public hearings an expert noted that, over the years, Congress has increased SSA's responsibilities for representative payment but has never allocated specific resources for the activities. The Omnibus Budget Reconciliation Act of 1990 enhanced SSA's power to investigate prospective representative payees, but provided no additional funding for the activity.

The growth in the number of SSI beneficiaries with mental illness has led to an increased need for representative payment. Historically, representative payees have been found among beneficiaries' relatives and friends. However, for those disabled by substance abuse or severe mental illness, finding and retaining a suitable representative payee is difficult. During the public hearings, the experts heard from individuals and social service organizations concerning problems encountered representing this group of beneficiaries. Substance abusers and severely mentally ill persons often do not want a payee managing their money; this results in power struggles between the payee and the beneficiary over the benefits. When the payee is a family member, family strife often leads to frequent payee changes. Representative payees described being threatened or attacked by the eligible person in disputes over the use of SSA benefits. Because of these difficulties, the experts say a continuing need for SSA to seek out social service agencies to act as payees when suitable payees are unavailable among family members or close friends.

As of July 1, 1991, the law permits certain nonprofit community-based social service organizations to collect a fee for expenses occurred in performing payee services. This fee is deducted from the beneficiary's check. During the public hearings, social service organizations and representative payees indicated that fees for representative payee services should come from the administrative budget rather than from the beneficiary's check.

Members of the public emphasized the importance of monitoring representative payees. Instances of abuse, both physical and financial, were described. When a representative payee misuses funds or fails to report changes to SSA, the beneficiary suffers and is responsible for repaying any overpayments which may occur, even though s/he may never have received use of the funds. People said that when a change in payee occurs, overpayment notices are sent to the new payee and SSA makes little or no attempt to recover the overpaid monies from the previous payee. Public commenters urged that there be stricter monitoring of representative payees by SSA, and that payees provide documentation to support their accounting for the use of funds. It was stated that SSA should have the ability to recover misused funds from the responsible payee.

Experts' Discussion of Representative Payment Issues

Some experts stressed in particular that payments for representative payee services should be made from SSA's administrative budget and should not be deducted from beneficiaries' checks. Most experts also agreed that there would need to be a special appropriation for the fees.

Also, most experts preferred that a fee should be paid only to a payee who is neither a relative of the beneficiary nor a custodial institution. One expert stated that if the benefit rate is raised to 120 percent of the poverty level, the $25 fee should come from the beneficiary's payment.

During the discussions one expert expressed the view that prosecution of a payee for misuse of funds should be left to the discretion of SSA.

Most experts supported the development of legislation which would mandate a specific program of recruitment, training, and monitoring of representative payees and authorize the appropriation of funds to implement the program. The legislative proposal would provide for: (a) Payments of reasonable compensation by the Federal Government to nonrelative and noncustodial representative payees for their services out of administrative budget funds rather than from beneficiaries' checks; (b) contracting by SSA with agencies at Government expense when suitable volunteers are not available (alternatively, if an SSI beneficiary were required to pay some or all the cost of the fees of a representative payee, s/he would be reimbursed); (c) requiring payees, other than parents with custody of minor children, to provide periodic documentation to support their annual accountings; (d) recovery of misused funds by SSA from the monthly payment of any representative payee currently receiving benefits in his or her own right; and (e) prosecution of representative payees who have misused funds, regardless of the amount.

RECAPITULATION OF EXPERTS' OPINIONS ON REPRESENTATIVE PAYMENT

Option	Experts supporting
1. Develop legislation which mandates recruitment, training and monitoring of representative payees and authorizes the appropriation of funds to implement the program. This legislation should provide reasonable compensation to nonrelative, noncustodial representative payees from administrative funds; contracting by SSA with agencies when suitable payees are not available; periodic documentation by payees to support annual accounting; recovery of misused funds from the monthly check of representative payees receiving benefits in their own right; and prosecution of representative payees who misuse funds	19
Comment: An expert who did not support this option expressed the view that representative payees' fees should be paid from social insurance benefit checks. However, with respect to beneficiaries receiving only SSI, the fee should be paid from the administrative budget.	

G. Options Preferred by a Majority of Experts—Summary and Cost Estimates

Staffing: Adequacy

All of the experts who took a position on this issue stated that one of their top priorities is an increase in SSA's administrative budget to permit additional staff positions and related support (e.g., training and equipment). These experts view an immediate increase of 6,000 positions as a reasonable first step toward adequate staffing. The experts believe that an increase in staffing would help to alleviate backlogs and allow SSA to better serve the public.

ESTIMATED COST

[In millions]

Fiscal year	SSI program	SSI administrative	Medicaid program
1993	None	$280	None.
1994	None	297	None.
1995	None	315	None.
1996	None	335	None.
1997	None	356	None.

* * * * *

Staffing: Services

A majority of the experts believes that SSA should renew emphasis on personal contact and individualized service. These experts believe that this is badly needed by a large portion of the population which the SSI program is

intended to serve. This would improve access to the program.

ESTIMATED COST

[In millions]

Fiscal year	SSI program	SSI administrative	Medicaid program
All	None	(*)	None.

(*): Unable to estimate.

* * * * *

Funding for Outreach Activities

A majority of the experts expressing a view on this option favor establishing a specific funding stream to assure continuation of outreach activities. These experts believe that many potentially eligible elderly or disabled persons are not receiving SSI benefits. Outreach activities can help to remove barriers to filing for SSI benefits, and appropriations should provide funds for outreach activities. The experts believe that outreach should have specific funding provided by an increase in the SSI administrative budget of at least 5 percent.

ESTIMATED COST

[In millions]

Fiscal year	SSI program	SSI administrative	Medicaid program
All	(*)	(*)	(*)

(*): Unable to estimate.

* * * * *

Information and Referral.

Most of the experts expressing a view favor SSA's use of the expanded community liaison model. The experts believe that SSA has a responsibility to refer individuals for services available from other agencies and organizations.

ESTIMATED COST

[In millions]

Fiscal year	SSI program	SSI administrative	Medicaid program
1993	None	$100	(*)
1994	None	110	(*)
1995	None	120	(*)
1996	None	130	(*)
1997	None	130	(*)

(*): Unable to estimate.

* * * * *

Helping the Homeless—Emergency payments

A majority of the experts support providing emergency payments to homeless persons who are severely mentally ill. Such payments are needed since these persons are not likely to stay in one place during the normal adjudication period.

ESTIMATED COST

[In millions]

Fiscal year	SSI program	SSI administrative	Medicaid program
1993	$13	$10	$10
1994	45	10	35
1995	50	0	40
1996	55	0	50
1997	60	0	55

* * * * *

Continued Payment Protection for Hospitalized Persons

All the experts expressing a view on providing continued payment protection for hospitalized individuals favor elimination of the statutory requirements for a physician's certification regarding the person's anticipated length of stay and the requirement that the individual have expenses for maintaining a home. The experts support continuation of full payment for 3 months for all SSI beneficiaries who become hospitalized. This would help such beneficiaries to maintain a home or to secure a place to live upon discharge.

ESTIMATED COST

[In millions]

Fiscal year	SSI program	SSI administrative	Medicaid program
1993	$31	Negligible	Negligible.
1994	43	Negligible	Negligible.
1995	46	Negligible	Negligible.
1996	48	Negligible	Negligible.
1997	50	Negligible	Negligible.

* * * * *

Public Emergency Shelters for the Homeless

All but one of the experts expressing a view favor paying SSI benefits to individuals in public emergency shelters for the homeless without a time limit. These experts believe that elimination of the time limit would allow beneficiaries to continue living in emergency shelters and eliminate the need for a beneficiary to choose whether to remain at a shelter or to continue receiving SSI.

ESTIMATED COST

[In millions]

Fiscal year	SSI program	SSI administrative	Medicaid program
All	Negligible.	Negligible	Negligible

* * * * *

Expand Nationwide Outreach Services

Most of the experts expressing a view supporting expanding outreach services. The experts believe that outreach services for the homeless are needed as this population encounters numerous barriers to filing an application and obtaining documentation required to complete the application process and/or to provide necessary medical evidence.

ESTIMATED COST

[In millions]

Fiscal year	SSI program	SSI administrative	Medicaid program
All	(*)	(*)	(*)

(*): Unable to estimate.

* * * * *

Create Backup Mailing Address Locations

All the experts expressing a view believe that when a homeless or mentally ill person files an application for SSI, SSA should ask for a backup mailing address. The experts believe that a backup mailing address would increase the likelihood that the beneficiary will receive his/her benefits.

ESTIMATED COST

[In millions]

Fiscal year	SSI program	SSI administrative	Medicaid program
All	None	Negligible	None.

* * * * *

Representative Payment

A majority of the experts supports development of legislation to strengthen the recruitment, monitoring and training of representative payees. A majority

also stated that fees for representative payee services should be provided when the payee is neither a relative of the beneficiary nor a custodial institution. Such fees should be paid from the administrative budget—needy persons should not have to pay them from monthly benefit.

ESTIMATED COST

[In millions]

Fiscal year	SSI program	SSI administrative	Medicaid program
All	None	(*)	None.

(*): Unable to estimate.

* * * * *

Chapter VII—Linkage of the Supplemental Security Income Program to Medicaid and the Food Stamp Program

A. Preamble to Chapter

The Social Security Act and other Federal statutes mandate certain linkages between SSI and other programs. The nature of these linkages varies widely. For example, the SSI statute requires that SSI applicants file for all other benefits for which they may be eligible. (This includes, for example, retirement, survivors, and disability social insurance benefits.) The SSI law and other Federal statutes provide for income disregards (in whole or in part) which apply to benefits paid under other programs. Other statutory provisions address linkages with certain noncash benefits of other Federal programs, including some which are State-administered. In particular, Medicaid and the Food Stamp Program have eligibility conditions which specifically relate to persons eligible to receive an SSI payment.

The experts reviewed the linkages between the SSI program and Medicaid and the Food Stamp Program, with the view that the SSI benefit package should be considered in the context of the total impact of the three programs. In doing so, the experts noted existing disparities in the benefits and services available to SSI recipients nationwide.

During their public meetings, the experts had discussions with representatives from the Health Care Financing Administration and the Department of Agriculture concerning Medicaid and the Food Stamp Program, respectively. Also, they heard members of the public describe problems people encounter in connection with the relationships between SSI and other programs.

It was apparent to the experts that many SSI claimants are in need of improved access to Medicaid and the Food Stamp Program. This chapter addresses the experts' opinions regarding the appropriate linkages between these programs and SSI.

B. Linkage of the Supplemental Security Income Program and the Medicaid Program

Background

Prior to the SSI program, receipt of cash benefits from the former State administered programs of aid to the aged, blind, or disabled made a person eligible for Medicaid (except in Arizona which did not have a Medicaid program). The Congress recognized that, with the enactment of SSI, more people would become eligible to receive cash assistance payments. Given the potential for increased State Medicaid costs, the legislation which established SSI also permitted States to break the direct link between receipt of cash assistance and Medicaid eligibility.

The statute permits States to use more restrictive Medicaid eligibility criteria than those of the SSI program. States may use more restrictive rules and disregards for income, resources and disability. However, these rules and disregards may not be more stringent than those the State used just before enactment of the SSI program. Also, a State which elects income criteria which are more restrictive than those of the SSI program must deduct medical expenses which a person has incurred for Medicaid covered services from that person's countable income when determining eligibility for Medicaid.

Currently, 12 States elect to use more restrictive criteria. Thirty-eight States, the District of Columbia, and the Commonwealth of the Northern Mariana Islands provide Medicaid to persons who meet the SSI requirements.

These latter jurisdictions have an option to enter into agreements with SSA to use the SSI application as an application for Medicaid and for SSA to make determinations of Medicaid eligibility for persons who receive SSI payments or who are deemed to be receiving payments under section 1619(b). (For information about section 1619(b) see part C of chapter IV.) Thirty-one States and the District of Columbia have these agreements. The remaining 7 States and the Commonwealth of the Northern Mariana Islands use the SSI standards to determine Medicaid eligibility, but require a separate Medicaid application.

Experts' Discussion of Medicaid Linkage Issues

The experts' discussion recognized that much has been happening outside the SSI arena relating to public interest in structural reform to the health insurance system. One expert pointed out that, even if there were legislation to improve health care access for people in general, this would not necessarily cover things which Medicaid now covers for qualified disabled persons. This expert stressed that recognition of the need for all SSI recipients to have Medicaid coverage cannot be postponed on the assumption that there will be broader action to provide health care access. Another expert, in agreement, noted that nearly 450,000 SSI recipients are not covered by Medicaid.

A majority of the experts stated that SSI should be a primary route to Medicaid eligibility, and the linkage of Medicaid and SSI should be strengthened. This affirmed views expressed by the majority of public commenters. Two experts stated that, conceptually, Medicaid is "part and parcel" of the total benefit package that the experts are addressing. If medical coverage is not provided, people have to use their SSI checks to pay for medical care. Those experts believe it is a gross inequity to permit over 400,000 persons in 12 States to be provided a smaller benefit package (i.e., a package which does not include Medicaid) than that provided to others.

Some experts also pointed out that Federal determinations of Medicaid eligibility should be universal. They said that where there is State administration, some people who qualify for Medicaid coverage get lost on their way through the State bureaucracy. These experts think SSI recipients should not have to go through extra steps (e.g., filing a separate application, etc), to obtain the coverage.

Recapitulation of Experts' Opinions on Medicaid Linkage

Option	Experts supporting
1. Require all States to use the SSI eligibility criteria and mandate Federal determinations of Medicaid eligibility	16
2. Retain the current State option to use more restrictive eligibility criteria than those of the SSI program	2

Recapitulation of Experts' Opinions on Medicaid Linkage—Continued

Option	Experts supporting
Comment: One of the experts favoring this option also supports requiring Federal determinations of Medicaid eligibility in all States that use the SSI criteria to determine Medicaid eligibility.	

C. Linkage of the Supplemental Security Income Program and the Food Stamp Program

Background Information

Under the Food Stamp Program, eligibility for benefits is determined for a household (rather than for individuals/couples as in the SSI program) and depends on the household's size, resources, gross income, and net income after certain exclusions and allowable deductions (e.g., dependent care, excess medical and shelter costs, etc.).

Food Stamp law requires SSA offices to inform SSI applicants and recipients that they may be eligible for food stamps and that food stamp application forms can be obtained at Social Security offices. In addition, SSA staff is to assist applicants and recipients who are members of a household in which all members are applicants or recipients of SSI (referred to as a "pure SSI household") in applying for food stamps at Social Security offices.

Members of pure SSI household and/or "public assistance households" (households in which all members receive public assistance; e.g., AFDC, or AFDC and SSI) are automatically ("categorically") eligible to participate in the Food Stamp Program. These households do not have to meet the income or resource limits of the Food Stamp Program.

However, SSI recipients in "mixed food stamp households" (households where at least one member receives SSI but others do not) must file for benefits at the food stamp office. Some SSI recipients in mixed households are not eligible for food stamp benefits depending on household size and the resources and income of others in the household. Mixed households must meet the Food Stamp Program's resource and net income limits in order to be eligible. However, because mixed households contain an elderly or disabled member, they do not have to meet the Food Stamp Program's gross income limits. Also, by law, SSI recipients' resources are excluded in determining whether a household meets the resource limit.

Food stamp offices make eligibility determinations and issue food stamp coupons.

Note: Pursuant to changes in the Food Stamp Act at the time of the implementation of the SSI program, SSI recipients in California do not participate in the Food Stamp Program. Instead, the value of food stamps is included in their State supplementary payments (although consideration is being given to allowing recipients in California to participate).

Experts' Discussion of Food Stamp Linkage Issues

Most of the discussion centered on the experts' observation that the current processes for filing for SSI and food stamps are confusing, duplicative, too time consuming and needlessly complicated. A majority of experts concluded that SSA's completion of a short food stamp application form for each interested SSI claimant would be the preferred way to simplify and improve processing of food stamp applications in Social Security offices. Although the short-form application would be incomplete for determining food stamp eligibility, it would establish the individual's intent to file a claim. One expert pointed out that this option would require SSA to do less than it is currently required to do by statute, but the agency probably would be able to administer this approach more successfully.

One expert proposed that eligibility for food stamps should be phased out when the SSI benefit reaches the poverty level. The experts discussed the possibility of doing this by eliminating categorical eligibility and/or eliminating the $10 minimum allotment for one- and two-person households. A majority of the experts supported eliminating automatic eligibility when the SSI Federal benefit standard reaches the poverty line. A majority of the experts did not favor eliminating the minimum allotment for SSI recipients, since this would be treating SSI recipients less favorably than others.

The experts discussed three other options. One option was to urge that SSA pursue with the Food and Nutrition Service the feasibility of SSA making food stamp eligibility determinations for the SSI population. The second option would allow categorical eligibility for a food stamp allotment, but the food stamp benefit would be cashed out with a flat amount which would be included in the SSI check. There was little support for these two options. Under the third option, the food stamp program would treat all SSI recipients as separate food stamp households which would be categorically eligible for food stamps but would receive a flat food stamp allotment. This could decrease the amount that some recipients currently receive. No expert supported this option.

RECAPITULATION OF EXPERTS' OPINIONS ON FOOD STAMP LINKAGE

Option	Experts supporting
1. Have Social Security offices complete short-form food stamp applications for all interested SSI claimants	16
Comment: One expert supporting this option also favored action by SSA to pursue with the Food and Nutrition Service the feasibility of SSA making food stamp eligibility determinations for the SSI population	
2. Eliminate automatic (categorical) eligibility for food stamps when the SSI Federal benefit rate equals or exceeds the poverty line	13
Comments: One expert supporting this option also supports allowing categorical eligibility, but cashing out the food stamp benefit with a flat amount which would be included in the SSI check	
Another expert, voicing disagreement with the elimination of categorical eligibility, stated that a person does not cease to be needy when the Federal benefit standard reaches the poverty line	

D. Options Preferred by a Majority of Experts Summary and Cost Estimates

Medicaid Linkage

Most experts favor a requirement that all States use both the SSI eligibility criteria and Federal determinations of Medicaid eligibility. They believe that anyone who is eligible for SSI should have Medicaid coverage as part of a total benefit package. They also believe that people should receive this coverage automatically. Mandated use of the SSI criteria with automatic determinations of eligibility would achieve this goal; people would no longer have to work their way through another governmental system in order to be covered for Medicaid.

ESTIMATED COST

[In millions]

Fiscal year	SSI program	SSI administrative	Medicaid program
1993	None	Negligible.	$1,590
1994	None	Negligible.	1,750
1995	None	Negligible.	1,915

ESTIMATED COST—Continued

[In millions]

Fiscal year	SSI program	SSI administrative	Medicaid program
1996	None	Negligible.	2,110
1997	None	Negligible.	2,315

* * * * *

Food Stamps Linkage: Applications

A majority of experts supports having Social Security offices complete short-form food stamp applications for all interested SSI claimants. This would help to assure that all interested persons establish, on a timely basis, their intention to apply for food stamps while simplifying the administrative difficulties which SSA and food stamp applicants encounter under the current process.

ESTIMATED COST

[In millions]

Fiscal year	SSI program	SSI administrative	Food Stamp Program
All	None	(*)	$1

* Unable to estimate.

* * * * *

Food Stamps Linkage: Eligibility

A majority of experts supports eliminating categorical eligibility of SSI recipients for food stamps at such time as the Federal benefit standard for SSI reaches the poverty line. This would eliminate expenses (for the guaranteed minimum food stamp allotment and related administrative costs) which they believe are unreasonable since most SSI recipients would be receiving sufficient cash benefits under the SSI program to enable them to purchase food. At the same time, it would not prevent those SSI recipients with significant excess shelter or medical expenses from qualifying for food stamps under the regular rules of the Food Stamp Program.

ESTIMATED COST

[In millions]

Fiscal year	SSI program	SSI administrative	Food stamp program
1993	None	Negligible.	$(870)
1994	None	Negligible.	(1300)

ESTIMATED COST—Continued

[In millions]

Fiscal year	SSI program	SSI administrative	Food stamp program
1995	None	Negligible.	(710)
1996	None	Negligible.	(740)
1997	None	Negligible.	(780)

* * * * *

Chapter VIII—Program Review Issues

A. Preamble to Chapter

Congress passed legislation to create the SSI program in 1972. Since the first payments in January 1974, the program has provided a valuable lifeline to millions of aged, blind and disabled persons. SSI benefits help provide life's necessities—food, clothing, and shelter—to people who might otherwise be without these basic items.

Society has changed since 1972 but the SSI program remains fundamentally unchanged in structure and purpose. Until now, there has never been a comprehensive review of the program by a group entirely from outside the Federal government.

Provisions for Review of Trust Fund Programs of the Social Security Act.

Shortly after the Social Security Act was established, the Social Security Board and Congress appointed an Advisory Council to examine the advisability of amending the social insurance program to ensure that its financing was sound. The Advisory Council, consisting of representatives of employees, employers, and the general public, met initially in 1937 and periodically thereafter.

In 1969, the Advisory Council's charter was expanded to reflect a broader scope of review, including the scope of coverage of the trust fund programs (old-age and survivors insurance, disability insurance, and hospital insurance and supplementary medical insurance under Medicare); the adequacy of benefits; and all other aspects, including the impact of the programs on public assistance programs under the Social Security Act.

Currently, under the law, a new Council is appointed every four years. Each Council is charged, by the Secretary of HHS, with addressing certain issues (however, the Council is not limited to those issues) and it submits a comprehensive report to the Secretary. Through the years, the various Advisory Councils have provided independent reviews which have enabled the Government to be responsive to the changes in society and the needs of the people.

B. An Advisory Council Level of Review

Background Information

Reviews of SSI. At the time of the statutory mandate for an "Advisory Council on Social Security", the SSI program had not been established, and the Act has never been modified to specify that this Council should review the SSI program. Only one Social Security Advisory Council has ever addressed SSI program issues.

Although the SSI program has undergone numerous refinements and modifications since enactment, the basic structure has not changed. A number of reviews have been conducted over the years, but not on a regular basis. Only one review was comprehensive and involved direct reporting to the Secretary, as is the case with the Advisory Council on Social Security.

Major initiatives to review the operation of the SSI program were done on an ad hoc basis and for a variety of reasons. Some of the early reviews performed in the 1970's were in response to complaints about the programs not living up to expectations and the quality of service. These were done by representatives from both inside and outside the Federal Government. Later studies done in the 1980's focused on achieving administrative simplification. These efforts were mostly internal efforts aimed at improving SSA's field office efficiency and understanding.

This current review of the program was initiated in 1990 by Social Security Commissioner Gwendolyn S. King. She recognized an existing need for a broad-based review to determine how well the program has met, and will continue to meet, the needs of the population it is intended to serve, recognizing current fiscal constraints.

Testimony received. Many commenters expressed support and appreciation for the SSI Modernization Project, remarking that the effort is important and necessary. Additionally, some people stated that the SSI program would benefit from a periodic, independent review, similar to the Social Security Advisory Council process afforded the four trust fund programs. They said that a separate Advisory Council for SSI is desirable because: (1) There are fundamental differences between the SSI program and the social insurance programs; (2) the scope of review would be too great to be manageable if the SSI review were

combined with a review of the social insurance programs; and (3) the issues involved in a review of SSI would require extensive consideration of other social and domestic programs.

Experts' Discussion of Program Review

All of the experts who addressed the subject stated that program review at an advisory council level would ensure a detailed analytical review of the SSI program. This review would achieve a level of visibility equivalent to that afforded the social insurance programs, because recommendations for change made by the Council are brought before the Secretary and Congress. Also, they believed that an advisory council level of review for SSI would establish a formalized process of periodic review by an independent group which would be sensitive to the needs of the SSI population and responsive to changes in society.

Two options for an advisory council were considered. One option would amend the Social Security Act to include SSI in the Social Security advisory Council jurisdiction. While this approach would not guarantee that the SSI program would be reviewed every four years, it would include SSI in the Council's jurisdiction and allow the program to be reviewed singly or jointly with the trust fund programs.

The other option was to establish a separate Advisory Council on SSI. This option would guarantee that the SSI program receives a regular, comprehensive review by an independent group of experts who would report to the Secretary. The mandate would include a broad charter for the examination of the SSI program, such as the SSI relationship with Federal and State income maintenance programs (other than trust fund programs). The separate Advisory Council would be expected to take into account actions of the most recent or existing Advisory Council for the social insurance programs on issues of mutual interest.

A majority of the experts concluded that a separate Advisory Council should be established for the SSI program. This affirmed the views expressed by the public. One expert stated, "The failure to regularly review the program has resulted in creating prolonged hardships for beneficiaries and inefficiency in the SSI program." The majority view was that a separate council would provide a better focus on the SSI program, rather than having SSI issues reviewed along with other Social Security programs and Medicare. However, two experts said they believed that including SSI in the Social Security Advisory Council's jurisdiction would give the SSI program a higher profile.

RECAPITULATION OF EXPERTS' OPINIONS ON PROGRAM REVIEW

Option	Experts supporting
1. Establish a separate Advisory Council on SSI	17
Comment: One of the experts favoring this option supported the option below as a second choice	
2. Include SSI in the Social Security Advisory Council jurisdiction	3

C. Option Preferred by a Majority of Experts—Summary and Cost Estimates

Program Review

A majority of the experts supports SSI program review by a separate Advisory Council. They conclude that such a level of separate review would increase the overall effectiveness of the program.

ESTIMATED COST

[In millions]

Fiscal year	SSI program	SSI administrative	Medicaid program
All	None	(*)	None.

(*): Unable to estimate.

* * * * *

Additional Views

By Michael Stern

In their review and consideration of the Supplemental Security Income program, a majority of the experts gave support to changes affecting virtually all elements of the program. When fully effective, these changes would increase Federal program costs by some $47 billion annually. (Federal program outlays in the current fiscal year are estimated at about $17 billion.)

The experts did not attempt to identify those program changes which they would support if only a specified amount of additional funds were available, such as $300 million or $1 billion annually.

There are a number of important things that could be done within a total limitation of about $300 million.

Staffing increases.—In my view, the most important single need for the Supplemental Security Income program is to increase its staffing. Many of the difficulties the program is experiencing could be eliminated or substantially alleviated simply by having more staff available.

Program simplifications.—The following relatively modest changes in the program hold the promise of improving equity, simplifying program operations and significantly reducing the incidence of overpayments:

1. Change the method for calculating overpayments that result from excess resources; the overpayment would not be greater than the amount the individual's resources exceeded the resource limit.

2. Accounting Issues: (a) Change the computation method from retrospective monthly accounting to prospective monthly accounting; changes that result in a reduction in payment would be effectuated two months later than the month in which the income changed. (b) Continue Medicaid coverage when SSI eligibility is lost solely due to a calendar-related income fluctuation (e.g., when there are five weekly paydays in a month). (c) Do not require income verification when it is not cost-effective.

3. Require Federal determinations of Medicaid eligibility in all States that use the SSI criteria to determine Medicaid eligibility.

4. Develop legislation that would mandate specific recruitment, training, and monitoring of representative payees and authorize the appropriation of funds to implement the program.

5. Increase the monthly payment limit for residents of institutions from $30 to $35 and provide for an annual cost of living adjustment.

6. Change the definition of substantial gainful activity so that, for purposes of establishing initial eligibility for SSI, an individual would be considered to be engaging in substantial gainful activity only if he is earning above the substantial gainful earnings level (generally $500 a month) *without* significant support services. (Wages and self-employment income would still count in terms of evaluating need and determining the benefit amount.)

Perhaps the most complex administrative task in the SSI program is determining in-kind support and maintenance—food, clothing, or shelter that is given to a person or that a person receives because someone else pays for it. Most of the experts assigned a high priority to the elimination of this feature of the program, which would involve an average annual program cost in the area of $1 billion. In my view, the elimination of the in-kind support and maintenance provision with no other program changes would fail to recognize that the needs of a person living in quarters with someone else are lower than those of a person living alone. A proposal for restructuring SSI and eliminating determinations of in-kind support and maintenance is discussed below.

A Cost-Neutral Proposal for Restructuring SSI Benefits and Improving Program Administration

If no additional funds become available for SSI program expansion, consideration could be given to a cost-neutral restructuring of SSI benefits and improvement of program administration consisting of the following elements:

1. Any SSI recipient living in the same quarters as another person who is an adult (whether or not an SSI recipient) would receive a payment based on 75 percent of the standard for an individual living alone. (This rule would apply only to persons who

become recipients after the proposal's effective date.)

In the SSI program, as in the social insurance programs, a couple's benefits are set at 150 percent of an individual's benefits. This recognizes the fact that two individuals living together do not have twice the expenses of an individual living alone. (The current Federal poverty level for a couple is 134 percent of the poverty level for an individual.) Under the proposed change, two SSI recipients living in the same quarters would receive the same combined payment whether or not they are a couple.

2. For new recipients, the SSI in-kind support and maintenance rules would be eliminated.

Under the first element of the proposal, any SSI recipient living with at least one other person who is an adult would receive a payment 25 percent below what he would receive if he were living alone. The principal reason for having an in-kind support and maintenance provision would no longer exist.

3. To assure no reductions in payments for persons already on the SSI rolls at the time the proposal is adopted, and whose payment amounts, but for this provision, would be affected by receipt of in-kind support and maintenance, I propose the following:

a. If the recipient is not living in the same quarters as another person who is an adult, the payment would be based on 100 percent of an individual's standard, and the in-kind support and maintenance reduction would be eliminated.

b. If the recipient is living in the same quarters as another person who is an adult, and if the recipient's in-kind support and maintenance reduction is equal to, or greater than, 25 percent of the Federal benefit standard, the payment would be based on 75 percent of an individual's standard and the in-kind support and maintenance reduction would be eliminated.

c. If the recipient is living in the same quarters as another person who is an adult, and if the recipient's in-kind support and maintenance reduction is less than 25 percent of the Federal benefit standard, the payment would be based on 100 percent of an individual's standard and the in-kind support and maintenance reduction would not be eliminated.

4. It would take some years for the restructuring to be fully effective, since present recipients would be protected from payment reductions. In the first two years, the savings would be applied largely to the staffing increases and program simplifications outlined above.

Beginning in the second year, any program savings that exceed these costs would be devoted to increasing the SSI payment levels beyond the annual cost of living increases and at the same time as those increases. Based on the estimates provided me, the SSI payment levels could be increased about 11 percent over a four year period from FY 1994 to FY 1997. By the end of that time, substantial progress would have been made in increasing SSI payment levels to the Federal poverty level.

ESTIMATED NET SSI PROGRAM SAVINGS

[In millions of dollars]

FY 1993	(85)
FY 1994	(515)
FY 1995	(985)
FY 1996	(1,455)
FY 1997	(1,930)
Total	(4,970)

ESTIMATED BENEFIT INCREASES ABOVE THE COLA'S AFTER DEVOTING $300 MILLION PER YEAR TO OTHER IMPROVEMENTS

	Percent
FY 1993	NA
FY 1994	.8
FY 1995	2.2
FY 1996	3.4
FY 1997	4.4

Additional Views by Kenneth Bowler, Robert Fulton, Arthur Hess, Richard Nathan, and Timothy Smeeding

Commissioner King is to be commended for launching a thorough examination of the Supplemental Security Income (SSI) program. Such a review of the program was long overdue. The Modernization Project experts, under the capable leadership of Dr. Arthur Flemming, have performed an important public service. They have identified, examined, and formulated potential corrective actions for the key problems that inhibit the SSI program's effectiveness, complicate its administration, and create inequities among applicants for, and recipients of, program benefits. The experts' report can help build public awareness of the importance of the SSI program to millions of America's elderly, blind, and disabled citizens and their families. We hope this work will also increase significantly the attention given to the SSI program by policy makers in both the executive and legislative branches of the federal government as well as by analysts and advocates outside government.

We join our colleagues in endorsing many of the changes presented in the report. Nevertheless, we find a number of aspects of the report troublesome. We presented these concerns during meetings with our fellow experts. We present them here in the hope that our perspectives will help persuade congressional committees, the Social Security Administration, and policy officials elsewhere in the executive branch to treat this report as an essential starting point for considering comprehensive reform of the SSI program.

Specific Concerns

1. Cost

The options preferred by a majority of the experts would, by the end of five years, double the cost of the SSI program to the federal treasury. Some of the cost increases would result from addition to the rolls of persons who would become eligible as a result of increased benefit levels, more generous resource limitations, and other liberalizations presented. The changes would also significantly increase payments to persons already receiving SSI benefits. The chances of all these program expansions being effected in the foreseeable future are extremely slim, given the federal budget situation and the many other pressing domestic priorities which are competing for resources.

Moreover, the cost impact would extend beyond the federal government to state and local governments as well. In particular, the impact of the increased numbers of SSI recipients on state and local Medicaid costs deserves much more attention than it received, in view of the prominence of Medicaid cost growth as a source of great budgetary concern throughout the nation.

2. Choice of Priorities Within the SSI Program

The report treats an extremely expensive option on increasing benefits as being on the highest priority level. We advocate a more deliberate approach which would treat increases in benefit levels beyond 100 percent of the poverty guidelines as a longer-range goal and move to the top of the agenda for short-term action lower-cost changes which will improve equity, simplify administration, improve understanding of the program by those already eligible, and promote self-help efforts by recipients and their families.

3. Sensitivity to Other Needs

It is obvious that the response made to the needs of elderly, blind and disabled citizens must take into account other urgent national needs such as health care for the medically uninsured, the economic and social needs of our cities, and improvement of the support and protection of all of America's children. While this broad array of needs was beyond the experts' specific charge, we believe proposals on the scope and phasing of SSI changes must fully take into account their cumulative effect and the fact that other pressing domestic problems also have priority claims on substantial additional resources.

Conclusions

We believe it would be major, and acceptable, progress if the following resulted in the near future from the work of the experts:

(1) The Social Security Administration were provided the staff resources it must have in order to discharge more adequately its responsibilities for the SSI program. It is urgent that SSA receive the approvals and funding necessary for hiring, training, and making fully functional, no more than two years from now, the additional staff seen as vital by nearly all of the experts.

(2) Significant administrative complexities were eliminated and equity and benefit adequacy were improved for many recipients through early approval and implementation of many of the simplifications proposed. Examples of changes which should be effected without delay are: Simplified and more generous treatment of interest income,

raising current resource limits by moderate amounts and reconciling the treatment of different types of resources, providing stronger work incentives, and eliminating benefit reductions due to in-kind support and maintenance.

(3) A plan for gradually increasing benefits and expanding eligibility were developed and implemented. For example, annual increases covering changes in the cost of living plus two percentage points could bring benefit levels close to the poverty line by the early years of the 21st century, while being more realistically accommodated within the federal budget.

These changes would represent a major contribution to the well-being of Americans who are elderly or have disabilities and are dependent on SSI for meeting their basic needs.

SUMMARY OF OPTIONS PREFERRED BY A MAJORITY OF EXPERTS WITH COST ESTIMATES—SSI PROGRAM COSTS, SSA ADMINISTRATIVE COSTS, MEDICAID COSTS, AND FOOD STAMP COSTS

Options		Cost (Millions of dollars)				
		1993	1994	1995	1996	1997
Benefit Payment Issues:						
Benefit Adequacy:						
Increase the Federal benefit standard for an individual, in 5 equal annual increments, to 120 percent of poverty guideline. Keep the couple's benefit standard at 150 percent of that for individuals.	Program	2,567	7,092	12,706	19,527	27,707
	Administration	250	710	460	470	510
	Medicaid	435	1,825	2,950	4,310	5,995
Couples:						
Eliminate the concept of "holding out" in defining a spouse	Program	2	3	3	4	4
	Administration	(*)	(*)	(*)	(*)	(*)
	Medicaid	(*)	(*)	(*)	(*)	(*)
Give each member of a couple a full set of earned income exclusions	Program	1	2	3	3	3
	Administration	(*)	10	(*)	0	(*)
	Medicaid	5	20	25	25	35
State Supplementation:						
Permit States to reduce or terminate supplements once the Federal SSI benefit standard reaches 100 percent of poverty. "Grandfather" extant supplementary levels for current beneficiaries. Require States, for at least 3 years, to spend "freed up" supplementation funds for other services to needy aged, blind, or disabled.	Program	0	0	0	0	0
	Administration	(*)	(*)	(*)	(*)	(*)
	Medicaid	435	1,825	1,995	2,195	2,410
		0	0	0	0	0
Require States by July 1, 1995, to: have no more than 3 supplementary payment level variations based on living arrangements, 6 based on categorical distinctions, and 3 by geographic area; or pay SSA for the costs of administration; or take over administration of supplementation.	Program	0	0	0	0	0
	Administration	(*)	(*)	(*)	(*)	(*)
	Medicaid	0	0	0	0	0
Payment Limits for People in Institutions:						
Increase the payment limit to $35, indexed annually, and rounded to the next higher dollar	Program	8	16	20	23	27
	Administration	0	(*)	0	0	0
	Medicaid	(*)	(*)	(*)	(*)	(*)
					0	
					(*)	
Accounting Periods:						
Change to prospective monthly accounting	Program	(*)	(*)	(*)	(*)	(*)
	Administration	(*)	(*)	(*)	(*)	(*)
	Medicaid	(*)	(*)	(*)	(*)	(*)
Continue Medicaid coverage when SSI eligibility is lost solely due to a calendar-related income fluctuation.	Program	0	0	0	0	0
	Administration	(*)	(*)	(*)	(*)	(*)
	Medicaid	(*)	(*)	(*)	(*)	(*)
When it is not cost-effective, do not require income verification	Program	(*)	(*)	(*)	(*)	(*)
	Administration	(*)	(*)	(*)	(*)	(*)
	Medicaid	(*)	(*)	(*)	(*)	(*)
Define SSI eligibility in terms of income below the combined Federal/State payment level in States with federally-administered supplements.	Program	4	5	5	5	5
	Administration	(*)	(*)	(*)	(*)	(*)
	Medicaid	(*)	(*)	(*)	(*)	(*)
Test method(s) of annual accounting, beginning with prospective annual accounting, by running computer simulation(s).	Program	0	0	0	0	0
	Administration	(*)	(*)	(*)	(*)	(*)
	Medicaid	0	0	0	0	0
Needs—Based Eligibility Issues:						
Unearned Income:						
Increase the general income exclusion to $30 and apply it only to unearned income	Program	203	303	321	338	355
	Administration	150	370	40	30	30
	Medicaid	260	935	1,105	1,280	1,475
Exclude from income up to $200 annually of interest and dividends	Program	3	4	5	5	5
	Administration	0	a	0	0	0
	Medicaid	5	5	5	5	5
Adopt the current "earned and unearned" income formula for use in all parent-to-child deeming situations.	Program	11	15	15	15	16
	Administration	(*)	(*)	(*)	(*)	(*)
	Medicaid	(*)	(*)	(*)	(*)	(*)
Deduct itemized special expenses of a disabled child before deeming parental income	Program	10	15	17	18	20
	Administration	(*)	(*)	(*)	(*)	(*)
	Medicaid	(*)	(*)	(*)	(*)	(*)
In parent-to-child deeming, treat as earned income benefits intended to replace a parent's earnings (e.g., unemployment, worker's compensation, and disability and survivorship social insurance benefits).	Program	18	27	29	32	35
	Administration	(*)	(*)	(*)	(*)	(*)
	Medicaid	(*)	(*)	(*)	(*)	(*)
Exclude up to $2,000 per year of income from individually-held Indian trust land	Program	(*)	(*)	(*)	(*)	(*)
	Administration	(*)	(*)	(*)	(*)	(*)
	Medicaid	(*)	(*)	(*)	(*)	(*)
In-Kind Support and Maintenance:						
Eliminate consideration of in-kind support and maintenance as income	Program	600	1,003	1,066	1,122	1,178
	Administration	60	170	0	(4)	(4)
	Medicaid	140	510	600	695	805

SUMMARY OF OPTIONS PREFERRED BY A MAJORITY OF EXPERTS WITH COST ESTIMATES—SSI PROGRAM COSTS, SSA ADMINISTRATIVE COSTS, MEDICAID COSTS, AND FOOD STAMP COSTS—Continued

Options		Cost (Millions of dollars)				
		1993	1994	1995	1996	1997
Resources:						
Increase resource limits to $7,000 and $10,500 with fewer resource exclusions	Program	55	191	215	236	257
	Administration	40	100	10	10	10
	Medicaid	75	265	315	365	420
Change all periods for time-limited resource exclusions to 12 months	Program	(*)	(*)	(*)	(*)	(*)
	Administration	(*)	(*)	(*)	(*)	(*)
	Medicaid	(*)	(*)	(*)	(*)	(*)
Change the calculation of overpayments resulting from excess resources	Program	3	3	3	2	2
	Administration	(*)	(*)	(*)	(*)	(*)
	Medicaid	(*)	(*)	(*)	(*)	(*)
In deeming parental resources, exclude $2,000 for each ineligible child	Program	7	11	12	13	14
	Administration	(*)	(*)	(*)	(*)	(*)
	Medicaid	(*)	(*)	(*)	(*)	(*)
Disability and Work Incentive Issues:						
Disability: Definitions:						
Redefine "substantial gainful activity" in the SSI program to recognize that persons who need substantial support services in order to work are not performing substantial gainful activity.	Program	(*)	(*)	(*)	(*)	(*)
	Administration	(*)	(*)	(*)	(*)	(*)
	Medicaid	(*)	(*)	(*)	(*)	(*)
Study the feasibility of: (a) eliminating use of substantial gainful activity in both the SSI and the disability insurance programs; and (b) formulating disability criteria in terms of being disadvantaged in participating in major life activities.	Program	0	0	0	0	0
	Administration	(*)	(*)	(*)	(*)	(*)
	Medicaid	0	0	0	0	0
Disability: Claims Process:						
Use specially trained field office disability experts to conduct initial disability interviews	Program	(*)	(*)	(*)	(*)	(*)
	Administration	(20)	(20)	(20)	(30)	(30)
	Medicaid	(*)	(*)	(*)	(*)	(*)
Disability: Very Young Children:						
Develop appropriate criteria for assuming the existence of disability in very young children Permit continued payment, based on an assumption, up to age 4, without creating an overpayment.	Program	8	31	35	38	42
	Administration	0	10	0	0	0
	Medicaid	5	20	20	25	25
Disability: Appeal of Decisions:						
In both the SSI and the insurance programs: (a) eliminate the reconsideration level of appeal; and (b) provide opportunity for a face-to-face interview with the decisionmaker prior to issuing a disability denial.	Program	(*)	(*)	(*)	(*)	(*)
	Administration	(*)	(*)	(*)	(*)	(*)
	Medicaid	(*)	(*)	(*)	(*)	(*)
Disability: Time Limits on Claims and Appeals:						
Establish 90-day time limits which, if exceeded, would result in benefit payments not to be considered overpayments. Apply such limits to: initial SSI disability determinations; completing cases at the administrative law judge level; and completing cases at the Appeals Council level. Study the effects after 4 years of experience.	Program	(*)	(*)	(*)	(*)	(*)
	Administration	(*)	(*)	(*)	(*)	(*)
	Medicaid	(*)	(*)	(*)	(*)	(*)
Work Incentives:						
Seek legislation authorizing all of the following work incentives:						
(a) Raise the earned income exclusion to $200 plus two-thirds of any remaining earned income.	Program	149	328	351	370	388
	Administration	80	200	20	20	20
	Medicaid	140	510	605	695	805
(b) Eliminate continuing disability reviews triggered by work; defer scheduled medical reviews for 3 years after work begins.	Program	(*)	(*)	(*)	(*)	(*)
	Administration	(*)	(*)	(*)	(*)	(*)
	Medicaid	(*)	(*)	(*)	(*)	(*)
(c) Treat as earned income: unemployment compensation, workers' compensation, sick pay, and similar benefits related to recent work activity.	Program	10	14	15	16	16
	Administration	(*)	(*)	(*)	(*)	(*)
	Medicaid	(*)	(*)	(*)	(*)	(*)
(d) Eliminate the time limit for completing a plan for achieving self-support	Program	(*)	(*)	(*)	(*)	(*)
	Administration	(*)	(*)	(*)	(*)	(*)
	Medicaid	(*)	(*)	(*)	(*)	(*)
(e) Allow aged individuals to be eligible for all work incentives	Program	(*)	(*)	(*)	(*)	(*)
	Administration	(*)	(*)	(*)	(*)	(*)
	Medicaid	(*)	(*)	(*)	(*)	(*)
Simultaneous with the preceding option, conduct a national demonstration of its work incentives.	Program	0	0	0	0	0
	Administration	(*)	(*)	(*)	(*)	(*)
	Medicaid	(*)	(*)	(*)	(*)	(*)
Grandfather demonstration policies for demonstration participants after expiration of the project.	Program	(*)	(*)	(*)	(*)	(*)
	Administration	(*)	(*)	(*)	(*)	(*)
	Medicaid	(*)	(*)	(*)	(*)	(*)
Disregard deemed income of an ineligible spouse when determining continued Medicaid eligibility under section 1619(b).	Program	0	0	0	0	0
	Administration	(*)	(*)	(*)	(*)	(*)
	Medicaid	(*)	(*)	(*)	(*)	(*)
Require SSA to make a decision on a plan for achieving self-support within 30 days. If there is no decision within that time, assume the plan is acceptable.	Program	0	0	0	0	0
	Administration	(*)	(*)	(*)	(*)	(*)
	Medicaid	(*)	(*)	(*)	(*)	(*)
Require States which supplement regular SSI payments to supplement payments under 1619(a).	Program	0	0	0	0	0
	Administration	(*)	(*)	(*)	(*)	(*)
	States	(*)	(*)	(*)	(*)	(*)
	Medicaid	(*)	(*)	(*)	(*)	(*)
Provide Medicaid under section 1619 to all working individuals	Program	0	0	0	0	0
	Administration	(*)	(*)	(*)	(*)	(*)
	Medicaid	10	15	15	15	15
Provide SSI benefits for individuals who lose their social insurance cash benefits due to substantial gainful activity.	Program	(*)	(*)	(*)	(*)	(*)
	Administration	(*)	(*)	(*)	(*)	(*)
	Medicaid	(*)	(*)	(*)	(*)	(*)

SUMMARY OF OPTIONS PREFERRED BY A MAJORITY OF EXPERTS WITH COST ESTIMATES—SSI PROGRAM COSTS, SSA ADMINISTRATIVE COSTS, MEDICAID COSTS, AND FOOD STAMP COSTS—Continued

Options		Cost (Millions of dollars)				
		1993	1994	1995	1996	1997
Do not permit States to count resources set aside under a plan for achieving self-support when determining Medicaid eligibility using their own rules.	Program	0	0	0	0	0
	Administration	(*)	(*)	(*)	(*)	(*)
	Medicaid	(*)	(*)	(*)	(*)	(*)
Definition of "Aged" Issue:						
Lowering the "Aged" Limit:						
Lower the age requirement to 62, phased in over 3 years	Program	40	178	351	481	528
	Administration	(*)	10	19	10	(*)
	Medicaid	20	115	255	390	460
Agency Service Issues:						
Services:						
Increase staffing (6,000 positions)	Program	0	0	0	0	0
	Administration	280	297	315	335	356
	Medicaid	0	0	0	0	0
Place renewed emphasis on personal contact and individualized service	Program	0	0	0	0	0
	Administration	(*)	(*)	(*)	(*)	(*)
	Medicaid	0	0	0	0	0
Outreach:						
Establish specific funding for outreach by increasing the SSI administrative budget by at least 5 percent.	Program	(*)	(*)	(*)	(*)	(*)
	Administration	(*)	(*)	(*)	(*)	(*)
	Medicaid	(*)	(*)	(*)	(*)	(*)
Information and Referral:						
Adopt the expanded community liaison model	Program	0	0	0	0	0
	Administration	100	110	120	130	130
	Medicaid	(*)	(*)	(*)	(*)	(*)
Helping the Homeless:						
Provide emergency payments to homeless persons with severe mental illness	Program	13	45	50	55	60
	Administration	10	10	0	0	0
	Medicaid	10	35	40	50	55
Provide continued payment protection for all hospitalized individuals	Program	31	43	46	48	50
	Administration	(*)	(*)	(*)	(*)	(*)
	Medicaid	(*)	(*)	(*)	(*)	(*)
Pay SSI benefits to individuals in public emergency shelters for the homeless without any time limit.	Program	(*)	(*)	(*)	(*)	(*)
	Administration	(*)	(*)	(*)	(*)	(*)
	Medicaid	(*)	(*)	(*)	(*)	(*)
Expand nationwide outreach services now being tested	Program	(*)	(*)	(*)	(*)	(*)
	Administration	(*)	(*)	(*)	(*)	(*)
	Medicaid	(*)	(*)	(*)	(*)	(*)
Create backup mailing addresses for the homeless or mentally ill	Program	0	0	0	0	0
	Administration	(*)	(*)	(*)	(*)	(*)
	Medicaid	0	0	0	0	0
Representative Payment:						
Develop legislation mandating specific recruitment, training and monitoring of representative payees; provide reasonable compensation to nonrelative noncustodial payees out of administrative funds.	Program	0	0	0	0	0
	Administration	(*)	(*)	(*)	(*)	(*)
	Medicaid	0	0	0	0	0
Program Linkage Issues:						
Medicaid:						
Require all States to use SSI eligibility criteria and mandate Federal determinations of Medicaid eligibility.	Program	0	0	0	0	0
	Administration	(*)	(*)	(*)	(*)	(*)
	Medicaid	1,590	1,750	1,915	2,110	2,315
Food Stamps:						
Social security offices to complete a short-term food stamp application for all interested SSI claimants.	Program	0	0	0	0	0
	Administration	(*)	(*)	(*)	(*)	(*)
	FdStamps	1	1	1	1	1
	Medicaid	0	0	0	0	0
Eliminate categorical eligibility for food stamps when the SSI benefit standard equals or exceeds the poverty line.	Program	0	0	0	0	0
	Administration	(*)	(*)	(*)	(*)	(*)
	FdStamps	(870)	(1300)	(710)	(740)	(780)
	Medicaid	0	0	0	0	0
Program Review Issues:						
An Advisory Council Level of Review:						
Establish a separate Advisory Council on SSI	Program	0	0	0	0	0
	Administration	(*)	(*)	(*)	(*)	(*)
	Medicaid	0	0	0	0	0
Four Top Priority Issues:						
Increase Staffing: Increase Federal Benefit Standard; Eliminate In-Kind Support and Maintenance; Increase Resource Limits With Fewer Exclusions.	Program	3,539	9,391	15,711	23,346	32,507
	Administration	610	1,237	855	885	946
	Medicaid	610	2,490	3,870	5,545	7,615
All Issues Combined:						
Estimate of combined SSI costs, program and administrative, for all preceding options to which specific dollar amounts have been attributed.		5,281	13,258	19,635	28,539	38,844
Number of New Beneficiaries (in thousands):						
Estimate of total number of people added to the Federal SSI rolls by all preceding options to which specific dollar amounts have been attributed. Annual numbers are cumulative.		489	1,527	2,240	2,965	3,607

(*): Negligible.
(*): Unable to estimate.

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federal register

Friday
September 4, 1992

Part III

Environmental Protection Agency

40 CFR Part 55

Outer Continental Shelf Air Regulations; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 55

[FRL-4200-9]

Outer Continental Shelf Air Regulations

AGENCY: Environmental Protection Agency ("EPA").

ACTION: Final rule.

SUMMARY: The EPA is promulgating new regulations that establish requirements to control air pollution from outer continental shelf ("OCS") sources.

The Clean Air Act ("the Act") requires EPA to promulgate a rule establishing air pollution control requirements for OCS sources. The purpose of the requirements is to attain and maintain federal and state ambient air quality standards, to comply with part C of title I of the Act, and to distribute the burden of achieving these goals more equitably between onshore sources and OCS sources.

The requirements apply to all OCS sources except those located in the Gulf of Mexico west of 87.5 degrees longitude (near the border of Florida and Alabama). New sources must comply with the requirements of this part on the date of promulgation and existing sources must comply within 24 months from promulgation. For OCS sources located within 25 miles of states' seaward boundaries, the requirements are the same as the requirements that would be applicable if the source were located in the corresponding onshore area ("COA"). In states affected by this rule, state boundaries extend three miles from the coastline, except off the coast of the Florida Panhandle, where that state's boundary extends three leagues (approximately 9 miles) from the coastline. Sources located beyond 25 miles of states' boundaries are subject to federal requirements for Prevention of Significant Deterioration ("PSD") promulgated pursuant to part C of title I of the Act. New Source Performance Standards ("NSPS") and National Emissions Standards for Hazardous Air Pollutants Standards ("NESHAPS") apply under section 328 to the extent they are rationally related to protection of federal or state ambient air quality standards and compliance with part C of title I of the Act. EPA will amend its new regulations to incorporate the federal operating permit program and enhanced compliance and monitoring regulations when they are promulgated. The rule establishes procedures for EPA to delegate implementation and enforcement of the requirements of this part to state and local agencies. Beyond 25 miles from states' seaward boundaries, the OCS program requirements will be implemented and enforced solely by EPA. The new regulations also establish procedures to allow the Administrator of EPA ("the Administrator") to exempt any OCS source from a control technology requirement if it is technically infeasible or poses an unreasonable threat to health or safety.

DATES: This rule shall be effective as of September 4, 1992. The incorporation by reference of certain rules listed in the regulation (under § 55.14 of this part) is approved by the Director of the Federal Register Office as of September 4, 1992.

ADDRESSES: *Docket:* This rulemaking is determined to be subject to the requirements of § 307(d) of the Act. Supporting information used in developing the rule is contained in EPA docket A-91-76. This docket is available for public inspection and copying at the following locations: (1) U.S. Environmental Protection Agency Region 9, Air and Toxics Division, 75 Hawthorne Street, San Francisco, CA 94105, and (2) U.S. Environmental Protection Agency, 401 M Street SW, Washington, DC 20460 in Room M-1500. These locations are open to the public Monday through Friday, excluding legal holidays. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Alison Bird, Air and Toxics Division (A-5), U.S. EPA, Region 9, 75 Hawthorne Street, San Francisco, CA 94105.

SUPPLEMENTARY INFORMATION: This rule (40 CFR part 55) was proposed in the **Federal Register** on December 5, 1991 (56 FR 63774). EPA held four public hearings during January 1992 and accepted public comments on the proposal until February 20, 1992. The hearings were held in San Francisco, CA, Los Angeles, CA, Washington, DC, and Anchorage, AK. The hearing testimony, public comments, EPA's response to comments and other support documents are contained in the docket referenced above. This preamble discusses changes made to the proposed rule and responds to the major comments received on the proposed rule. This preamble does not repeat information and policies discussed in the preamble that accompanied the proposed rule. Hereafter, the proposed rule and preamble will simply be referred to as the notice of proposed rulemaking ("NPR"). The reader may refer to the NPR for further background and information on this rule.

This preamble is organized according to the following outline:

As in the NPR, citations to various sections within commonly referenced documents will not always be followed by a notation of their origin such as "of this preamble" or "of section 328."

Rather, the reader can recognize the origins of the sections by their nature:

- Sections of the preamble begin with a roman numeral
- Sections of the OCS regulations appear as § 55.xx
- Sections of the Act are numbered in the hundreds
- Sections of non-OCS EPA regulations are preceded by 40 CFR

This preamble and the final rule make frequent use of the term "state," usually meaning the state air pollution control agency that would be the permitting authority. Use of the term "state" may also reference a local air pollution permitting agency or certain Indian tribes which can be the permitting authority for areas within their jurisdiction. In some cases, the term "delegated agency" is used and can refer to the state agency, the local agency, or the Indian tribe, depending on the delegation status of the program. The term state may also be used in the geographic sense and in such cases may refer to the state or the geographic area associated with an onshore permitting authority, such as the nearest onshore area ("NOA"), and the COA.

I. Discussion of the Final Regulations

A. § 55.1—Statutory Authority and Scope

In response to several comments, § 55.1 has been revised from the NPR to more accurately reflect the language of section 328 of the Act by stating that the Administrator is required to issue regulations for the OCS, rather than simply authorized to do so.

In addition, language has been added to this section to clarify that the purpose of this rule is to attain and maintain federal and state ambient air quality standards and to comply with the provisions of part C of title I of the Act. This language sets forth the limits of the rulemaking authority given to EPA under section 328 of the Act. As a result, the state and local rules that EPA incorporates pursuant to this rule must be rationally related to this purpose and may not be used expressly for the purpose of preventing exploration and development of the OCS.

B. § 55.2—Definitions

The following definitions were added or amended since the publication of the NPR. The various changes are summarized below and explained as necessary.

Corresponding Onshore Area ("COA")—This definition has been changed to clarify that the COA may be defined in association with a "proposed" source as well as an existing source. Several commenters noted that this will make clear that a proposed OCS source must comply with the preconstruction requirements of the COA. The definition of NOA has been changed in an identical manner for the same reason.

Delegated Agency—Language has been added to the rule to clarify that the delegated agency may be a state or local agency or an Indian tribe, provided that EPA has found that the delegation requirements of part 55 have been satisfied.

Exploratory Source—Language has been added to this definition to clarify that an exploratory source includes an operation conducted during the exploratory phase to determine the characteristics of the reservoir and formation and may involve the extraction of oil and gas.

Existing Source, New Source and Modification—Many commenters expressed confusion as to when the definitions of existing source, new source, and modification apply. These terms have the meaning given in the federal, state, and local requirements incorporated into §§ 55.13 and 55.14, as stated in the NPR. However, for two years following the date of promulgation of this part, the definitions given in section 111(a) of the Act shall apply for the purpose of determining the required date of compliance with this part, as required by section 328 of the Act and set forth in § 55.3 of this part. Language has been added to this section to clarify the applicability of the definitions given § 55.3 and in the requirements incorporated into §§ 55.13 and 55.14.

Nearest Onshore Area ("NOA")—This definition has been changed so that the NOA may be defined in association with a proposed source. This clarifies that proposed sources are subject to preconstruction requirements (see definition of COA). Language was also added to limit application of the NOA definition to OCS sources located within 25 miles of states' seaward boundaries. The definition of NOA is now consistent with the definition of COA.

Onshore Area—This definition has been changed to reflect the fact that the boundaries of areas designated pursuant to section 107 often do not coincide with the jurisdictional boundaries of any one air pollution control agency. When this is the case, the onshore area will have the same boundaries as the air pollution control agency for the purpose of determining the NOA and the COA.

Outer Continental Shelf—This definition was modified so that it will track any changes made to the definition in the Outer Continental Shelf Lands Act (OCSLA). Commenters were divided on whether or not this definition should be made permanent within this rule or allowed to change if OCSLA changes. EPA concurs with the comment that the determination of applicability, implementation, and enforcement could become unnecessarily complicated if the definitions in OCSLA and this rule diverge.

OCS Source—The definition of "OCS source" has been modified to clarify when EPA will consider vessels to be OCS sources. Section 328(a)(4)(C)(ii) defines an OCS source as a source that is, among other things, regulated or authorized under the OCSLA. The OCSLA in turn provides that the Department of the Interior ("DOI") may regulate "all installations and other devices permanently or temporarily attached to the seabed, which may be erected thereon for the purpose of exploring, developing, or producing resources therefrom, or any such installation or other device (other than a ship or vessel) for the purpose of transporting such resources." 43 U.S.C. § 1333(a)(1). Vessels therefore will be included in the definition of "OCS source" when they are "permanently or temporarily attached to the seabed" and are being used "for the purpose of exploring, developing or producing resources therefrom." This would include, for example, drill ships on the OCS.

In addition, when a vessel is physically attached to an OCS facility it will be considered a part of that facility and regulated as such. This is consistent with DOI's regulations, which specifically cover vessels used to transfer production from an offshore facility when the vessel is physically attached to the facility. 30 CFR 250.2. It is also consistent with federal new source review ("NSR") requirements, under which emissions from the stationary source activities of vessels at dockside are considered primary emissions of the marine terminal and are regulated as such. Moreover, under the "same as" requirements of section 328, the OCS platform will have to comply with the same requirements as the marine terminals. It therefore makes sense for vessels to be subject to the same requirements at OCS platforms as they are at marine terminals.

Only the vessel's stationary source activities may be regulated, since when vessels are in transit, they are specifically excluded from the definition of OCS source by statute. In addition, only the stationary source activities of vessels at dockside will be regulated under title I of the Act (which contains NSR and PSD requirements), since EPA

is prohibited from directly regulating mobile sources under that title. See *NRDC v. EPA*, 725 F.2d 761 (DC Cir. 1984). Part 55 thus will not regulate vessels en route to or from an OCS facility as "OCS sources," nor will it regulate any of the non-stationary source activities of vessels while at dockside. Section 328 does not provide authority to EPA to regulate the emissions from engines being used for propulsion of vessels. Any state or local regulations that go beyond these limits will not be incorporated into the OCS rule. If the mobile source emissions of vessels are regulated under future regulations developed pursuant to title II of the Act, the OCS rule will be revised accordingly.

All vessel emissions related to OCS activity will be accounted for by including vessel emissions in the "potential to emit" of an OCS source. Vessel emissions must be included in offset calculations and impact analyses, as required by section 328 and explained in the NPR. Emissions from vessels that service more than one OCS facility will be allocated among all the OCS facilities that the vessel services, to ensure that there is no double-counting of emissions.

EPA received some comments noting that at one point DOI proposed OCS rules that would have regulated vessels. Because the DOI regulations were proposed long before section 328 was enacted and were not developed beyond the stage of a proposal, they were not considered during rule development.

EPA also received comments regarding a development and production plan that DOI approved for an OCS platform named Julius, to be located off the coast of California, which contained requirements for vessels. However, these requirements were not required of the source by DOI, but rather were controls that the source and the state had agreed to. DOI simply incorporated the requirements into the plan as existing controls. Moreover, for the most part, these regulations applied to vessels while at the platform.

State—This definition was added to clarify that state means the state air pollution control agency that would be the permitting authority, a local air pollution permitting agency, or certain Indian tribes which can be the permitting authority for areas within their jurisdiction. In some cases, the term "delegated agency" is used and can refer to the state agency, the local agency, or the Indian tribe, depending on the delegation status of the program. The term may also be used in the geographic sense and then it refers to a state or the area associated with a permitting authority. Usage of this term was described in the NPR and has now been included in the final rule for clarification.

C. § 55.3—Applicability

As discussed in the NPR, this section gives the compliance dates for new and existing sources. Section 328 requires that new sources comply with this part on the date of promulgation, which is the date that the rule is published in the **Federal Register**. Existing sources must comply with this part within 24 months from promulgation. For purposes of compliance with this requirement a "new source" means an OCS source that is a new source within the meaning of section 111(a) and an "existing source" means any source that is not a new source. In brief, section 111(a) defines a "new source" as any stationary source the construction or modification of which is commenced after the publication of the NPR, which for this rule was December 5, 1991.

This section also establishes two separate regulatory regimes, as indicated by the statute and discussed in the NPR. The first applies to OCS sources within 25 miles of states' seaward boundaries. These nearshore OCS sources must comply with all the requirements of this part, including the federal requirements as set forth in § 55.13 and the federal, state, and local requirements of the COA (designated pursuant to § 55.5), as set forth in § 55.14. The second regulatory regime will apply to OCS sources located more than 25 miles beyond states' seaward boundaries. These outer sources must comply with all the applicable requirements of this part, including the federal requirements set forth in § 55.13.

Most of the comments received on this section pertain to the requirements that EPA proposed to incorporate into these two regimes. The reader is referred to sections I.M. and I.N. for a discussion of these comments. The only change made to this section clarifies in § 55.3(c) that sources in the outer regime are not subject to the requirements of the following sections: § 55.6—Requirements to Submit a Notice of Intent; § 55.4—Corresponding Onshore Area Designation; § 55.11—Delegation; § 55.12—Consistency Updates; and § 55.14—Requirements that Apply to OCS Sources Located Within 25 Miles of States' Seaward Boundaries.

D. § 55.4—Requirements To Submit a Notice of Intent ("NOI")

Few comments were received on § 55.4, and the changes, discussed below, are simply to clarify EPA's intent in the NPR in response to comment. As stated in the NPR, the owner or operator of a new OCS source or modification to be located within 25 miles of a state's seaward boundary must submit an NOI to the Administrator through the Regional EPA Office and to the air pollution control agency of the nearest onshore area and adjacent onshore areas. The NOI must include information about the proposed source or modification to determine onshore impacts and the applicability of onshore requirements for the purposes of designating a COA (if necessary) and performing consistency updates as mandated by section 328 of the Act.

The information required to be submitted in the NOI is listed in § 55.4. This information will generally be less extensive than that required by a new source review permit application and will in no way limit the required scope and contents of the permit application or applicable requirements. In response to comments, subsection (c) has been added to the rule to eliminate any confusion in this regard.

Several comments stated that existing sources planning to modify should be required to submit an NOI. In the NPR, modifications that trigger preconstruction requirements were considered new sources as defined by sections 328 and 111(a) of the Act. Section 55.4(a) has been amended to clarify that the NOI requirement applies to new sources and to modifications of existing sources that result in an increase in emissions. The NOI for modifications to existing sources only triggers consistency updates and not the COA procedure, as discussed in more detail in section I.E. below.

In addition, § 55.4(a) has been amended to require that the applicant submit the NOI to the EPA Administrator through the EPA Regional Office and at the same time to the air pollution control agencies of the NOA and onshore areas adjacent to the NOA. This clarification was made in response to comments that sources should submit the NOI to the Administrator and the delegated agency simultaneously.

EPA received several comments that stated that exploratory sources should not be exempt from NOI and emission control requirements. Exploratory sources and modifications to existing sources are exempt only from § 55.4(b)(10), the requirement to submit "such other information as necessary to determine the source's impact in onshore areas." Because the NOA will automatically be designated as the COA for exploratory sources (see discussion section II.D of the NPR) and the COA will not change for modifications to

existing sources, these sources will not be required to submit any information to be used for the purpose of determining the COA (i.e. an impacts analysis). Exploratory sources and modifications to existing sources that result in an increase in emissions will have to submit all other information required for consistency update purposes and will be subject to all the permitting and emission control requirements of the COA. In addition, should exploration lead to development and production, proposed sources will be subject to the full NOI and COA designation processes. Exploratory sources are discussed further in § I.E below.

E. § 55.5—Designation of the Corresponding Onshore Area ("COA")

Under section 328(a)(4)(B), the COA is assumed to be the NOA, but the Act gives the Administrator the discretion to designate a more stringent area as the COA if the area meets certain other criteria.

Proposed Exploratory Sources

The substance of this section of the rule was not changed significantly, but clarifying language was added in response to comments. The added language states that COA designations apply only to exploratory sources that are located within 25 miles of states' seaward boundaries. Another minor change clarifies that exploratory sources are not subject to those requirements of § 55.5 that relate only to the designation of the COA.

The content of this section resulted in several significant comments that are discussed for clarification, although they did not result in changes to the rule. Some commenters objected to EPA's proposal to make presumptive determinations of the COA for exploratory sources. Although exploratory sources are of admittedly limited duration, they emit significant amounts of nitrogen oxides (NO_x) while in operation. Commenters objected that areas possibly affected by emissions from these sources would be deprived of the chance to request COA designation. EPA concluded that this concern was outweighed by the need to prevent overly burdensome regulations. As previously stated in the NPR, EPA has determined that it is unreasonable to require a source that will operate for three or four months to undergo an administrative procedure that may last up to eight months. If the exploratory operation results in a plan to develop the site for production, that proposed source will be subject to all the requirements of § 55.5 for the designation of a COA. The Administrator may reconsider presumptive COA designations for exploratory sources in the future if presumptive determinations appear to be interfering with an area's ability to protect or attain ambient standards or comply with PSD, or if other conditions indicate that a review is warranted.

Many comments were received stating that exploratory sources should not be exempt from regulation and control requirements. In fact, exploratory sources are subject to the requirements of this part. In addition, exploratory sources are required to submit an NOI, thereby initiating the consistency review process. If necessary, a consistency update will be performed and the proposed exploratory source shall then be required to comply with the updated requirements of the NOA.

Requests for Designation

The final rule contains a change to the procedural requirements for COA designation requests. In response to comment, § 55.5(b)(1) has been modified to require the agency requesting COA designation to notify the chief air pollution control officer of the NOA and the owner or operator of the proposed source at the same time the request is submitted to EPA. This change will facilitate information transfer among affected parties.

Section 55.5(b)(1) also contains the first instance of a change that is repeated throughout § 55.5. The words submission and submittal are replaced with receipt and received, respectively. This change lends certainty to the timing of events that are to occur pursuant to this section. In the NPR, every significant date in this section was related to the date the NOI was submitted. As a practical matter, the Administrator cannot know when the NOI is submitted, only when it is received. Thus, this aspect of the change allows EPA to initiate the COA process with certainty. The COA process has the potential to last eight months; it is essential to ensure that it does not last any longer than planned. Another ramification of this word change is that the burden now lies with the requesting area to assure that EPA receives the deliverable items (i.e. COA requests and demonstrations) by the date specified. If the Administrator does not receive a deliverable item, the COA will be designated by default.

If an air pollution control district wants to be designated as the COA, it must submit a demonstration showing that the criteria of § 55.5(b)(2) are met. In the NPR, EPA solicited suggestions to more explicitly define the parameters of the demonstration and criteria. Two of the three statutory criteria use the undefined term "reasonably expected." Because this term can be broadly interpreted, EPA specifically requested comment on possible interpretations. After a thorough review of the comments received, it was determined by EPA that the Administrator must be allowed to exercise discretion in the evaluation of each COA request. In part, the large number and variability of suggestions received contributed to EPA's decision. Each suggestion had merit if applied under specific circumstances, but no single suggestion could be logically applied in every case. The rule applies to a variety of local environments and trying to set rigid criteria for evaluating COA requests limits the flexibility of the requesting area to tailor the demonstration to their situation.

In response to an overwhelming number of comments, § 55.5(c) of the final rule has been revised to allow the delegated agency that is designated as the COA to exercise all delegated authority. The NPR stated that if the COA was not the NOA, EPA would implement and enforce the rule. Commenters argued that permit engineers at the delegated agency would have expertise developed through implementing their own regulations, while EPA's permit engineers would be less familiar with the applicable requirements of the COA. EPA concurs with this argument. If there is no delegated agency in the COA, EPA will implement and enforce the requirements of the rule. EPA may also choose to implement and enforce the requirements of this rule if the NOA and the COA are in different states.

In the NPR, every modification to an existing source that required a preconstruction permit would have triggered the COA designation process. Some commenters requested that EPA consider modifying the rule to stipulate that the COA for each source shall be designated only once in the source's lifetime. Comment to the contrary was also received. The final rule has been modified so that an OCS source will be subject to the COA designation process only once. The rule still requires an NOI to be submitted when an existing platform is modified, but only the consistency update process will be triggered by the NOI. The statute makes no mention of reevaluating the COA, and this approach will ensure a consistent and stable permitting regime, as is the case onshore. Corresponding changes were also made to § 55.4, the section that contains the requirements of the NOI process because it is the NOI

that actually triggers the COA designation process.

Offset Requirements

Section 55.5(d) of the rule has changed significantly as a result of comments received by EPA. The first change is the addition of language that requires all offsets to be obtained in accordance with the requirements of the Act and the regulations thereunder. This is simply a clarification and mirrors the language of the offset requirements in § 55.7, Exemptions.

The substantive requirements of the offset provisions contained at § 55.5(d) have undergone several changes as a result of comments received. As proposed, the rule would not have required any offset penalties or discounting based on the distance between the proposed source and the source of offsets when the offsets were obtained on the landward side of the proposed OCS source. Offsets obtained on the seaward side of the proposed source would have been subject to distance discounting and penalties in the same manner that those requirements are applied onshore. EPA's rationale for this proposal is explained in detail in the NPR. Put simply, EPA believed that onshore emission reductions would yield greater air quality benefits in the onshore nonattainment area than emission reductions on the OCS. Many onshore regulatory agencies agreed that it would be preferable for OCS sources to obtain offsets onshore. However, these agencies expressed concern that complete elimination of distance based penalties could result in OCS sources obtaining onshore offsets that would not provide actual air quality benefits in the affected nonattainment area. Each onshore area has crafted offset requirements with the aim of reducing emissions and impacts in the areas that experience violations of the ambient standards.

Key comments focused on the fact that EPA's proposed offset requirements would not necessarily achieve EPA's goals as described in the NPR. Commenters stated that not all onshore emission reductions have a beneficial effect in the nonattainment area, even if the emissions reductions occur in the same air basin, NOA, or COA. After review of the comments, EPA concluded that the offset requirements in the NPR were inadequate to consistently achieve the desired result of producing a net air quality benefit in the onshore nonattainment area.

The offset requirements of the final rule have been revised to allow the offset requirements of the COA to be applied to OCS sources in a manner consistent with the underlying goals and technical rationale used by the COA to determine its offset requirements. The revisions, discussed below, address the concerns of most commenters and still provide incentive for OCS sources to obtain their offsets from the landward side of the OCS source. The changes reflect EPA's position that distance discounting and penalties serve a useful purpose when they are applied in a manner consistent with the assumptions upon which they are based.

The offset provisions of the final rule create three geographic zones, each with different requirements for the purpose of applying distance penalties. The first zone lies seaward of the OCS source, the second zone lies between the OCS source and the state seaward boundary, and the third zone extends from the state seaward boundary inland. In each zone the offset ratio applied shall not be higher than the highest offset ratio required onshore, provided that a net air quality benefit is achieved.

Offsets obtained in the first zone are subject to all the offset requirements of the COA, and any distance penalties are calculated based on the distance between the OCS source and the source of offsets. Offsets obtained in the second zone are obtained at the base ratio required in the COA, and no distance penalties will apply. Offsets obtained in the third zone are subject to the offset requirements of the COA. For the purpose of calculating the distance between the OCS source and the source of offsets, a straight line shall be drawn from the site of the OCS source to the source of offsets. The point at which this line crosses the state seaward boundary shall be treated as the site of the OCS source for the purpose of offset requirements.

No negative comment was received on the application of distance penalties to offsets obtained seaward of the OCS source, and these offset requirements are unchanged from the NPR. The rule does not apply distance penalties to offsets obtained between the OCS source and the state seaward boundary, which avoids creating a disincentive to obtain offsets from the landward side of the OCS source. Finally, when offsets are obtained from within state boundaries, offset penalties apply, but the OCS source is not penalized for the distance between the OCS source and the state seaward boundary. Treating the OCS source as if it were located at the state seaward boundary allows the onshore offset requirements to function in the manner originally intended. This eliminates the concern of EPA and other commenters that application of onshore offset requirements might unintentionally provide an incentive for an OCS source to obtain offsets far from the nonattainment area.

The NPR and the final rule state that an OCS source may obtain offsets from the NOA, the COA, and from OCS sources with the same NOA or COA. The NOA is likely to experience impacts from the OCS source; it is therefore appropriate to allow offsets to be obtained from sources located within the NOA. Since some onshore areas prohibit sources from obtaining offsets outside their area of jurisdiction, it was necessary to include language which supersedes such geographic restrictions. This provision was not meant to contradict or supersede any other requirements of the COA's regulations or of part 55. The rule now clarifies that the OCS source must comply with all other offset requirements of the COA and this part, including distance penalties. The language of the offset requirements has also been modified to make it clear that modifications are subject to offset requirements.

Administrative Procedures and Public Participation

A very large number of commenters expressed concern regarding public participation. In response to these comments, § 55.5(f) now states more clearly that public comment will be taken on preliminary COA designations before they are made final. Another change to this section eliminates the obligation of the Administrator to issue a separate document to respond to comments. This requirement is redundant because the Administrator must prepare a written justification of the COA designation setting forth the reasons for the decision. Since public comment must be considered in making the designation, this justification will address the comments.

Final Designations of COAs

The final rule designates the COAs for existing and proposed OCS sources adjacent to California. No changes have been made from the COA designations proposed in the NPR. EPA is designating the COAs for these sources in order to facilitate their timely compliance with part 55. In making these designations, EPA is not making or implying a decision as to the status of these facilities pursuant to section 111(a) of the Act for the purposes of compliance with the requirements of this part.

The NPR stated that the proposed COA designations would be included in the final rule unless commenters submitted sufficient documentation to

demonstrate that EPA should reconsider the proposed COA for a source. Comments were submitted requesting that EPA change some of the proposed COA designations. Although these comments contained logical justifications for changing the COA for specific sources, none contained a stringency analysis, a key criterion for requesting COA designation. EPA does not have the discretion to designate a COA other than the NOA unless a determination is made that the requesting area has more stringent requirements for the control of air pollution than the NOA. One commenter requested that EPA delay all the COA designations for six months to allow time to prepare a stringency analysis. Existing sources have only two years from promulgation of part 55 to come into compliance with the rule, and a six month delay would jeopardize their ability to meet the compliance deadline. For these reasons EPA is making final designations of the COAs for the existing and proposed platforms adjacent to California, as listed below.

The South Coast Air Quality Management District is designated as the COA for the following OCS facilities: Edith, Ellen, Elly, and Eureka.

The Ventura County Air Pollution Control District is designated as the COA for the following OCS facilities: Grace, Gilda, Gail, and Gina.

The Santa Barbara County Air Pollution Control District is designated as the COA for the following OCS facilities: Habitat, Hacienda, Harmony, Harvest, Heather, Henry, Heritage, Hermosa, Hidalgo, Hillhouse, Hogan, Houchin, Hondo, Irene, Independence (formerly named Iris), the OS & T, and Union A, B, and C.

F. § 55.6—Permit Requirements

Section 55.6 contains requirements to enable EPA or a delegated agency to issue preconstruction and operating permits in accordance with onshore federal, state, and local regulations for OCS sources within 25 miles of states' seaward boundaries and establishes federal permitting requirements for OCS sources beyond 25 miles of states' seaward boundaries. As discussed in the NPR (section II.K.) and section I.K below, the Administrator will retain authority for the implementation and enforcement of the OCS regulations beyond 25 miles of states' seaward boundaries.

Permit Applications

This section requires that approval to construct or permit to operate applications submitted by a new or existing OCS source must include a description of how the source will comply with all the applicable requirements of this part. In response to several comments, this section has been amended to require that the application also identify those requirements that have been proposed by EPA for incorporation into this part. This will ensure that the permitting agency and the applicant have identified all the requirements to which the source will be subject and allows the applicant to identify any control technology requirements that the applicant believes are technically infeasible or will cause an unreasonable threat to health and safety. In addition, to help ensure that the OCS source meets requirements that are consistent with onshore requirements, the condition set out at § 55.6(b)(2) states that the permit application must not be submitted until any consistency update that the Administrator determines is necessary has been proposed. This requirement was included in response to numerous comments received on the proposed consistency update procedures. The consistency update procedures, including the deadlines specified for the Administrator, are discussed in detail in section I.L. below.

Modification of Existing Sources

Section 55.6 of the NPR exempts from preconstruction requirements (new source review requirements and preconstruction permits) those existing sources that undertake modifications solely to come into compliance with part 55 within 24 months of promulgation of this part, providing such modifications do not result in an increase in emissions of any regulated pollutant. Those sources not requiring a preconstruction permit must submit a compliance plan to the permitting agency. Numerous comments were received on how to ensure that existing sources come into compliance within 24 months from promulgation of part 55 in light of EPA's exemption of these sources from preconstruction requirements for modifications required to obtain compliance. The comments ranged from several assertions that all modifications made to come into compliance with the regulation should require NSR or preconstruction permits prior to modification, to a recommendation that only modifications that result in an increase of emissions above some unspecified *de minimus* level should be subject to any compliance review at all. Several commenters stated that sources would make costly modifications to facilities that may not meet onshore requirements and subsequent enforcement would be difficult.

For the most part, commenters agreed with the provision contained in the NPR that NSR requirements (such as best available control technology or modeling) should not be applied to these sources, but they felt that preconstruction permits or enforceable compliance plans should be required. Specifically, several commenters stated that § 55.6 should be modified to require that the applicant submit a compliance plan for approval by the Administrator or delegated agency prior to performing the modification and that the regulation should make provisions for the delegated agency to charge fees for the review and approval of the plan. Other commenters suggested that the regulation give a timeline for agency review of the compliance plan.

EPA is concerned that preconstruction permits or compliance plans that require approval and public comment would not leave existing sources with enough time to come into compliance. In addition, EPA does not believe that compliance plans must be enforceable to be effective. If existing OCS sources do not meet the compliance deadline, they will be in violation of this part and subject to enforcement action. The intent of a compliance plan is to ensure that existing sources make appropriate modifications in a timely manner in order to comply with all the applicable requirements of this part within 24 months of rule promulgation. The compliance plan should facilitate communication between the source and reviewing agency, which should in turn expedite the operating permit review and eliminate costly oversights. EPA maintains that existing sources must meet all applicable requirements of part 55 within 24 months, regardless of the status of the compliance plan, and that sources subject to COA operating permit requirements are required to obtain such permits within 24 months of promulgation of this part.

In response to the above comments, § 55.6(b) has been amended to require that the reviewing agency provide written comments to the source within 45 days of receipt of the compliance plan. The source must in turn respond to such comments as required by the reviewing agency. This will ensure that both the reviewing agency and existing source benefit from the compliance plan and that the intended modification will indeed meet the onshore requirements.

In addition, language was added to § 55.6(b)(8)(iii) to address DOI's concern with the condition that modifications exempt from preconstruction

requirements must not result in an increase in emissions of any regulated pollutant. They believed that onshore agencies would interpret the preconstruction exemption to require that all modifications required to comply with this rule that result in an increase in emissions would be subject to NSR requirements irrespective of any *de minimus* levels that may exist in onshore NSR rules. The applicable definition of modification, however, is that definition given by the applicable federal, state, or local requirements incorporated into this part. Thus, only sources that increase emissions above any *de minimus* levels included in the applicable rules will be subject to preconstruction requirements.

Finally, language was added to this section to require that, as with permit applications, any requests for exemption from control technology requirements must be submitted with the compliance plan. The administrator or delegated agency will act on the exemption request in accordance with the procedures set forth in § 55.7.

Exemptions

Several commenters pointed out that the timeline for the exemption procedure may conflict with mandatory permit issuance requirements of state and local agencies, especially when an exemption request is appealed to the Administrator (see § 55.7). Language has been added to § 55.6(a)(2) to ensure that a final permit will not be issued until a final determination is made on any exemption request submitted with the required permit application.

Administrative Procedures

A few comments were received regarding the NPR's reference to 40 CFR part 124. As stated in the NPR, when issuing preconstruction or operating permits, EPA will use the applicable administrative and public notice and comment procedures of § 55.6 and 40 CFR part 124, Procedures for Decision Making. Part 124 contains regulations on the issuance of EPA permits and will be amended to reference the issuance of federal OCS permits. Where the Administrator delegates the OCS permitting requirements to a state or local agency, that agency must issue permits in accordance with the requirements of § 55.6, except for the administrative and public participation procedures of the federal rule, for which the agency may substitute its own procedures. Comments stated that the applicable procedures that EPA intends to apply from part 124 must be made explicit. Section 55.6 now specifies that until part 124 has been modified to reference permits issued under this part, the Administrator will follow the procedures in part 124 used to issue PSD permits.

During the public comment period, industry expressed the concern that given the complex leasing, owner, and operator relationships on the OCS it would be easy to postulate conditions under which the owner of an OCS source would have no constructive knowledge of the requirements of the permits obtained by an applicant. Once commenter suggested that applicants should be required to inform contractors and sub-contractors of any conditions of the permits issued under part 55 that might affect their equipment or operations. Section 55.6 has been amended to include the above suggestion. Notification of future owners and sub-contractors is often a requirement of federally issued PSD permits.

Several comments were received that recommended the regulation should allow the delegated agency 10 days to send a copy of any preliminary determination and final action to the Administrator. Section 55.6 of the NPR requires the delegated agency to send a copy of any preliminary determination or final permit action to EPA on the date of the determination. By "date of determination" EPA meant the date that the draft or final permit is issued to the applicant or made available for public review and comment. EPA needs simply to receive a copy of all such actions. A delay of 10 days could effectively shorten EPA's review time during the public comment period if such period begins on the date of draft permit issuance. The condition set out in § 55.6(a)(5)(iii) has been modified to clarify this intent.

Transitional Permit Applications

In responding to comments, EPA discovered a discontinuity in the proposed rule for sources that commence construction during the period between proposal of this part on December 5, 1991 and promulgation of this final rule, which is the date of publication of this notice in the **Federal Register**. Section 328(a)(1) of the Act provides that "new OCS sources" must be "in compliance" as of the date EPA's final OCS rules are promulgated. Under section 328(a)(4)(D), a "new OCS source" is defined by reference to CAA section 111(a) (42 U.S.C. 7411(a)). Under that section, a source is new if construction of that source commences after the applicable regulation is proposed in the **Federal Register**. Therefore, an OCS source that is covered by this rule, and that commenced construction after December 5, 1991 (the date this rule was proposed), is a new OCS source that must be "in compliance" on the date of promulgation.

The OCS rule includes, among other things, preconstruction review (NSR and PSD) and other permitting requirements. However, the source can not obtain such permits prior to promulgation of this rule, because the permitting authority does not have the jurisdiction and authority necessary for action until promulgation of the rule. It is thus impossible for the source to be "in compliance" by the date of promulgation to the extent that phrase is interpreted to mean in receipt of final, valid permits.

As the permitting process typically takes several months or longer to complete, the source would potentially be in the position of having to cease all activity for the time it takes to get a permit or continuing to construct and operate in violation of federal law. The situation would occur regardless of whether the source was in compliance with all the applicable air pollution control requirements. Although, in theory, it may have been technically possible for such sources to have prepared a permit application and made preliminary contracts with the projected permitting authority in advance of promulgation, EPA does not believe the necessity or availability of such a course was sufficiently apparent prior to today's final action to require sources to have done so. Moreover, even if an affected source took these actions, a permit likely still could not be issued immediately (e.g., before a PSD or NSR permit may be issued, the public must first be provided an opportunity to comment on the draft permit).

EPA believes that Congress did not intend such a result for these sources. Nothing in the statute or legislative history suggests that Congress intended that OCS sources that have lawfully commenced construction or operation in the period between proposal and promulgation, cease construction or operation while they engage in a potentially lengthy permitting process. Instead, EPA believes that Congress desired that these sources immediately comply with all substantive provisions and that they immediately commence the process of receiving all necessary permits. To this end, provisions for receiving valid permit(s) without unduly or unnecessarily disrupting ongoing activities for these limited number of sources have been included in this final rule.

EPA has determined that, for purposes of permitting only, compliance by

prepromulgation new OCS sources with the transitional permit rules, set forth in § 55.6(e), satisfies the requirements of section 328(a) of the Act. These provisions are designed to assure continuous compliance with all substantive requirements and provide assurance that public health or welfare will not be impaired. In essence, these rules contain the same requirements that the source would have to comply with if it had a valid permit except that the following requirements replace the obligation to have a valid permit on the date of promulgation of this rule:

1. Pursuant to § 55.6(e), within 30 days of promulgation the source must submit to the permitting authority a transitional permit application (TPA). The essential information required in the TPA includes a complete description of the source, a listing of all requirements that apply to the source directly, and, for sources required to perform an air quality analysis (such as under PSD), a screening analysis that demonstrates whether the source has or is expected to cause or contribute to a violation of any ambient air quality standard or exceed any applicable increment;

2. If the source is required to obtain a preconstruction permit, the source must set forth in the TPA, proposed emission limits that reflect utilization of the required control technology, including BACT or LAER. The TPA must demonstrate that the source is in compliance with these proposed emission limits;

3. The TPA must include documentation that source emissions are currently being offset, or will be offset if the source has not commenced operation, at the ratio required under this part, and documentation that those offsets will meet the requirements of this part by the date the final permit is issued;

4. The source must expeditiously complete its permit application; and

5. The source may not operate if the permitting authority determines that the source will cause or contribute to a violation of an ambient air quality standard or would exceed an applicable increment.

EPA believes that 30 days is a reasonable period for filing the TPA; it reflects our determination as to the earliest date affected sources could reasonably be expected to comply with this requirement. This limited period is needed for the source to receive and comprehend the rule once published, accumulate the information called for by the regulations, and conduct the requisite air quality and technology analyses.

Under this scheme, EPA retains the authority to preclude sources from constructing or operating if it finds that the source has failed to fully satisfy its obligations under the regulations. In other words, if the source has filed an incomplete TPA, unduly delayed in completing its permit application, failed to adhere to an applicable control requirement, projected a plainly inadequate BACT or LAER emission limit (or failed to adhere to the limit projected), or if it can be expected to interfere with attainment of an ambient air quality standard or exceed an applicable increment, EPA may take enforcement action.

Response to Comments

Although not requiring modifications to § 55.6, there are several permitting issues that EPA believes merit additional clarification. Comments related to these issues are discussed below. The reader is referred to the Response to Comment document contained in EPA Air Docket A–91–76 for a more detailed discussion of these issues and other comments received on this section.

Section 55.6(b)(4) requires that an approval to construct expire if construction is not commenced within 18 months after receipt of such approval, if construction is discontinued for a period of 18 months or more, or if construction is not completed within a reasonable time. One commenter stated that it is not clear what is meant by "reasonable time" or whether this allows an exception to the 18-month requirement. "Reasonable time" should be read as that continuous construction schedule defined in the permit application and is not an exception to the other criteria. Section 55.6 further allows the 18 month period to be extended if the administrator or delegated agency believes that the applicant has made a showing that the extension is justified. This will provide flexibility for the construction of OCS sources. Sources obtaining extensions are subject to all new or interim requirements and a reassessment of applicable control technology when the extension is granted. It should also be noted that § 55.6(b)(4) does not supersede more stringent requirements contained in applicable federal, state, or local permitting regulations, as this would conflict with the intent of the statute.

Many commenters requested that part 55 specify a deadline by which existing OCS sources must apply for an operating permit. Section 328 and part 55 require that existing sources comply with the OCS rule within 24 months of promulgation of the rule. This includes obtaining, not simply applying for, any operating permits required by the COA. EPA acknowledges the commenters' concerns that existing sources may not allow enough time for the onshore area to process the permit application. However, due to the varying permit processing times of agencies, EPA does not feel it is appropriate, or in the best interest of the permitting agency or applicant, to specify an application date that may conflict with onshore timelines. Existing sources have been put on notice of the onshore requirements and need to plan accordingly to receive required operating permits by the compliance deadline.

Numerous comments stated that the permits should address impacts on non-human species and resources in addition to the protection of onshore ambient air quality standards. Specifically, these commenters stated that the near coastal environment, islands, and plant and animals, must also be protected and biological damage from deposits of surface contaminants should be addressed. These concerns are in part addressed by onshore requirements incorporated into part 55 and in other federal laws that apply independent of part 55. OCS sources subject to the PSD regulations must assess their impacts on ambient air quality, soils, vegetation, and visibility. Impacts on the resources of federal Class I areas (National Parks, Forests and Seashores), including flora, fauna, water, visibility, and cultural artifacts, must also be analyzed. In addition, section 7 of the Endangered Species Act of 1973 requires all federal agencies to ensure that any actions authorized, funded, or carried out by the agency are not likely to jeopardize the continued existence of any listed endangered or threatened species or result in the destruction or adverse modification of their critical habitat. This includes federal actions such as permits, grants, and licenses. Permits issued under the OCS regulation would qualify as such an action. The Minerals Management Service ("MMS") holds formal consultations with the Fish and Wildlife Service and National Marine Fisheries Service up to three times during the life of an OCS project to comply with this requirement. Finally, to the extent that the rule results in improved air quality, non-human species, the near coastal environment, islands, plants and animals may benefit.

A few commenters requested clarification of the term "modification" as it applies to § 55.6. One commenter rquested that part 55 specify *de minimus*

levels of emission increases to determine the applicability of this section. As stated in the NPR, the definition of modification will be that given by the applicable requirements incorporated into §§ 55.13 and 55.14, except for the purpose of determining the date that the modification must comply with this part. For two years following the date of promulgation of this part, the definitions of modification and new source given in section 111(a) of the Act shall apply for the purpose of determining whether the modification shall be treated as a new source, and consequently must comply upon promulgation of this part, or treated as an existing source and must comply within 24 months of promulgation. In brief, a physical change, or change in method of operation, commenced after December 5, 1991 (the proposal date of 40 CFR part 55) that results in an increase in emissions will cause an existing OCS source to be considered a new OCS source. Establishing *de minimus* levels would conflict with the definition of modification required by the statute and the directive that the OCS requirements applying to sources located within 25 miles of states' seaward boundaries be the same as those onshore. *De minimus* levels are set, however, in most of the applicable federal, state and local regulations that have been incorporated into part 55.

C. § 55.7—Exemptions

Section 328(a)(2) allows the Administrator to grant an OCS source an exemption from a specific control technology requirement if the Administrator finds that the requirement is technically infeasible or will cause an unreasonable threat to health and safety.

EPA intends to delegate the authority to make exemption determinations to states with adequate regulations for carrying out this part of the rule. EPA interprets the statue to require delegation of this authority if the state's regulations are adequate, since exemption determinations are simply a part of the implementation and enforcement of the rule, which EPA must delegate under section 328(a)(3). This position is unchanged from the NPR and is implicit in the language of § 55.7. Industry and DOI have both commented that the statute does not allow EPA to delegate the authority to grant and deny exemption requests. Evaluation of an exemption request is simply a control technology determination, very similar to the best available control technology (BACT) and lowest achievable emission rate (LAER) determinations. It would be ineffective to divide what is essentially a single task between two agencies and EPA does not believe that was the intent of Congress. The rule integrates the exemption process into the permitting process, which streamlines the administrative process and is a logical approach to permitting.

Request for Exemption

Concern was expressed by many commenters that the exemption procedures contained in the rule are lengthy at best and have the potential to be extended by many months due to appeals. Because this is an overriding concern for many commenters, several of the times allotted for procedures under the rule have been shortened. A source must now request an exemption within 60 days from the date EPA promulgates a requirement that does not require a permit. This is 30 days fewer than in the NPR. In addition to this change, the section now requires that existing sources that submit a compliance plan shall include all requests for exemption when the plan is submitted. For the purpose of § 55.7, these requests will be treated as requests that do not require a permit.

The final change to this section is in § 55.7(b)(4)(iv), where language has been added to require a source located beyond 25 miles from states' seaward boundaries to consult with the Administrator to identify suitable offsets. There are no analogous, offset requirements for onshore sources, so offsets for these sources must be evaluated on an individual basis. This is also addressed in § 55.7(e), as discussed below.

Delegation

Comments were received on § 55.7(c), the requirement that a delegated agency must reach consensus with the MMS and the U.S. Coast Guard ("USCG") on exemption requests. Some commenters suggested that this requirement represented an illegal delegation of authority to these agencies. These agencies have the primary responsibility for assuring that OCS operations occur in a safe manner and can provide valuable advice to ensure that no control technology believed to be unsafe will be required on the OCS. In regard to the issue of illegal delegation, there is no delegation of authority; MMS and the USCG have no authority to grant or deny a request, and if consensus cannot be reached, the request is automatically referred to the Administrator.

Two clarifying changes were made to this section in response to comments. First, the word "application" has been replaced by "permit application," and exemption requests that do not require a permit are now explicitly included. The second change is that the time allowed for the delegated agency to transmit the request and related materials has been reduced from 15 days to 5 days. This will allow the federal agencies to begin discussion with the delegated agency sooner and will facilitate reaching a consensus decision within the required time frame. If consensus cannot be reached within 90 days from the date the delegated agency received the request or application, whichever is sooner, the exemption request will be referred to the Administrator, and the decision will be more in accordance with the procedures contained in § 55.7(f). This is a change from the NPR, which simply stated that the request would be appealed to the Administrator.

The language contained in the NPR that would have allowed an extension of the consensus process has been deleted in response to comments that the procedures in the NPR were too lengthy. Similarly, to expedite the permit process in the event that an exemption request is referred to the Administrator, language has been added to § 55.7 to allow the delegated agency to issue a preliminary permit determination prior to the Administrator's final decision on the exemption request. This allows the delegated agency to proceed with the public notice and comment phase of their permitting process before the Administrator makes a final decision on the exemption request. The notice must refer to the exemption request and mention that comments related to the request must be made to the Administrator. The rule specifies that the Administrator's final decision must be incorporated into the final permit issued by the delegated agency.

Grant of Exemption

One commenter pointed out an oversight in the offset requirements; no provision was made for OCS sources located beyond 25 miles from states' seaward boundaries to obtain offsets. Language has been added to § 55.7(e) to address the acquisition of required offsets when a source located beyond 25 miles from a state's seaward boundary is granted a technical exemption. The source will be required to consult with EPA to identify suitable offsets. If the source is granted an exemption, the offsets obtained must be adequate to protect state and federal ambient air quality standards and ensure compliance with PSD.

Administrative Procedures and Public Participation

Another change attributable to comments on the NPR is the deletion of § 55.7(f)(1), which allowed the Administrator 30 days to review an exemption request and notify the source of any deficiencies. Instead, the Administrator or the delegated agency will simply proceed with deliberations on the exemption request. If any information from the source is needed, it must be obtained during the review process.

This section has also been revised to clarify the implicit intent of the NPR; an exemption request shall be considered part of the permit application. This is clarified at § 55.7(f)(1), which now specifies that if a permit is required, the applicable procedures to process the permit will be used to simultaneously process the exemption request. EPA will use the procedures at 40 CFR part 124 and a delegated agency will use its own administrative procedures to process a permit.

The majority of § 55.7(f) contains procedures to be used by the Administrator or the delegated agency in the event that an exemption request is submitted that does not require a permit. These procedures have not substantively changed from the NPR. Language has been added to allow the Administrator to use these procedures when an exemption request is referred from the delegated agency. The Administrator must make a preliminary determination on the exemption request within 30 days of referral. The Administrator or delegated agency is allowed 90 days to make this determination when there is no referral.

Language describing the appeal procedure when the Administrator of an EPA regional office ("Regional Administrator") denies an exemption request has been removed in the final rule. This language was redundant because the Regional Administrator's decision may be appealed to the Administrator by petitioning for administrative review in accordance with § 55.7(f)(5).

H. § 55.8—Monitoring, Reporting, Inspections, and Compliance

Section 55.8 adopts the monitoring, reporting and inspection authority of section 114 of the Act. Only one change was made to this section. EPA added language to the final rule clarifying that all monitoring, reporting, inspections and compliance requirements of the Act apply to OCS sources. This will include the upcoming rules for Enhanced Monitoring and Compliance and Certification of Compliance when such rules are promulgated pursuant to section 114 of the Act.

Several commenters emphasized the importance of good monitoring and reporting requirements and requested that EPA ensure that state and local requirements are adequate if authority is to be delegated. EPA agrees that good monitoring and reporting requirements are essential to effective implementation. The statute requires EPA to evaluate the adequacy of the program of the state agency that is requesting delegation. Therefore, EPA will ensure that state and local programs contain effective monitoring and reporting requirements prior to delegation.

I. § 55.9—Enforcement

Section 55.9 restates the requirement set out in section 328 of the Act that all OCS sources shall comply with this part and failure to comply shall be considered a violation of section 111(e) of the Act. The section adopts the enforcement authority of sections 113, 114, 120, and 303 of the Act. Several commenters indicated that section 304 of the Act should be included also. This was an oversight and was corrected in the final rule. EPA also made explicit that all the enforcement authority of the Act applies to OCS sources.

J. § 55.10—Fees

Section 55.10 establishes the requirements under which EPA will collect operating permit fees, as discussed in the NPR. No changes were made to this section of the rule.

K. § 55.11—Delegation

This section sets forth the requirements for a state or local agency to receive delegation to implement and enforce the OCS regulation in accordance with section 328(a). The NPR generated a significant number of comments on this section.

The California air pollution control districts pointed out that they, not the state air pollution control agency (the Air Resources Board), are the state agencies with authority to permit air pollution sources and enforce air pollution regulations. They contend that EPA should delegate implementation and enforcement authority to them and not the state (through the Governor). After considering the air pollution control districts' concerns, EPA maintains that it is more appropriate for the Governor or the Governor's designee to make the request on behalf of the local air pollution control district. This will eliminate the need for EPA to make a state law determination of which agency has the proper authority for implementing and enforcing the OCS regulations, yet allows flexibility for the Governor to designate the local air pollution control district as the designee.

Many commenters wanted the OCS rule to be more explicit as to what authority the state has, after delegation, to use its administrative procedures, such as variances. EPA maintains that a state may use any administrative procedure that it has under state law to implement and enforce the requirements of this part. However, as required by the statute, part 55 will only be delegated to a state or local agency that demonstrates that these administrative procedures are adequate to implement and enforce the requirements of this part (see also the discussion of state administrative procedures in section I.N.). As onshore, a variance will not shield a source form enforcement action by EPA.

A large number of commenters expressed concern with the revocation of delegation procedure in the NPR. Several commenters argued that EPA does not have the authority to revoke delegation, since revocation is not addressed in the statue. EPA disagrees, as revocation of a grant of authority if the delegated agency is not performing adequately is basic to governmental functioning. Many commenters objected to the language in the NPR that stated that EPA would revoke the delegation if "the requirements of this part are being implemented or enforced in an inequitable, arbitrary, or capricious manner." After consideration of the comments, EPA is modifying the language such that the basis of revocation will be inadequate implementation and enforcement. The rule has been adjusted so that the concerns over improper use of OCS regulations are now addressed in § 55.1, as discussed above in section I.A.

Several commenters questioned why EPA was not delegating authority for sources beyond 25 miles from states' seaward boundaries. They pointed out that the statute required EPA to delegate all of its authority under section 328 if the state program was adequate. However, for sources beyond 25 miles, only federal requirements were incorporated into this part. In this situation, EPA believes that it is more efficient to have the federal government retain authority than to have a state agency try to implement and enforce purely federal requirements. The state agency would have to treat sources within 25 miles with one set of rules and procedures and sources beyond 25 miles

with a second set of rules and procedures.

A number of commenters stressed the importance of public comment and requested that EPA ensure that public comment procedures are required and maintained if the program is delegated. EPA modified the criteria for delegation to include a requirement that a delegated agency have adequate procedures for public comment.

L. § 55.12—Consistency Updates

Because onshore requirements may change, section 328(a)(1) requires that EPA update the OCS requirements "as necessary to maintain consistency with onshore regulations." In the NPR, EPA described the criteria it would use to evaluate rules to be incorporated via consistency updates. EPA proposed that state and local rules must be rationally related to the attainment and maintenance of state or federal ambient standards or part C of title I, equitable, and must not be arbitrary or capricious. EPA proposed to update the rule annually, with NOIs also triggering consistency reviews. EPA solicited comment on the appropriate frequency of consistency updates. Most comments that EPA received regarding this portion of the rule concerned the timing and content of the consistency updates and the use of "inequity" as a criterion for screening onshore rules.

The statute mandates that OCS sources be subject to the same requirements that would be applicable if the source were located in the COA. At the same time, the statute does not provide a mechanism by which state law can automatically (and instantaneously) apply on the OCS. Because EPA must incorporate onshore requirements by formal rulemaking, inherent delay is introduced.

Several commenters opined that the consistency update procedure should provide for onshore agency submittal of OCS rules and EPA action in a timely manner. Some had detailed suggestions as to the events which should trigger consistency updates and the frequency with which EPA should do them. Commenters also expressed concern that higher emission levels could be permanently permitted if consistency updates were not done in a timely manner. EPA considered all comments and has revised this section to include more specific procedures and details regarding the timing of consistency updates.

In areas where there is OCS activity, EPA will review onshore requirements at least annually. If the Administrator finds that the requirements of part 55 are inconsistent with those onshore, EPA will update the appropriate portion of part 55. Also, as proposed, EPA will initiate a consistency review upon recipe of an NOI. In the case where the NOI is for a source that does not require a COA designation (a COA was previously determined), EPA will propose a consistency update, if needed, within 60 days of receiving the NOI. If the NOI is for a source that requires a COA designation, EPA will take action, if needed, in accordance with the following schedule:

- If no adjacent areas request to be designated as the COA and the NOA is automatically designated as the COA, EPA will publish a proposed consistency update no later than 15 days after the default COA determination (within 75 days after the NOI is received by EPA).
- If an area other than the NOA requests to be the COA but fails to submit the required demonstration, EPA will publish the proposed consistency update no later than 15 days after the due date for the demonstration has passed (within 105 days after the NOI is received by EPA).
- If an area other than the NOA requests COA designation and submits the required demonstration, EPA will publish the proposed consistency update no later than 15 days after the date of the final COA determination.

In addition, if a state or local district submits an applicable rule to EPA (with proof of adoption) that meets the criteria for incorporation into part 55, EPA will take action on that rule by the end of the following calendar quarter. This approach enables EPA to process rules in batches, thus reducing the time and expense involved in publishing multiple **Federal Register** notices. It also enables EPA to postpone unnecessary rulemaking in areas where there is no activity and thus avoids expending resources on activities that will have no effect on air quality.

An OCS source may not submit its permit application until a consistency review is completed and, if appropriate, an update of part 55 has been proposed. However, sources are only required to comply with those requirements that are adopted into part 55 as of the date the final permit is issued. EPA intends to promulgate the final update prior to the final permit issuance. This puts the consistency update process and the permit review process on a parallel timeline. EPA believes that the approach it has taken to consistency updates will minimize the possibility of sources being permitted under outdated requirements.

The use of the term "inequitable" in the NPR was the cause of considerable concern to many commenters. Commenters stated that the term "inequitable" is vague and undefined and has no basis in the statute. Several suggested that EPA eliminate or objectively define "inequitable." By using the word "inequitable" EPA was attempting to clarify the terms "arbitrary" and "capricious." However, to avoid any confusion, EPA has deleted all references to this term from the rule. Language has been added to § 55.1 to clarify that EPA will not incorporate rules that are designed to prohibit exploration or development of the OCS.

The inclusion of language prohibiting the incorporation of arbitrary and capricious rules was negatively commented on by several parties. Several commenters stated that consistency updates may not consider whether a state or local onshore regulation is arbitrary or capricious. Others said that EPA is already prohibited from adopting arbitrary and capricious rules so the use of these terms is confusing and redundant. A number of commenters recommended that the terms arbitrary and capricious be deleted from § 55.12.

Pursuant to section 706(2)(a) of the Administrative Procedures Act, EPA must consider whether any action it undertakes is arbitrary or capricious. All federal rulemaking is subject to this standard. Inclusion of this language neither expands nor limits EPA's pre-existing authority and obligation. EPA has included this language to emphasize that state or local rules incorporated into the OCS rule must bear a rational relationship to the purposes of the rule, as discussed in section I.A. of this preamble, and may not be designed expressly to prohibit offshore development.

Some commenters objected to EPA incorporating rules via notice and comment rulemaking. They stated that onshore rules should automatically apply. However, the statute requires that EPA update part 55 to maintain consistency with onshore requirements. In consultation with the Department of Justice, EPA has concluded that Congress did not intend that changes in state or local law would automatically change the content of federal OCS law. Therefore, before a state or local rule or regulation may be applied to OCS sources, it must be incorporated into part 55 by federal rulemaking, which includes mandatory notice and comment procedures.

A few commenters stated that if EPA precludes onshore agencies from independently changing the requirements of § 55.14, then EPA must ensure that the rules applied to the OCS are "the same." In contrast, another

commenter stated that only federally approved state implementation plan ("SIP") rules should be incorporated into part 55. The Act clearly specifies that EPA must promulgate requirements to control OCS sources of air pollution that are "the same as" or "consistent with" onshore requirements. If EPA were to rely solely on the federally approved SIP, it would fail to meet its statutory obligation because, in a number of cases, current state or local requirements that would apply to OCS sources have not been incorporated into the SIP. This could be the case for any number of reasons. There is no basis for EPA to exclude from part 55 rules that are not part of a federally approved SIP.

While EPA will update the rule as required by the statute to maintain consistency, EPA cannot guarantee that all requirements will be exactly "the same as" onshore requirements for the following reasons:

1. The Administrator must comply with the general prohibition against arbitrary and capricious rulemaking. (Section 307(d) of the Act or section 706(2)(a) of the Administrative Procedures Act.) Therefore, if EPA finds that inclusion of a state or locally adopted rule would be arbitrary or capricious, EPA will not incorporate it into part 55.

2. Under section 328(a)(1), state and local requirements that apply to OCS sources are limited to those that pertain to the control of pollutants (and their precursors) for which there is a state or federal ambient standard, or pertain to the requirements of part C of title I of the Act. Therefore, state and local requirements that are not related to the attainment and maintenance of ambient air quality standards or part C of title I will not be incorporated into part 55.

M. § 55.13—Applicable Federal Requirements

Section 55.13 contains requirements that apply to all OCS sources. Under § 55.13, PSD, and to the extent they are rationally related to protection of ambient air quality standards or part C of title I, NSPS and NESHAPS apply. When promulgated, EPA will incorporate the requirements of the federal operating permit program (40 CFR part 71) into part 55. When part 55 is amended, part 71 will apply to sources located more than 25 miles beyond states' seaward boundaries. Part 71 requirements will also apply to sources located within 25 miles if the requirements are in effect in the COA. (See section B. for a discussion of the general applicability of the Act.)

Some commenters suggested that some or all of these requirements should not apply to sources located more than 25 miles beyond states' seaward boundaries. Section 328 does not mandate the precise content of the OCS requirements for sources located on the "outer" OCS. However, it does require that EPA "establish requirements to attain and maintain federal and state ambient standards and to comply with the provision of part C of title I." Within these bounds, EPA has latitude to establish requirements that apply under section 328 to sources located more than 25 miles beyond states' seaward boundaries. EPA believes that the requirements incorporated into this part are necessary to fulfill its statutory obligation.

It is possible that additional requirements for "outer" OCS sources may be necessary to protect onshore air quality. This could occur, for example, if the density of OCS sources in a specific area cumulatively caused negative impacts on onshore air quality. As discussed in the NPR, EPA will promulgate such requirements in future rule makings if the Administrator deems such action necessary. EPA has added language to § 55.13 of the rule to clarify this.

NSPS regulations often define a new source as any source that was constructed or modified after the date the NSPS was proposed. Language has been added to the rule to clarify that sources determined to be existing OCS sources pursuant to § 55.3(e) will not be considered new sources for the purpose of compliance with NSPS adopted prior to December 5, 1991. This ensures that existing sources will not be required to meet NSPS intended for new or modified sources.

Sections 55.13 and 55.14 were amended to clarify that language contained in onshore requirements adopted prior to promulgation of part 55 that restricts the applicability of the requirements to onshore sources or sources in state waters, does not apply. This provision was added to ensure that offshore requirements are the same as onshore requirements and to preserve flexibility for states to tailor their future rules to OCS sources and the marine environment, should they so choose.

N. § 55.14—Applicable Requirements of the COA

Section 55.14 contains the requirements that apply to sources located within 25 miles of states' seaward boundaries. Requirements applying to such OCS sources must be "the same as" or "consistent with" onshore requirements, as well as rationally related to the attainment and maintenance of federal or state ambient air quality standards or part C of title I. EPA therefore has little flexibility in establishing requirements under section 328 that apply to nearshore OCS sources.

The format of this section was changed to make it consistent with § 55.13 and to reflect a change in the method of incorporation by reference, as required by the Office of the Federal Register. This change in format is administrative only, and does not alter the requirements of this section.

A few other minor changes have been made to this section of the rule. Language was added to clarify that only those substantive 40 CFR part 52 (federally approved SIP) requirements that are rationally related to ambient air quality standards or part C of title I shall apply to OCS sources. Also, several commenters provided suggestions regarding specific rules that had or had not been listed. EPA's analysis of these rules is contained in the response to comments document. Only a few minor changes were made to the rule list. Typographical errors and mistakes in adoption dates or rule titles were corrected. No rules were added to or deleted from the list. Any rules identified that should be incorporated into part 55 will be proposed in a consistency update. The reader is referred to Appendix A of this part for the complete listing of requirements incorporated by reference into § 55.14.

EPA received comment on several issues related to this section that did not result in changes to the rule. Some commented that administrative and procedural rules should be included in the requirements incorporated in § 55.14. The statute, however, does not require nor is it necessary for EPA to adopt non-control requirements. Upon delegation, the onshore area will be allowed to use its administrative and procedural rules, to the same extent as onshore. The same situation that exists onshore will exist on the OCS; state and local governments can use their administrative procedures, but EPA will disregard any procedures that conflict with federal requirements and can enforce federal law in a delegated program.

Several commenters said that EPA should provide a variance mechanism for OCS sources. Variances are administrative or procedural rules, not substantive requirements, and therefore they are not incorporated into part 55. Upon delegation, districts may grant variances as they would onshore. However, state and local variance procedures are not recognized by federal law because there is no provision in the Act giving the

Administrator such authority. Agencies delegated the OCS program can use administrative tools if they do not result in any violations of federal requirements. Variances do not shield sources from federal enforcement onshore, nor will they shield an OCS source. In those instances where EPA does not delegate authority to implement and enforce part 55, EPA will use its own administrative and procedural requirements to implement the substantive requirements.

Many commenters felt that all state and local rules should be included, and that EPA should not "pick and choose" or screen out rules. Also, some stated that delegated agencies must have unfettered discretion to impose all onshore rules. EPA will incorporate into the OCS rule those state and local onshore rules that comply with the statutory requirements of section 328, are not arbitrary or capricious, and are rationally related to the attainment and maintenance of ambient air quality standards and PSD. The screening criteria that EPA will apply are mandated by the language of section 328 or the general prohibition against arbitrary or capricious rulemaking with which the Administrator must comply in any rulemaking proceeding, either under section 307(d) of the Act or under the Administrative Procedures Act.

Finally, several people commented that it appeared or could be misconstrued that EPA was intending to incorporate only those requirements that were in place at the time of enactment of the Clean Air Act Amendments and would therefore be inappropriately grandfathering sources to pre-1991 control levels. In the NPR, EPA was attempting to point out that rules in place as of the date of enactment were to be considered part of an initial promulgation. Rules adopted subsequent to enactment are incorporated via consistency updates. The rule is not limited to the requirements that were in place as of the date of enactment, and in fact, contains numerous state and local rules that were adopted subsequent to that date.

II. Additional Topics for Discussion

A. Relationship Between the OCS Regulations and the State Implementation Plans

1. Emission Inventories/Attainment Demonstrations

EPA received comment that the NPR did not adequately integrate the new program into the SIP process. Commenters suggested that EPA needs to ensure that OCS sources are included in emission inventories and are tracked through the SIP process so that only surplus OCS emissions reductions are utilized in offset transactions.

EPA concurs with the proposition that OCS emissions must be included in inventories. All offsets must be surplus to emission reductions required by the SIP. The treatment of OCS emissions will be addressed in revised emissions inventory guidance. All existing sources under EPA jurisdiction are presently included in emission inventories prepared by coastal air pollution control agencies. No changes to the rule were necessary.

2. Deficiencies Incorporated Into the OCS Rule

Section 328(a) requires that EPA establish requirements to control air pollution from OCS sources located within 25 miles of states' seaward boundaries that are the same as onshore requirements. To comply with this statutory mandate, EPA must incorporate applicable onshore rules into part 55 as they exist onshore. This limits EPA's flexibility in deciding which requirements will be incorporated into part 55, and prevents EPA from making substantive changes to the requirements it incorporates. As a result, EPA is incorporating into part 55 several rules that do not conform to all of EPA's SIP guidance or certain requirements of the Act. EPA emphasized in the NPR that incorporation of a state or local rule into part 55 does not constitute or imply approval of that rule as part of the SIP. Nor does it preclude any action EPA may take in regard to deficient onshore SIPs.

EPA received comment in support of differentiating between the SIP process and the OCS consistency update process. A commenter agreed that regulations being considered for incorporation under the two different programs are subject to different standards of review, and the COA may submit OCS regulations directly to EPA, rather than through the state as in the SIP process.

Another commenter felt that EPA was attempting to weaken the rules by insisting they are less stringent than SIP requirements. The intent of EPA's discussion regarding SIP deficiencies was to explain that for the purposes of incorporation into part 55, EPA cannot use SIP approvability criteria or EPA guidance for SIP rules as a screening mechanism. This in no way weakens the OCS rule. Often rules that contain "deficiencies" may be more stringent than the federally approved version of the same rule. By incorporating all versions of applicable rules, EPA ensures that the most stringent onshore requirements will apply.

B. Regulation of Non-criteria Pollutants

Section 328(a) requires the Administrator to promulgate requirements for OCS sources "to attain and maintain federal and state ambient air quality standards and to comply with the provisions of part C of title I of the Act." EPA reads this provision to restrict EPA's authority to regulate OCS sources pursuant to this part. (See NPR at p. 63786). The practical effect of this interpretation is that certain state and local regulations adopted for toxic air pollutants will not be adopted pursuant to section 328 of the Act.

The NPR generated numerous comments on this subject. Many commenters questioned EPA's interpretation and pointed out that this approach will result in inconsistencies between the regulation of onshore and offshore sources, which section 328 was intended to eliminate. After considering these comments, EPA still believes that its original interpretation conforms with the plain language of the statute.

However, while EPA interprets its regulatory authority under section 328 to be restricted to federal and state criteria pollutants, precursors to those pollutants, and pollutants regulated pursuant to PSD, and has accordingly limited its rule to these pollutants, EPA's general authority to apply the Act to the OCS is a separate question which is not addressed here.

III. Administrative Requirements

A. Executive Order 12291 (Regulatory Impact Analysis)

EPA has determined that neither the proposed rule nor the final rule constitutes a major action according to the criteria of Executive Order (E.O.) 12291. However, due to the relevance of potential outer continental shelf oil and gas reserves to the National Energy Strategy, an Regulatory Impact Analysis ("RIA") has been prepared.

The estimated incremental annualized cost of this rule is $5 million in 1997. This estimated incremental cost is expected to reach $29 million in 2010 primarily as a result of increased exploration, construction, development, and production. This rule will result in the reduction of 610 tons of volatile organic compound emissions and 730 tons of nitrogen oxide emissions in 1997. The projected emission reductions in 2010 are 2400 tons of volatile organic compounds and 3800 tons of nitrogen oxides. These pollutants are precursors to several pollutants for which EPA has

set ambient standards, including nitrogen dioxide, ozone, and particulate matter. The paucity of data and other factors precluded monetization of the benefits of this rule. Consequently, the allocative efficiency aspects of this rule cannot be determined.

A few commenters asserted that Executive Order 12291 is not applicable to part 55 according to section 8 of that Order. They noted that section 8 states that Executive Order 12291 shall not apply where its terms would be in conflict with statutory deadlines. EPA notes that the RIA was not a pacing item in rule development. Furthermore, other analyses contained in the RIA are necessary to respond to the requirements of the Paperwork Reduction Act and the Regulatory Flexibility Act.

Another commenter suggested that EPA avoided the most direct measure of assessing equity by not comparing the relative cost effectiveness of onshore regulations to offshore regulations. The criterion used by EPA to assess equity is that required by section 328, namely, that the same requirements applied onshore be applied offshore, within 25 miles of states' seaward boundaries.

Cost effectiveness estimates on the regulations are included in the RIA as they were in the RIA Screening. Estimates included in the RIA are based on application of generic control technologies on existing platforms. The resulting cost effectiveness numbers (dollars per ton of pollution removed) do not establish a precedent as a cost-effectiveness benchmark. In addition, permitting agencies are not bound by EPA's assumptions of the controls that may be required of any specific source.

Various parameters of the RIA Screening have been changed or modified for the RIA as a result of comments received. The following is a brief description of comments and resulting changes to the analysis. A more detailed description is found in the Response to Comments document in EPA Air Docket A–91–76.

New Sources

The following comments, to which the RIA responds, have had the greatest impact on the estimated cost of this rule. These comments are in regard to (1) the time frame of the analysis, (2) the number and type of projected activities assumed, (3) assumptions regarding emission offset ratios, (4) projections of offset prices, and (5) transfer and resale of surplus offsets.

Comments regarding items (1) and (2) correctly noted that due to current moratoria on OCS leasing, the time frame chosen and activity level assumed for the RIA Screening did not typify the rate of OCS development. In response, EPA has used data from MMS which incorporate activity on existing leases, as well as projected activity on future leases. Costs resulting from activity projected to occur during 1993–1997 have been analyzed in the RIA. For activity projected to occur between 1998–2010, costs have been tabulated and explained in Addendum I of the RIA.

The incremental offset ratio is what is at issue in item (3) because it affects an important element of cost attributable to the OCS regulation. The comment noted the emission offset ratio assumed for Santa Barbara, 1.2:1, was incorrect. The rationale was that as a result of the coastal consistency process, new sources locating in the Santa Barbara Channel currently face a 1:1 offset ratio. In response, EPA incorporated an incremental offset ratio of 0.2:1 into the RIA for new sources in the Santa Barbara Channel, but only in the form of a sensitivity analysis. The offset ratio imposed through the coastal consistency process is dependent on the membership of the Coastal Commission, and is therefore subject to change. A 1.2:1 offset ratio is still assumed in the RIA to calculate the incremental costs and benefits of the rule for new sources locating off of ozone nonattainment areas in Southern California, as this is the offset ratio incorporated into Santa Barbara's onshore regulations.

In response to comment (4), EPA has revised its projected offset prices to incorporate additional data and analyses, including two NO_x offset price scenarios. The result is higher projected costs for offsets.

In regard to comment (5), commenters noted that although the transfer and resale of surplus offsets, which was assumed in the RIA Screening, is consistent with EPA policy, such assumptions may not be consistent with the regulations of the onshore area. Another commenter noted that due to the uncertainty of the offsets market, holders of offsets are apt to maintain, and then transfer, offsets between OCS phases of operation. As a result, the RIA retains the assumption that emission offsets are transferred from a successful exploration activity to the later stages of an OCS project; however, the resale of surplus offsets is not assumed. This change in assumption regarding the resale of surplus offsets may overestimate costs.

Existing Platforms

With respect to existing platforms, comments were received on control cost levels, the baseline used for assessing incremental costs, and applicability of technical and safety exemptions.

Regarding control cost levels, commenters stated existing platforms would be subject to $87 million in equipment retrofit and incremental operating costs, or an average of $17.4 million/year, over the five-year time frame analyzed in the RIA Screening. Insufficient data were provided to analyze the methods used to derive these figures. However, it appeared that total investment costs had been accounted for as opposed to incremental investment costs, and that investment costs had not been amortized over the life of the retrofit equipment.

In response to comments on the baseline, incremental control and administrative requirements have been assessed for all existing OCS platforms with onshore agency agreements. For the RIA Screening, these platforms were assumed to be in compliance with many of the requirements onshore as a result of their agreements, and thus, incremental costs were not assessed.

In response to comment, assumptions on the applicability of technical and safety exemptions were revised in the RIA. The RIA Screening assumed that emergency equipment on existing platforms was operated infrequently and that technical and safety exemptions would, as a result, be given. Moreover, residual emissions resulting from these exemptions would have to be offset. Upon further data review and analysis, it was determined that the engines in question are not subject to onshore control technology due to the infrequency of their operation. Hence, the exemptions assumed in the RIA Screening are not required or warranted. As a result, offsets will not be required and costs associated with emergency equipment controls have been deducted from the costs for these platforms originally calculated in the RIA Screening.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 requires each federal agency to perform a Regulatory Flexibility Analysis for all rules that are likely to have a "significant impact on a substantial number of small entities." Small entities include small businesses, organizations, and governmental jurisdictions.

As with the proposed regulation, the final regulation does not apply to any small entities. Consequently, a Regulatory Flexibility Analysis is not required. In response to comments which stated that the regulation may have an impact on small businesses in service and supply operations, a

sensitivity analysis has been conducted. This analysis suggests that the rule as currently structured averts direct impacts and mitigates indirect impacts on small entities.

The EPA certifies that the proposed rule will not have a significant impact on a substantial number of small entities.

C. Paperwork Reduction Act

As a result of better data, industry compliance testing costs as reflected in the Information Collection Request ("ICR") have increased. One comment stated that the resource burden for states and localities has been underestimated in the ICR relative to EPA's resource burden. It should be noted that EPA's resource burden is higher in part due to the resources needed for initial rule makings and for consistency updates. The burden is also higher due to an increase in projected sources under EPA jurisdiction during the five-year time frame of 1992–1997.

Another comment noted that most of the administrative burden associated with this regulation will be borne by the regulated community as a result of the federal and California Acts which require permitted sources to cover the expense of implementing the regulations under these Acts. To some extent this point is valid. However, there may be a lag between activities conducted by the agencies and the reimbursement via fee collections from the sources. Furthermore, market forces may allow the cost for fees to be reflected in the market prices of products produced by the sources. Hence, it may be the customer and not necessarily the source who bears the ultimate cost for the agencies to administer these regulations. Regardless, the compliance with the ICR requirements of the Paperwork Reduction Act focuses on the initial, not the ultimate, incidence of administrative requirements.

EPA disagrees with the concern that administrative costs associated with the federal operating permit program were not anticipated in the ICR. The Santa Barbara County Air Pollution Control District's regulations were used as a guide in determining administrative costs in Southern California. Santa Barbara's regulations are more stringent than the regulations anticipated as a result of the 40 CFR part 70 permit program. Moreover, for sources outside of California, the best available information regarding the federal operating permit program was employed.

The Office of Management and Budget (OMB) has approved the information collection requirements contained in this rule under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060–0249.

This collection of information is estimated to have a public reporting burden averaging 413 hours per response. This includes time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Chief, Information Policy Branch (PM–223Y); U.S. Environmental Protection Agency; 401 M St., SW.; Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA."

List of Subjects in 40 CFR Part 55

Administrative practice and procedures, Air pollution control, Continental shelf, Ozone, Sulfur oxides, Nitrogen dioxide, Particulate matter, Hydrocarbons, Nitrogen oxides, Intergovernmental relations, Reporting and Recordkeeping requirements, Incorporation by reference, Permits.

Dated: August 21, 1992.

William K. Reilly,

Administrator.

For the reasons set out in the preceding preamble, title 40, chapter I of the Code of Federal Regulations is amended by adding a new part 55 as follows.

PART 55—OUTER CONTINENTAL SHELF AIR REGULATIONS

Sec.

Authority: Section 328 of the Clean Air Act (42 U.S.C. 7401, *et seq.*) as amended by Public Law 101–549.

PART 55—OUTER CONTINENTAL SHELF AIR REGULATIONS

§ 55.1 Statutory authority and scope.

Section 328(a)(1) of the Clean Air Act ("the Act"), requires the Environmental Protection Agency ("EPA") to establish requirements to control air pollution from outer continental shelf ("OCS") sources in order to attain and maintain federal and state ambient air quality standards and to comply with the provisions of part C of title I of the Act. This part establishes the air pollution control requirements for OCS sources and the procedures for implementation and enforcement of the requirements, consistent with these stated objectives of section 328(a)(1) of the Act. In implementing, enforcing and revising this rule and in delegating authority hereunder, the Administrator will ensure that there is a rational relationship to the attainment and maintenance of federal and state ambient air quality standards and the requirements of part C of title I, and that the rule is not used for the purpose of preventing exploration and development of the OCS.

§ 55.2 Definitions.

Administrator means the Administrator of the U.S. Environmental Protection Agency.

Corresponding Onshore Area ("COA") means, with respect to any existing or proposed OCS source located within 25 miles of a state's seaward boundary, the onshore area that is geographically closest to the source or another onshore area that the Administrator designates as the COA, pursuant to § 55.5 of this part.

Delegated agency means any agency that has been delegated authority to implement and enforce requirements of this part by the Administrator, pursuant to § 55.11 of this part. It can refer to a state agency, a local agency, or an Indian tribe, depending on the delegation status of the program.

Existing source or existing OCS source shall have the meaning given in the applicable requirements incorporated into §§ 55.13 and 55.14 of this part, except that for two years following the date of promulgation of this part the definition given in § 55.3 of this part shall apply for the purpose of

determining the required date of compliance with this part.

Exploratory source or exploratory OCS source means any OCS source that is a temporary operation conducted for the sole purpose of gathering information. This includes an operation conducted during the exploratory phase to determine the characteristics of the reservoir and formation and may involve the extraction of oil and gas.

Modification shall have the meaning given in the applicable requirements incorporated into §§ 55.13 and 55.14 of this part, except that for two years following the date of promulgation of this part the definition given in section 111(a) of the Act shall apply for the purpose of determining the required date of compliance with this part, as set forth in § 55.3 of this part.

Nearest Onshore Area ("NOA") means, with respect to any existing or proposed OCS source located within 25 miles of a state's seaward boundary, the onshore area that is geographically closest to that source.

New source or new OCS source shall have the meaning given in the applicable requirements of §§ 55.13 and 55.14 of this part, except that for two years following the date of promulgation of this part, the definition given in § 55.3 of this part shall apply for the purpose of determining the required date of compliance with this part.

OCS source means any equipment, activity, or facility which:

(1) Emits or has the potential to emit any air pollutant;

(2) Is regulated or authorized under the Outer Continental Shelf Lands Act ("OCSLA") (43 U.S.C. § 1331 *et seq.*); and

(3) Is located on the OCS or in or on waters above the OCS.

This definition shall include vessels only when they are:

(1) Permanently or temporarily attached to the seabed and erected thereon and used for the purpose of exploring, developing or producing resources therefrom, within the meaning of section 4(a)(1) of OCSLA (43 U.S.C. § 1331 *et seq.*); or

(2) Physically attached to an OCS facility, in which case only the stationary sources aspects of the vessels will be regulated.

Onshore area means a coastal area designated as an attainment, nonattainment, or unclassifiable area by EPA in accordance with section 107 of the Act. If the boundaries of an area designated pursuant to section 107 of the Act do not coincide with the boundaries of a single onshore air pollution control agency, then onshore area shall mean a coastal area defined by the jurisdictional boundaries of an air pollution control agency.

Outer continental shelf shall have the meaning provided by section 2 of the OCSLA (43 U.S.C. § 1331 *et seq.*).

Potential emissions means the maximum emissions of a pollutant from an OCS source operating at its design capacity. Any physical or operational limitation on the capacity of a source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as a limit on the design capacity of the source if the limitation is federally enforceable. Pursuant to section 328 of the Act, emissions from vessels servicing or associated with an OCS source shall be considered direct emissions from such a source while at the source, and while enroute to or from the source when within 25 miles of the source, and shall be included in the "potential to emit" for an OCS source. This definition does not alter or affect the use of this term for any other purposes under §§ 55.13 or 55.14 of this part, except that vessel emissions must be included in the "potential to emit" as used in §§ 55.13 and 55.14 of this part.

Residual emissions means the difference in emissions from an OCS source if it applies the control requirements(s) imposed pursuant to § 55.13 or § 55,14 of this part and emissions from that source if it applies a substitute control requirement pursuant to an exemption granted under § 55.7 of this part.

State means the state air pollution control agency that would be the permitting authority, a local air pollution permitting agency, or certain Indian tribes which can be the permitting authority for areas within their jurisdiction. State may also be used in the geographic sense to refer to a state, the NOA, or the COA.

§ 55.3 Applicability.

(a) This part applies to all OCS sources except those located in the Gulf of Mexico west of 87.5 degrees longitude.

(b) OCS sources located within 25 miles of states' seaward boundaries shall be subject to all the requirements of this part, which include, but are not limited to, the federal requirements as set forth in §55.13 of this part and the federal, state, and local requirements of the COA (designated pursuant to § 55.5 of this part), as set forth in § 55.14 of this part.

(c) OCS sources located beyond 25 miles of states' seaward boundaries shall be subject to all the requirements of this part, except the requirements of §§ 55.4, 55.5, 55.11, 55.12, and 55.14 of this part.

(d) New OCS sources shall comply with the requirements of this part by September 4, 1992 where a "new OCS source" means an OCS source that is a new source within the meaning of section 111(a) of the Act.

(e) Existing sources shall comply with the requirements of this part by September 4, 1994, where an "existing OCS source" means any source that is not a new source within the meaning of section 111(a) of the Act.

§ 55.4 Requirements to submit a notice of intent.

(a) Prior to performing any physical change or change in method of operation that results in an increase in emissions, and not more than 18 months prior to submitting an application for a preconstruction permit, the applicant shall submit a Notice of Intent ("NOI") to the Administrator through the EPA Regional Office, and at the same time shall submit copies of the NOI to the air pollution control agencies of the NOA and onshore areas adjacent to the NOA. This section applies only to sources located within 25 miles of states' seaward boundaries.

(b) The NOI shall include the following:

(1) General company information, including company name and address, owner's name and agent, and facility site contact.

(2) Facility description in terms of the proposed process and products, including identification by Standard Industrial Classification Code.

(3) Estimate of the proposed project's potential emissions of any air pollutant, expressed in total tons per year and in such other terms as may be necessary to determine the applicability of requirements of this part. Potential emissions for the project must include all vessel emissions associated with the proposed project in accordance with the definition of potential emissions in § 55.2 of this part.

(4) Description of all emissions points including associated vessels.

(5) Estimate of quantity and type of fuels and raw materials to be used.

(6) Description of proposed air pollution control equipment.

(7) Proposed limitations on source operations or any work practice standards affecting emissions.

(8) Other information affecting emissions, including, where applicable, information related to stack parameters (including height, diameter, and plume

temperature), flow rates, and equipment and facility dimensions.

(9) Such other information as may be necessary to determine the applicability of onshore requirements.

(10) Such other information as may be necessary to determine the source's impact in onshore areas.

(c) Exploratory sources and modifications to existing sources with designated COAs shall be exempt from the requirement in paragraph (b)(10) of this section.

(d) The scope and contents of the NOI shall in no way limit the scope and contents of the required permit application or applicable requirements given in this part.

§ 55.5 Corresponding onshore area designation.

(a) *Proposed exploratory sources.* The NOA shall be the COA for exploratory sources located within 25 miles of states' seaward boundaries. Paragraphs (b), (c), and (f) of this section are not applicable to these sources.

(b) *Requests for designation.*

(1) The chief executive officer of the air pollution control agency of an area that believes it has more stringent air pollution control requirements than the NOA for a proposed OCS source, may submit a request to be designated as the COA to the Administrator and at the same time shall send copies of the request to the chief executive officer of the NOA and to the proposed source. The request must be received by the Administrator within 60 days of the receipt of the NOI. If no requests are received by the Administrator within 60 days of the receipt of the NOI, the NOA will become the designated COA without further action.

(2) No later than 90 days after the receipt of the NOI, a demonstration must be received by the Administrator showing that:

(i) The area has more stringent requirements with respect to the control and abatement of air pollution than the NOA;

(ii) The emissions from the source are or would be transported to the requesting area; and

(iii) The transported emissions would affect the requesting area's efforts to attain or maintain a federal or state ambient air quality standard or to comply with the requirements of part C of title I of the Act, taking into account the effect of air pollution control requirements that would be imposed if the NOA were designated as the COA.

(c) *Determination by the Administrator.*

(1) If no demonstrations are received by the Administrator within 90 days of the receipt of the NOI, the NOA will become the designated COA without further action.

(2) If one or more demonstrations are received, the Administrator will issue a preliminary designation of the COA within 150 days of the receipt of the NOI, which shall be followed by a 30 day public comment period, in accordance with paragraph (f) of this section.

(3) The Administrator will designate the COA for a specific source within 240 days of the receipt of the NOI.

(4) When the Administrator designates a more stringent area as the COA with respect to a specific OCS source, the delegated agency in the COA will exercise all delegated authority. If there is no delegated agency in the COA, then EPA will issue the permit and implement and enforce the requirements of this part. The Administrator may retain authority for implementing and enforcing the requirements of this part if the NOA and the COA are in different states.

(5) The Administrator shall designate the COA for each source only once in the source's lifetime.

(d) *Offset requirements.* Offsets shall be obtained based on the requirements imposed in the COA, and in accordance with the following provisions:

(1) The offset ratio applied shall not be higher than the highest offset ratio required onshore provided that a net air quality benefit is achieved.

(2) To determine whether an offset is on the landward or seaward side of a proposed source or modification, a straight line shall be drawn through the proposed source or modification parallel to the coastline. Offsets obtained on the seaward side of the line will be considered seaward of the source, and offsets obtained on the landward side will be considered landward.

(3) Offsets obtained between the site of the proposed source or modification and the state seaward boundary shall be obtained at the base ratio for the COA. No discounting or penalties associated with distance between the proposed source and the source of emissions reductions shall apply.

(4) Offsets obtained on the landward side of the state seaward boundary will be subject to onshore discounting and penalties associated with distance as required in the COA to be applied in the following manner. A straight line shall be drawn from the site of the proposed source or modification to the source of the offsets. The point at which this line crosses the state seaward boundary shall be treated as the site of the proposed source or modification for the purpose of determining the amount of offsets required.

(5) Offsets obtained on the seaward side of the proposed source or modification will be subject to all the requirements of the COA, including any discounting and distance penalties.

(6) Offsets may be obtained in the COA, the NOA, and from OCS sources with the same COA or NOA as the proposed source or modification. All other offset requirements of the COA and paragraph (d) of this section shall apply, including distance penalties applied in accordance with the requirements of this subsection.

(7) Offsets may be obtained outside the NOA or the COA in accordance with the requirements of the COA and this subsection.

(e) *Authority to designate the COA.* The authority to designate the COA for any OCS source shall not be delegated to a state or local agency, but shall be retained by the Administrator.

(f) *Administrative procedures and public participation.* The Administrator will use the following public notice and comment procedures for processing a request for COA designation under this section:

(1) Within 150 days from receipt of an NOI, if one or more demonstrations are received, the Administrator shall make a preliminary determination of the COA and shall:

(i) Make available, in at least one location in the NOA and in the area requesting COA designation, a copy of all materials submitted by the requester, a copy of the Administrator's preliminary determination, and a copy or summary of other materials, if any, considered by the Administrator in making the preliminary determination; and

(ii) Notify the public, by prominent advertisement in a newspaper of general circulation in the NOA and the area requesting COA designation, of a 30-day opportunity for written public comment on the available information and the Administrator's preliminary COA designation.

(2) A copy of the notice required pursuant to paragraph (f)(1)(ii) of this section shall be sent to the requester, the affected source, each person from whom a written request of such notice has been received, and the following officials and agencies having jurisdiction over the COA and NOA: state and local air pollution control agencies, the chief executive of the city and county, the Federal Land Manager of potentially affected Class I areas, and any Indian governing body whose lands

may be affected by emissions from the OCS source.

(3) Public comments received in writing within 30 days after the date the public notice is made available will be considered by the Administrator in making the final decision on the request. All comments will be made available for public inspection.

(4) The Administrator will make a final COA designation within 60 days after the close of the public comment period. The Administrator will notify, in writing, the requester and each person who has requested notice of the final action and will set forth the reasons for the determination. Such notification will be made available for public inspection.

§ 55.6 Permit requirements.

(a) *General provisions.*

(1) *Permit applications.* (i) The owner or operator of an OCS source shall submit to the Administrator or delegated agency all information necessary to perform any analysis or make any determination required under this section.

(ii) Any application submitted pursuant to this part by an OCS source shall include a description of all the requirements of this part and a description of how the source will comply with the applicable requirements. For identification purposes only, the application shall include a description of those requirements that have been proposed by EPA for incorporation into this part and that the applicant believes, after diligent research and inquiry, apply to the source.

(2) *Exemptions.* (i) When an applicant submits any approval to construct or permit to operate application to the Administrator or delegated agency it shall include a request for exemption from compliance with any pollution control technology requirement that the applicant believes is technically infeasible or will cause an unreasonable threat to health and safety. The Administrator or delegated agency shall act on the request for exemption in accordance with the procedures established in § 55.7 of this part.

(ii) A final permit shall not be issued under this part until a final determination is made on any exemption request, including those appealed to the Administrator in accordance with § 55.7 of this part.

(3) *Administrative procedures and public participation.* The Administrator will follow the applicable procedures of 40 CFR part 124 in processing applications under this part. Until 40 CFR part 124 has been modified to specifically reference permits issued under this part, the Administrator will follow the procedures in part 124 used to issue Prevention of Significant Deterioration ("PSD") permits.

(4) *Source obligation.* (i) Any owner or operator who constructs or operates an OCS source not in accordance with the application submitted pursuant to this part 55, or with any approval to construct or permit to operate, or any owner or operator of a source subject to the requirements of this part who commences construction after the effective date of this part without applying for and receiving approval under this part, shall be in violation of this part.

(ii) Any owner or operator of a new OCS source who commenced construction prior to the promulgation date of this rule shall comply with the requirements of paragraph (e) of this section.

(iii) Receipt of an approval to construct or a permit to operate from the Administrator or delegated agency shall not relieve any owner or operator of the responsibility to comply fully with the applicable provisions of any other requirements under federal law.

(iv) The owner or operator of an OCS source to whom the approval to construct or permit to operate is issued under this part shall notify all other owners and operators, contractors, and the subsequent owners and operators associated with emissions from the source, of the conditions of the permit issued under this part.

(5) *Delegation of authority.* If the Administrator delegates any of the authority to implement and enforce the requirements of this section, the following provisions shall apply:

(i) The applicant shall send a copy of any permit application required by this section to the Administrator through the EPA Regional Office at the same time as the application is submitted to the delegated agency.

(ii) The delegated agency shall send a copy of any public comment notice required under this section or §§ 55.13 or 55.14 to the Administrator through the EPA Regional Office.

(iii) The delegated agency shall send a copy of any preliminary determination and final permit action required under this section or §§ 55.13 or 55.14 to the Administrator through the EPA Regional Office at the time of the determination and shall make available to the Administrator any materials used in making the determination.

(b) *Preconstruction requirements for OCS sources located within 25 miles of states' seaward boundaries.*

(1) No OCS source to which the requirements of §§ 55.13 or 55.14 of this part apply shall begin actual construction after the effective date of this part without a permit that requires the OCS source to meet those requirements.

(2) Any permit application required under this part shall not be submitted until the Administrator has determined whether a consistency update is necessary, pursuant to § 55.12 of this part, and, if the Administrator finds an update to be necessary, has published a proposed consistency update.

(3) The applicant may be required to obtain more than one preconstruction permit, if necessitated by partial delegation of this part or by the requirements of this section and §§ 55.13 and 55.14 of this part.

(4) An approval to construct shall become invalid if construction is not commenced within 18 months after receipt of such approval, if construction is discontinued for a period of 18 months or more, or if construction is not completed within a reasonable time. The 18-month period may be extended upon a showing satisfactory to the Administrator or the delegated agency that an extension is justified. Sources obtaining extensions are subject to all new or interim requirements and a reassessment of the applicable control technology when the extension is granted. This requirement shall not supersede a more stringent requirement under §§ 55.13 or 55.14 of this part.

(5) Any preconstruction permit issued to a new OCS source or modification shall remain in effect until it expires under paragraph (b)(4) of this section or is rescinded under the applicable requirements incorporated in §§ 55.13 and 55.14 of this part.

(6) Whenever any proposed OCS source or modification to an existing OCS source is subject to action by a federal agency that might necessitate preparation of an environmental impact statement pursuant to the National Environmental Policy Act (42 U.S.C. 4321), review by the Administrator conducted pursuant to this section shall be coordinated with the environmental reviews under that Act to the extent feasible and reasonable.

(7) The Administrator or delegated agency and the applicant shall provide written notice of any permit application from a source, the emissions from which may affect a Class I area, to the Federal Land Manager charged with direct responsibility for management of any lands within the Class I area. Such notification shall include a copy of all information contained in the permit application and shall be given within 30 days of receipt of the application and at

least 60 days prior to any public hearing on the preconstruction permit.

(8) *Modification of existing sources.* The preconstruction requirements above shall not apply to a particular modification, as defined in §§ 55.13 or 55.14 of this part, of an existing OCS source if:

(i) The modification is necessary to comply with this part, and no other physical change or change in the method of operation is made in conjunction with the modification;

(ii) The modification is made within 24 months of promulgation of this part; and

(iii) The modification does not result in an increase, in excess of any *de minimus* levels contained in the applicable requirements of §§ 55.13 and 55.14, of potential emissions or actual hourly emissions of a pollutant regulated under the Act.

(9) *Compliance plans.* Sources intending to perform modifications that meet all of the criteria of paragraph (b)(8) of this section shall submit a compliance plan to the Administrator or delegated agency prior to performing the modification. The compliance shall describe the schedule and method the source will use to comply with the applicable OCS requirements within 24 months of the promulgation date of this part and shall include a request for any exemptions from compliance with a pollution control technology requirement that the applicant believes is technically infeasible or will cause an unreasonable threat to health and safety. The Administrator or delegated agency shall act on the request for exemption in accordance with the procedures established in § 55.7 of this part.

(i) The Administrator or delegated agency shall review the compliance plan and provide written comments to the source within 45 days of receipt of such plan. The source shall provide a written response to such comments as required by the reviewing agency.

(ii) Receipt and review of a compliance plan by the Administrator or delegated agency shall not relieve any owner or operator of an existing OCS source of the responsibility to comply fully with the applicable requirements of §§ 55.13 and 55.14 of this part within 24 months of promulgation of this part.

(c) *Operating permit requirements for sources located within 25 miles of states' seaward boundaries.*

(1) All applicable operating permit requirements listed in this section and incorporated into §§ 55.13 and 55.14 of this part shall apply to OCS sources.

(2) The Administrator or delegated agency shall not issue a permit to operate to any existing OCS source that has not demonstrated compliance with all the applicable requirements of this part.

(3) [Reserved].

(d) *Permit requirements for sources located beyond 25 miles of states' seaward boundaries.*

(1) OCS sources located beyond 25 miles of states' seaward boundaries shall be subject to the permitting requirements set forth in this section and § 55.13 of this part.

(2) The Administrator shall retain authority to implement and enforce all requirements of this part for OCS sources located beyond 25 miles from states' seaward boundaries.

(e) *Permit requirements for new sources that commenced construction prior to September 4, 1992.*

(1) *Applicability.* § 55.6(e) applies to a new OCS source, as defined by section 328 of the Act, that commenced construction before September 4, 1992.

(2) A source subject to § 55.6(e) shall comply with the following requirements:

(i) By October 5, 1992, the owner or operator of the source shall submit a transitional permit application ("TPA") to the Administrator or the delegated agency. The TPA shall include the following:

(A) The information specified in §§ 55.4(b)(1) through § 55.4(b)(9) of this part;

(B) A list of all requirements applicable to the source under this part;

(C) A request for exemption from compliance with any control technology requirement that the applicant believes is technically infeasible or will cause an unreasonable threat to health and safety;

(D) An air quality screening analysis demonstrating whether the source has or is expected in the future to cause or contribute to a violation of any applicable state or federal ambient air quality standard or exceed any applicable increment. If no air quality analysis is required by the applicable requirements of §§ 55.13 and 55.14, this requirement does not apply;

(E) Documentation that source emissions are currently being offset, or will be offset if the source has not commenced operation, at the ratio required under this part, and documentation that those offsets meet or will meet the requirements of this part; and

(F) A description of how the source is complying with the applicable requirements of §§ 55.13 and 55.14 of this part, including emission levels and corresponding control measures, including Best Available Control Technology ("BACT") or Lowest Achievable Emission Rates ("LAER"), but excluding the requirements to have valid permits.

(ii) The source shall expeditiously complete its permit application in compliance with the schedule determined by the Administrator or delegated agency.

(iii) The source shall comply with all applicable requirements of this part except for the requirements of paragraph (a)(4)(i) of this section. The source shall comply with the control technology requirements (such as BACT or LAER) set forth in the TPA that would be applicable if the source had a valid permit.

(iv) Any owner or operator subject to this subsection who continues to construct or operate an OCS source thirty days from promulgation of this part without submitting a TPA, or continues to construct or operate an OCS source not in accordance with the TPA submitted pursuant to paragraph (e) of this section, or constructs or operates an OCS source not in accordance with the schedule determined by the permitting authority, shall be in violation of this part.

(3) Upon the submittal of a permit application deemed to be complete by the permitting authority, the owner or operator of the source shall be subject to the permitting requirements of §§ 55.13 and 55.14 of this part that apply subsequent to the submission of a complete permit application. When a source receives the permit or permits required under this part, its TPA shall expire.

(4) Until the date that a source subject to this subsection receives the permit or permits required under this part, that source shall cease operation if, based on projected or actual emissions, the permitting authority determines that the source is currently or may in the future cause or contribute to a violation of a state or federal ambient air quality standard or exceed any applicable increment.

§ 55.7 Exemptions.

(a) *Authority and criteria.* The Administrator or the delegated agency may exempt a source from a control technology requirement of this part if the Administrator or the delegated agency finds that compliance with the control technology requirement is technically infeasible or will cause an unreasonable threat to health and safety.

(b) *Request for an exemption.* (1) *Permit application required.* An applicant shall submit a request for an exemption from a control technology requirement at the same time as the

applicant submits a preconstruction or operating permit application to the Administrator or delegated agency.

(2) *No permit application required.* If no permit or permit modification is required, a request for an exemption must be received by the Administrator or delegated agency within 60 days from the date the control technology requirement is promulgated by EPA.

(3) *Compliance plan.* An existing source that submits a compliance plan in accordance with § 55.6(b) of this part shall submit all requests for exemptions at the same time as the compliance plan. For the purpose of applying § 55.7 of this part, a request submitted with a compliance plan shall be treated in the same manner as a request that does not require a permit application.

(4) *Content of request.* (i) The request shall include information that demonstrates that compliance with a control technology requirement of this part would be technically infeasible or would cause an unreasonable threat to health and safety.

(ii) The request shall include a proposed substitute requirement(s) as close in stringency to the original requirement as possible.

(iii) The request shall include an estimate of emission reductions that would be achieved by compliance with the original requirement, an estimate of emission reductions that would be achieved by compliance with the proposed substitute requirement(s) and an estimate of residual emissions.

(iv) The request shall identify emission reductions of a sufficient quantity to offset the estimated residual emissions. Sources located beyond 25 miles from states' seaward boundaries shall consult with the Administrator to identify suitable emission reductions.

(c) *Consultation requirement.* If the authority to grant or deny exemptions has been delegated, the delegated agency shall consult with the Minerals Management Service of the U.S. Department of Interior and the U.S. Coast Guard to determine whether the exemption will be granted or denied.

(1) The delegated agency shall transmit to the Administrator (through the Regional Office), the Minerals Management Service, and the U.S. Coast Guard, a copy of the permit application, or the request if no permit is required, within 5 days of its receipt.

(2) *Consensus.* If the delegated agency, the Minerals Management Service, and the U.S. Coast Guard reach a consensus decision on the request within 90 days from the date the delegated agency received the request, the delegated agency may issue a preliminary determination in accordance with the applicable requirements of paragraph (f) of this section.

(3) *No consensus.* If the delegated agency, the Minerals Management Service, and the U.S. Coast Guard do not reach a consensus decision within 90 days from the date the delegated agency received the request, the request shall automatically be referred to the Administrator who will process the referral in accordance with paragraph (f)(3) of this section. The delegated agency shall transmit to the Administrator, within 91 days of its receipt, the request and all materials submitted with the request, such as the permit application or the compliance plan, and any other information considered or developed during the consultation process.

(4) If a request is referred to the Administrator and the delegated agency issues a preliminary determination on a permit application before the Administrator issues a final decision on the exemption, the delegated agency shall include a notice of the opportunity to comment on the Administrator's preliminary determination in accordance with the procedures of paragraph (f)(4) of this section.

(5) The Administrator's final decision on a request that has been referred pursuant to paragraph (c) of this section shall be incorporated into the final permit issued by the delegated agency. If no permit is required, the Administrator's final decision on the request shall be implemented and enforced by the delegated agency.

(d) *Preliminary determination.* The Administrator or delegated agency shall issue a preliminary determination in accordance with paragraph (f) of this section. A preliminary determination shall propose to grant or deny the request for exemption. A preliminary determination to grant the request shall include proposed substitute control requirements and offsets necessary to comply with the requirements of paragraph (e) of this section.

(e) *Grant of exemption.*

(1) The source shall comply with a substitute requirement(s), equal to or as close in stringency to the original requirement as possible, as determined by the Administrator or delegated agency.

(2) An OCS source located within 25 miles of states' seaward boundaries shall offset residual emissions resulting from the grant of an exemption request in accordance with the requirements of the Act and the regulations thereunder. The source shall obtain offsets in accordance with the applicable requirements as follows:

(i) If offsets are required in the COA, a new source shall offset residual emissions in the same manner as all other new source emissions in accordance with the requirements of § 55.5(d) of this part.

(ii) If offsets are not required in the COA, a new source shall comply with an offset ratio of 1:1.

(iii) An existing OCS source shall comply with an offset at a ratio of 1:1.

(3) An OCS source located beyond 25 miles from states' seaward boundaries shall obtain emission reductions at a ratio determined by the Administrator to be adequate to protect state and federal ambient air quality standards and to comply with part C of title I of the Act.

(f) *Administrative procedures and public participation.*

(1) *Request submitted with a permit application.* If a request is submitted with a permit application, the request shall be considered part of the permit application and shall be processed accordingly for the purpose of administrative procedures and public notice and comment requirements. The Administrator shall comply with the requirements of 40 CFR part 124 and the requirements set forth at § 55.6 of this part. If the Administrator has delegated authority to a state, the delegated agency shall use its own procedures as deemed adequate by the Administrator in accordance with § 55.11 of this part. These procedures must provide for public notice and comment on the preliminary determination.

(2) *Request submitted without a permit or with a compliance plan.* If a permit is not required, the Administrator or the delegated agency shall issue a preliminary determination within 90 days from the date the request was received, and shall use the procedures set forth at paragraph (f)(4) of this section for processing a request.

(3) *Referral.* If a request is referred to the Administrator pursuant to paragraph (c) of this section, the Administrator shall make a preliminary determination no later than 30 days after receipt of the request and any accompanying materials transmitted by the delegated agency. The Administrator shall use the procedures set forth at paragraph (f)(4) of this section for processing a request.

(4) The Administrator or the delegated agency shall comply with the following requirements for processing requests submitted without a permit, with a compliance plan, and requests referred to the Administrator:

(i) Issue a preliminary determination to grant or deny the request. A preliminary determination by the Administrator to deny a request shall be

considered a final decision and will be accompanied by the reasons for the decision. As such, it is not subject to any further public notice, comment, or hearings. Written notice of the denial shall be given to the requester.

(ii) Make available, in at least one location in the COA and NOA, a copy of all materials submitted by the requester, a copy of the preliminary determination, and a copy or summary of other materials, if any, considered in making the preliminary determination.

(iii) Notify the public, by prominent advertisement in a newspaper of general circulation in the COA and NOA, of a 30-day opportunity for written public comment on the information submitted by the owner or operator and on the preliminary determination.

(iv) Send a copy of the notice required pursuant to paragraph (f)(4)(iii) of this section to the requester, the affected source, each person from whom a written request of such notice has been received, and the following officials and agencies having jurisdiction over the COA and NOA: state and local air pollution control agencies, the chief executive of the city and county, the Federal Land Manager of potentially affected Class I areas, and any Indian governing body whose lands may be affected by emissions from the OCS source.

(v) Consider written public comments received within 30 days after the date the public notice is made available when making the final decision on the request. All comments will be made available for public inspection. At the time that any final decision is issued, the Administrator or delegated agency will issue a response to comments.

(vi) Make a final decision on the request within 30 days after the close of the public comment period. The Administrator or the delegated agency will notify, in writing, the applicant and each person who has submitted written comments, or from whom a written request of such notice has been received, of the final decision and will set forth the reasons. Such notification will be made available for public inspection.

(5) Within 30 days after the final decision has been made on a request, the requester, or any person who filed comments on the preliminary determination, may petition the Administrator to review any aspect of the decision. Any person who failed to file comments on the preliminary decision may petition for administrative review only on the changes from the preliminary to the final determination.

§ 55.8 Monitoring, reporting, inspections, and compliance.

(a) The Administrator may require monitoring or reporting and may authorize inspections pursuant to section 114 of the Act and the regulations thereunder. Sources shall also be subject to the requirements set forth in §§ 55.13 and 55.14 of this part.

(b) All monitoring, reporting, inspection and compliance requirements authorized under the Act shall apply.

(c) An existing OCS source that is not required to obtain a permit to operate within 24 months of the date of promulgation of this part shall submit a compliance report to the Administrator or delegated agency within 25 months of promulgation of this part. The compliance report shall specify all the applicable OCS requirements of this part and a description of how the source has complied with these requirements.

(d) The Administrator or the delegated agency shall consult with the Minerals Management Service and the U.S. Coast Guard prior to inspections. This shall in no way interfere with the ability of EPA or the delegated agency to conduct unannounced inspections.

§ 55.9 Enforcement.

(a) OCS sources shall comply with all requirements of this part and all permits issued pursuant to this part. Failure to do so shall be considered a violation of section 111(e) of the Act.

(b) All enforcement provisions of the Act, including, but not limited to, the provisions of sections 113, 114, 120, 303 and 304 of the Act, shall apply to OCS sources.

(c) If a facility is ordered to cease operation of any piece of equipment due to enforcement action taken by EPA or a delegated agency pursuant to this part, the shutdown will be coordinated by the enforcing agency with the Minerals Management Service and the U.S. Coast Guard to assure that the shutdown will proceed in a safe manner. No shutdown action will occur until after consultation with these agencies, but in no case will initiation of the shutdown be delayed by more than 24 hours.

§ 55.10 Fees.

(a) *OCS sources located within 25 miles of states' seaward boundaries.*

(1) EPA will collect operating fees from OCS sources calculated in accordance with the fee requirements imposed in the COA if the fees are based on regulatory objectives, such as discouraging emissions. If the fee requirements are based on cost recovery objectives, however, EPA will adjust the fees to reflect the costs to EPA to issue permits and administer the permit program.

(2) EPA will collect all other fees from OCS sources calculated in accordance with the fee requirements imposed in the COA if the fees are based on regulatory objectives, such as discouraging emissions. If the fee requirements are based on cost recovery objectives, however, EPA will adjust the fees to reflect the costs to EPA to issue permits and administer the permit program.

(3) Upon delegation, the delegated agency will collect fees from OCS sources calculated in accordance with the fee requirements imposed in the COA. Upon delegation of authority to implement and enforce any portion of this part, EPA will cease to collect fees imposed in conjunction with that portion.

(b) [Reserved].

§ 55.11 Delegation.

(a) The governor or the governor's designee of any state adjacent to an OCS source subject to the requirements of this part may submit a request to the Administrator for authority to implement and enforce the requirements of this OCS program within 25 miles of the state seaward boundary, pursuant to section 328(a)(3) of the Act. Authority to implement and enforce §§ 55.5, 55.11, and 55.12 of this part will not be delegated.

(b) The Administrator will delegate implementation and enforcement authority to a state if the state has an adjacent OCS source and the Administrator determines that the state's regulations are adequate, including a demonstration by the state that the state has:

(1) Adopted the appropriate portions of this part into state law;

(2) Adequate authority under state law to implement and enforce the requirements of this part. A letter from the State Attorney General shall be required stating that the requesting agency has such authority;

(3) Adequate resources to implement and enforce the requirements of this part; and

(4) Adequate administrative procedures to implement and enforce the requirements of this part, including public notice and comment procedures.

(c) The Administrator will notify in writing the governor or the governor's designee of the Administrator's final action on a request for delegation within 6 months of the receipt of the request.

(d) If the Administrator finds that the state regulations are adequate, the Administrator will authorize the state to implement and enforce the OCS

requirements under state law. If the Administrator finds that only part of the state regulations are adequate, he will authorize the state to implement and enforce only that portion of this part.

(e) Upon delegation, a state may use any authority it possesses under state law to enforce any permit condition or any other requirement of this part for which the agency has delegated authority under this part. A state may use any authority it possesses under state law to require monitoring and reporting and to conduct inspections.

(f) Nothing in this part shall prohibit the Administrator from enforcing any requirement of this part.

(g) The Administrator will withdraw a delegation of any authority to implement and enforce any or all of this part if the Administrator determines that: (1) The requirements of this part are not being adequately implemented or enforced by the delegated agency, or (2) The delegated agency no longer has adequate regulations as required by § 55.11(b) of this part.

(h) *Sharing of information.* Any information obtained or used in the administration of a delegated program shall be made available to EPA upon request without restriction. If the information has been submitted to the delegated agency under a claim of confidentiality, the delegated agency must notify the source of this obligation and submit that claim to EPA. Any information obtained from a delegated agency accompanied by a claim of confidentiality will be treated in accordance with the requirements of 40 CFR Part 2.

(i) *Grant of exemptions.* A decision by a delegated agency to grant or deny an exemption request may be appealed to the Administrator in accordance with § 55.7 of this part.

§ 55.12 Consistency updates.

(a) The Administrator will update this part as necessary to maintain consistency with the regulations of onshore areas in order to attain and maintain federal and state ambient standards and comply with part C of title I of the Act.

(b) Where an OCS activity is occurring within 25 miles of a state seaward boundary, consistency reviews will occur at least annually. In addition, in accordance with paragraphs (c) and (d) of this section, consistency reviews will occur upon receipt of an NOI and when a state or local agency submits a rule to EPA to be considered for incorporation by reference in this part 55.

(1) Upon initiation of a consistency review, the Administrator will evaluate the requirements of part 55 to determine whether they are consistent with the current onshore requirements.

(2) If the Administrator finds that part 55 is inconsistent with the requirements in effect in the onshore area, EPA will conduct a notice and comment rulemaking to update part 55 accordingly.

(c) *Consistency reviews triggered by receipt of an NOI.* Upon receipt of an NOI, the Administrator will initiate a consistency review of regulations in the onshore area.

(1) If the NOI is submitted by a source for which the COA has previously been assigned, EPA will publish a proposed consistency update in the **Federal Register** no later than 60 days after the receipt of the NOI, if an update is deemed necessary by the Administrator:

(2) If the NOI is submitted by a source requiring a COA designation, EPA will publish a proposed consistency update in the **Federal Register**, if an update is deemed necessary by the Administrator:

(i) No later than 75 days after receipt of the NOI if no adjacent areas submit a request for COA designation and the NOA becomes the COA by default, or

(ii) No later than 105 days after receipt of the NOI if an adjacent area submits a request to be designated as COA but fails to submit the required demonstration within 90 days of receipt of the NOI, or

(iii) No later than 15 days after the date of the final COA determination if one or more demonstrations are received.

(d) *Consistency reviews triggered by state and local air pollution control agencies submitting rules directly to EPA for inclusion into Part 55.*

(1) EPA will propose in the **Federal Register** to approve applicable rules submitted by state or local regulatory agencies for incorporation by reference into § 55.14 of this part by the end of the calendar quarter following the quarter in which the submittal is received by EPA.

(2) State and local rules submitted for inclusion in part 55 must be rationally related to the attainment and maintenance of federal or state ambient air quality standards or to the requirements of part C of title I of the Act. The submittal must be legible and unmarked, with the adoption date and the name of the agency on each page, and must be accompanied by proof of adoption.

(e) No rule or regulation that EPA finds to be arbitrary or capricious will be incorporated into this part.

(f) A source may not submit a complete permit application until any update the Administrator deems necessary to make part 55 consistent with the COA's rules has been proposed.

§ 55.13 Federal requirements that apply to OCS sources.

(a) The requirements of this section shall apply to OCS sources as set forth below. In the event that a requirement of this section conflicts with an applicable requirement of § 55.14 of this part and a source cannot comply with the requirements of both sections, the more stringent requirement shall apply.

(b) In applying the requirements incorporated into this section:

(1) "New Source" means new OCS source; and

(2) "Existing Source" means existing OCS source; and

(3) "Modification" means a modification to an OCS source.

(4) For requirements adopted prior to promulgation of this part, language in such requirements limiting the applicability of the requirements to onshore sources or to sources within state boundaries shall not apply.

(c) 40 CFR Part 60 (NSPS) shall apply to OCS sources in the same manner as in the COA, except that any source determined to be an existing source pursuant to § 55.3(e) of this part shall not be considered a "new source" for the purpose of NSPS adopted before December 5, 1991.

(d) 40 CFR 52.21 (PSD) shall apply to OCS sources:

(1) Located within 25 miles of a state's seaward boundary if the requirements of 40 CFR 52.21 are in effect in the COA;

(2) Located beyond 25 miles of states' seaward boundaries.

(e) 40 CFR Part 61, together with any other provisions promulgated pursuant to section 112 of the Act, shall apply if rationally related to the attainment and maintenance of federal or state ambient air quality standards or the requirements of part C of title I of the Act.

(f) (Reserved).

(g) The provisions of 40 CFR 52.10, 40 CFR 52.24, and 40 CFR Part 51 and accompanying Appendix S shall apply to OCS sources located within 25 miles of states' seaward boundaries, if these requirements are in effect in the COA.

(h) If the Administrator determines that additional requirements are necessary to protect federal and state ambient air quality standards or to comply with part C of title I, such requirements will be incorporated in this part.

§ 55.14 Requirements that apply to OCS sources located within 25 miles of states' seaward boundaries, by state.

(a) The requirements of this section shall apply to OCS sources as set forth below. In the event that a requirement of this section conflicts with an applicable requirement of § 55.13 of this part and a source cannot comply with the requirements of both sections, the more stringent requirement shall apply.

(b) In applying the requirements incorporated into this section:

(1) "New Source" means new OCS source; and

(2) "Existing Source" means existing OCS source; and

(3) "Modification" means a modification to an existing OCS source.

(4) For requirements adopted prior to promulgation of this part, language in such requirements limiting the applicability of the requirements to onshore sources or to sources within state boundaries shall not apply.

(c) During periods of EPA implementation and enforcement of this section, the following shall apply:

(1) Any reference to a state or local air pollution control agency or air pollution control officer shall mean EPA or the Administrator, respectively.

(2) Any submittal to state or local air pollution control agency shall instead be submitted to the Administrator through the EPA Regional Office.

(3) Nothing in this section shall alter or limit EPA's authority to administer or enforce the requirements of this part under federal law.

(4) EPA shall not be bound by any state or local administrative or procedural requirements including, but not limited to, requirements pertaining to hearing boards, permit issuance, public notice procedures, and public hearings. EPA will follow the applicable procedures set forth elsewhere in this part, in 40 CFR Part 124, and in federal rules promulgated pursuant to title V of the Act (as such rules apply in the COA), when administering this section.

(5) Only those requirements of 40 CFR Part 52 that are rationally related to the attainment and maintenance of federal or state ambient air quality standards or part C of title I shall apply to OCS sources.

(d) *Implementation Plan Requirements.*

(1) (Reserved).

(2) Alaska.

(i) 40 CFR part 52, subpart C.

(ii) (Reserved).

(3) California.

(i) 40 CFR part 52, subpart F.

(ii) (Reserved).

(4) and (5) (Reserved).

(6) Florida.

(i) 40 CFR part 52, subpart K.

(ii) (Reserved).

(7) through (16) (Reserved).

(17) North Carolina.

(i) 40 CFR part 52, subpart II.

(ii) (Reserved).

(18) through (23) (Reserved).

(e) *State and local requirements.* State and local requirements promulgated by EPA as applicable to OCS sources located within 25 miles of states' seaward boundaries have been compiled into separate documents organized by state and local areas of jurisdiction. These documents, set forth below, are incorporated by reference. This incorporation by reference was approved by the Director of the Federal Register Office in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be inspected at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC. Copies of rules pertaining to particular states or local areas may be inspected or obtained from the EPA Air Docket (A–91–76), U.S. EPA, room M–1500, 401 M Street, SW., Washington, DC, 20460 or the appropriate EPA regional offices: U.S. EPA, Region 4 (Florida and North Carolina), 345 Courtland Street, NE., Atlanta, GA 30365; U.S. EPA, Region 9 (California), 75 Hawthorne Street, San Francisco, CA 94105; and U.S. EPA, Region 10 (Alaska), 1200 Sixth Avenue, Seattle, WA 98101. For an informational listing of the state and local requirements incorporated into this part, which are applicable to sources of air pollution located on the OCS, see Appendix A to this part.

(1) (Reserved).

(2) Alaska.

(i) State requirements.

(A) *State of Alaska Requirements Applicable to OCS Sources,* August 21, 1992.

(B) (Reserved).

(ii) Local requirements.

(A) *South Central Alaska Clean Air Authority Requirements Applicable to OCS Sources,* August 21, 1992.

(B) (Reserved).

(3) California.

(i) State requirements.

(A) (Reserved).

(ii) Local requirements.

(A)–(D) (Reserved).

(E) *San Luis Obispo County Air Pollution Control District Requirements Applicable to OCS Sources,* August 21, 1992.

(F) *Santa Barbara County Air Pollution Control District Requirements Applicable to OCS Sources,* August 21, 1992.

(G) *South Coast Air Quality Management District Requirements Applicable to OCS Sources,* August 21, 1992.

(H) *Ventura County Air Pollution Control District Requirements Applicable to OCS Sources,* August 21, 1992.

(4) and (5) (Reserved).

(6) Florida.

(i) State requirements.

(A) *State of Florida Requirements Applicable to OCS Sources,* August 21, 1992.

(B) (Reserved).

(ii) Local requirements.

(A) (Reserved).

(7) through (16) (Reserved).

(17) North Carolina.

(i) State requirements.

(A) *State of North Carolina Air Pollution Control Requirements Applicable to OCS Sources,* August 21, 1992.

(B) (Reserved).

(ii) Local requirements.

(A) (Reserved).

(18) through (23) (Reserved).

Appendix A to 40 CFR Part 55—Listing of State and Local Requirements Incorporated by Reference Into Part 55, by State

This Appendix lists the titles of the state and local requirements that are contained within the documents incorporated by reference into 40 CFR Part 55.

Alaska

(a) State requirements.

(1) The following requirements are contained in *State of Alaska Requirements Applicable to OCS Sources,* August 21, 1992:

Alaska Administrative Code—Department of Environmental Conservation. The following sections of Title 18, Chapter 50:

18 AAC 50.020 Ambient Air Quality Standards (Effective 7/21/91)

18 AAC 50.030 Open Burning (Effective 10/30/83)

18 AAC 50.040 Incinerators (Effective 10/30/83)

18 AAC 50.050 Industrial Processes and Fuel Burning Equipment (Effective 5/11/91)

18 AAC 50.090 Ice Fog Limitations (Effective 5/26/72)

18 AAC 50.100 Marine Vessels (Effective 7/21/91)

18 AAC 50.110 Air Pollution Prohibited (Effective 5/26/72)

18 AAC 50.300 Permit to Operate (Effective 7/21/91)

18 AAC 50.310 Revocation or Suspension of Permit (Effective 5/4/80)

18 AAC 50.400 Application Review and Issuance of Permit to Operate (Effective 7/21/91)

18 AAC 50.500 Source Testing (Effective 6/2/88)

18 AAC 50.510 Ambient Analysis Methods (Effective 7/21/91)

18 AAC 50.520 Emission and Ambient Monitoring (Effective 7/21/91)

18 AAC 50.530 Circumvention (Effective 6/7/87)

18 AAC 50.620 Air Quality Control Plan; Volume II, Section IV: Paragraph F.—Facility Review Procedures; Paragraph G.—Application Review and Permit Development, only. (Effective 7/21/91)
18 AAC 50.900 Definitions (Effective 7/21/91)

(b) Local requirements.

(1) the following requirements are contained in *South Central Alaska Clean Air Authority Requirements Applicable to OCS Sources*, August 21, 1992:

15.30.030 Definitions
15.30.100 Registration and Notification, except E
15.30.110 Permit to Operate
15.30.120 Source Reports
15.30.130 Source Tests
15.35.040 Stationary Source Emissions—General Definitions
15.35.050 Stationary Source Emissions—Visible Emission Standards
15.35.060 Stationary Source Emissions—Emission Standards
15.35.080 Stationary Source Emissions—Circumvention
15.35.090 Stationary Source Emissions—Fugitive Emissions
15.35.100 Stationary Source Emissions—Open Burning

California

(a) State requirements.

(1) [Reserved].

(b) Local requirements.

(1)–(4) [Reserved].

(5) The following requirements are contained in *San Luis Obispo County Air Pollution Control District Requirements Applicable to OCS Sources*, August 21, 1992:

Rule 103 Conflicts Between District, State and Federal Rules (Adopted 8/6/76)
Rule 104 Action in Areas of High Concentration (Adopted 7/5/77)
Rule 105 Definitions (Adopted 11/5/91)
Rule 106 Standard Conditions (Adopted 8/6/76)
Rule 108 Severability (Adopted 11/13/84)
Rule 113 Continuous Emissions Monitoring, except F. (Adopted 7/5/77)
Rule 201 Equipment not Requiring a Permit, except A.1.b. (Adopted 11/5/91)
Rule 202 Permits, except A.4. and A.8. (Adopted 11/5/91)
Rule 203 Applications, except B. (Adopted 11/5/91)
Rule 204 Requirements, except B.2. and C. (Adopted 11/5/91)
Rule 209 Provision for Sampling and Testing Facilities (Adopted 11/5/91)
Rule 210 Periodic Inspection, Testing and Renewal of Permits to Operate (Adopted 11/5/91)
Rule 213 Calculations, except E.4. and F. (Adopted 11/5/91)
Rule 302 Schedule of Fees (Adopted 7/1/91)
Rule 305 Fees for Acid Deposition Research (Adopted 7/18/89)
Rule 401 Visible Emissions (Adopted 8/6/76)
Rule 403 Particulate Matter Emission Standards (Adopted 8/6/76)
Rule 404 Sulfur Compounds Emission Standards, Limitations and Prohibitions (Adopted 12/6/76)
Rule 405 Nitrogen Oxides Emission Standards, Limitations and Prohibitions (Adopted 11/13/84)
Rule 406 Carbon Monoxide Emission Standards, Limitations and Prohibitions (Adopted 11/14/84)
Rule 407 Organic Material Emission Standards, Limitations and Prohibitions (Adopted 1/10/89)
Rule 411 Surface Coating of Metal Parts and Products (Adopted 1/10/89)
Rule 416 Degreasing Operations (Adopted 6/18/79)
Rule 422 Refinery Process Turnarounds (Adopted 6/18/79)
Rule 501 General Burning Provisions (Adopted 1/10/89)
Rule 503 Incinerator Burning, except B.1.a. (Adopted 2/7/89)
Rule 601 New Source Performance Standards (Adopted 9/4/90)

(6) The following requirements are contained in *Santa Barbara County air Pollution Control District Requirements Applicable to OCS Sources*, August 21, 1992:

Rule 102 Definitions (Adopted 7/30/91)
Rule 103 Severability (Adopted 10/23/78)
Rule 201 Permits Required (Adopted 7/2/79)
Rule 202 Exemptions to Rule 201 (Adopted 7/30/91)
Rule 203 Transfer (Adopted 10/23/78)
Rule 204 Applications (Adopted 10/23/78)
Rule 205 Standards for Granting Applications (Adopted 7/30/91)
Rule 206 Conditional Approval of Authority to Construct or Permit to Operate (Adopted 10/15/91)
Rule 207 Denial of Applications (Adopted 10/23/78)
Rule 210 Fees (Adopted 5/7/91)
Rule 301 Circumvention (Adopted 10/23/78)
Rule 302 Visible Emissions (Adopted 10/23/78)
Rule 304 Particulate Matter—Northern Zone (Adopted 10/23/78)
Rule 305 Particulate Matter Concentration—Southern Zone (Adopted 10/23/78)
Rule 306 Dust and fumes—Northern Zone (Adopted 10/23/78)
Rule 307 Particulate Matter Emission Weight Rate—Southern Zone (Adopted 10/23/78)
Rule 308 Incinerator Burning (Adopted 10/23/78)
Rule 309 Specific Contaminants (Adopted 10/23/78)
Rule 310 Odorous Organic Sulfides (Adopted 10/23/78)
Rule 311 Sulfur Content of Fuels (Adopted 10/23/78)
Rule 312 Open Fires (Adopted 10/2/90)
Rule 317 Organic Solvents (Adopted 10/23/78)
Rule 318 Vacuum Producing Devices or Systems—Southern Zone (Adopted 10/23/78)
Rule 321 Control of Degreasing Operations (Adopted 7/10/90)
Rule 322 Metal Surface Coating Thinner and Reducer (Adopted 10/23/78)
Rule 323 Architectural Coatings (Adopted 2/20/90)
Rule 324 Disposal and Evaporation of Solvents (Adopted 10/23/78)
Rule 325 Storage of Petroleum and Petroleum Products (Adopted 7/11/89)
Rule 326 Effluent Oil Water Separators (Adopted 10/23/78)
Rule 327 Organic Liquid Cargo Tank Vessel Loading (Adopted 12/16/85)
Rule 328 Continuous Emission Monitoring (Adopted 10/23/78)
Rule 331 Refinery Valves and Flanges (Adopted 7/11/89)
Rule 332 Petroleum Refinery Vacuum Producing Systems, Wastewater Separators and Process Turnarounds (Adopted 6/11/79)
Rule 505 Breakdown Conditions Sections A., B.1., and D. only. (Adopted 10/23/78)
Rule 603 Emergency Episode Plans (Adopted 6/15/81)

(7) The following requirements are contained in *South Coast Air Quality Management District Requirements Applicable to OCS Sources*, August 21, 1992:

Rule 102 Definition of Terms (Adopted 11/4/88)
Rule 103 Definition of Geographical Areas (Adopted 1/9/76)
Rule 104 Reporting of Source Test Data and Analyses (Adopted 1/9/76)
Rule 107 Determination of Volatile Organic Compounds in Organic Material (Adopted 1/8/82)
Rule 108 Alternative Emission Control Plans (Adopted 4/6/90)
Rule 109 Recordkeeping for Volatile Organic Compound Emissions (Adopted 5/5/89)
Rule 201 Permit to Construct (Adopted 1/5/90)
Rule 201.1 Permit Conditions in Federally Issued Permits to Construct (Adopted 1/5/90)
Rule 202 Temporary Permit to Operate (Adopted 5/7/76)
Rule 203 Permit to Operate (Adopted 1/5/90)
Rule 204 Permit Conditions (Adopted 1/4/85)
Rule 205 Expiration of Permits to Construct (Adopted 1/5/90)
Rule 206 Posting of Permit to Operate (Adopted 1/5/90)
Rule 207 Altering or Falsifying of Permit (Adopted 1/9/76)
Rule 208 Permit for Open Burning (Adopted 1/5/90)
Rule 209 Transfer and Voiding of Permits (Adopted 1/5/90)
Rule 210 Applications (Adopted 1/5/90)
Rule 212 Standards for Approving Permits (Adopted 6/28/90)
Rule 214 Denial of Permits (Adopted 1/5/90)
Rule 217 Provisions for Sampling and Testing Facilities (Adopted 1/5/90)
Rule 218 Stack Monitoring (Adopted 8/7/81)
Rule 219 Equipment Not Requiring a Written Permit Pursuant to Regulation II (Adopted 6/3/88)
Rule 220 Exemption—Net Increase in Emissions (Adopted 8/7/81)
Rule 221 Plans (Adopted 1/4/85)
Rule 301 Permit Fees (Adopted 6/7/91)
Rule 304 Equipment, Materials and Ambient Air Analyses (Adopted 7/6/90)
Rule 304.1 Analyses Fees (Adopted 6/7/91)
Rule 305 Fees for Acid Deposition Research (Adopted 3/3/89)
Rule 306 Plan Fees (7/6/90)

Rule 401 Visible Emissions (Adopted 4/7/89)
Rule 403 Fugitive Dust (Adopted 5/7/76)
Rule 404 Particulate Matter—Concentration (Adopted 2/7/86)
Rule 405 Solid Particulate Matter—Weight (Adopted 2/7/86)
Rule 407 Liquid and Gaseous Air Contaminants (Adopted 4/2/82)
Rule 408 Circumvention (Adopted 5/7/76)
Rule 409 Combustion Contaminants (Adopted 8/7/81)
Rule 429 Start-Up and Shutdown Provisions for Oxides of Nitrogen (Adopted 12/21/90)
Rule 430 Breakdown Provisions, (a) and (e) only. (Adopted 5/5/78)
Rule 431.1 Sulfur Content of Gaseous Fuels (Adopted 5/4/90)
Rule 431.2 Sulfur Content of Liquid Fuels (Adopted 5/4/90)
Rule 431.3 Sulfur Content of Fossil Fuels (Adopted 5/7/76)
Rule 441 Research Operations (Adopted 5/7/76)
Rule 442 Usage of Solvents (Adopted 3/5/82)
Rule 444 Open Fires (Adopted 10/2/87)
Rule 463 Storage of Organic Liquids (Adopted 12/7/90)
Rule 465 Vacuum Producing Devices or Systems (Adopted 12/7/90)
Rule 468 Sulfur Recovery Units (Adopted 10/8/76)
Rule 473 Disposal of Solid and Liquid Wastes (5/7/76)
Rule 474 Fuel Burning Equipment—Oxides of Nitrogen (Adopted 12/4/81)
Rule 475 Electric Power Generating Equipment (Adopted 8/7/78)
Rule 476 Steam Generating Equipment (Adopted 10/8/76)
Rule 480 Natural Gas Fired Control Devices (Adopted 10/7/77)
Addendum to Regulation IV
Rule 701 General (Adopted 7/9/82)
Rule 702 Definitions (Adopted 7/11/80)
Rule 704 Episode Declaration (Adopted 7/9/82)
Rule 707 Radio-Communication System (Adopted 7/11/80)
Rule 708 Plans (Adopted 7/9/82)
Rule 708.1 Stationary Sources Required to File Plans (Adopted 4/4/80)
Rule 708.2 Content of Stationary Source Curtailment Plans (Adopted 4/4/80)
Rule 708.4 Procedural Requirements for Plans (Adopted 7/11/80)
Rule 709 First Stage Episode Actions (Adopted 7/11/80)
Rule 710 Second Stage Episode Actions (Adopted 7/11/80)
Rule 711 Third Stage Episode Actions (Adopted 7/11/80)
Rule 712 Sulfate Episode Actions (Adopted 7/11/80)
Rule 715 Burning of Fossil Fuel on Episode Days (Adopted 8/24/77)
Regulation IX—New Source Performance Standards (Adopted 9/7/90)
Rule 1106 Marine Coating Operations (Adopted 12/7/90)
Rule 1107 Coating of Metal Parts and Products (Adopted 11/2/90)
Rule 1109 Emissions of Oxides of Nitrogen for Boilers and Process Heaters in Petroleum Refineries (Adopted 8/5/88)
Rule 1110 Emissions from Stationary Internal Combustion Engines (Demonstration) (Adopted 11/6/81)
Rule 1110.1 Emissions from Stationary Internal Combustion Engines (Adopted 10/4/85)
Rule 1110.2 Emissions from Gaseous- and Liquid-Fueled Internal Combustion Engines (Adopted 9/7/90)
Rule 1113 Architectural Coatings (Adopted 12/7/90)
Rule 1116.1 Lightering Vessel Operations—Sulfur Content of Bunker Fuel (Adopted 10/20/78)
Rule 1121 Control of Nitrogen Oxides from Residential-Type Natural Gas-Fired Water Heaters (Adopted 12/1/78)
Rule 1122 Solvent Cleaners (Degreasers) (Adopted 5/5/89)
Rule 1123 Refinery Process Turnarounds (Adopted 12/7/90)
Rule 1129 Aerosol Coatings (Adopted 11/2/90)
Rule 1134 Emissions of Oxides of Nitrogen from Stationary Gas Turbines (Adopted 8/4/89)
Rule 1140 Abrasive Blasting (Adopted 8/2/85)
Rule 1142 Marine Tank Vessel Operations (Adopted 7/19/91)
Rule 1146 Emissions of Oxides of Nitrogen from Industrial, Institutional, and Commercial Boilers, Steam Generators, and Process Heaters (Adopted 1/6/89)
Rule 1146.1 Emissions of Oxides of Nitrogen from Small Industrial, Institutional, and Commercial Boilers, Steam Generators, and Process Heaters (Adopted 10/5/90)
Rule 1148 Thermally Enhanced Oil Recovery Wells (Adopted 11/5/82)
Rule 1149 Storage Tank Degassing (Adopted 4/1/88)
Rule 1168 Control of Volatile Organic Compound Emissions from Adhesive Applications (Adopted 7/19/91)
Rule 1173 Fugitive Emissions of Volatile Organic Compounds (Adopted 12/7/90)
Rule 1176 Sumps and Wastewater Separators (Adopted 1/5/90)
Rule 1301 General (Adopted 6/28/90)
Rule 1302 Definitions (Adopted 6/28/90)
Rule 1303 Requirements (Adopted 5/3/91)
Rule 1304 Exemptions (Adopted 5/3/91)
Rule 1306 Emission Calculations (Adopted 5/3/91)
Rule 1313 Permits to Operate (Adopted 6/28/90)
Rule 1403 Asbestos Emissions from Demolition/Renovation Activities (Adopted 10/6/89)
Rule 1701 General (Adopted 1/6/89)
Rule 1702 Definitions (Adopted 1/6/89)
Rule 1703 PSD Analysis (Adopted 10/7/88)
Rule 1704 Exemptions (Adopted 1/6/89)
Rule 1706 Emission Calculations (Adopted 1/6/89)
Rule 1713 Source Obligation (Adopted 10/7/88)
Regulation XVII Appendix

(8) The following requirements are contained in *Ventura County Air Pollution Control District Requirements Applicable to OCS Sources*, August 21, 1992:

Rule 2 Definitions (Adopted 5/8/90)
Rule 5 Effective Date (Adopted 5/23/72)
Rule 6 Severability (Adopted 11/21/78)
Rule 7 Zone Boundaries (Adopted 6/14/77)
Rule 10 Permits Required (Adopted 7/5/83)
Rule 11 Application Contents (Adopted 8/15/78)
Rule 12 Statement by Application Preparer (Adopted 6/16/87)
Rule 13 Statement by Applicant (Adopted 11/21/78)
Rule 14 Trial Test Runs (Adopted 5/23/72)
Rule 15 Permit Issuance (Adopted 7/5/83)
Rule 16 Permit Contents (Adopted 12/2/80)
Rule 18 Permit to Operate Application (Adopted 8/17/76)
Rule 19 Posting of Permits (Adopted 5/23/72)
Rule 20 Transfer of Permit (Adopted 5/23/72)
Rule 21 Expiration of Applications and Permits (Adopted 6/23/81)
Rule 23 Exemptions from Permit (Adopted 1/8/91)
Rule 24 Source Recordkeeping and Reporting (Adopted 11/21/78)
Rule 26 New Source Review (Adopted 2/26/85)
Rule 26.1 All New or Modified Major Stationary Sources (Adopted 11/19/85)
Rule 26.2 New or Modified Non-Major Sources (Adopted 11/19/85)
Rule 26.3 New or Modified Stationary Sources—Prevention of Significant Deterioration (PSD) (Adopted 11/19/85)
Rule 26.6 Air Quality Impact Analysis and Notification (Adopted 1/10/84)
Rule 28 Revocation of Permits (Adopted 7/18/72)
Rule 29 Conditions on Permits (Adopted 5/30/89)
Rule 30 Permit Renewal (Adopted 5/30/89)
Rule 32 Breakdown Conditions; Emergency Variances, A., B.1., and D. only. (Adopted 2/20/79)
Appendix II–A Information Required for Applications to the Air Pollution Control District
Appendix II–B Best Available Control Technology (BACT) Tables
Rule 42 Permit Fees (Adopted 6/19/90)
Rule 44 Exemption Evaluation Fee (Adopted 1/8/91)
Rule 45 Plan Fees (Adopted 6/19/90)
Rule 50 Opacity (Adopted 2/20/79)
Rule 52 Particulate Matter-Concentration (Adopted 5/23/72)
Rule 53 Particulate Matter-Process Weight (Adopted 7/18/72)
Rule 54 Sulfur Compounds (Adopted 7/5/83)
Rule 56 Open Fires (Adopted 5/24/88)
Rule 57 Combustion Contaminants—Specific (Adopted 6/14/77)
Rule 60 New Non-Mobile Equipment—Sulfur Dioxide, Nitrogen Oxides, and Particulate Matter (Adopted 7/8/72)
Rule 63 Separation and Combination of Emissions (Adopted 11/21/78)
Rule 64 Sulfur Content of Fuels (Adopted 7/5/83)
Rule 66 Organic Solvents (Adopted 11/24/87)
Rule 67 Vacuum Producing Devices (Adopted 7/5/83)
Rule 68 Carbon Monoxide (Adopted 6/14/77)
Rule 71 Crude Oil and Reactive Organic Compound Liquids (Adopted 9/11/90)

Rule 71.1 Crude Oil Production and Separation (Adopted 10/4/88)
Rule 71.2 Storage of Reactive Organic Compound Liquids (Adopted 9/26/89)
Rule 71.3 Transfer of Reactive Organic Compound Liquids (Adopted 9/11/90)
Rule 71.4 Petroleum Sumps, Pits, Ponds and Well Cellars (Adopted 10/4/88)
Rule 72 New Source Performance Standards (NSPS) (Adopted 6/19/90)
Rule 74 Specific Source Standards (Adopted 7/6/76)
Rule 74.1 Abrasive Blasting (Adopted 9/5/89)
Rule 74.2 Architectural Coatings (Adopted 10/21/88)
Rule 74.6 Surface Cleaning and Degreasing (Adopted 5/8/90)
Rule 74.6.1 Cold Cleaning Operations (Adopted 9/12/89)
Rule 74.6.2 Batch Loaded Vapor Degreasing Operations (Adopted 9/12/89)
Rule 74.7 Fugitive Emissions of Reactive Organic Compounds at Petroleum Refineries and Chemical Plants (Adopted 1/10/89)
Rule 74.8 Refinery Vacuum Producing Systems, Waste-water Separators and Process Turnarounds (Adopted 7/5/83)
Rule 74.9 Stationary Internal Combustion Engines (Adopted 9/5/89)
Rule 74.10 Components at Crude Oil Production Facilities and Natural Gas Production and Processing Facilities (Adopted 9/22/87)
Rule 74.11 Natural Gas-Fired Residential Water Heaters—Control of NO_x (Adopted 4/9/85)
Rule 74.12 Surface Coating of Metal Parts and Products (Adopted 5/15/89)
Rule 74.15 Boilers, Steam Generators and Process Heaters (Adopted 3/28/89)
Rule 74.16 Oil field Drilling Operations (Adopted 1/8/91)
Rule 75 Circumvention (Adopted 11/27/78)
Appendix IV–A Soap Bubble Tests
Rule 100 Analytical Methods (Adopted 7/18/72)
Rule 101 Sampling and Testing Facilities (Adopted 5/23/72)
Rule 102 Source Tests (Adopted 11/21/78)
Rule 103 Stack Monitoring (Adopted 6/4/91)
Rule 155 Plans (Adopted 11/20/79)
Rule 157 First Stage Episode Actions (Adopted 11/20/79)
Rule 158 Second Stage Episode Actions (Adopted 11/20/79)
Rule 159 Third Stage Episode Actions (Adopted 11/20/79)

Florida

(a) State requirements.

(1) The following requirements are contained in *State of Florida Requirements Applicable to OCS Sources*, August 21, 1992: Florida Administrative Code—Department of Environmental Regulation. The following sections of Chapter 17:

2.100 Definitions (Adopted 9/13/90)
2.200 Statement of Intent (Adopted 8/26/81)
2.210 Permits Required (Adopted 7/9/89)
2.215 Emission Estimates (Adopted 5/1/85)
2.240 Circumvention (Adopted 8/26/81)
2.250 Excess Emissions (Adopted 8/26/81)
2.260 Air Quality Models (Adopted 7/9/89)
2.270 Stack Height Policy (Adopted 10/20/86)
2.280 Severability (Adopted 8/26/81)
2.300 Ambient Air Quality Standards (Adopted 7/9/89)
2.310 Maximum Allowable Increases (Prevention of Significant Deterioration) (Adopted 7/13/90)
2.320 Air Pollution Episodes (Adopted 8/26/81)
2.330 Air Alert (Adopted 5/30/80)
2.340 Air Warning (Adopted 7/9/89)
2.350 Air Emergency (Adopted 5/30/88)
2.500 Prevention of Significant Deterioration (Adopted 7/13/90)
2.510 New Source Review for Nonattainment Areas (Adopted 8/30/89)
2.520 Sources Not Subject to Prevention of Significant Deterioration or Nonattainment Requirements (Adopted 7/9/89)
2.530 Source Reclassification (Adopted 1/12/82)
2.540 Source Specific New Source Review Requirements (Adopted 7/9/89)
2.600 Specific Source Emission Limiting and Performance Standards (Adopted 8/30/89)
2.610 General Particulate Emission Limiting Standards (Adopted 7/9/89)
2.620 General Pollutant Emission Limiting Standards, except (2). (Adopted 8/26/81)
2.630 Best Available Control Technology (BACT) (Adopted 5/1/85)
2.640 Lowest Achievable Emission Rate (LAER) (Adopted 8/26/81)
2.650 Reasonably Available Control Technology (RACT), except (2)(f) (Adopted 9/13/90)
2.660 Standards of Performance for New Stationary Sources (NSPS) (Adopted 12/18/89)
2.670 National Emission Standards for Hazardous Air Pollutants (Adopted 12/5/88)
2.700 Stationary Point Source Emission Test Procedures (Adopted 8/30/89)
2.710 Continuous Emission Monitoring Requirements (Adopted 8/30/89)
2.753 DER Ambient Test Methods (Adopted 5/1/85)
4.020 Definitions (Adopted 3/31/88)
4.021 Transferability of Definitions (Adopted 8/31/88)
4.030 General Prohibitions (Adopted 8/31/88)
4.040 Exemptions (Adopted 8/31/88)
4.050 Procedure To Obtain Permit; Application, except (4)(b) through (4)(j) and 4(n) (Adopted 5/30/91)
4.070 Standards for Issuing or Denying Permits; Issuance; Denial (Adopted 3/28/91)
4.080 Modification of Permit Conditions (Adopted 3/19/90)
4.090 Renewals (Adopted 3/19/90)
4.100 Suspension and Revocation (Adopted 8/31/88)
4.110 Financial Responsibility (Adopted 8/31/88)
4.120 Transfer of Permits (Adopted 3/19/90)
4.130 Plant Operations—Problems (Adopted 8/31/88)
4.160 Permit Conditions, except (16) and (17) (Adopted 10/4/89)
4.210 Construction Permits (Adopted 8/31/88)
4.220 Operation Permits for New Sources (Adopted 8/31/88)
4.520 Definitions (Adopted 7/11/90)
4.530 Procedures (Adopted 3/19/90)
4.540 General conditions for all General Permits (Adopted 8/31/88)
256.100 Declaration and Intent (Adopted 10/20/86)
256.200 Definitions (Adopted 10/20/86)
256.300 Prohibitions (Adopted 10/20/86)
256.600 Industrial, Commercial, Municipal and Research Open Burning (Adopted 8/26/87)
256.700 Open Burning Allowed (Adopted 11/23/88)

(b) Local requirements.

(1) (Reserved).

North Carolina

(a) State requirements.

(1) The following requirements are contained in *State of North Carolina Air Pollution Control Requirements Applicable to OCS Sources*, August 21, 1992: The following sections of Subchapters 2D and 2H:

2D.0101 Definitions (Adopted 12/1/89)
2D.0104 Adoption by Reference Updates (Adopted 10/1/89)
2D.0201 Classification of Air Pollution Sources (Adopted 7/1/84)
2D.0202 Registration of Air Pollution Sources (Adopted 6/1/85)
2D.0303 Emission Reduction Plans (Adopted 7/1/84)
2D.0304 Preplanned Abatement Program (Adopted 7/1/88)
2D.0305 Emission Reduction Plan; Alert Level (Adopted 7/1/84)
2D.0306 Emission Reduction Plan; Warning Level (Adopted 7/1/84)
2D.0307 Emission Reduction Plan; Emergency Level (Adopted 7/1/84)
2D.0401 Purpose (Adopted 10/1/89)
2D.0501 Compliance with Emission Control Standards (Adopted 10/1/89)
2D.0502 Purpose (Adopted 6/1/85)
2D.0503 Particulates from Fuel Burning Indirect Heat Exchanger (Adopted 6/1/85)
2D.0505 Control of Particulate from Incinerators (Adopted 7/1/87)
2D.0510 Particulates: Sand, Gravel and Crushed Stone Operations (Adopted 1/1/85)
2D.0511 Particulates, SO_2 from Lightweight Aggregate Processes (Adopted 10/1/89)
2D.0515 Particulates from Miscellaneous Industrial Processes (Adopted 1/1/85)
2D.0516 Sulfur Dioxide Emissions Combustion Sources (Adopted 10/1/89)
2D.0518 Miscellaneous Volatile Organic Compound Emissions (Adopted 2/1/83)
2D.0519 Control of Nitrogen Dioxide Emissions (Adopted 10/1/89)
2D.0520 Control and Prohibition of Open Burning (Adopted 1/1/85)
2D.0521 Control of Visible Emissions (Adopted 8/1/87)
2D.0530 Prevention of Significant Deterioration (Adopted 10/1/89)
2D.0531 Sources in Nonattainment Area (Adopted 12/1/89)
2D.0532 Sources Contributing to an Ambient Violation (Adopted 10/1/89)
2D.0533 Stack Height (Adopted 7/1/87)

2D.0535 Excess Emissions Reporting and Malfunctions, (a) and (f) only. (Adopted 5/1/90)
2D.0537 Control of Mercury Emissions (Adopted 6/1/85)
2D.0601 Purpose and Scope (Adopted 7/1/84)
2D.0602 Definitions (Adopted 7/1/84)
2D.0604 Sources Covered by Implementation Plan Requirements (Adopted 7/1/88)
2D.0606 Other Coal or Residual Oil Burners (Adopted 5/1/85)
2D.0607 Exceptions to Monitoring and Reporting (Adopted 7/1/84)
2D.0901 Definitions (Adopted 12/1/89)
2D.0902 Applicability (Adopted 5/1/90)
2D.0903 Recordkeeping, Reporting, Monitoring (Adopted 12/1/89)
2D.0906 Circumvention (Adopted 1/1/85)
2D.0912 General Provisions on Test Methods and Procedures (Adopted 12/1/89)
2D.0914 Determination of VOC Emission Control System Efficiency (Adopted 1/1/85)
2D.0925 Petroleum Liquid Storage (Adopted 12/1/89)
2D.0933 Petroleum Liquid Storage in External Floating Roof Tanks (Adopted 12/1/89)
2D.0939 Determination of Volatile Organic Compound Vapor Emissions (Adopted 7/1/88)
2D.1101 Purpose (Adopted 5/1/90)
2D.1102 Applicability (Adopted 5/1/90)
2D.1103 Definition (Adopted 5/1/90)
2D.1104 Toxic Air Pollutant Guidelines (Adopted 5/1/90)
2D.1105 Facility Reporting, Recordkeeping (Adopted 5/1/90)
2D.1106 Determination of Ambient Air Concentrations (Adopted 5/1/90)
2D.1107 Multiple Facilities (Adopted 5/1/90)
2D.1108 Multiple Pollutants (Adopted 5/1/90)
2H.0601 Purpose and Scope (Adopted 10/1/89)
2H.0602 Definitions (Adopted 5/1/90)
2H.0603 Applications (Adopted 12/1/89)
2H.0609 Permit Fees (Adopted 8/1/88)
2H.0610 Permit Requirements for Toxic Air Pollutants (Adopted 5/1/90)

(b) Local requirements.

(1) (Reserved).

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