

**Registered
Federal
Order**

**TUESDAY, JANUARY 9, 1979
PART II**



**DEPARTMENT OF
COMMERCE**
Office of the Secretary

**IMPROVING
GOVERNMENT
REGULATIONS**

Response to Executive Order 12044

[3510-20-M]

DEPARTMENT OF COMMERCE**IMPROVING GOVERNMENT REGULATIONS**

Response to Executive Order 12044

AGENCY: U.S. Department of Commerce.

ACTION: Final Report.

SUMMARY: On Tuesday, May 30, 1978, the Department of Commerce proposal for implementing Executive Order 12044, "Improving Government Regulations" (the Executive Order) was published for public comment in the *FEDERAL REGISTER* (43 FR 23170). Careful consideration has been given to all comments received, and a number of appropriate revisions have been made to the Department's Draft Report. As required by the Executive Order, the revised report was submitted to the Office of Management and Budget for approval on September 15, 1978. Having obtained Office of Management and Budget approval, the Department is now publishing its procedures for implementing the Executive Order.

EFFECTIVE DATE: January 9, 1979.

SUPPLEMENTARY INFORMATION:

- I. Background
- II. Public Comments
- III. Revisions

I. BACKGROUND

The Executive Order outlines policy for developing regulations; sets minimum procedures for developing significant regulations, including publication by agencies of a semi-annual agenda of regulations under development or review; requires close agency head oversight; calls for early and meaningful opportunities for public participation; requires careful review of the need, quality and effectiveness of regulations being proposed; requires careful economic analysis of regulations having a major economic effect; and requires periodic review of existing regulations.

Section 5 of the Executive Order requires that each agency prepare and publish in the *FEDERAL REGISTER* for public comment, a draft report briefly describing: (1) Its process for developing regulations and changes that have been made to comply with the Executive Order, (2) its proposed criteria for defining significant regulations, (3) its proposed criteria for identifying which regulations require regulatory analysis, and (4) its proposed criteria for selecting existing regulations for review and a list of regulations that will be considered for initial review. Section 5 further required that after receiving public comments, each agency submit a revised report to OMB for approval

and then publish its final report in the *FEDERAL REGISTER*.

As was noted in the preamble to the draft report, the Department of Commerce is a Cabinet level agency composed of the Office of the Secretary and 13 operating units. While the principal mission of the Department is to foster, promote and develop the foreign and domestic commerce of the United States, the activities of the components of the Department in furthering that mission are broad and varied in scope. Further, while some of the operating units of the Department have a limited need for developing regulations which affect the public; others have had extensive regulatory experience.

Given these great differences in mission and experience, the Department determined that considerable decentralization is necessary to effectively implement the Executive Order by encouraging operating units to tailor procedures to their individual programs. Thus, although basic Department wide standards and procedures are established, the focal point for implementation will be the head of each operating unit (usually an Assistant Secretary). This official will establish criteria called for by the Executive Order, approve the plans for developing significant regulations, approve significant regulations before final publication in the *FEDERAL REGISTER* and otherwise make sure that the provisions of the Executive Order and Department Administrative orders are being followed.

At the same time, it was decided that some departmental coordinating and monitoring procedure was desirable to ensure compliance with the Executive Order. The semiannual regulatory agenda process was chosen to accomplish this objective. The head of each operating unit will submit to the Assistant Secretary for Policy a semi-annual agenda covering all regulations it plans to develop or review during the relevant six-month period. This procedure will serve the dual purposes of (1) keeping the Secretary informed of operating unit activities, and (2) providing a mechanism for the Secretary to monitor agency implementation of the Executive Order and call for Secretarial approval when appropriate.

Coordination and review of the operating unit agendas will be conducted by the Assistant Secretary for Policy. After any modifications resulting from this review process, the Assistant Secretary for Policy will combine the relevant portions of the operating unit agendas into a Department Agenda as required by Section 2 of the Executive Order. The Department Agenda will be approved by the Secretary and published in the *FEDERAL REGISTER*.

This report contains the following:

1. Department Administrative Order (DAO) 218-7, "Issuing Departmental Regulations." This DAO sets forth the basic departmental procedures and requirements that all operating units are to follow in developing regulations. It has been circulated within the Department and operating units have revised existing procedures, or have established new procedures, to conform to the DAO.

2. Amendment to DAO 205-11. This Amendment sets forth a procedure to assure that each document published in the *FEDERAL REGISTER* is written in clear and simple English and is understandable to those who will be affected by it.

3. Individual appendices for each operating unit of the Department. The operating units of the Department have each developed at least the report required by Section 5. Some units, however, have developed more detailed procedures to implement the Executive Order. Rather than requiring uniform submissions meeting the minimum requirements of Section 5, it was decided to publish more detailed procedures, if submitted, to give the public as complete a picture as possible of overall Departmental implementation efforts. The individual appendices attached are:

- Appendix A—Assistant Secretary for Administration
- Appendix B—Bureau of Census
- Appendix C—Bureau of Economic Analysis
- Appendix D—Economic Development Administration
- Appendix E—Industry and Trade Administration
- Appendix F—Maritime Administration
- Appendix G—National Fire Prevention and Control Administration
- Appendix H—National Oceanic and Atmospheric Administration
- Appendix I—National Telecommunications and Information Administration
- Appendix J—Office of Minority Business Enterprise
- Appendix K—Office of Regional Economic Coordination
- Appendix L—Assistant Secretary for Science and Technology (includes National Bureau of Standards, National Technical Information Service, and Patent and Trademark Office)
- Appendix M—United States Travel Service

II. PUBLIC COMMENTS

A total of four comments were received on the Department's draft report, in response to the request for comments published in the *FEDERAL REGISTER* on May 30, 1978 (43 FR 23170). The Department has given serious consideration to these comments in revising its initial report. The comments, in summary form, are discussed below.

One commentator objected to the length and complexity of the Department's notice and singled out § 4.03 of

DAO 218-7 as an example of unnecessary complexity. That commentator was particularly concerned that the notice was overlong and redundant, and suggested that the Department should have established "one general set of regulations for all components, plus any specific regulations pertaining to individual bureaus and administrations."

The problem of excessive length and redundancy was the subject of great concern in the drafting of the Department's implementation plan. However, given the great diversity in programs and regulatory activities of the various units of the Department, and given the fact that most individuals deal directly with a particular operating unit on specific matters (rather than the Department as a whole), it was decided that considerable decentralization was the most effective way to implement the Executive order. Further, it was decided that length and repetition were not necessarily undesirable if used to present interested individuals with as clear a picture as possible of the procedures of each particular unit with which they are concerned. Finally, it is noted that the Department did in fact follow the suggestion of the commentator. Thus, DAO 218-7 sets forth one general set of rules which all components of the Department must follow, and the individual appendices set forth the specific procedures and additional criteria for the individual units.

Section 4.03 of DAO 218-7 was also the subject of considerable internal debate in the drafting of the Department's implementation plan. This section provides that when the underlying legislation is so specific that no significant options for implementation are available to the agency, agency heads are authorized to determine that a proposed regulation is not significant, even if it meets the criteria established for determining whether a regulation is significant. The Department's request for public comments singled out this provision as one on which public input was particularly requested. Unfortunately, no other comments were received on this point. Upon further review it has been decided to leave this provision intact for the time being and revise it, if necessary, in light of future experience.

Another commentator suggested that at least 60 days notice be required for all proposed regulations. The Executive Order requires that 60 days notice be provided for only significant regulations, and even then allows for exceptions to be made. Current procedures do not prohibit 60 day, or even longer comment periods, and procedures also exist where, in appropriate circumstances, short initial comment periods may be extended upon re-

quest. In other circumstances, however it may be necessary for rules to become effective on considerably less than 60 days notice. The Department believes that its current procedures provide desirable flexibility which would be lacking if this suggestion were adopted.

This same commentator also suggested that once regulations are in place, changes and reinterpretation should be severely limited, arguing that Government policies should be predictable and certain. While the Department cannot disagree with this as a general principle, in practice, the formulation of a rule to such effect would unduly restrict the ability to make necessary changes to existing regulations (for example, Section 4 of the Executive Order requires that all existing regulations be periodically reviewed and, if necessary, revised).

Finally, one commentator suggested that the Department's procedures be modified to provide that the concerns of that particular special interest group be adequately considered when regulations in its area of concern were being considered. While the Department agrees that every effort should be made to be sure the concerns of all special and, indeed, general interest groups are being drafted, it is anticipated that the procedures being established will result in this goal.

III. REVISIONS

In addition to a number of minor technical, editorial and grammatical corrections, the following changes have been made to the Department's implementation plan.

A. DAO 218-7

1. A new § 2.04 has been added to cover situations where two or more agencies jointly promulgate a regulation or set of regulations. The agency heads or program officials involved shall designate one agency as lead agency for the purpose of determining whose rulemaking procedures will be utilized.

2. A new § 4.03 has been added which allows agency heads to delegate authority to initially determine whether a regulation is significant. However, a determination that a regulation is not significant must be reviewed by the agency head. This change makes it absolutely clear that the final decision on the question of "significance" rests with the agency head.

3. Section 4.05 (formerly § 4.04), which lists what the agency head must review before proceeding to develop significant regulations, is revised to include a requirement that the agency head decide, at that time, whether a regulatory analysis is required. This change reinforces the existing requirement that the agency head make this

decision, and clarifies when that decision must be made.

4. A new § 5.04(e) has been added to incorporate the requirements of Executive Order 12074 and OMB Circular A-116, concerning Urban and Community Impact Analyses.

5. Minor language changes have been made in Section 7 to make sure that the operating unit agendas are complete and kept current. These changes are made to ensure that the Secretary is informed, on a continuing basis, of the status of the entire regulatory process of the Department and to enable the Office of the Secretary to fulfill its central oversight function.

B. Amendment to DAO 205-11

A new last sentence has been added to § 6.02 which requires heads of operating units to provide the Director, Office of Organization and Management Systems with a list of employees they have designated to review documents prior to FEDERAL REGISTER publication, and keep that list current.

C. Minor changes have been made to a number of the operating unit appendices to reflect the above changes and otherwise to improve those submissions.

In consideration of the foregoing, the Department of Commerce hereby adopts, as its implementation plan for Executive Order 12044, the following:

ISSUING DEPARTMENTAL REGULATIONS

(Department Administrative Order 218-7)

SECTION 1. PURPOSE AND POLICY

.01 This order implements Executive Order 12044, of March 23, 1978, "Improving Government Regulations".

.02 It is the policy of the Department that regulations:

- a. Be as simple and clear as possible;
- b. Achieve legislative goals effectively and efficiently;
- c. Not impose unnecessary burdens on the economy, individuals, public or private organizations, or State and local governments.

.03 To achieve these objectives, regulations shall be developed by following procedures which ensure that:

- a. The need for and purpose of the regulation are clearly established;
- b. Heads of agencies and policy officials exercise effective oversight;
- c. Opportunity exists for early and meaningful participation and comment by other Federal agencies, State and local governments, businesses, organizations and individual members of the public;
- d. Meaningful alternatives are considered and analyzed before the regulation is issued; and
- e. Compliance costs, paperwork and other burdens on the public are minimized.

SECTION 2. SCOPE

.01 This order applies to all regulations of the Department published in the FEDERAL REGISTER, except as provided in paragraph .02 of this section.

.02 This order *does not* apply to:

a. Regulations issued in accordance with the formal rulemaking provisions of the Administrative Procedure Act (5 U.S.C. §§ 556, 557);

b. Regulations issued with respect to a military or foreign affairs function of the United States (but see section 9.06);

c. Matters related to agency management or personnel;

d. Regulations related to Federal Government procurement; or

e. Regulations that are issued in response to an emergency or which are governed by short-term (less than 91 days) statutory or judicial deadlines (but see sections 9.05 and 9.06).

.03 Sections cited in the text refer to those in this order.

.04 Whenever two or more agencies plan to jointly promulgate regulations, the agency heads or program officials involved shall designate one agency as lead agency for the purpose of determining whose rulemaking procedures will be utilized. That agency shall be responsible for compliance with, and its procedures implementing Executive Order 12044 shall apply. Regardless of who is designated as lead, each Department of Commerce agency involved in a joint rulemaking will separately comply with the requirements of Sections 7 and 8 of this order.

SECTION 3. DEFINITIONS

.01 *Agency head.* In this order, agency head means: the head of each operating unit of the Department; Secretarial Officers; the Deputy Under Secretary, and the Special Assistant to the Secretary for Regional Development, for departmental offices under their jurisdiction; or persons acting in those positions. The functions of the agency head may not be delegated.

.02 *Regulation(s).* In this order, regulation(s) means both rules and regulations issued by components of the Department including those which establish conditions for financial assistance. Closely related sets of regulations shall be treated as a single package.

SECTION 4. SIGNIFICANT REGULATIONS

.01 Agency heads shall establish criteria for identifying which regulations are significant.

.02 In establishing criteria for identifying significant regulations, agency heads shall consider, among other things:

a. The type and number of individuals, businesses, organizations, or State and local governments affected;

b. The compliance and reporting requirements likely to be involved;

c. The direct and indirect effects of the regulation, including the effect on competition;

d. The relationship of the regulation to those of other programs and agencies;

e. The relationship of the regulation to major Departmental policy issues; and

f. The degree of controversy over, or public interest in, the regulation.

.03 Agency heads may delegate authority to initially determine that a regulation is not significant. Any such determinations shall be reviewed by the agency head prior to the submission of the next agency agenda required by § 7.01 or the notification required by § 7.09, whichever occurs first.

.04 An agency head may conclude that a regulation is not significant, even if it meets the criteria established for identifying significant regulations, if the agency head determines, in writing, that the degree of discretion available to the agency is so limited by underlying legislation or executive branch directives (e.g. Executive Orders, OMB Circulars, etc.) that no significant options for implementation are available to the agency. A copy of this determination shall be sent promptly to the Assistant Secretary for Policy, and an explanation of the determination shall be included in the preamble to the notice of proposed rulemaking.

.05 Before proceeding to develop significant regulations, the agency head shall review: the issues to be considered; the alternative approaches to be explored; whether a regulatory analysis, as provided for in section 5, is required; a tentative plan for obtaining public comment; where applicable a tentative plan for consulting with State and local governments (see DAO 201-9); and target dates for completion of steps in the development of the regulation.

.06 Agency heads shall approve significant regulations before they are published in the FEDERAL REGISTER in final form. Before approving significant regulations, the agency head should be satisfied that:

a. The regulation is needed;

b. The direct and indirect effects of the regulation have been adequately considered;

c. Alternative approaches have been considered and the least burdensome of the acceptable alternatives has been chosen;

d. Public comments (including those from State or local or other public

agencies) have been considered and an adequate response has been prepared;

e. The regulation is written clearly and as simply as possible and is understandable to those who must comply with it;

f. An estimate has been made of the new reporting burdens or recordkeeping requirements necessary for compliance with the regulation;

g. The name, address and telephone number of a knowledgeable official is included in the publication; and

h. A plan has been developed for evaluating the regulation after its issuance.

.07 Agency heads may, in their discretion, refer significant regulations which they believe to be of particular importance to the Secretary for approval.

.08 Regulations which are not significant shall be accompanied by a statement to that effect in the preamble whenever published in the FEDERAL REGISTER.

SECTION 5. REGULATORY ANALYSIS

.01 A regulatory analysis shall be prepared for each significant regulation which the agency head determines to have potential major economic consequences for the general economy, for individual industries, geographic regions, levels of government, or specific elements of the population.

.02 Agency heads shall establish criteria for determining which significant regulations require regulatory analysis. Since a regulatory analysis is designed to aid decisionmakers in promulgating effective regulations, the criteria established should consider the characteristics of their specific programs. At a minimum, a regulatory analysis shall be prepared for any significant regulations which:

a. During any one year can be expected to result in an effect (direct or indirect) on the economy exceeding \$50 million;

(b) During any one year can be expected to result in an effect (direct or indirect) on either consumers, industries, levels of government, or geographic regions exceeding \$25 million;

c. During any one year can be expected to result in an increase in costs or prices of five percent or more for the activity, product(s) and/or service(s) affected;

d. Can be expected to reduce labor productivity by one percent or more in the economic activity or sector(s) affected;

e. Can be expected to reduce employment by five percent or more in the economic activity or sector(s) affected;

f. For the particular market(s) affected, can be expected to result directly or indirectly in a one percent or more decline in supply of materials, products or services, or a one percent

or more increase in consumption of these materials, products or services; or

g. For the particular market(s) affected, can be expected to result in a distinct decline in competition.

.03 A regulatory analysis may also be prepared when:

a. In the judgment of the agency head such an analysis would improve decisionmaking; or

b. The Secretary determines, in accordance with section 7.05, that such an analysis should be performed.

.04 A regulatory analysis shall involve a careful examination of alternative approaches early in the decision-making process. Thus, each analysis shall include, at a minimum:

a. A succinct statement of the problem;

b. A description of the major alternative ways of dealing with the problems that were considered;

c. A comparison of the economic and other consequences of each of these alternatives.

d. A detailed explanation of the reasons for choosing one alternative over the others; and

3. The urban and community impact analysis required by Executive Order 12074, of August 16, 1978 and OMB Circular A-116 which implements that Executive Order.

.05 The analysis in section 5.04 may also include an examination of:

a. The need for specific requirements versus the benefits of allowing varying degrees of discretion by those subject to the regulation;

b. Alternative types of compliance incentives;

c. Alternative enforcement mechanisms; and

d. Alternative governmental levels for implementation (Federal, State, or local).

.06 The notice of proposed rulemaking for each regulation for which a regulatory analysis is required shall include:

a. A succinct description of the alternatives considered;

b. An explanation of the regulatory approach that has been selected or is favored;

c. The major reasons for selecting, or favoring, a particular alternative(s); and

d. A statement of how the public may obtain a copy of the draft regulatory analysis.

.07 Public comments on the draft regulatory analysis shall be considered in preparing a final regulatory analysis, which shall be made available to the public when the final regulation is published. Significant public comments on the analysis shall be summarized and responded to in the preamble to the final regulation.

.08 These internal procedures shall apply:

a. The agency head shall inform the Chief Economist of the Department as early as possible of the nature and extent of the analysis being undertaken to assure adequate opportunity for consultation and assistance; and

b. The agency head shall transmit the draft regulatory analysis to the Chief Economist of the Department for review and comment at least 15 days prior to submission of a notice of proposed rulemaking to the FEDERAL REGISTER.

.09 Regulatory analyses are not required in rulemaking proceedings pending as of March 23, 1978, if an Economic Impact Statement has already been prepared in accordance with Executive Orders 11821 and 11949.

.10 New or accurate information may be needed from persons and businesses, in order to make informed decisions. In those instances only essential data is to be obtained in the least burdensome way.

SECTION 6. REVIEW OF EXISTING REGULATIONS

.01 Agency heads shall establish procedures to ensure that their organization's existing regulations are reviewed periodically to determine whether they are achieving the policy goals of Executive Order 12044.

.02 Agency heads shall establish criteria for selecting existing regulations to be reviewed and the order in which the review will be conducted.

.03 In developing criteria for selecting regulations to be reviewed, agency heads shall consider:

a. The continued need for the regulation;

b. The type and number of complaints or suggestions received;

c. The burdens imposed on those directly or indirectly affected by the regulation;

d. The need to simplify or clarify language;

e. The need to eliminate overlapping and duplicative regulations; and

f. The length of time since the regulation has been evaluated or the degree to which technology, economic conditions or other factors have changed.

.04 The review of existing regulations shall, at a minimum, contain the following procedural steps:

a. Inclusion of notice of the review in the semi-annual agenda as required by section 7.02, or as appropriate, supplementing the Department Agenda as called for in section 7.08, and notification to the Assistant Secretary for Policy as called for in section 7.09;

b. A determination whether the regulation meets the criteria established for identifying significant regulations,

and, if so, agency head oversight as called for in section 4.04 before proceeding with review;

c. A determination whether the regulation meets the criteria established for determining if a regulatory analysis must be performed, and, if so, preparing a regulatory analysis; and

d. If the review results in a determination that a regulation should be amended or rewritten, compliance with public notice and participation requirements of this order and DAO 201-9 concerning consultation with State and local governments; and, if the regulation is determined to be significant, agency head approval before final publication, as set forth in section 4.06.

.05 Agency heads should review their organization's significant regulations not less than every four years.

SECTION 7. REGULATORY AGENDA

.01 On January 15 and July 15 of each year, each agency head shall submit a regulatory agenda to the Assistant Secretary for Policy.

.02 Each agency agenda shall include:

a. A description of each regulation covered by this order which is under development or being considered for development, including, to the extent feasible:

1. A statement whether the regulation has been determined to be a significant regulation;

2. The need and the legal basis for the action being taken;

3. A statement whether or not a regulatory analysis will be required;

4. The name and telephone number of a knowledgeable official;

5. A listing of major issues likely to be considered in developing the regulation;

6. A tentative plan for obtaining public comment and, where applicable, for consulting with State and local governments;

7. Target dates for completing steps in the development process; and

8. Information on the status (including changes to the information required by this §.02.a.) of proposed significant regulations listed in previous agendas which are not yet published as final in the FEDERAL REGISTER.

b. A list of each existing regulation scheduled to be reviewed, under section 6, during the next six months, including the name and telephone number of a knowledgeable official for each regulation;

c. Information on the status of existing regulations listed for review in previous agendas; and

d. A list, including the date and FEDERAL REGISTER citation, of all final regulations published in the FEDERAL REGISTER during the previous six months.

.03 If there are no plans for developing or reviewing regulations, the agency head will so report to the Assistant Secretary for Policy.

.04 The Assistant Secretary for Policy shall review all agendas and, after consultation with appropriate Department officials recommend to the Secretary:

a. Which regulations determined not to be significant by the agency heads should be treated as significant;

b. Which regulations being considered or developed should be approved by the Secretary prior to being published in the FEDERAL REGISTER in final form; and

c. Which regulations, in addition to those identified by the agency heads, require a regulatory analysis.

.05 After consulting, as appropriate, with concerned Department officials, the Secretary will inform the Assistant Secretary for Policy and the relevant agency head of decisions made with regard to the recommendations submitted under paragraph .04 of this section.

.06 Using the agendas of agency heads, as may be modified by the Secretary's decisions under paragraph .05 of this section, the Assistant Secretary for Policy shall prepare an overall Department Agenda. The Department Agenda, after approval by the Secretary, shall be submitted for publication in the FEDERAL REGISTER on or about February 15, 1979, and every six months thereafter.

.07 The Department Agenda shall include the following:

a. For proposed significant regulations being considered or developed:

1. A description of the regulation;
2. The need and the legal basis for the action being taken;

3. A statement as to whether or not a regulatory analysis will be required;

4. The name and telephone number of a knowledgeable official to whom comments on that planned regulation may be addressed;

5. A discussion of the issues to be considered in developing the regulation;

6. A tentative plan for obtaining public comments and, where applicable, for consulting with State and local governments; and

7. Target dates for completing steps in the development process.

b. Information on the status (including changes to the information required in § .07.a. above) of all proposed significant regulations listed in previous agendas which are not yet published as final in the FEDERAL REGISTER;

c. A list of existing regulations scheduled to be reviewed during the next six months, including the name and telephone number of a knowledgeable official for each regulation;

d. Information on the status of existing regulations previously scheduled for review; and

e. The name and telephone number of an official to whom general comments about the Department Agenda should be addressed.

.08 Agency heads shall, in order to prevent undue delay, publish supplements to the Department Agenda whenever it becomes apparent that development or review of significant regulations not listed in the previous Department Agenda will commence before publication of the next Department Agenda or development or review of a regulation listed in the previous Department Agenda will not commence as scheduled.

.09 Agency heads shall immediately notify the Assistant Secretary for Policy whenever it becomes apparent that development or review of regulations not listed in their previous agency agenda will commence before publication of the next Department Agenda, or significant changes have occurred in the status of items listed in their previous agency agenda.

.10 Comments received on items in the Department Agenda shall be considered in developing any proposed regulations and included in the public record of the relevant proposed rulemaking.

.11 The information in any agenda is only that which is reasonably expected to be known at the time.

.12 Every year, on the first Monday in October, the Assistant Secretary for Policy will publish in the FEDERAL REGISTER a schedule showing the times during the coming fiscal year when the Department Agenda will be published.

SECTION 8. SECRETARIAL APPROVAL

.01 Whenever, under sections 4.07 and 7.05, Secretarial approval of a regulation is requested or required before it is published in final form, the appropriate agency head shall, no later than 15 days before the proposed date of publication in the FEDERAL REGISTER in final form, submit the regulation to the Secretary for approval.

.02 The Secretary shall review the regulation in accordance with section 4.06, and shall either:

- a. Approve the regulation; or
- b. Disapprove the regulation, indicate the reasons for disapproval, and return the regulation to the appropriate agency head.

SECTION 9. PUBLIC PARTICIPATION

.01 The public, and, for regulations with significant intergovernmental impact, State and local governments, shall be given an early and meaningful opportunity to participate in the development of the regulations of the Department.

.02 Agency heads shall consider a variety of ways to provide this opportunity, including, but not limited to:

a. Publishing an advance notice of proposed rulemaking;

b. Holding open conferences or public hearings;

c. Sending notices of proposed regulations to publications likely to be read by those affected;

d. Notifying interested parties directly; and

e. Providing for more than one cycle of public comments.

.03 The preamble of any proposed rulemaking covered by this order shall contain a brief description of plans for obtaining public, and, if applicable, State and local government participation. If none of the methods listed in paragraph .02 of this section are used in a rulemaking covered by this order, the preamble accompanying the final regulation shall briefly explain the reasons and indicate what other steps were taken to assure adequate opportunity for public and State and local government participation.

.04 The public shall be given at least 60 days to comment on proposed significant regulations. Exceptions to this requirement may be granted only by the agency head and only in those few instances where it is determined that compliance is not possible. When an exception is made, the preamble to the proposed regulation shall include a brief statement of the reasons for the shorter time period.

.05 Regulations exempted by section 2.02e. (emergencies or short-term deadlines) shall, when published in the FEDERAL REGISTER, be accompanied by a statement of the reasons why it is impracticable or contrary to the public interest to follow the procedures of this order. This statement shall include the name of the policy official responsible for the determination.

.06 Regulations exempted by section 2.02b. (military or foreign affairs functions) or 2.02e. may be made effective on issuance. However, FEDERAL REGISTER publication of these regulations shall provide for a public comment period of at least 60 days after issuance and republication after public comments have been considered and appropriate modifications, if any, are made.

SECTION 10. EFFECT ON OTHER ORDERS

.01 This order supersedes Department Administrative Order 216-7 of January 17, 1972, "Interagency Coordination of Issuances on Environmental Quality, Consumer Protection, and Occupational and Public Health and Safety", and Department Administrative Order 218-6 of November 28, 1974, "Inflationary Impact of Legislation and Regulatory Proposals".

.02 Nothing in this order shall affect the procedures set forth in Department Administrative Order 205-11 of May 12, 1971, as amended, "Publishing Documents in the FEDERAL REGISTER".

JUANITA M. KREPS,
Secretary of Commerce.

PUBLISHING DOCUMENTS IN THE
FEDERAL REGISTER

(Department Administrative Order 205-11—
Amendment 4)

Department Administrative Order 205-11 of May 12, 1971, is hereby further amended as shown below. The purpose of this amendment is to add a new Section 6.

1. A new Section 6. is added to read as follows:

"SECTION 6. PLAIN ENGLISH.

".01 It is the policy of the Department that all documents published in the FEDERAL REGISTER be designed to be understandable to those affected by them and be written as simply and clearly as possible.

".02 The head of each operating unit and the Director, Office of Organization and Management Systems (OOMS), for other components of the Department, shall designate an employee or employees who shall review each document to be published in the FEDERAL REGISTER to ensure that it is written clearly and simply as possible and is designed to be understandable to those affected by it. Heads of operating units will provide the Director, OOMS, with a list of employees they have designated and promptly notify the Director of changes to that list.

".03 No document will be published in the FEDERAL REGISTER until it is cleared by this designated employee.

".04 Exception to paragraph .03 of this section may be granted only by the head of the operating unit or the Assistant Secretary for Administration. Exceptions shall be in writing and explain why the exception is necessary. Copies of all exceptions will be provided to the Director, OOMS."

2. Renumber the existing Section 6., 7., and 8., as 7., 8., and 9. respectively.
Effective: October 23, 1978.
Issued: October 24, 1978.

APPENDIX A—ASSISTANT SECRETARY FOR
ADMINISTRATION

MEMORANDUM FOR ALL OFFICE DIRECTORS
IN ADMINISTRATION
SUBJECT: Executive Order 12044

On March 23, 1978, the President signed Executive Order 12044, "Improving Government Regulations". As part of this Executive Order, each Federal agency is required to establish: (a) a regulatory process; (b) criteria for defining significant regulations; (c) criteria for identifying regulations

which require a regulatory analysis; (d) criteria for selecting existing regulations to be reviewed; and (e) a list of regulations that the agency will consider for its initial review. Overall Departmental procedures for implementing these requirements, including definitions of coverage, are prescribed in Department Administrative Order 218-7, a copy of which is attached. The purpose of this memorandum is to describe the steps which each office in Administration will follow in order to implement DAO 218-7.

SIGNIFICANT REGULATIONS

Before proceeding to develop any regulation covered by DAO 218-7, each office director shall provide me with a report containing the information described in Section 4.02 of DAO 218-7. Based on the information supplied, I will determine if the regulation is to be treated as significant. A determination of significant will be made if:

—The regulation applies to a large number of persons or organizations;

—The requirements for ensuring compliance, including data collection and reporting requirements, imposed more than a minimum burden on those affected;

—The regulation causes other Federal agencies or State and local governments to incur new responsibilities or make other than minimal changes in program operations;

—The regulation meets the criteria for preparation of a regulatory analysis; or

—The regulation can be expected to generate considerable public interest or controversy.

As soon as possible after a regulation has been determined to be significant, the appropriate office director shall submit a report containing the information necessary for me to make the review described in Section 4.04 of DAO 218.7.

Before a significant regulation is published in the FEDERAL REGISTER in final form, the appropriate office director shall submit it to me for approval. The submission shall contain all of the information necessary for me to address each point described in Section 4.05 of DAO 218.7.

REGULATORY ANALYSIS

Office directors shall prepare a regulatory analysis for any proposed regulation which meets the criteria described in Section 5.02 of DAO 218-7. In addition, based on the information supplied in the report necessary to make a determination of whether a regulation is significant, I may also determine that the regulation requires a regulatory analysis.

In preparing a regulatory analysis, office directors shall follow the proce-

dures described in Section 5.04 through 5.07 of DAO 218-7 and, as soon as possible, shall seek the assistance of the Chief Economist in preparing the analysis. A draft regulatory analysis shall be submitted to me at least three weeks prior to the submission of a notice of proposed rulemaking to the FEDERAL REGISTER.

REVIEW OF EXISTING REGULATIONS

All existing regulations issued by an Administration Office and covered by DAO 218-7 shall be reviewed no less frequently than once every three years. In addition, an existing regulation shall be reviewed if:

—New laws, Executive Orders, etc. require changes;

—Amendments to central or coordinating agency regulations require changes; or

—I receive suggestions or complaints which indicate a need for changes.

The existing regulations which an office director proposes to review shall be identified in the office's regulatory agenda submission (discussed below). Each regulation proposed for review should be accompanied by a report containing the information described in Section 4.02 of DAO 218-7 so that I can determine if the regulation is significant or requires a regulatory analysis. If either of these determinations are positive, the appropriate office director shall follow the procedures described above.

REGULATORY AGENDA

By December 15, 1978, and every six months thereafter, each office director shall submit a regulatory agenda to me. The agenda shall include all of the information described in Section 7.02 of DAO 218-7. Negative submissions stating that an office director does not contemplate either the development of a new or the review of an existing regulation during the next six months are required. Office directors shall submit supplements to their agenda: (a) whenever it appears that the development or review of a regulation not listed in a previous agenda will begin before the next regular agenda is scheduled to be submitted; or (b) whenever it appears that the development or review of a previously listed regulation will not begin as scheduled.

RESPONSIBILITIES

All of the submissions discussed in this memorandum shall be sent to me through the Director, Office of Organization and Management Systems. The Director of OOMS shall be available to assist office directors in the preparation of these submissions, shall compile the Office of Administration agenda from the material submitted by the office directors, and shall serve as the liaison with the Office of the

General Counsel and the Assistant Secretary for Policy.

RELATED REQUIREMENTS

DAO 205-11, "Publishing Documents in the FEDERAL REGISTER", has been amended to require that all documents published in the FEDERAL REGISTER be reviewed by a designated employee to ensure that these documents are clearly written. All documents which Administration offices propose to publish in the FEDERAL REGISTER shall be reviewed by Bob Ingram, the Head of the Directives Management Staff in the Office of Organization and Management Systems. Bob is in Room 5312 and can be reached on 377-5481.

EXISTING OFFICE OF ADMINISTRATION REGULATIONS SCHEDULED FOR REVIEW DURING THE NEXT SIX MONTHS

Department of Commerce regulations under Title VI of the Civil Rights Act of 1964 will be reviewed. These regulations appear at 15 CFR 8.1-8.15, and deal with the prohibition of discrimination in many programs for which Federal financial assistance is authorized under a law administered by the Department. The review will be for the purpose of ensuring consistency with the Title VI regulations issued by the Department of Justice (28 CFR 41.401-41.415), and ensuring that the regulations are understandable to those affected. Comments on this review should be sent to Arthur E. Cizek, Office of Civil Rights, Room 4065, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230. The telephone number is (202) 377-3940.

APPENDIX B—BUREAU OF THE CENSUS

The Bureau of the Census was established as a permanent Bureau by the Act of March 6, 1902 (32 Stat. 51). Laws pertaining to the Bureau's statistical program are encompassed in title 13 of the United States Code. The mission of the Census Bureau is to collect and publish basic statistics concerning the population and the economy of the Nation in order to assist the Congress, the Executive Branch, and the general public in the development and evaluation of economic and social programs. The Bureau publishes a wide variety of statistical data and provides special tabulations of statistical information for government and private users. Major Census Bureau program areas include periodic censuses, current surveys and programs and reimbursable work.

It should be noted that because of the nature of its work, the Census Bureau does little rulemaking. Those half dozen regulations that are in existence have no major impact on the economy. They relate to either administering a data collection program or

data service programs. Consequently, there has been no need to formalize an extensive process for developing regulations; the process has been ad hoc in nature. To comply with the Executive Order, the Bureau is now establishing procedures in addition to the requirements provided for in Department Administrative Order 218-7 for the issuance of regulations.

1. *Existing procedures and changes that have been made to comply with Executive Order 12044.*

(a) The following procedures shall be applicable to all regulations. Prior to the promulgation of a regulation, the Director shall determine:

(1) That the need for and purpose of the regulation are clearly established and specified in the FEDERAL REGISTER preamble;

(2) That adequate provisions are made for early public participation in the development of regulations by notification of advisory committees and announcements in relevant publications and the regulatory agenda that the regulation is being considered and comments are solicited;

(2) That the least burdensome of the acceptable alternatives has been chosen;

(3) That the issues have been thoroughly reviewed;

(4) That the feasible alternatives have been explored;

(5) That compliance costs, paperwork and other burdens on the public are minimized; and

(6) That the Program and Policy Development Office will be responsible for insuring that the regulation is written in plain English and is understandable to those who must comply with it.

(b) In addition, before approving and signing significant regulations, the Director shall determine:

(1) That the direct and indirect effects of the regulation have been adequately considered including whether a regulatory analysis, as provided in section 3, and whether an Urban and Community impact analysis as required by OMB Circular A-116 are required;

(3) That public comments, including those from State and local Governments, have been considered and an adequate response prepared;

(4) That an estimate has been made of the new reporting burden or record-keeping requirements, if any, necessary for compliance with regulations;

(5) That the name, address, and telephone number of a knowledgeable official is included in the FEDERAL REGISTER preamble; and

(6) That a plan is developed for evaluating the effect of the regulation after its issuance. Organization and Management Systems Division shall provide a report containing the infor-

mation necessary for the Director to make these determinations. This report shall be provided the Director prior to the Director's approving and signing significant regulations

(c) The Director shall submit an agency regulatory agenda to the Assistant Secretary for Policy by January 15, 1979, and every six months thereafter.

The regulatory agenda shall include.

(1) A description of each regulation under development or being considered which includes items specified in Section 7.02 of Department of Administrative Order 218-7;

(2) A list of each existing regulation scheduled to be reviewed;

(3) Information on the status of existing regulations listed for review on previous agency agendas; and

(4) A list of all final regulations promulgated during the previous six months with the date and FEDERAL REGISTER citation.

The Director shall immediately notify the Assistant Secretary for Policy whenever it becomes apparent that development or review of regulations not listed in the previous agency agenda will commence before submission of the next agency agenda to the Assistant Secretary for Policy, or review of a regulation listed in the previous agency agenda will not take place, or significant changes have been made to items in previous agency agendas. The Director shall determine at the time of notification whether or not a regulation significant. If the regulation is significant, a supplement to the Departmental agenda will be published, if necessary.

(d) A docket on each regulation will be established and maintained in the office of the legal counsel when the regulation is first put on the agency's agenda. Documents which are relevant to the regulation will be filed and available to the public, unless prohibited by law.

2. *Criteria for defining significant agency regulations.*

A regulation shall be considered significant by the Director if it meets any of the Departmental criteria as set forth in Department Administrative Order 218-7 or one or more of the following:

(a) Since a burden is placed on shippers by the regulations, a substantive change in the reporting requirements necessary for compliance with the Foreign Trade statistics regulations will be considered significant;

(b) The Regulation would affect over 25 percent of all States or local government units;

(c) The procedures or programs of another department or agency will be affected.

(d) Significant public controversy or interest is expected to result;

(e) The Secretary, the Chief Economist of the Department or the Director requests that a regulation be considered significant.

3. Criteria for identifying which regulations require regulatory analysis.

A regulatory analysis shall be prepared for significant regulations which meet the Departmental criteria as set forth in Department Administrative Order 218-7, or the Secretary, the Chief Economist of the Department, or the Director request that such an analysis be performed.

4. Criteria for selecting existing regulations to be reviewed.

All existing regulations shall be reviewed within 1 year of the date of the publication of this report. Thereafter, a regulation will be reviewed whenever:

(a) The regulation has not been reviewed for 5 years;

(b) A significant regulation has not been reviewed for 2 years;

(c) It appears to the Director that there is no further need for the regulation in the light of public comments received;

(d) It appears to the Director that the burdens imposed upon the public are increased even though no change has been made to the regulation itself;

(e) It appears to the Director that there is a need to simplify or clarify the language of the regulation;

(f) It appears to the Director that there is a need to eliminate overlapping and duplicative regulations;

(g) Technology, economic conditions or other factors have changed the effect of the regulation on the public;

(h) The Secretary, the Chief Economist of the Department or the Director requests that such review should take place.

The Bureau's regulations may be found in 15 CFR Chapter 1. We plan to complete the review of Bureau regulations within 1 year of the effective date of these procedures.

These regulations are:

15 CFR 20 relating to the Bureau of the Census official seal.

15 CFR 30 establishes reporting requirements and criteria relating to exports and imports.

15 CFR 40 which provides, through the State Department, training of foreign participants in Census procedures and general statistics.

15 CFR 50 establishes fees charged for various services provided by the Bureau to individual, State and local governments and firms.

15 CFR 60 relates to the release of information under the Freedom of Information Act.

15 CFR 70 establishes the date by which a change in a political boundary must be reported to the Bureau in order to be included in the decennial census.

15 CFR 80 establishes the procedure for obtaining data from past records of the decennial census questionnaires.

APPENDIX C—BUREAU OF ECONOMIC ANALYSIS

The Bureau of Economic Analysis (BEA) was established under Department Order No. 10, effective December 18, 1945. Department Order No. 15, as amended December 1, 1953, pursuant to authority contained in reorganization Plan No. 5 of 1959, further designated BEA as a primary operating unit of the Department. The mission of BEA is to provide a clear picture of the state of the economy through the preparation, development and interpretation of the economic accounts of the United States.

To construct the accounts, BEA uses mainly data collected by other agencies from individuals, businesses, and other respondents. About one-third of these primary data comes from the Census Bureau. Most of the rest come from the Treasury Department, the Labor Department, and the Office of Management and Budget. BEA also conducts its own surveys to collect data whenever there is a close link between the data and its analytical work, as for instance, in the case of its balance of payments work and its work on international investment.

Because of the nature of its work, the Bureau of Economic Analysis does little rulemaking. Proposed rules and regulations have been developed primarily to establish new statistical surveys and public reporting requirements, and it has not been necessary to formalize a process for developing regulations; the process has been ad hoc in nature. To comply with the Executive Order, the Bureau is now establishing procedures in addition to the requirements provided for in Department Administration Order 218-7 for the issuance of regulations.

The Bureau of Economic Analysis has received no public comments to the draft Appendix C published in the FEDERAL REGISTER (43 FR 23170) May 30, 1978. The final version of Appendix C here published takes into consideration and its consistent with recent changes to Department Order 218-7 and guidelines received from the Administrative Conference of the United States.

1. Existing procedures and changes that have been made to comply with Executive Order 12044.

(a) The following procedures shall be applicable to all regulations. Prior to the promulgation of a regulation, the Director shall determine:

(1) That the need for and purpose of the regulation are clearly established and specified in the FEDERAL REGISTER preamble;

(2) That adequate provisions are made for early public participation in the development of regulations by notification of advisory committees and announcements in relevant publications and the agency regulatory agenda that the regulation is being considered and comments are solicited;

(3) That the issues have been thoroughly reviewed;

(4) That the feasible alternatives; have been explored;

(5) That compliance costs, paperwork and other burdens on the public are minimized;

(6) That the regulation has been reviewed by Management Services Division to insure that it is written in plain English and is understandable to those who must comply.

(b) In addition, before approving and signing significant regulations, the Director shall consult with Management Services Division and determine:

(1) That the direct and indirect effects of the regulation have been adequately considered, including whether a regulatory analysis, as provided for in Section 3, and whether an urban and community impact analysis as required by OMB Circular A-116 are required;

(2) That the least burdensome of the acceptable alternatives has been chosen;

(3) That all public comments, including those from state and local governments have been considered and an adequate response prepared;

(4) That an estimate has been made of the new reporting burden or record-keeping requirements, if any, necessary for compliance with the regulation;

(5) That the name, address, and telephone number of a knowledgeable official is included in the FEDERAL REGISTER preamble;

(6) That a work plan is developed for scheduling target dates for consultation and comment, the issuance process, and evaluation of the effect of the regulation after its issuance.

(c) The Director shall submit an agency regulatory agenda to the Assistant Secretary for Policy by January 15, 1979, and every 6 months thereafter. The agency regulatory agenda shall include:

(1) A description of each regulation under development or being considered which includes items specified in Section 7.02 of Department Administrative Order 218-7;

(2) A list of each existing regulation scheduled to be reviewed;

(3) Information on the status of existing regulations listed for review on previous agency agenda; and

(4) A list of all final regulations promulgated during the previous 6 months with the date and FEDERAL REGISTER citation. The Director shall

immediately notify the Assistant Secretary for Policy and furnish supplements to the Department Agenda whenever it becomes apparent that development or review of regulations not listed in the previous agency agenda will commence before publication of the next Department Agenda, review of a regulation listed in the previous Department Agenda will not commence as scheduled, or significant changes have been made to items in previous agency agendas.

A docket will be established within the Office of the General Counsel whenever a new regulation is first proposed in draft form. The docket will be available for review by the public, at any time, unless prohibited by law.

2. Criteria for defining significant agency regulations.

A regulation shall be considered significant if it meets the Departmental criteria as set forth in Department Administrative Order 218-7, or one or more of the following:

(a) The regulation would affect over 25 percent of all State or local governments;

(b) The procedures or programs of another department or agency will be affected;

(c) Significant public controversy or interest will result;

(d) The Secretary, Chief Economist, or the Director determines that a regulation is significant.

3. Criteria for identifying which regulations require regulatory analysis.

A regulatory analysis shall be prepared for significant regulations which meet the Departmental criteria as set forth in Department Administrative Order 218-7, or the Secretary, Chief Economist of the Department, or the Director determines that such an analysis should be performed.

4. Criteria for selecting existing regulations to be reviewed.

All existing regulations (15 CFR Chapter VIII) shall be reviewed within 1 year of the date of the publication of this report. Thereafter, a regulation will be reviewed whenever:

(a) The regulation has not been reviewed for 5 years;

(b) A significant regulation has not been reviewed for 2 years;

(c) It appears to the Director that there is no further need for the regulation in the light of public comments received;

(d) It appears to the Director that the burdens imposed upon the public are increased even though no change has been made to the regulation itself;

(e) It appears to the Director that there is a need to simplify or clarify the language of the regulation;

(f) It appears to the Director that there is a need to eliminate overlapping and duplicative regulations;

(g) Technology, economic conditions or other factors have changed the effect of the regulation on the public;

(h) The Secretary, the Chief Economist of the Department, or the Director, requests that such review take place.

The Bureau's basic regulations may be found in 15 CFR Chapter VIII. We plan to complete the review of Bureau Regulations within 1 year of the effective date of these procedures. These regulations are: 15 CFR 802 which relates to the reporting of revenues and expenditures by carriers of imports.

15 CFR 803 which relates to the reporting of royalties and fees earned by foreign holdings of U.S. persons.

15 CFR 806 which relates to the reporting of direct investment.

15 CFR 807 which relates to the release of material under the Freedom of Information Act.

15 CFR 804 and 805 are outdated and will be deleted.

APPENDIX D—ECONOMIC DEVELOPMENT ADMINISTRATION

REPORT ON IMPROVING THE REGULATORY PROCESS

This notice sets forth the report which Executive Order 12044 on Improving Government Regulations (E.O. 12044, March 23, 1978) requires each agency to publish in the FEDERAL REGISTER for public comment.

The Economic Development Administration (ERA) administers programs to foster the economic development of the Nation. As a part of the Department of Commerce, EDA has been delegated responsibility primarily for implementing the following acts:

The Public Works and Economic Development Act of 1965, as amended (42 U.S.C. 3121), authorizing the Secretary of Commerce to provide financial assistance for public works, business development, and economic development planning which are needed to alleviate conditions of substantial and persistent unemployment and underemployment in economically distressed areas and regions;

Title II, Chapters 3 and 4 of the Trade Act of 1974 (19 U.S.C. 2101), authorizing the Secretary to provide adjustment assistance for trade impacted firms and communities in trade impacted areas;

The Local Public Works Capital Development and Investment Act of 1976, as amended (42 U.S.C. 6701), which authorized the Secretary to provide grants to State and local governments experiencing high unemployment; and

The Community Emergency Drought Relief Act of 1977 (42 U.S.C. 5184), which authorized the secretary to extend assistance in drought impacted areas.

EDA has promulgated regulations to implement these acts in Chapter III of Volume 13 of the Code of Federal Regulations. Henceforth, additions and changes to these regulations will be prepared in accordance with E.O.

12044, Department Administrative Order (D.A.O.) 218-7 and this report.

The following topics are examined in this report: (1) EDA's current process for developing significant regulations; (2) the changes EDA has made to that process to comply with E.O. 12044; (3) EDA's criteria for determining significant regulations; (4) criteria for identifying significant regulations which require regulatory analysis; (5) criteria for the selection of existing regulations to be reviewed according to the provisions of E.O. 12044; (6) a list of existing regulations which EDA will consider in its initial review; and, (7) a description of EDA's regulatory agenda.

I. CURRENT PROCESS FOR DEVELOPING REGULATIONS

EDA develops new regulations and revises existing regulations through basically the same process. There are several stages to this development: initiation, circulation within the agency, publication in the FEDERAL REGISTER, and opportunity for public comment.

(1) EDA's regulatory process starts in its Office of Chief Counsel (OCC) on its own initiative or at the request of the program offices, depending on the nature of the regulation. Regulations required by legislation originate with OCC; regulations implementing policy are proposed in program offices.

(2) Where OCC proposes a regulation, it prepares a draft of the proposal accompanied by background information on the authority for the regulation, the purpose it is intended to accomplish, and, if necessary, any policy decisions incorporated into the regulation. When a program office suggests a regulation, it supplies the background information to OCC, which drafts the proposed regulation. These drafts are circulated through the Agency for comments.

(3) After comments, if any, have been received and appropriate revisions made, the regulation is sent to the Assistant Secretary for approval. When the Assistant Secretary signs the regulation, it is published in the FEDERAL REGISTER, as a final rule. The FEDERAL REGISTER publication includes the name of an agency official whom interested persons may contact for further information and allows the public 30 days to comment on the regulation.

Up to this date, EDA published regulations directly in final because section 553 of the Administrative Procedure Act (5 U.S.C. 551) exempts agencies from the notice-and-comment procedure for regulations pertaining to grant and loan programs. Because of this exemption, EDA was not required to publish notices of proposed rule-making. Upon occasion, EDA obtained comments prior to publication in the

FEDERAL REGISTER, through formal and informal consultation with State and local governments. For instance, under the \$6 billion Local Public Works Program, EDA submitted draft regulations to the Advisory Commission on Intergovernmental Relations for their comments.

II. REVISED PROCESS FOR SIGNIFICANT REGULATIONS

The following reforms have been made to EDA's procedures for significant (as defined in part III) regulations to accommodate the provisions of E.O. 12044. EDA will also comply with the procedures set forth in D.A.O. 218-7 "Issuing Departmental Regulations". EDA's process now includes the following stages: initiation, agency head oversight, regulatory analysis (where appropriate), public participation, and approval.

A. Initiation of Process

EDA will continue to initiate regulations as it did prior to E.O. 12044. As permitted under section 4.03 of D.A.O. 218-7, the Office of the Chief Counsel will examine regulations initially to determine their significance. The criteria for determining significance in regulations are discussed in part III below. If a regulation is determined significant, it will be subject to the remaining four stages. A regulation found not to be significant will be developed through similar procedures consistent with section 1 of E.O. 12044, depending on the nature of the regulation involved. When OCC determines that a regulation is not significant, the Assistant Secretary will review that determination prior to the submission of the next agency agenda or agenda supplement under section 7.01 or section 7.09 of D.A.O. 218-7, whichever occurs first.

B. Oversight by the Assistant Secretary

Before drafting a significant regulation, OCC will inform the Assistant Secretary about the issues to be considered in the proposal and alternative approaches to achieve the proposal's purpose which should be explored. The Deputy Assistant Secretary for Policy and Planning will submit an initial determination to the Assistant Secretary regarding the necessity for preparing a regulatory analysis under parts II.C and IV below. The Assistant Secretary then will determine how the Agency will proceed with the regulation.

The Assistant Secretary also will review a tentative plan for obtaining public comment on the regulation. Where appropriate to the nature of the regulation, this plan shall include provision for consultation with State and local governments. Finally, the

Assistant Secretary will establish dates for the completion of various steps in the development of the regulation.

Notice of developing a significant regulation will be given in EDA's regulatory agenda as described in part VII.

C. Regulatory Analysis

EDA will prepare a regulatory analysis for all significant regulations which may have major economic consequences, as set forth in part IV. For such regulations, EDA will scrutinize alternative approaches early in the decisionmaking process. The Office of the Deputy Assistant Secretary for Economic Development Policy and Planning will be responsible for determining the need for and for preparing regulatory analyses. In performing the regulatory analysis, EDA will:

(1) provide a succinct statement of the problem;

(2) describe the major alternative ways of dealing with the problem;

(3) analyze the economic consequences of each alternative considered;

(4) explain in detail the reasons for choosing one alternative over the others;

(5) explain in the public notice of proposed rulemaking the regulatory approach selected or favored, describe briefly other alternatives considered, and state how the public may obtain a copy of the draft regulatory analysis; and

(6) prepare a final regulatory analysis which EDA will make available when final regulations are published.

In performing the regulatory analysis, EDA will include as part of that analysis the urban and community impact analysis required by Executive Order 12074 and OMB Circular A-116, and section 5.04.e of D.A.O. 218-7.

D. Opportunity for Public Participation

EDA will give the public early and meaningful opportunity to participate in the development of significant regulations. In accordance with this goal, the Agency will publish an advance notice of proposed rulemaking after the Assistant Secretary has performed his oversight functions. EDA also will notify appropriate interested parties directly of the development of regulations.

In addition to these steps, EDA may, where appropriate and helpful, hold open conferences or public hearings on proposed rulemaking and send notice of proposed regulations to publications likely to be read by those affected by the rulemaking.

EDA will publish significant regulations as proposed rules and will allow the public sixty days to submit written comments on them. Written comments received from the public will be con-

sidered when the regulations are put into their final form.

In accordance with section 2(c) of E.O. 12044, EDA reserves the right to publish significant regulations with a shorter period for public comment or as final rules where short-term (60-90 days) statutory or judicial deadlines or other exigencies make the 60 day period impractical or contrary to the public interest. The preamble to these regulations will be accompanied by a statement of the reason for the abbreviated public participation procedures and the name of the EDA official responsible for this determination.

E. Approval of Significant Regulations

As in EDA's former process, the Assistant Secretary will approve all significant regulations prior to publication in final form in the FEDERAL REGISTER. The Assistant Secretary will make the following specific determinations as part of his approval:

(1) the proposed regulations are needed;

(2) the direct and indirect effects of the regulations have been considered;

(3) alternative approaches have been considered and the least burdensome of the acceptable alternatives has been chosen;

(4) public comments have been considered and responded to adequately;

(5) the regulations are written in plain English and are understandable to those who must comply with them;

(6) an estimate has been made of the new reporting burdens or recordkeeping requirements necessary for compliance with the regulations;

(7) the name, address and telephone number of a knowledgeable agency official is included in the publication; and

(8) a plan for evaluating the regulations after their issuance has been developed.

Pursuant to sections 4.07 and 7.05 of the D.A.O., EDA will submit significant regulations to the Secretary of Commerce for approval at least fifteen days before the proposed publication date.

III. CRITERIA FOR DETERMINING SIGNIFICANT REGULATIONS

The process for developing regulations described in part II applies only to regulations which EDA determines are significant. As noted in II.A., the Office of the Chief Counsel will initially determine significance. EDA will use the following criteria to determine the significance of regulations.

(1) EDA will consider the relationship of the regulation to major Departmental or Agency policy issues. Where an EDA regulation implements a major policy of either the Department or the Agency, rather than mandatory legislative authority or execu-

tive branch directive (see paragraph III (4)(b) below), the regulation will be considered significant.

(2) EDA will consider the degree of controversy over or public interest in the regulation. Where a proposal for a regulation is controversial or of great public interest, that regulation will be considered significant.

(3) EDA will also consider the following factors in determining significance:

(a) the type and number of individuals, businesses, organizations, State and local governments affected;

(b) the compliance and reporting requirements likely to be involved;

(c) the direct and indirect effects of the regulation, including the effect on competition; and

(d) the relationship of the regulation to those of other programs and agencies.

(4) EDA will determine that regulations are not significant where the regulation is required by statute or other exigency (e.g. judicial deadlines) to be published quickly (i.e. 60-90 days) or where the regulation is required by statute or an executive branch directive and allows EDA no substantial discretion in developing the contents of the regulation.

(a) EDA will determine a regulation to be an emergency regulation where the statute or exigency requires publication within 91 days. In such a case, the regulation will not be significant. EDA will follow the procedures described in part II only insofar as time will allow. EDA will publish these regulations as interim regulations and allow the public to comment for at least 60 days prior to final publication.

(b) The Assistant Secretary may conclude that a regulation is not significant, even if it meets the criteria established for identifying significant regulations, if the Assistant Secretary determines, in writing, that the degree of discretion available to EDA is so limited by underlying legislation or executive branch directives (e.g. Executive Orders, OMB Circulars, etc.) that no significant options for implementation are available to EDA. A copy of this determination shall be promptly sent to the Assistant Secretary for Policy and an explanation of the determination shall be included in the preamble to the notice of the proposed rulemaking.

IV. EDA'S PROPOSED CRITERIA FOR IDENTIFYING SIGNIFICANT REGULATIONS WHICH REQUIRE REGULATORY ANALYSIS

EDA will prepare a regulatory analysis of proposed regulations which the Agency has both (a) identified as significant under the above criteria and (b) determined may have major economic consequences.

EDA will apply the following alternative criteria to determine whether a significant regulation may have major economic consequences:

(1) *Effect on the economy as a whole.* Where the potential economic consequences of the significant regulation will affect the economy as a whole, EDA will determine those consequences to be major if such regulation can be expected, during any 12-month period it is in effect, to result in an effect, direct or indirect, on the economy of \$50 million or more. If this criterion is met, EDA will perform a regulatory analysis of the proposed significant regulation.

(2) *Effect on an individual industry.* Where the potential economic consequences of the significant regulation will affect an individual industry, EDA will determine those consequences to be major:

(a) if, during any 12-month period in which it is in effect, such regulation can be expected to result in an increase of cost or price of 5 percent or more for the specific activity, product(s) or service(s) affected by the regulation; or

(b) if, during any 12-month period in which it is in effect, such regulation can be expected to result in an effect, direct or indirect, exceeding \$25 million; or

(c) if the regulation can be expected to reduce labor productivity by 1 percent or more in the item which is the unit of focus in the regulation; or

(d) if such regulation can be expected, for the particular market(s) affected, to result in a 1 percent or more decline in a supply of materials, products or services or a 1 percent or more increase in consumption of these materials, products or services as a direct or indirect result of such regulation; or

(e) if such regulation can be expected to result in a decline in competition in the particular market(s) affected. Factors to be considered include limitation of market information, or other restrictive factors that impede the functioning of the market system.

If any of the criteria (a) through (e) is met, EDA will perform a regulatory analysis of the proposed significant regulation.

(3) *Effect on a level of government.* Where the potential economic consequences will affect a level of government, EDA will determine those consequences to be major if the effect, direct or indirect, is an increase in costs to that level of government which can be expected to exceed \$25 million. If this criterion is met, EDA will perform a regulatory analysis of the proposed significant regulation.

(4) *Effect on a geographic area.* Where the potential economic consequences will affect a geographic area, EDA will determine those conse-

quences to be major if, during any 12-month period in which it is in effect, the significant regulation can be expected to result in an effect, direct or indirect, exceeding \$25 million. If this criterion is met, EDA will perform a regulatory analysis of the proposed significant regulation.

(5) *Effect on consumers.* Where the potential economic consequences of the significant regulation will result in an effect, direct or indirect, to consumers, EDA will determine those consequences to be major:

(a) if, during any 12-month period it is in effect, such regulation can be expected to result in an effect, direct or indirect, exceeding \$25 million; or

(b) if, during any 12-month period it is in effect, such regulation can be expected to result in an increase in price of 5 percent or more for the specific activity, product(s) or service(s) affected by the proposed regulation; or

(c) if such regulation can be expected to result, for the particular market(s) affected, in a 1 percent or more decline in supply of materials, products or services or a 1 percent or more increase in consumption of these materials, products or services as a direct or indirect result of the regulation; or

(d) if, such regulation can be expected to result in a decline in competition in the particular market(s) affected. Factors to be considered include limitation of market entry, restraint of market information, or other restrictive factors that impede the functioning of the market system.

EDA will also prepare a regulatory analysis of existing regulations where the Agency has determined, pursuant to the criteria set forth in part V, that the regulations should be revised, and that the regulations as revised are both significant and will have major economic consequences under one or more of the preceding criteria.

If the Agency determines that a proposed or revised regulation is not significant or that a proposed or revised regulation is significant but will not have major economic consequences under one of the above criteria, EDA will not perform a regulatory analysis of the regulation except where:

(a) the Assistant Secretary for Economic Development determines that such an analysis would be beneficial; or

(b) the Secretary of Commerce determines, in accordance with section 7.05 of D.A.O. 218-7 that such an analysis should be performed.

V. CRITERIA FOR SELECTING REGULATIONS FOR REVIEW

In order to assure that existing regulations are achieving the policy goals of E.O. 12044, EDA will review its regulations periodically. In selecting ex-

isting regulations for review, EDA will consider the following criteria:

(1) The length of time since the regulation has been evaluated. All regulations which meet the criteria of significance will be reviewed at least once every four years. EDA will review all other regulations within six years of publication. After selecting regulations under this criterion, EDA will review the regulations in accord with the other criteria listed below.

(2) The continued need for the regulation. EDA shall examine all its regulations periodically to determine if there is a continuing need for the regulations. EDA will measure the need for each regulation on the basis of the underlying legislation, EDA policy, or other Federal agency requirements.

(3) The need to simplify or clarify language. EDA will note which of its regulations have caused misunderstandings and review them as necessary to clarify them.

(4) The need for clarifying the organization of parts or subparts due to the addition of or substantial revision of individual regulations.

(5) The need to eliminate overlapping or duplicative regulations.

(6) The need to eliminate unnecessary variations in requirements imposed on recipients of financial assistance by both EDA and other Federal agencies.

(7) The burdens imposed on those directly or indirectly affected by the regulations.

(8) The number of complaints or suggestions received.

(9) The degree to which economic conditions or other factors have changed in the area affected by the regulation.

Based upon its review of existing regulations, EDA will revise significant regulations in accord with the procedures set forth in part II above for developing new significant regulations.

VI. LIST OF EXISTING REGULATIONS WHICH EDA WILL CONSIDER FOR ITS INITIAL REVIEW

EDA will consider the following regulations for its initial review:

1. Regulations regarding the organization of Economic Development Districts. EDA will review these regulations, primarily 13 CFR 303.4, because many district organizations have requested EDA to clarify and to simplify these requirements.

2. Regulations regarding the Business Development Program, 13 CFR Part 306. EDA will review these regulations because they have not been reviewed as a whole since they were published and are in need of reorganization.

3. Regulations regarding general requirements for assistance, 13 CFR Part 309. EDA will review these regu-

lations to eliminate those which are no longer necessary and to clarify procedural requirements.

VII. REGULATORY AGENDA

By January 15 and July 15 of each year, EDA will prepare a regulatory agenda of forthcoming regulations under review or development. EDA will submit the agenda to the Assistant Secretary of Commerce for Policy. The portions of this agenda concerning significant regulations will be published in the FEDERAL REGISTER as part of the combined Department of Commerce regulatory agenda by February 15 and August 15 of each year. The regulatory agenda for EDA will include, to the extent feasible:

(1) a description of regulations under development or being considered for development, including:

(a) a statement whether the regulation has been determined to be a significant regulation;

(b) the need for and the legal basis for the action being taken;

(c) if possible, a statement as to whether or not a regulatory analysis will be required;

(d) the name and telephone number of a knowledgeable official;

(e) a list of major issues likely to be considered in developing the regulation;

(f) a tentative plan for consulting with State and local governments;

(g) target dates for the completion of steps in the development process; and

(h) information on the status of all new regulations listed in the previous agenda, including changes to the information required by this part, until such time as these regulations are published as final in the FEDERAL REGISTER.

(2) a list of existing regulations scheduled for review during the next six months, including the name and telephone number of a knowledgeable official for each;

(3) information on the status of existing regulations previously scheduled for review; and

(4) a list of all final regulations published in the FEDERAL REGISTER during the previous six months, including the date and FEDERAL REGISTER citation.

If EDA has no regulations which it intends to review or develop, EDA will submit a report to the Assistant Secretary for Policy to that effect. If, prior to the date of the next agency agenda, it becomes necessary for EDA to develop or review regulations which were not listed on the last agency agenda, EDA will publish a supplement to the agency agenda. In addition, EDA will immediately notify the Assistant Secretary for Policy of any changes to its regulatory agenda, including any significant changes in the status of items

listed on the previous agenda. EDA may also publish a supplement to the agency agenda, when appropriate, if EDA will not develop or review significant regulations as scheduled on the latest agenda.

In developing proposed regulations, EDA will consider and include as part of the public record all substantive comments which it has received concerning any item listed on the agenda.

EDA received no comments regarding the draft of this report which was published on May 30, 1978, as Appendix D to the Department of Commerce "Response to Executive Order No. 12044". Interested persons should send comments on this final report to: Assistant Secretary for Economic Development, Room 7800B, U.S. Department of Commerce, Washington, D.C. 20230.

Dated: December 8, 1978.

APPENDIX E—INDUSTRY AND TRADE ADMINISTRATION ISSUING REGULATIONS

SECTION 1. PURPOSE.

This order prescribes the procedures which shall apply in implementing Executive Order 12044 of March 23, 1978, improving Government Regulations, and Department Administrative Order 218-7.

SECTION 2. SCOPE

.01 Except as provided in paragraph .02 of this section, this order applies to all regulations of the Industry and Trade Administration published in the FEDERAL REGISTER.

.02 Unless specifically noted to the contrary, this order does not apply to regulations exempted by Executive Order 12044 and D.A.O. 218-7, specifically:

a. regulations issued in accordance with the formal rulemaking provisions of the Administrative Procedure Act (5 U.S.C. 556, 557);

b. regulations issued with respect to a military or foreign affairs function of the United States;

c. matters related to agency management or personnel;

d. regulations related to Federal Government procurement; or

e. regulations that are issued in response to an emergency or which are governed by short-term (less than 91 days) statutory or judicial deadlines.

.03 Whenever two or more agencies plan to jointly promulgate regulations, bureau heads shall designate one agency as lead agency for the purpose of determining whose rulemaking procedures will be utilized. The designated agency shall be responsible for compliance with Executive Order 12044 and its procedures implementing that Executive Order, shall apply. Regardless of the designation as lead agency, each bureau head involved in a joint

rulemaking will separately comply with the requirements of Section 7 of this Order.

.04 Even in cases where the exemptions in paragraph .02 of this section apply, regulations will be developed, to the extent practicable, in accordance with the requirements, procedures and intent of the Executive Order.

SECTION 3. DEFINITIONS

.01 *Bureau head.* As used in this order, bureau head means the head of each bureau of the Industry and Trade Administration and persons serving in those positions in an acting capacity.

.02 *Regulation(s).* As used in this order, regulation(s) means both rules and regulations issued by the Industry and Trade Administration including those which establish conditions for financial assistance. Closely related sets of regulations shall be considered together.

SECTION 4. SIGNIFICANT REGULATIONS

01. Bureau heads shall identify a regulation to be significant if:

a. a substantial number of individuals, businesses, organizations, State and local governments would be affected by the regulation;

b. the compliance and reporting requirements of the regulation are likely to be excessive and interfere with normal business practices or substantially increase paperwork requirements;

c. the regulation is likely to have a major affect directly or indirectly on competition within the marketplace;

d. the regulation would be likely to have a measurable inflationary effect;

e. the regulation would be likely to contribute substantially to unemployment;

f. the regulation would be likely to reduce U.S. exports by a substantial amount;

g. the availability of material and equipment in the marketplace would be increased or decreased in a substantial amount;

h. the regulation relates in an important way to other programs and agencies within and outside of the Industry and Trade Administration and the Department; or

i. the regulation bears an important relationship to major Industry and Trade Administration and Departmental policy issues.

.02 a. Before proceeding to develop significant new regulations the bureau head shall consult with the Assistant General Counsel for Industry and Trade and shall have reviewed the issues to be considered, the alternative approaches to be explored, whether a regulatory analysis, as provided for in Section 5, is required, a tentative plan for obtaining public comment where

applicable, a tentative plan for consultation with State and local governments, and a target date for completion of steps in the development of the regulation.

b. The bureau head shall obtain the written approval of the Assistant Secretary for Industry and Trade of any proposal to develop significant new regulations.

.03 The Assistant Secretary for Industry and Trade shall approve significant regulations before they are published in the FEDERAL REGISTER in final form. Before approving significant regulations, the Assistant Secretary for Industry and Trade shall consult with the Assistant General Counsel for Industry and Trade and will be satisfied that:

a. the regulation is needed;

b. the direct the indirect effects of the regulation have been adequately considered;

c. alternative approaches to regulations and among various types of regulations have been considered and the least burdensome of the acceptable alternatives has been chosen;

d. public comments (including those from State and local governments) have been considered and an adequate response has been prepared;

e. the regulation is written in simple and clear English and is understandable to those who must comply with it;

f. an estimate has been made of the new reporting burdens or recordkeeping requirements necessary to carry out the regulation;

g. the cost to the Government and to the public have been assessed;

h. the name, address and telephone number of a knowledgeable official is included in the publication; and

i. a plan for periodically evaluating the effectiveness of the regulation after its issuance has been developed.

.04 The Assistant Secretary for Industry and Trade, in consultation with the Assistant General Counsel for Industry and Trade, shall review determinations that a regulation is not significant prior to the submission of the next agency agenda required by Section 7.05, or the notification required by Section 7.08, whichever occurs first.

.05 Regulations which are not significant shall be accompanied by a statement to that effect when published in the FEDERAL REGISTER.

SECTION 5. REGULATORY ANALYSIS

.01 A regulatory analysis shall be prepared for each significant regulation determined to have potential major economic consequences for the general economy, for individual industries, geographic regions, levels of government, or specific elements of the population.

.02 Bureau heads shall determine which significant regulations require

regulatory analysis. While these officials should be guided by the individual needs of their specific programs and may require an analysis for any proposed regulation, at a minimum a regulatory analysis shall be prepared for each regulation which:

a. during any one year of its existence, can be expected to result in increased cost(s) (direct or indirect) to consumers, businesses, Federal, and State and local governments exceeding \$50 million;

b. during any one year of its existence, can be expected to result in increased costs (direct or indirect) to either consumers, businesses, or levels of governments exceeding \$25 million;

c. during any one year of its existence, can be expected to result in an increase or decrease in costs or prices of five percent or more for the activity, product(s) and/or service(s) affected by the proposed regulation;

d. can be expected to reduce labor productivity by one percent or more in the economic activity or sector(s) affected by the regulation;

e. can be expected to reduce employment by five percent or more in the economic activity or sector(s) affected by the regulation;

f. can be expected to result in a one percent or more decline or rise in supply or consumption of materials, products or services, in the activity affected;

g. can be expected to result in a clearly identifiable decline in domestic or international competition, including such factors as limitation of market entry, restraint of market information, or other impediments to the functioning of the market system; or

h. can be expected to redirect supplies of material, equipment, products or services from one market to another by a significant amount.

.03 A regulatory analysis shall also be prepared when:

a. the Assistant Secretary for Industry and Trade determines that such an analysis should be performed; or

b. the Secretary determines that such an analysis should be performed.

.04 A regulatory analysis must involve a careful examination of alternative approaches early in the decision-making process. Thus, each analysis must include, at the minimum:

a. a succinct statement of the problem;

b. a description of the major alternative ways of dealing with the problems that were considered;

c. an analysis of the economic consequences of each of these alternatives and a detailed explanation of the reasons for choosing one alternative over the others; and

d. the urban and community impact analysis required by Executive Order 12047, of August 16, 1978, and OMB

Circular A-16, which implements that Executive Order.

.05 The notice of proposed rule-making for each regulation for which a regulatory analysis is required shall include:

- a. an explanation of the regulatory approach that has been selected or is favored;
- b. a short description of the other alternatives considered;
- c. the major reason(s) for selecting or favoring a particular alternative; and
- d. a statement of how the public may obtain a copy of the draft regulatory analysis.

.06 a. The Assistant Secretary for Industry and Trade shall transmit the draft regulatory analysis along with the proposed regulation to the Chief Economist and to the Assistant General Counsel for Industry and Trade for review and comment at least 15 days prior to submission of a notice of proposed rulemaking to the FEDERAL REGISTER; and

b. The Assistant Secretary for Industry and Trade shall inform the Chief Economist as early as possible of the nature and extent of the analysis being undertaken to assure adequate opportunity for consultation and assistance.

.07 Bureau heads shall consider public comments on their regulatory analysis and prepare a final regulatory analysis to be made available when the final regulations are published. Significant public comments on the analysis shall be summarized and responded to in the preamble to the final regulation.

.08 Regulatory analyses are not required in rulemaking proceedings pending as of March 23, 1978, if an Economic Impact Statement has already been prepared in accordance with Executive Order 11821 and 11949 or it has been determined that such a statement was not needed.

SECTION 6. REVIEW OF EXISTING REGULATIONS

.01 Bureau heads shall review existing regulations administered by their organization at least every four years to determine whether they are achieving the policy goals of Executive Order 12044 and report their findings to the Assistant Secretary for Industry and Trade.

.02 Bureau heads shall consider the following criteria, among other things, in reviewing existing regulations:

- a. the continued need for the regulation;
- b. the availability of alternative approaches to the regulations;
- c. the type or number of complaints or suggestions received;

d. the burdens imposed on those directly or indirectly affected by the regulation;

e. the cost to the Government of administration of the regulation;

f. the need to simplify or clarify the language;

g. the need to eliminate overlapping and duplicative regulations; and

h. the length of time since the regulation has been evaluated or the degree to which technology, economic conditions or other factors have changed in the area affected by the regulation.

.03 Procedures for review of existing regulations shall, at a minimum, contain the following procedural steps:

a. inclusion of notice of the review in the semi-annual agenda as required by section 7.02 of this order, or as appropriate, supplementation of the Department Agenda and notification to the Assistant Secretary for Policy as called for in section 7.08 of this order;

b. a determination of whether the regulation meets the criteria established for identifying significant regulations;

c. if the regulation is determined to be significant, approval by the Assistant Secretary for Industry and Trade as called for in section 4.02b before proceeding with the review;

d. a determination of whether the regulation meets the criteria established for determining if a regulatory analysis must be performed;

e. if applicable, the preparation of a regulatory analysis in accordance with the procedures established;

f. if the review results in a determination that a regulation should be amended or rewritten, compliance with public notice and participation requirements;

g. if applicable, Assistant Secretary for Industry and Trade approval of significant regulations before final publication in the FEDERAL REGISTER as set forth in section 4.03 of this order.

SECTION 7. REGULATORY AGENDA

.01 No later than January 3, 1979, each bureau head shall provide the Senior Deputy Assistant Secretary for Industry and Trade with the first regulatory agenda required under this section. No later than June 1, 1979, each bureau shall provide the Senior Deputy Assistant Secretary for Industry and Trade with the second regulatory agenda required under this section and shall provide such an agenda every six months thereafter.

.03 Each regulatory agenda shall include the following:

a. a description of regulations under development or being considered for development to include to the extent feasible:

1. a statement of whether the regulation has been determined to be a significant regulation;

2. the need for and the legal basis for the action being taken;

3. a statement as to whether or not a regulatory analysis will be required;

4. the name and telephone number of a knowledgeable official to whom comments on the planned regulation may be addressed;

5. a listing of the major issues likely to be considered in developing the regulation;

6. a tentative plan for obtaining public comment and where applicable, a tentative plan for consulting with State and local governments;

7. proposed dates for the completion of steps in the development process; and

8. information on the status (including changes to the information required by this Section .02.a.) of proposed significant regulations listed in previous agendas until such time as these regulations are published as final in the FEDERAL REGISTER.

b. a list of existing regulations scheduled to be reviewed, including the name and telephone number of a knowledgeable official for each such regulation;

c. information on the status of existing regulations previously scheduled for review; and

d. a list, including the date and FEDERAL REGISTER citation, of all final regulations published in the FEDERAL REGISTER during the previous six months.

.03 The Senior Deputy Assistant Secretary for Industry and Trade shall review all bureau head agendas and, after consultation with the Assistant General Counsel for Industry and Trade and such Industry and Trade Administration officials as may be deemed appropriate, recommend to the Assistant Secretary for Industry and Trade:

a. which regulations not determined to be significant by the bureau heads should be treated as significant;

b. which of the new regulations under development or being considered for development should be brought to the attention of the Secretary prior to being published in the FEDERAL REGISTER in final form; and

c. in addition to those identified by bureau heads, which new regulations under development or being considered for development require a regulatory analysis.

.04 The Senior Deputy Assistant Secretary for Industry and Trade shall advise bureau heads of the decisions made by the Assistant Secretary for Industry and Trade with respect to these recommendations.

.05 Using the bureau head agendas, as modified by the Assistant Secretary for Industry and Trade, the Senior

Deputy Assistant Secretary for Industry and Trade shall prepare an overall Industry and Trade Administration agenda. This agenda after approval by the Assistant Secretary for Industry and Trade, shall be submitted to the Assistant Secretary for Policy by January 15, 1979, and every six months thereafter.

.06 The Industry and Trade Administration agenda shall include the information required by section .02 above.

.07 Supplements to the Department Agenda may be published whenever it becomes apparent that development or review of significant regulations not listed in the previous Department Agenda will commence before the publication of the next Department Agenda; or development or review of a regulation listed in the previous Department Agenda will not commence as scheduled.

.08 Bureau heads will notify the Assistant Secretary for Policy whenever it becomes apparent that development or review of regulations not listed in the previous agency agenda will commence before publication of the next Department Agenda, development or review of a regulation listed in the previous Department Agenda will not commence as scheduled or significant changes have occurred in the status of items listed in the previous agency agenda.

.09 a. A docket shall be established and maintained for each item appearing in the regulatory agenda.

b. Dockets shall be maintained by the staff of the Industry and Trade Administration Freedom of Information Records Inspection Facility and shall be available for public inspection in Room 3012, Main Building, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230. The telephone number of the inspection facility is 202-377-3031.

c. Dockets shall include, but not be limited to:

1. documents of central relevance to the proceeding and any technical support documents developed or relied on prior to publication of the Notice of Proposed Rulemaking;

2. a copy of the Notice of Proposed Rulemaking;

3. all public comments received concerning the proposal;

4. all transcripts of hearings, if held, concerning the proposal;

5. all documents of central relevance that became available after the Notice of Proposed Rulemaking; and

6. a copy of the Notice of Final Rulemaking.

SECTION 8. PUBLIC PARTICIPATION

.01 The public shall be given an early and meaningful opportunity to participate in the development of the regulations of the Industry and Trade Administration.

.02 Bureau heads shall consider a variety of ways to provide this opportunity, including, but not limited to:

a. publishing an advance notice of proposed rulemaking;

b. holding open conferences or public hearings;

c. sending notices of proposed regulations to publications likely to be read by those affected;

d. notifying interested parties directly; and

e. providing for more than one cycle of public comments.

.03 If none of the methods listed in paragraph .02 of this section are used in a particular rulemaking covered by this order, the preamble accompanying the final regulation shall briefly explain the reasons and indicate what other steps were taken to assure adequate opportunity for public participation.

.04 The public shall be given at least 60 days to comment on proposed

significant regulations. Exceptions to this requirement may be granted only by the Assistant Secretary for Industry and Trade and only in those few instances where it is determined that it is not possible to comply. When an exception is made the preamble to the proposed regulation shall include a brief statement of reasons for a shorter time period.

.05 In instances when regulations exempted by sections 2.02 (b) and (c) of this order do not comply with the procedures set forth in this order, their publication in the FEDERAL REGISTER shall be accompanied by a statement of the reasons why the procedures of this order could not be followed. This statement shall include the name of the policy official responsible for the determination.

.06 Regulations exempted by section 2.02 (b) or (c) of this order shall be issued in interim form only. FEDERAL REGISTER publication of these regulations will provide for a public comment period of at least 60 days and republication in final form after public comments have been considered and appropriate modifications, if any, made.

ITA is considering for initial review the following regulations:

REVIEW OF REGULATIONS

Regulation	CFR Citation	Contact Point
Export Administration Regulations Commodity Control List and Related Matters.	15 CFR 399.....	Rauer Meycr 202/377-4293
Defense Materials System (DMS) Order 1—Iron and Steel....	32A CFR 631.....	John Richards 202/377-4506
Defense Materials System (DMS) Order 2—Nickel Alloys	32A CFR 632.....	John Richards 202/377-4506
Defense Materials System (DMS) Order 3—Aluminum.....	32A CFR 633.....	John Richards 202/377-4506
Defense Materials System (DMS) Order 4—Copper and Copper Base Alloys.	32A CFR 634.....	John Richards 202/377-4506
Operation of the Priorities and Allocations Systems between Canada and the United States (DPS Reg. 2).	32A CFR 652.....	John Richards 202/377-4506
Compliance and Enforcement Procedures (DPS Reg. 3)	32A CFR 653.....	John Richards 202/377-4506
Instruments and Apparatus for Educational and Scientific Institutions.	15 CFR 301.....	Richard Seppa 202/377-2925
China Trade Act Corporations.....	15 CFR 363.....	Harry Stringer 202/377-3647
Joint Export Associations.....	15 CFR 366.....	Samuel Cerrata 202/377-4577
Determination of Bona Fide Motor-Vehicle Manufacturers...	15 CFR 315.....	Edward Smith 202/377-4338
Foreign-Trade Zones Board (Administrative support is provided to the Foreign-Trade Zones Board staff by ITA).	15 CFR 400.....	John DaPonte 202/377-2862

APPENDIX F—MARITIME ADMINISTRATION (MARAD)

PROCESS FOR DEVELOPING REGULATIONS
PRESENT PROCESS FOR DEVELOPING REGULATIONS

Marad's principal programs are promotional (grants or contracts), or related to national defense, and have not been subject to the notice of proposed rulemaking requirements of the Administrative Procedure Act (5 USC 553). As a matter of practice, Marad has published a notice of proposed

rulemaking in the FEDERAL REGISTER, and has usually allowed at least 30 days for the submission of written comments by all interested parties with respect to new regulations or amendments to existing regulations which we consider to be important. An exception to this practice has occurred where observance of such notice requirements would defeat principal objectives of the new or amended regulations. However, Marad has rarely engaged in final rulemaking without

prior consultation with parties who will be directly affected.

Previously, Marad has not adopted a uniform policy for the development of regulations or the review of existing regulations. With respect to regulations which implement our principal programs, development or revision of regulations has usually resulted from recognition of operational problems by Marad Offices responsible for administering these programs or from complaints received, either from participants in the programs or from others affected by such regulations. Where important new regulations or major revisions of such regulations have been drafted pursuant to direction or authorization of legislation, it has been customary to select a committee which meets regularly to consider and draft the proposed regulation. The Committee has usually included staff members involved in program administration and an attorney in the Office of General Counsel. With respect to most other efforts in developing regulations, draft proposals have been initiated by Offices concerned with program administration and submitted to the Office of General Counsel for review. The agency has exercised discretion in determining whether to solicit the views of interested persons before publication of the notice of final rulemaking in the FEDERAL REGISTER.

REVISED PROCEDURE FOR DEVELOPING REGULATIONS

Marad hereby establishes a uniform procedure for developing regulations, and will comply with the requirements of Department of Commerce Administrative Order 218-7 (DAO 218-7). Prior to considering in depth a proposal from any source for issuing a new or revised regulation, or set of regulations, the Director of the Office with a principal responsibility for administering the program to which the regulation relates shall prepare a brief memorandum to the appropriate Assistant Administrator. Copies shall be distributed to the Deputy Assistant Secretary for Maritime Affairs and to the General Counsel. This memorandum shall briefly describe the background of the proposal, the objectives of the regulation, possible alternative approaches to accomplish these objectives, an estimate of its potential economic impact, a tentative plan for obtaining public comment and target dates for completion of steps in the development of the regulation. The Assistant Administrator, with the concurrence of the Deputy Assistant Secretary and the General Counsel, shall make a preliminary determination as to whether the regulation is "significant", so as to be subject to require-

ments of sections 2 or 3 of Executive Order 12044 (EO 12044).

If these officials determine that the regulation is significant (using criteria described hereinafter), they shall recommend that the Assistant Secretary for Maritime Affairs or Maritime Subsidy Board (Assistant Secretary/MSB), as appropriate, designate the Offices (including the Office of General Counsel) to be represented on a committee which shall evaluate the proposal. The Committee shall draft proposed regulations where it considers such action to be necessary. Should a determination be made that the proposal does not involve a significant regulation, the staff of the Office Director initiating the action shall be responsible for developing such regulation with assistance from the Office of General Counsel.

The Assistant Secretary/MSB, prior to authorizing development of significant regulations, shall review the issues to be considered; the alternative approaches to be explored; whether a regulatory analysis (as described hereinafter) is required; a tentative plan for consulting with State and local government, where appropriate; and target dates for completion of the steps in the development of the regulation.

Significant regulations shall be published in the FEDERAL REGISTER, allowing all interested persons at least 60 days (except where circumstances to be described in the notice make a shorter period necessary) to submit written comments. With respect to all significant regulations, Marad shall consider utilizing other publications to advise interested persons of proposed rulemaking, as well as for giving advance notice of such proposed rulemaking. With respect to regulations determined not to be significant, the staff shall consider soliciting comments from interested persons through publication or other channels of communication.

The Assistant Secretary/MSB shall approve all significant regulations prior to their publication in the FEDERAL REGISTER in final form after determining that:

- (1) The regulation is needed;
- (2) Its direct and indirect effects have been adequately considered;
- (3) Alternative approaches have been considered and the least burdensome acceptable alternative has been selected;
- (4) Comments have been solicited from interested persons, where appropriate (including State or local government), and have been adequately considered and acknowledged responsively;
- (5) The regulation is written in a manner that should be comprehensi-

ble to those subject to its requirements;

(6) An estimate has been made of any new reporting or recordkeeping requirements imposed by the regulation;

(7) The name, address and telephone number of a knowledgeable official, to whom inquiries and suggestions about the proposed regulation may be submitted, is included in the publication; and

(8) A plan has been developed for evaluating the regulation after its issuance.

Regulations which are not significant shall be accompanied by a statement to that effect when published in the FEDERAL REGISTER.

CRITERIA FOR SIGNIFICANT REGULATIONS.

Significant, within the scope of section 2 of Executive Order 12044, means a regulation that:

(1) Is necessary to implement new provisions of law relating to the operation of any major Marad program, including, but not limited to financial assistance for vessel construction or operations, reservation of cargo for United States vessels, vessel insurance, citizenship requirements and matters relating to the United States Merchant Marine Academy and State Maritime Academies; or would effect a substantial revision to an existing regulation relating to any such program;

(2) Is expected to have major economic consequences on the general economy or have a substantial impact on levels of production of employment, either at the national level or in any geographic area, of U.S. shipbuilders, vessel operators, port facility operators, or related industries or segments thereof;

(3) Overlaps or has a substantial effect on regulations in effect or functions of another Federal or State governmental body; or

(4) Is considered by the Assistant Secretary/MSB to involve an important matter on which there is current substantial public interest or controversy.

CRITERIA FOR REGULATORY ANALYSIS

The committee responsible for developing a significant regulation or set of regulations shall initially consider the problems, objectives and alternative approaches for administrative action. This consideration shall include an evaluation of the probable economic impact of the regulation upon the general economy, individual industries, geographical regions or levels of Government. The Committee shall utilize the expertise of the Office of Policy and Plans whenever it considers consultation to be appropriate. It shall issue an opinion, subject to the approval of the Assistant Secretary/MSB, as to

whether the proposed regulation may have major economic consequences of any type.

A Regulatory Analysis shall be prepared if a determination is made that any of the following major economic consequences of the regulation under consideration are likely to occur:

(1) During any one year of its existence, it can be expected to result in an effect (direct or indirect) on the national economy of \$50 million or more;

(2) During any one year of its existence, it can be expected to result in an effect (direct or indirect) exceeding \$25 million in the economy of any State;

(3) It can be expected to produce at least a 5 percent reduction in the level of activity or employment in the U.S. shipbuilding industry, the U.S. ship operating industry, or the U.S. port industry;

(4) It can be expected to produce at least a 5 percent reduction in the level of industrial activity or employment in any local area (e.g., city, county, port authority region);

(5) It can be expected to produce at least a 10 percent reduction in the U.S. tax revenues derived from the shipbuilding, ship operating, or port industry; or

(6) During any one year of its existence, it can be expected to result in an increase of cost or price of 5 percent or more for the specific maritime service(s) affected by its provisions.

Each draft Regulatory Analysis shall include—

(1) A succinct statement of the reason for issuing the regulation;

(2) Major alternatives to the regulation that have been considered;

(3) An analysis of the respective economic consequences of the regulation and alternative approaches; and

(4) A detailed explanation of the reasons for choosing the alternative favored or selected.

(5) The urban and community impact analysis required by Executive Order 12074 (August 16, 1978) and OMB Circular A-116.

The draft Regulatory Analysis shall be made available for public inspection, and reference to it shall be included in the notice of proposed rule-making.

REVIEW OF EXISTING REGULATIONS

Each Marad Office which has a principal function of administering programs to which existing regulations relate shall systematically review each regulation to determine its effectiveness. An initial review of all existing regulations shall be completed by the end of the calendar year 1981 (the 1979 year end deadline stated in the draft report was based on a misinterpretation of an EO 12044 provision, and would impose an unreasonable burden on the agency). There shall be a review of all significant regulations no less frequently than every four years thereafter, subject to approval by the Assistant Secretary/MSB. In determining the priorities of initial review, the criteria for principal consideration are:

(1) Whether the regulation has been reviewed within the preceding five years;

(2) If there is a substantial question of the continuing need for regulations in any area of agency activity;

(3) Receipt of complaints from other agencies, State or local governments, or the public;

(4) Recognition by program administrators of the need for simplification, clarification, consolidation with other existing regulations, or elimination of conflicts with Marad regulations or those of other governmental agencies.

REGULATORY AGENDA

Semiannually, by January 15 and July 15, Marad will prepare and submit for Department approval a regulatory agenda which describes regulations under development or being considered, which will include the information required in section 7.02 of DAO 218-7. The Assistant Secretary/MSB shall review the proposed agenda

and any determination which has been made that a regulation is not significant.

Marad presently is considering an initial review or its proceeding with the development of the regulations described below:

Subject	Regulations
Temporary removal of prohibition of vessels built with construction-differential subsidy (CDS) from carrying oil from Alaska in the domestic trade.....	46 CFR Part 250
Conservative Dividend Policy—Restriction on the payment of dividends by vessel operators receiving operating differential subsidy (ODS).....	46 CFR Part 283
ODS for bulk cargo vessels engaged in worldwide services—essential service and U.S. foreign commerce requirement.....	46 CFR Part 252.21
ODS for bulk cargo vessels engaged in worldwide services—principal foreign-flag competition; foreign wage costs.....	46 CFR Part 252.22; 252.31
Regulations governing awards of ODS—Agreements and payments of ODS.....	46 CFR Part 280
Standard contract forms and other regulations for administration of CDS Program.....	46 CFR Part 251
Total repayment of CDS—removal of trade restrictions.....	46 CFR Part 276
Guarantees of obligations issued to finance vessel construction—Final.....	46 CFR Part 298
Regulations for U.S. Maritime Service, a voluntary organization to train U.S. citizens for service on U.S. merchant vessels.....	46 CFR Part 310, Subpart B

Any inquiries about the procedure described herein or the regulations proposed for review should be directed to Richard P. Knutsen, Assistant General Counsel for Legislation and Regulations, Maritime Administration, Washington, D.C. 20230, Tel. 202-377-3159.

[3510-49-M]

APPENDIX G

Title 45—Public Welfare

CHAPTER XX—UNITED STATES FIRE ADMINISTRATION, DEPARTMENT OF COMMERCE

PART 2012—ISSUING AND REVIEW OF USFA REGULATIONS

AGENCY: United States Fire Administration (Note: The name of the National Fire Prevention and Control Administration was changed by Pub. L. 95-422 to the United States Fire Administration).

ACTION: Final rule.

SUMMARY: The Administrator of the United States Fire Administration (USFA) is authorized and directed by the Federal Fire Prevention and Control Act of 1974 (Pub. L. 93-498, 88 Stat. 1535, 15 U.S.C. 2201 *et seq.*, 278 f, 42 U.S.C. 290(a)), "the Act", to carry out certain fire prevention and control programs. Section 21(b) of the Act authorizes the Administrator to "establish such rules, regulations and procedures as are necessary to carry out the provisions of [the] Act." To carry out his responsibilities under the Act, the Administrator has found it necessary, and will likely find it necessary, to issue rules and regulations. This rule sets out the procedures by which such regulations will be issued. It further provides for the review of existing regulations, on a continuing basis.

Subpart A of the rule contains the purpose, scope and definitions. Subpart B of the rule sets out the method and the procedure for issuing regulations. Subpart C establishes the circumstances under which a regulatory analysis shall be accomplished and the procedure for such an analysis. Subpart D establishes the procedure for the review of existing regulations and for the preparation of a regulatory agenda (to include a listing of proposed regulations, and a schedule for review of existing regulations). Subpart E contains some general administrative provisions.

FOR FURTHER INFORMATION CONTACT:

David F. Snyder, Acting Chief Counsel, United States Fire Administration, U.S. Department of Commerce, P.O. Box 19518, Washington, D.C. 20036, Telephone: 202-632-9685.

SUPPLEMENTARY INFORMATION: On March 23, 1978, the President signed Executive Order 12044, "Improving Government Regulations." The policies of that Executive Order, the Department of Commerce, and this rule are: the promulgation of only

those regulations which are necessary, the provision for maximum public participation in regulatory affairs, the continuous review of existing regulations, and the special analysis of significant regulations.

To comply with Section 5 of Executive Order 12044, the following information is provided:

USFA has not previously published a detailed system for issuing regulations. Nonetheless, it has followed procedures consistent with the notice and comment rulemaking requirements of the Administrative Procedure Act. In one rulemaking, a Notice of Proposed Rulemaking was published with a ninety-day comment period. Comments were reviewed and the final publication occurred several months later.

In the second, more complex rulemaking, USFA followed a distinctly different process. Extensive consultations were held with and correspondence exchanged between the Office of the Chief Counsel, USFA, the General Counsel of the Department of Commerce, the General Counsel of the Department of Treasury, and the Office of Legal Counsel, Department of Justice. After the consultation and review, a Notice of Proposed Rulemaking was published with a sixty-day comment period. Simultaneously, the draft regulations were submitted to the State Fire Marshals, the State Attorneys General, the Mayors of some of the largest cities of each state, the heads of the legal staff of many federal agencies, and safety officers within some federal agencies. During the comment period, meetings were held with fire service officials in several states, with fire service officials employed by federal agencies, and inquiries, via telephone and the mails, were responded to. The comments were reviewed and the final regulations were published in the FEDERAL REGISTER and were soon thereafter published in the agency newsletter, FIREWORD, which is distributed free of charge to over 20,000 fire service, academic, and governmental personnel.

Subpart B, which sets forth a new process for developing and reviewing regulations, was published for comments to be consistent with Executive Order 12044 and departmental regulations. Under the new process, 45 CFR Part 2010 "Reimbursement for Costs of Firefighting on Federal Property", and 45 CFR Part 2011, "Public Safety Awards to Public Safety Officers", are to be reviewed first.

During the public comment period following the Notice of Proposed Rulemaking, no substantive comments were received. Any changes to the rules are procedural and are made to comply with the Department of Commerce rules or the principles set forth

in the "Guide on Agency Reports under Executive Order 12044" as issued by the Administrative Conference of the United States and published at 43 Fed. Reg. 36412-36422.

To carry out the policies of the Executive Branch as announced in Executive Order 12044, applicable regulations of the Department of Commerce and the policies of the Administrator, USFA, Title 45 of the Code of Federal Regulations is amended by establishing a new Part 2012, as follows:

Subpart A—Purpose, Scope, Definitions

- Sec.
- 2012.01 Purpose.
- 2012.02 Scope.
- 2012.03 Definitions.

Subpart B—Issuing Regulations

- 2012.11 Advanced Notice of Proposed Rulemaking and Public Participation.
- 2012.12 Agency Head Oversight Before Developing New Regulations.
- 2012.13 Notice of Proposed Rulemaking.
- 2012.14 Agency Head Approval Before Issuing Final Regulations.

Subpart C—Regulatory Analysis of Regulations with Major Economic Consequences

- 2012.21 Determination of Need for Regulatory Analysis.
- 2012.22 Contents of Regulatory Analysis.
- 2012.23 Procedure for Regulatory Analysis.

Subpart D—Regulatory Agenda and Review of Existing Regulations

- 2012.31 Regulatory Agenda.
- 2012.32 Review of Existing Regulations.

Subpart E—General Administrative Provisions

- 2012.41 Changes to this Rule.
- 2012.42 Effects of Other Laws.

AUTHORITY: Section 21(b)(5), Pub. L. 93-498, 88 Stat. 1535 (15 U.S.C. 2218(b)(5)) and Executive Order 12044, "Improving Government Regulations" (March 23, 1978).

Subpart A—Purpose, Scope, Definitions

§ 2012.01 Purpose.

(a) On March 23, 1978, the President issued Executive Order 12044, "Improving Government Regulations" which requires that regulations shall not impose unnecessary burdens on the economy, on individuals, on public or private organizations or on state and local governments. The Executive Order requires that regulations shall be developed by a process that insures that:

- (1) The need for and purposes of the regulation are clearly established;
- (2) Heads of agencies and policy officials exercise effective oversight;
- (3) Opportunity exists for early participation and comment by other Federal agencies, State and local governments, businesses, organizations and individual members of the public;

(4) Meaningful alternatives are considered and analyzed before the regulation is issued; and

(5) Compliance costs, paperwork and other burdens on the public are minimized.

(b) It is the policy of the United States Fire Administration, as determined by the Administrator, USFA, that USFA regulations shall be imposed only where necessary and after the maximum feasible participation. It is also the purpose of these rules to establish a continuous review of existing regulations.

§ 2012.02 Scope.

This rule applies to all rulemaking pursuant to Section 1 of the Administrative Procedure Act (5 U.S.C. 553) and to regulations which establish conditions for financial assistance. This rule does not apply to regulations issued in accordance with 5 U.S.C. 556 and 557, to matters related to agency management or personnel, and to regulations that are issued in response to an emergency or which are governed by short-term statutory or judicial deadlines. In these cases, the head of the agency shall publish in the FEDERAL REGISTER a statement of the reasons why it is impracticable or contrary to the public interest for the agency to follow the procedures of these regulations. The statement shall include the name of the policy official responsible for this determination.

§ 2012.03 Definitions.

(a) The "Act" means the Federal Fire Prevention and Control Act of 1974 [Pub. L., 93-498, 88 Stat. 1535, 15 U.S.C. 2201 *et seq.*, 278f, 42 U.S.C. 290(a)].

(b) "Agency Head" means the Administrator of the United States Fire Administration.

(c) "Agenda" means the semi-annual listing of proposed regulations and existing regulations to be reviewed.

(d) "Major economic consequences" means any regulation which:

(1) During any one year of its existence, can be expected to result in an effect (direct and indirect) on the economy of \$50 million or more;

(2) During any one year of its existence, can be expected to result in an effect (direct or indirect) on either consumers, industries, levels of government, or geographic regions exceeding \$25 million;

(3) During any one year of its existence, can be expected to result in an increase of costs or prices of 5 percent or more for the specific activity, product(s) and/or service(s) affected by the proposed rule or regulation;

(4) Can be expected to reduce labor productivity by 1 percent or more in the item which is the unit of focus in the regulation;

(5) Can be expected to reduce employment by 5 percent or more in the activity which is the unit of focus in the regulation;

(6) For the particular market(s) affected, can be expected to result in a 1 percent or more decline in supply of materials, products or services, or a 1 percent or more increase in consumption of these materials, products or services as direct or indirect result of the regulation; or

(7) For the particular market(s) affected, can be expected to result in a decline in competition as a result of the regulation. Factors to be considered include limitation of market entry, restraint of market information, or other restrictive factors that impede the functioning of the market system.

(e) "Regulations" means actions of the agency which are required by the Administrative Procedure Act (5 U.S.C. 553) to be carried out pursuant to informal rulemaking and rules and regulations which establish conditions for financial assistance. Not included in this definition are regulations issued in accordance with the formal rulemaking procedures of the Administrative Procedure Act (5 U.S.C. 556 and 557), matters related to agency management or personnel, regulations related to Federal Government procurement, regulations issued in response to an emergency or which are governed by short-term statutory or judicial deadlines. Also not included in this definition are regulations which govern the administration or management of grants (except rules which establish conditions for receipt of financial assistance), cooperative agreements, leases, and other agreements entered into between the agency and any other party.

(f) "Significant Regulations" means regulations:

(1) Which would substantially affect the expenditure of the funds for one program area which are not expended for personnel and administrative purposes;

(2) Which would substantially and nationally affect fire service, State or local government fire prevention and control planning, management, or operations;

(3) Which would substantially add to the involuntary reporting and compliance burden of USFA funding recipients;

(4) Which would substantially and nationally affect competition; or

(5) Which would have a substantial negative impact on the programs of any other Federal agency.

Subpart B—Issuing Regulations

§ 2012.11 Advance Notice of Proposed Rulemaking and Public Participation.

Prior to the decision to develop a regulation, an advanced notice of proposed rulemaking shall be published in the FEDERAL REGISTER.

(a) Advanced notices of proposed rulemaking may be issued by the agency head, by an Associate Administrator, by the Superintendent of the National Academy for Fire Prevention and Control or by the Chief Counsel of the agency. In any event, all notices of proposed rulemaking must be approved by the Chief Counsel.

(b) The contents of advanced notices of proposed rulemaking shall be consistent with requirements of the FEDERAL REGISTER and shall include the following:

(1) The name of the agency, the issuing official, the official assigned to direct the project out of which the notice arises, and his address and telephone number,

(2) A solicitation of written comments from the public, with a deadline of no less than 45 days following publication of the advanced notice,

(3) A description of the problem for which the notice is issued,

(4) A description of known solutions to the problem for which the notice is issued, including solutions which have been proposed or considered and solutions which may be proposed or considered, and

(5) Information available on additional publication, conferences or meetings, which are scheduled or to be scheduled on the subject of the notice.

(c) Other devices to encourage public participation shall be used to the fullest extent feasible, including: seminars, hearings, publication, and notification of those directly interested.

§ 2012.12 Agency Head Oversight Before Developing New Regulations.

After the deadline for public comment under an advanced notice of proposed rulemaking, after any further steps to encourage public participation have been taken and before proceeding to develop new regulations, the agency head shall, based upon information provided by the Chief Counsel and the appropriate Associate Administrator:

(a) Determine whether a new regulation is to be developed,

(b) For all new regulations:

(1) Review the issues to be considered.

(2) Review the alternative approaches to be explored.

(3) Establish a plan for obtaining additional public comment.

(4) Establish target dates for the completion of steps in the development of the regulations.

(5) Determine whether the regulation is a significant regulation.

(c) For new significant regulations:

(1) Determine that the proposed regulation is needed.

(2) Determine that the direct and indirect effects of the regulation have been adequately considered.

(3) Determine that alternative approaches have been considered and the least burdensome of the acceptable alternatives have been chosen.

(4) Determine that public comments have been considered and an adequate response has been prepared.

(5) Determine that State and local government officials have been consulted, when there is significant inter-governmental impact.

(6) Determine that the regulation is written in plain English and is understandable to those who must comply with it.

(7) Determine that an estimate has been made of the new reporting burdens or recordkeeping requirements necessary for compliance with the regulation.

(8) Determine that the name, address and telephone number of a knowledgeable agency official are included in the publication.

(9) Establish a plan for evaluating the regulation after its issuance has been developed.

(10) Determine whether a regulatory analysis is required.

§ 2012.13 Notice of Proposed Rulemaking.

(a) After approval by the agency head, new regulations shall be published in the FEDERAL REGISTER as a notice of proposed rulemaking.

(b) The notice of proposed rulemaking shall include:

(1) Information in the form required by the FEDERAL REGISTER and applicable regulations,

(2) A public comment period of no less than 60 days,

(3) A draft of the proposed regulations,

(4) For regulations that are not significant regulations, a statement that they are not significant,

(5) For regulations with major economic consequences:

(i) An explanation of the regulatory approach that has been selected or is favored,

(ii) A short description of the other alternatives considered,

(iii) A statement of how the public may obtain a copy of the draft regulatory analysis, and

(6) For significant regulations or regulations with major economic consequences which may potentially have a substantial affect on State or local governments:

(i) A statement of how advice from the government was obtained,

(ii) A summary of the nature of the comments, and

(iii) A statement that consultations occurred sufficiently early in the decisionmaking process to influence the action.

(c) All feasible methods of encouraging public participation shall, in addition, be used, including conferences and public hearings, notices of proposed regulations to publications likely to be read by those affected and notification of interested parties directly.

(d) If new significant substantive issues are raised in the comments, which were not raised in the original notice of proposed rulemaking, an additional notice of proposed rulemaking shall be published.

§ 2012.14 Agency Head Approval of Final Issuance.

The agency head shall approve all final regulations before they are formally issued for publication in the FEDERAL REGISTER.

(a) The agency head shall determine whether the final regulations are significant.

(1) If they are, he shall review the determinations and actions of § 2012.12C and shall see that they are accurate.

(2) If the determination and actions of § 2012.12C were not made, he shall make them.

(b) If the regulations have major economic consequences, the final publication shall include:

(1) A notice of a final regulatory analysis, and where a copy of it may be obtained,

(2) An explanation of the regulatory method selected, and

(3) A discussion of alternative regulatory methods and why the selected method prevailed.

(c) The contents and form of the publication of final regulations shall be as required by the FEDERAL REGISTER and the Code of Federal Regulations.

(d) For regulations which are not significant, a statement to that effect shall be a part of the final publication.

Subpart C—Regulatory Analysis of Regulations with Major Economic Consequences

§ 2012.21 Determination of Need for Regulatory Analysis.

A regulatory analysis shall be conducted by the office which originated the regulations with the concurrence of the agency head, for all regulations with major economic consequences or for any regulation at the discretion of the agency head, in draft, before the

notice of proposed rulemaking and, in final form, before the final issuance of the regulation.

§ 2012.22 Contents of Regulatory Analysis.

Each regulatory analysis shall contain:

(a) A succinct statement of the problem,

(b) A description of the major alternative ways of dealing with the problem that were considered by the agency,

(c) A comparison of the economic and other consequences of each of these alternatives,

(d) A detailed explanation for choosing one alternative over the others,

(e) All information required by Executive Order 12074 of August 16, 1978 and OMB Circular A-116 which implements that Executive Order, and

(f) Where there is significant inter-governmental impact, a statement of:

(1) Efforts to consult with State and local officials,

(2) The nature of State and local government comments, and

(3) How the agency dealt with the comments.

§ 2012.23 Procedure for Regulatory Analysis.

(a) The agency head shall be responsible for applying the criteria of § 2012.21 to determine if a regulatory analysis is necessary.

(b) The agency head must approve a draft regulatory analysis before new regulations with major economic consequences are published as a notice of proposed rulemaking.

(c) The agency head must approve a final regulatory analysis for all new regulations with major economic consequences prior to issuance as a final regulation.

(d) Agency head approvals shall be based on a determination that the regulatory analysis:

(1) Satisfies the requirements of the Executive Order 12044, applicable Department of Commerce regulations, and these rules, particularly § 2012.22, and

(2) Satisfies whatever additional requirements the agency head has imposed.

(e) The agency head shall submit draft regulatory analyses to the Chief Economist, at least 15 days before publication.

Subpart D—Regulatory Agenda and Review of Existing Regulations

§ 2012.31 Regulatory Agenda.

(a) By January 15, 1979, and every six months thereafter, the agency head shall submit a regulatory agenda to the Assistant Secretary for Policy.

(b) The regulatory agenda shall include the following:

(1) A description of regulations under development or being considered for development, including, to the extent feasible:

(i) A statement of whether the regulation has been determined to be a significant regulation;

(ii) The need and the legal basis for the action being taken;

(iii) A statement on whether a regulatory analysis will be required;

(iv) The name and telephone number of a knowledgeable official;

(v) A listing of major issues likely to be considered in developing the regulation;

(vi) A tentative plan for obtaining public comment and, where applicable, for consulting with State and local governments;

(vii) Target dates for completing steps in the development process; and

(viii) Information on the status (including changes to the information required by § 2012.31(b)(1)) of all proposed significant regulations listed in previous agendas until these regulations are published as final in the FEDERAL REGISTER.

(2) A list of existing regulations scheduled to be reviewed, during the next six months, including the name and telephone number of a knowledgeable official for each such regulation;

(3) Information on the status of existing regulations previously scheduled for review; and

(4) A list, including the date and FEDERAL REGISTER citation, of all final regulations published in the FEDERAL REGISTER during the previous six months.

(c) The agency head shall notify the Assistant Secretary for Policy when regulations are developed, reviewed or significant changes have occurred in their status before the next agenda publication.

§ 2012.32 Review of Existing Regulations.

(a) The agency head shall periodically (at least semiannually) review all existing regulations to determine whether they are achieving the goals

of agency policy, these regulations, and the policies of Executive Order 12044 "Improving Government Regulations" (March 23, 1978).

(b) In reviewing existing regulations, the agency head shall consider:

(1) The continued need for the regulation,

(2) The type and number of complaints or suggestions received regarding the regulation,

(3) The burdens imposed on those directly or indirectly affected by the regulations,

(4) The need to simplify or clarify language,

(5) The need to eliminate overlapping and duplicative regulations, and

(6) The length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation.

(c) When the review in (b), above, indicates that further evaluation of a regulation is warranted, the same procedural steps outlined for the development of new regulations in §§ 2012.12, 2012.13, and 2012.14 shall be followed.

Subpart E—General Administrative Provisions

§ 2012.41 Changes to this part.

The contents and procedures established by this part do not apply to amendments, modifications, or additions to this part.

§ 2012.42 Effects of Other Law.

This part is not intended to create delay in the regulatory and administrative processes or provide new grounds for judicial review. Nothing in this part shall be considered to supersede existing statutory obligations governing rulemaking.

JOSEPH A. MORELAND,
Acting Administrator, National
Fire Prevention and Control
Administration.

JANUARY 4, 1979.

APPENDIX H—NATIONAL OCEANIC AND
ATMOSPHERIC ADMINISTRATION

I. CHANGES IN THE EXISTING RULEMAKING
PROCESS

The process for developing regulations within NOAA already incorporates many of the improvements suggested by Executive Order 12044 and Departmental Administrative Order 218-7, particularly with respect to soliciting and incorporating public participation and comment as early in the development process as practicable. For example, under the Coastal Zone Management Act, State and local governments and other interested parties affected by regulations are consulted by rulemakers at an early stage in the regulatory development process. All segments of NOAA freely use the local press to reach the public for comments involving local issues, and NOAA rulemakers liberally publish advance notice of proposed rulemakings when such a procedure is deemed justified and helpful. In addition, NOAA generally employs a comment period of at least sixty days for major regulations, and has, where desirable, utilized more than one round of comments.

On the other hand, the procedures established by Departmental Administrative Order 218-7 change the NOAA regulatory development process in significant ways. Whereas previously the Administrator has delegated substantial rulemaking authority to Assistant Administrators, he is now personally brought into the rulemaking process at a much earlier stage, at least with regard to significant regulations. Furthermore, NOAA previously has had no formalized criteria for determining the significance of regulations, or for identifying which of its existing regulations needed review. The new rulemaking procedures place much greater stress on developing alternatives to ascertain that the least burdensome alternative is chosen. We anticipate that by scrutinizing alternatives to a contemplated regulation early in the decisionmaking process, certain regulations which otherwise would have been promulgated will be found to be unnecessary or undesirable. Finally, NOAA anticipates that Departmental Administrative Order 218-7, as supplemented herein, will provide a structural framework which provides consistency and clarity to our rulemaking procedures.

II. CRITERIA FOR DETERMINING THE
SIGNIFICANCE OF REGULATIONS

A contemplated regulation shall be considered "significant" if it—

(a) Creates a major impact upon the environment of economy;

(b) Affects a large number of individuals, businesses, organizations, State or local governments;

(c) Places burdensome recordkeeping and reporting requirements on the public;

(d) Has an integral relationship either to the regulations of other programs and agencies or to major Departmental policy issues; or

(e) Is the subject of controversy or significant public interest.

III. CRITERIA FOR IDENTIFYING WHICH
REGULATIONS REQUIRE REGULATORY
ANALYSIS

A. Office of Fisheries

A regulatory analysis shall be prepared for all regulations of the Office of Fisheries which:

(a) During any one year of its existence, can be expected to result in an effect (direct and indirect) on the economy of \$20 million or more;

(b) During any one year of its existence, can be expected to result in an effect (direct and indirect) on either consumers, industries, levels of government, or geographic region exceeding \$10 million;

(c) During any one year of its existence, can be expected to result in an increase of cost or price of five percent or more for the specific activity, product(s) and/or service(s) affected by the proposed rule or regulation;

(d) Can be expected to reduce labor productivity by 1 percent or more in the item which is the unit of focus in the regulation;

(e) Can be expected to reduce employment by five percent or more in the sector of the fishing industry which is the unit of focus in the regulation;

(f) For the particular market(s) affected, can be expected to result in a ten percent or more decline in supply of materials, products or services, or a ten percent or more increase in consumption of these materials, products or services as direct or indirect result of the regulation; or

(g) For the particular market(s) affected, can be expected to result in a decline in competition as a result of the regulation. Factors to be considered include limitation of market entry, restraint of market information, or other restrictive factors that impede the functioning of the market system.

(h) During any one year of its existence, can be expected to result in a decrease in revenues or profits of ten percent or more in the sector of the fishing industry directly affected by the regulation.

A regulatory analysis shall also be prepared when:

(i) In the judgment of the Administrator, such an analysis would benefit the decisionmaking process and/or

promote more informed public participation; or

(j) The Secretary determines, in accordance with Departmental Administrative Order 218-7, that such an analysis should be performed.

B. All Other NOAA Elements

A regulatory analysis shall be prepared for all regulations other than those of the Office of Fisheries which:

(a) During any one year of its existence, can be expected to result in an effect (direct or indirect) on the economy of \$50 million or more;

(b) During any one year of its existence, can be expected to result in an effect (direct or indirect) on either consumers, industries, levels of government, or geographic region exceeding \$25 million;

(c) During any one year of its existence, can be expected to result in an increase of cost or price of five percent or more for the specific activity, product(s) and/or service(s) affected by the proposed rule or regulation;

(d) Can be expected to reduce labor productivity by 1 percent or more in the item which is the unit of focus in the regulation;

(e) Can be expected to reduce employment by five percent or more in the activity which is the unit of focus in the regulation;

(f) For the particular market(s) affected, can be expected to result in a one percent or more decline in supply of materials, products or services, or a one percent or more increase in consumption of these materials, products or services as direct or indirect result of the regulation; or

(g) For the particular market(s) affected, can be expected to result in a decline in competition as a result of the regulation. Factors to be considered include limitation of market entry, restraint of market information, or other restrictive factors that impede the functioning of the market system.

A regulatory analysis shall also be prepared when:

(h) In the judgment of the Administrator, such an analysis would benefit the decisionmaking process and/or promote more informed public participation; or

(i) The Secretary determines, in accordance with Departmental Administrative Order 218-7, that such an analysis should be performed.

A regulatory analysis shall be prepared in conformance with Departmental Administrative Order 218-7, section 5.04. If data is lacking or there are questions about how to determine or analyze points of interest, the problem should be noted in the draft regulatory analysis so as to help elicit the necessary information during the public comment period on the notice of proposed rulemaking.

NOTICES

IV. CRITERIA FOR DETERMINING THE EXISTING REGULATIONS TO BE REVIEWED

The Assistant Administrators shall be responsible for an initial selection and subsequent periodic selections of existing regulations for review and possible revocation or revision. In selecting regulations to be reviewed and establishing priorities, the responsible Assistant Administrators shall select those regulations—

- (1) For which there is no continued need;
- (2) Which have been the subject of a number of complaints or suggestions;
- (3) Which impose heavy burdens on those directly or indirectly affected by the regulation;

(4) Which need to be clarified or simplified;

(5) Which overlap and duplicate other regulations; or

(6) Which have not undergone evaluation for a period of four or more years.

An existing regulation selected for review shall remain in full effect until such time as it may be revised or revoked.

V. EXISTING REGULATIONS SELECTED FOR INITIAL REVIEW

The following existing regulations have been selected for initial review:

Regulation	Reasons for Selection	Contact Person
15 CFR Part 931—Coastal Energy Impact Program.	(1) Has been the subject of complaints, comments, and criticisms. (2) Need to clarify and simplify. (3) Anticipated change in statutory language by Outer Continental Shelf Lands Act Amendments.	James Robcy Tel: 634-4249, Office of Coastal Zone Management, 2001 Wisconsin Ave. NW., Room 372, Page Bldg. 1, Washington, D.C.
50 CFR 620—FCMA Citations	NOAA effort to simplify and consolidate our civil penalty procedures under the six statutes authorizing such penalties.	Stan Pitkin Tel: (206) 399-0329, Building 25, Room 23, 7500 Sand Point Way NE, Seattle, Washington.
50 CFR 621—FCMA Civil Procedures	.....do.....	Do.
50 CFR 218—Subpart C—Marine Mammals—Civil Procedures	.....do.....	Do.
50 CFR 219—Marine Mammals—Seizure and Forfeiture Penalties	.....do.....	Do.
50 CFR 216—Subpart F—Taking and Importing of Marine Mammals	.....do.....	Do.
50 CFR 285.6—Atlantic tuna fisheries—Civil Procedures	.....do.....	Do.
50 CFR 246—Transportation of wildlife—Civil penalties under Lacey Act	.....do.....	Do.
15 CFR 922—Subpart D—Marine Sanctuaries—Enforcement	.....do.....	Do.
15 CFR 903—Public Information—Implementation of the Freedom of Information Act	Length of time until regulation issued or evaluated.	Jay Johnson Tel: (703) 443-8066, Room 627, 6100 Executive Blvd., Rockville, Md. 20852.
50 CFR Part 210—Renegotiated INPFC	Authorizing legislation underlying international agreement has been changed or eliminated.	Carmen J. Blondin Tel: (202) 634-7267, Asst. Director for Intl. Fisheries, Room 240, Page Bldg. 2, 3300 Whitehaven St., NW., Washington, D.C. 20235.
Part 240/241—Withdrawal from ICNAF	.....do.....	Do.
Part 295—Repeal of the Bartlett Act	.....do.....	William P. Allen Tel: (202) 634-7265, Special Agent Enforcement Division, Room 361, Page Bldg. 2, 3300 Whitehaven St., NW., Washington, D.C. 20235.
Part 201—Field Organization of the National Marine Fisheries Service	Length of time since regulation issued or evaluated.	Robert K. Crowell Tel: (202) 634-7405, Executive Officer, Room 428A, Page Bldg. 2, 3300 Whitehaven St., NW., Washington, D.C. 20235.
Part 215—Pribilof Islands Administration of Marine Mammals	.....do.....	Donald R. Johnson Tel: (206) 442-7575, Regional Director, Northwest Region, NMFS, 1700 West Ave., North, Seattle, Wash. 98109.
Part 216—Taking and Importing Marine Mammals (except § 216.24)	.....do.....	William F. Jensen Tel: (202) 634-7461, Marine Mammal Division, Room 410B, Page Bldg. 2, 3300 Whitehaven St., NW., Washington, D.C. 20235.

Regulation	Reasons for Selection	Contact Person
Parts 217 thru 225—Endangered Species Act and Fish and Wildlife Act—Implementation.	.....do.....	Robert B. Gorrell Tel: (202) 634-7461, Endangered Species Specialist, Room 406A, Page Bldg. 2, 3300 Whitehaven St., NW., Washington, D.C. 20235.
Part 230—Whaling Provisions (except native subsistence)—Enforcement of Whaling Convention Act.	.....do.....	Richard B. Roe Tel: (202) 634-7461, Acting Chief, Marine Mammal & Endangered Species Division, Room 410C, Page Bldg. 2, 3300 Whitehaven St., NW., Washington, D.C. 20235.
Part 245—Offshore Strimp Fisheries Act—Implementation.	.....do.....	William H. Stevenson Tel: (813) 893-3141, Regional Director, Southeast Region, NMFS, 9450 Koger Blvd., St. Petersburg, Fla. 33702.
Part 246—Transportation of Wildlife.....	.....do.....	Morris M. Palozzi Tel: (202) 634-7265, Chief, Enforcement Div., Room 361, Page Bldg. 2, 3300 Whitehaven St., NW., Washington, D.C. 20235.
Part 245 thru 259—Subchapter F—Aid to Fisheries.	.....do.....	Michael L. Grabie Tel: (202) 634-7496, Chief, Financial Assistance Division, Room 312, Page Bldg. 2, 3300 Whitehaven St., NW., Washington, D.C. 20235.
Part 260 thru 279—Subchapter G—Processed Fishery Products.	.....do.....	James R. Brooker Tel: (202) 634-7458, Food Technologist Seafood Quality & Inspection Division, Room 380, Page Bldg. 2, 3300 Whitehaven St., NW., Washington, D.C. 20235.
Part 281—Restrictions on Tuna Imports—Inter-American Tropical Tuna Convention.	.....do.....	Carmen J. Blondin Tel: (202) 634-7267, Asst. Director for Intl. Fisheries, Room 240, Page Bldg. 2, 3300 Whitehaven St., NW., Washington, D.C. 20235.
Part 290—Fishery Marketing Cooperatives Restraint of Trade.	.....do.....	Joseph W. Slavin Tel: (202) 634-7261, Asst. Director for Fisheries Development, Room 300, Page Bldg. 2, 3300 Whitehaven St., NW., Washington, D.C. 20235.
Part 301—Pacific Halibut Fisheries and the International Pacific Halibut Commission.	.....do.....	William H. MacKenzie Tel: (202) 634-7257, Foreign Affairs Officer, Room 249, Page Bldg. 2, 3300 Whitehaven St., NW., Washington, D.C. 20235.
Part 401—Anadromous Fisheries Conservation, Development and Enhancement under the Anadromous Fisheries Conservation Act.	.....do.....	Paul R. Nichols, Tel: (202) 634-7434, Fishery Administrator, Room 340, 3300 Whitehaven St., NW., Washington, D.C. 20235.

VI. DETERMINATION OF SIGNIFICANCE AND DETERMINATION OF THE NEED FOR REGULATORY ANALYSIS

The following officials shall determine initially whether a regulation is significant and whether that regulation requires a regulatory analysis:

- (1) The Assistant Administrator for Fisheries
- (2) The Assistant Administrator for Coastal Zone Management
- (3) The Assistant Administrator for Administration
- (4) The Assistant Administrator for Research and Development

(5) The Assistant Administrator for Oceanic and Atmospheric Services

These initial determinations by an Assistant Administrator shall be reviewed and approved by the Administrator.

VII. PREPARATION OF THE REGULATORY AGENDA

On January 15 and July 15 of each year, the Administrator shall submit the NOAA regulatory agenda to the Assistant Secretary for Policy of the Department of Commerce in order to enable examination and review of the agenda by the Office of the Secretary. Each regulatory agenda shall include:

a. a description of each regulation covered by DAO 218-7 which is under development or being considered for development, including, to the extent feasible:

(1) a statement whether the regulation has been determined to be a significant regulation;

(2) the need and the legal basis for the action being taken;

(3) a statement whether or not a regulatory analysis will be required;

(4) the name and telephone number of a knowledgeable official;

(5) a listing of major issues likely to be considered in developing the regulation;

(6) a tentative plan for obtaining public comment, and where applicable, for consulting with State and local governments;

(7) proposed dates for completing steps in the development process; and

(8) information on the status of proposed significant regulations listed in previous agendas which are not yet published as final in the FEDERAL REGISTER.

b. a list of each existing regulation scheduled to be reviewed, including the name and telephone number of a knowledgeable official for each regulation;

c. information on the status of existing regulations listed for review in previous agendas, and

d. a list, including the date and FEDERAL REGISTER citation, of all final regulations published in the FEDERAL REGISTER during the previous six months.

If there are no plans for developing or reviewing regulation, the Administrator will so report to the Assistant Secretary for Policy.

The Administrator, in order to prevent undue delay, shall notify the Assistant Secretary for Policy whenever it becomes apparent that:

a. development or review of significant regulations not listed in the previous Department Agenda will commence before publication of the next Department Agenda, or

b. development or review of a regulation listed in the previous Department Agenda will not commence as scheduled.

In such an event, the Administrator shall publish a supplement to the Department of Commerce agenda.

The information contained in any agenda is only that which is reasonably expected to be known at the time of its preparation.

VIII. COMMENTS

Any comment on this report should be directed in writing to: Michael A. Levitt, Office of General Counsel, National Oceanic and Atmospheric Administration, Washington, D.C. 20230 (Tel: 377-4080).

APPENDIX I—NATIONAL TELECOMMUNICATIONS AND INFORMATION ADMINISTRATION

I. INTRODUCTION

The National Telecommunications and Information Administration was established effective March 26, 1978. It absorbed the functions of the Office of Telecommunications Policy in the Executive Office of the President (with exceptions explained in Executive Order 12046, "Relating to the Transfer of Telecommunications Functions") and the Office of Telecommunication in the Department of Commerce.

NTIA does not have, nor did its predecessor offices have, any established procedures for issuing regulations covered by Executive Order 12044 and the Department's implementing administrative order, DAO 218-7. NTIA does have regulations governing the management of Federal agency use of radio frequencies, and procedures for issuing them. Because these regulations are related to the management of Federal agencies, Executive Order 12044 does not apply to them (see Section 6(b)(3)). Thus, NTIA has no regulations covered by the order.

NTIA establishes herein, for any future regulations covered by Executive Order 12044 and DAO 218-7, the following: (1) a process for developing them; (2) criteria for deciding which of them are significant under Section 2 of the order; and (3) criteria for identifying

which of them require regulatory analysis under Section 3 of the order. Criteria for selecting existing regulations to be reviewed under Section 4 of the order will be established concurrently with NTIA's first issuance of regulations covered by the order.

The process and criteria adopted herein are substantially similar to those published in draft form at 43 Fed. Reg. 23190-13191 (1978), upon which no comments were received.

II. PROCESS FOR DEVELOPING REGULATIONS

The NTIA process requires the preparation and approval of an issue paper before the development of *any* regulation(s) covered by Executive Order 12044. The issue paper must undergo staff review and be submitted for approval to the Assistant Secretary for Communications and Information, who is also the Administrator of NTIA (hereinafter called the Administrator). The issue paper must cover (1) the need, purpose and alternatives required by Section 1 of the Executive order; (2) whether the regulation is significant under Section 2(e) of the order and NTIA criteria (Part III) of this draft report; (3) whether a regulatory analysis is required under Section 3 of the order and NTIA criteria (Part IV of this draft report); and (4) plans for compliance with all applicable requirements of the order and the Department's Administrative Orders. One of the plans must show exactly how the opportunity will be provided for early participation and comment by other Federal agencies, State and local governments, businesses, organizations, and individuals, as required by Section 1(c) of the order. In preparing this plan, consideration will be given to (1) publishing an advance notice of proposed rulemaking, (2) holding open conferences or public hearings, (3) sending notices of proposed regulations to publications likely to be read by those affected; and (4) notifying interested parties directly, and the plan will include the method(s) which are most appropriate to the regulation(s) proposed to be developed.

As NTIA begins to develop *any* regulation(s), the information from the approved issue paper, which is necessary to public understanding of the issues and process to be followed, will be made public by following the issue paper's plan for providing an early opportunity for participation and comment. Notice of development of a *significant* regulation will also be published in the Department's Semi-annual Agenda of Significant Regulations, or a supplement to the agenda.

Development will proceed in compliance with the order. After appropriate

analysis and consideration of public comments, a Notice of Proposed Rulemaking will be prepared for staff review and approval of the Administrator or Secretary (or Deputy Administrator if the regulation is not significant). After publication of the notice in the FEDERAL REGISTER and circulation to the appropriate media as set forth in the issue paper's plan for providing an early opportunity for participation and comment, the resulting comments will be analyzed. A notice of the final regulation (which includes a plan for subsequent evaluation) will be prepared for staff review and final approval of the officer who approved the notice of Proposed Rulemaking. Upon approval, the notice will be appropriately published and put into effect.

III. CRITERIA FOR IDENTIFYING SIGNIFICANT REGULATIONS

As noted above, NTIA has not yet issued any regulations of that type covered by the Executive order. Thus, except for the Department's minimum criteria for requiring regulatory analysis, NTIA has nothing with which to compare our proposed specific criteria, nor to judge their reasonableness.

We have prepared two economic criteria, which are based upon the Department's minimum standards. In all other respects, NTIA must use general criteria until the opportunity occurs to develop specific regulations. The following have been prepared for the area of telecommunications and information in general, and are intended to serve as an interim check list to aid in deciding whether a proposed regulation would have a significant effect on the *status quo*. The criteria are as follows:

Criteria for Identifying Significant Regulations. A regulation shall be considered significant if it appears at the time of evaluation that:

(a) During any one year of its existence, the regulation can be expected to result in an effect (direct or indirect) on the economy of \$30 million or more;

(b) During any one year of its existence, the regulation can be expected to result in an effect (direct or indirect) on either consumers, industries, levels of government, or geographic regions exceeding \$15 million;

(c) It will have some other economic impact which is large enough to require regulatory analysis (Part IV);

(d) It will have a substantial effect upon the availability of the radio spectrum resource, other telecommunication resources, information resources, or upon the use of any of these resources;

(e) It will have a substantial effect upon a telecommunications or information equipment or service industry, or the structure of one or more such

industries, and is likely to be perceived as important to any such industry;

(f) It will have a substantial effect upon users of telecommunications or information resources, equipment or services (for example, by significantly limiting or expanding users' ability or opportunity to use them, or the range of choices available to users), or upon non-users, and is likely to be perceived as important to users or non-users; or

(g) It will require a substantial change in the existing relationships among suppliers and users of telecommunications and information goods and services, or upon their relationships with non-users.

In applying these criteria, the following factors, at least, shall be considered:

(1) The type and number of individuals, businesses, organizations, State and local governments affected;

(2) The compliance and reporting requirements likely to be required or changed;

(3) The direct and indirect effects of the regulation including the effect on competition;

(4) The relationship of the regulation to those of other programs and agencies;

(5) The relationship of the regulation to major Departmental policy issues;

(6) The degree of controversy over, or public interest in, the regulation; and

(7) The probable social impact of the regulation.

IV. CRITERIA FOR DETERMINING WHETHER REGULATORY ANALYSIS IS REQUIRED

For the reasons previously explained, NTIA has no specific basis for deciding whether its criteria for determining whether regulatory analysis is required should be more rigorous than, or otherwise different from, the minimum criteria for the Department set for in Section 5 of DAO 218-7. Thus, until NTIA does have a specific basis for issuing, and does issue, new criteria, a regulatory analysis must be prepared for all regulations which meet or exceed any of the criteria set forth in subsections .02 and .03 of section 5 of the Department Administrative Order.

V. EXISTING REGULATIONS

As was explained in the introduction to this report, NTIA has no regulations covered by Executive Order 12044. Criteria for selecting existing regulations to be reviewed under Section 4 of the order will be established concurrently with NTIA's first issuance of regulations covered by the order.

APPENDIX J—OFFICE OF MINORITY BUSINESS ENTERPRISE

The Office of Minority Business Enterprise (OMBE) coordinates Federal activities designed to assist minority business, stimulates private sector efforts in support of minority enterprise, and provides financial assistance to private and public organizations that provide management and technical assistance to minority businessmen, as authorized by Executive Order 11625.

The following report is provided as required by Section 5 of Executive Order 12044, Improving Government Regulations:

1. This agency has never issued regulations, and prior to the issuance of Executive Order 12044 no process for developing regulations had been established. Since then the Department of Commerce, to implement the order, has developed Department Administrative Order 218-7, which prescribes procedures for issuing departmental regulations. OMBE has adopted the identical process for issuing its regulations, except as provided below.

2. The Director has determined that all regulations of the agency will be considered significant.

3. If the Director determines that a regulation has potential major economic consequences, a regulatory analysis must be performed. The criteria to be used in determining when a regulation has major economic consequences, and what such an analysis must include, are found in Section 5 of Department Administrative Order 218-7. If the Director determines a regulation has no potential major economic consequences, a regulatory analysis need not be done, unless in the Director's judgment such an analysis would be beneficial.

4. Existing regulations will be reviewed not less frequently than every four years. The procedures to be followed in any review of existing regulations are described in Section 6.04 of Department Administrative Order 218-7. Since this agency has no existing regulations, an initial review cannot be done. Criteria for reviewing existing regulations will be developed when OMBE begins to issue regulations.

APPENDIX K—OFFICE OF REGIONAL DEVELOPMENT

DESCRIPTION OF PROCESS

The Special Assistant to the Secretary for Regional Development carries out the duties of the Secretary of Commerce under Title V and related provisions of the Public Works and Economic Development Act of 1965, as amended, which establishes the Regional Action Planning Commission program. The Special Assistant heads the Office of Regional Development, which assists him/her in meeting the duties under Title V. These tasks include the development of guidelines for the use of Title V funds and liaison with the Regional Commissions and with the Federal Cochairmen to the Commissions. By delegation of authority from the Secretary (DOO 15-5 dated), the Special Assistant

may adopt appropriate regulations applicable to Commission activities in order to carry out the responsibility of administering Title V.

The Commissions are partnerships between the Federal Government and the States which comprise the economic development regions designated by the Secretary pursuant to 42 U.S.C. 3181. Each Commission prepares a long-range economic development plan for its Region and undertakes the funding of economic development planning activities, studies and demonstration projects and the supplemental funding of other Federal grant-in-aid programs.

The Department's regulations on Title V apply to the Regional Commissions and only indirectly affect the public. They generally relate to the administration and management of the program by the Commissions and contain limitations on the use of funds. No regulation controls how businesses or consumers conduct their economic activities, nor do any regulations direct a Commission to make expenditures in any particular program or geographic area within the applicable Region. By the terms of the legislation creating the program, each Commission has a great deal of discretion in choosing specific activities and projects to be assisted.

Because the program is limited in scope, the Special Assistant's staff is small and the regulations have no major impact on the public, there are no formal procedures for developing regulations. However, the process of development always has and will continue to have the following elements:

(a) Examination of the need for a regulation or guideline as the means to resolve a problem, to implement legislation, executive orders or judicial decisions, or to respond to public petitions or requests.

(b) Consultation with the Federal Cochairman to the Commissions and Commission principals in order to draft, review, and re-draft any proposals.

(c) Keeping the members of the Commissions informed of major developments.

(d) Publication of any proposed rule in the FEDERAL REGISTER and solicitation of comments and suggestions from the public.

(e) Consideration of comments and re-drafting of proposals as needed.

(f) Approval by the Special Assistant and publication of final regulations in the FEDERAL REGISTER.

In response to the President's Executive Order and Department of Commerce Administrative Order (DAO) 218-7, the Special Assistant and the Office of Regional Development will modify these regulation development procedures in order to—

(1) Apply the criteria and procedures specified in the Order and in DAO 218-7 for different stages of the development process;

(2) Identify significant regulations early in the development process in order to implement requirements applicable to significant regulations, including developing a tentative plan for obtaining public comments which will provide for early and meaningful participation;

(3) Prepare a regulatory analysis for significant regulations in order to aid the Special Assistant in the decision-making process;

(4) Prepare an agency regulatory agenda for inclusion in the Department agenda;

(5) Estimate new reporting burdens and record-keeping requirements;

(6) Insure that alternatives to the regulatory approach are thoroughly considered;

(7) Submit proposals for legal review;

(8) Establish target dates for the completion of steps;

(9) Check more carefully the language and format of the rules in order to achieve understandability ("plain English"); and

(10) Develop a plan for future evaluation of the regulations.

The Office of Regional Development will attempt to involve all affected parties in the development process and plans to institute intergovernmental consultation procedures for significant regulations as required in the President's memorandum of March 23, 1978, to the heads of executive departments and agencies (concerning consultation with State and local Governments).

CRITERIA FOR DEFINING SIGNIFICANT REGULATIONS

I. The Special Assistant establishes the following criteria for determining which regulations are significant, taking into account the criteria of Executive Order 12044 and DAO 218-7:

(a) Any program regulation developed to implement a future Congressional authorization for a new Regional Commission program area.

(b) Any change in program regulations or any new regulations which will require Regional Commissions—

(1) To make major shifts of funds or major reprogrammings of funds—

(i) For the initiation of new programs or major new policies, or

(ii) For substantially increased financial activity in an existing program area or the substantial augmentation or abatement of an existing program;

(2) To undertake a major redirection of a program activity.

In addition, the Special Assistant may designate any regulation as "sig-

nificant", although it may not meet the above criteria.

II. The Deputy, Office of Regional Development, shall make the initial determination of what is a significant regulation at the time the agency regulatory agenda is prepared. The Special Assistant will review this determination when the agenda is approved for submission to the Assistant Secretary for Policy or when a change is made in the agenda.

PERFORMANCE OF REGULATORY ANALYSIS

The Special Assistant will require the development and use of a regulatory analysis in accordance with DAO 218-7 for each significant regulation as defined above. In addition, the Special Assistant may require the development of a regulatory analysis for any non-significant regulation. This decision will be made at the time the agency regulatory agenda is approved.

REVIEW OF EXISTING REGULATIONS

The Special Assistant and the Office of Regional Development will review all of the Title V regulations in accordance with the policies and procedures of Executive Order 12044. The initial review over the next six months will concentrate on the following Parts of Chapter V, Title 13, Code of Federal Regulations:

—530: Review of Commission Long-Range Economic Plans

—540: Grants for Administrative Expenses of Commissions

550: Technical and Planning Assistance by the Secretary and the Commissions

—560: Supplemental Grants to Other Federal Grant-in-Aid Programs

580: Coordination under the Title V Program.

Within one year this Office will have reviewed all of the regulations in 13 CFR, Chapter V—the remainder dealing with the designation of regions, regional boundaries, commission administration, specific commission demonstration project authorities, and interagency evaluation and coordination. During the next year, each time the review of a set of regulations is completed, this Office will establish a schedule for subsequent review, at least as often as every two years.

CONTACT OFFICIAL

Ms. Frances Pappas, Program Development Officer Office of Regional Development Department of Commerce Room 2092, Main Commerce Building Washington, D.C. 20230 202/377-5174.

APPENDIX L—OFFICE OF SCIENCE AND TECHNOLOGY REVISED REPORT REQUIRED BY SECTION 5(b), E.O. 12044

This report consists of a list of regulations selected for intensive review.

the name and official address of the person to be contacted for further information on this report, and the full text of a directive from the Assistant Secretary for Science and Technology implementing Executive Order 12044 within the Office of Science and Technology.

LIST OF EXISTING REGULATIONS SELECTED FOR INTENSIVE REVIEW

The regulations to be reviewed during the year following issuance of this report are as follows:

15 CFR Part 240—dealing with Barrels and Other Containers for Lime;

15 CFR Part 241—dealing with Barrels for Fruits, Vegetables and Other Dry Commodities, and for Cranberries;

37 CFR sections 1.15, 1.65, 1.107, 1.244, 1.344 and 1.345, dealing with patents; and

37 CFR sections 2.27, 2.64-2.65, 2.91-2.136, 2.141-2.142, 2.146-2.148, 2.165, 2.173 and 2.184, dealing with trademarks.

CONTACT PERSON FOR THIS REPORT

The person to be contacted for information concerning this report is: Robert B. Ellert, Assistant General Counsel for Science and Technology Room 3859, U.S. Department of Commerce, 14th & E Streets NW., Washington, D.C. 20230 Telephone 202-377-5394.

DIRECTIVE IMPLEMENTING EXECUTIVE ORDER 12044

The full text of the Assistant Secretary's directive implementing Executive Order 12044 in the Office of Science and Technology is as follows:

DIRECTIVE TO HEADS OF ORGANIZATIONS WITHIN THE OFFICE OF SCIENCE AND TECHNOLOGY; PROCEDURES FOR ISSUING REGULATIONS

Section 1. Purpose.

The purpose of this directive is to implement Executive Order 12044 of March 23, 1978, Improving Government Regulations, DAO 218-7, Issuing Department Regulations, and section 6 of DAO 205-11, on use of plain English, for organizations within the Office of Science and Technology.

Section 2. Scope.

.01 Except as provided in paragraph .02 of this section, this directive applies to all regulations issued by organization under the jurisdiction of the Assistant Secretary for Science and Technology (hereinafter, the Assistant Secretary), published in the FEDERAL REGISTER.

.02 Unless specifically noted to the contrary, this directive *does not* apply to:

a. Regulations issued in accordance with the formal rulemaking provisions

of the Administrative Procedure Act (5 U.S.C. 556, 557);

b. Regulations issued with respect to a military or foreign affairs function of the United States;

c. Matters related to agency management or personnel, including matters dealing with providing the public with an agency's services;

d. Regulations related to Federal Government procurement;

e. Regulations that are issued in response to an emergency or which are governed by short-term (less than 91 days) statutory judicial deadlines; or

f. Procedures and their implementing specifications governing voluntary compliance programs and standards wherein parties in the private sector may, on their own volition, choose whether or not to participate and may withdraw at any time.

Section 3. Definitions.

.01 *Agency head.* As used in this directive, "agency head" means the Director, National Bureau of Standards, Commissioner, Patent and Trademark Office, the Director, National Technical Information Service, the Assistant Secretary for other organizations within the office of Science and Technology, and persons serving in those positions in an acting capacity. The functions of the agency head may not be delegated.

.02 *Regulation(s).* As used in this directive, "regulation(s)" means both rules and regulations issued by components of the Office of Science and Technology, including those which establish conditions for financial assistance. Closely related sets of regulations shall be considered together.

Section 4. Significant Regulations.

.01 Any regulation issued within the Office of Science and Technology shall be deemed significant for the purpose of this directive.

.02 Before proceeding to develop significant new regulations the agency head shall have reviewed the items in subsection .03 of this section and, as appropriate, any other relevant issues. Furthermore, the agency head shall have reviewed the alternative approaches to be explored; whether a regulatory analysis, as provided for in section 5, is required; a tentative plan for obtaining public comment; and, where applicable, a tentative plan for consultation with state and local governments; and the agency head shall have established a target date for completion of steps in the development of the regulations. All regulations shall be reviewed for legal sufficiency by the chief legal officer of the agency and the Assistant General Counsel for Science and Technology.

.03 Agency heads shall approve significant regulations before they are published in the FEDERAL REGISTER in final form. Before approving signifi-

cant regulations, these officials should be satisfied that:

a. The regulation is needed;

b. The direct and indirect effects of the regulation have been adequately considered;

c. Alternative approaches have been considered and the least burdensome of the acceptable alternatives has been chosen;

d. Public comments (including those from state or local governments) have been considered and an adequate response has been prepared;

e. The regulation is written in plain English so that it is understandable to those who must comply with it;

f. An estimate has been made of the new reporting burdens or recordkeeping requirements necessary for compliance with the regulation;

g. The name, title, address and telephone number of a knowledgeable official is included in the publication; and

h. A plan for evaluating the regulation after its issuance has been developed.

.04 Agency heads may, except where otherwise required by law, in their discretion, refer regulations which they believe to be of particular importance to the Assistant Secretary or through the Assistant Secretary to the Secretary for approval.

Section 5. Regulatory Analysis.

.01 A regulatory analysis shall be prepared for each significant regulation determined to have potential major economic consequences for the general economy, for individual industries, geographic regions, levels of government, or specific elements of the population.

.02 Since a regulatory analysis is designed to aid decisionmakers in promulgating effective regulations, the criteria established should consider the characteristics of their specific programs. However, at a minimum, a regulatory analysis shall be prepared for all regulations which:

a. During any one year of its existence can be expected to result in an effect (direct and indirect) on the economy of \$50 million or more;

b. During any one year of its existence, can be expected to result in an effect (direct or indirect) on either consumers, industries, levels of government, or geographic region exceeding \$25 million;

c. During any one year of its existence, can be expected to result in an increase of cost or price of five percent or more for the specific activity, product(s) and/or service(s) affected by the proposed rule or regulation;

d. Can be expected to reduce labor productivity by one percent or more in the item which is the unit of focus in the regulation;

e. Can be expected to reduce employment by five percent or more in the activity which is the unit of focus in the regulation;

f. For the particular market(s) affected, can be expected to result in a one percent or more decline in supply of materials (including energy), products or services, or a one percent or more increase in consumption of these materials (including energy), products or services as direct or indirect result of the regulation; or

g. For the particular market(s) affected, can be expected to result in a decline in competition as a result of the regulation. Factors to be considered include limitation of market entry, restraint of market information, or other restrictive factors that impede the functioning of the market system.

.03 A regulatory analysis shall also be prepared for any regulation, when:

a. In judgment of the agency head or the Assistant Secretary such an analysis would improve the decision-making; or

b. The Secretary determines, in accordance with DAO 218-7, that such an analysis should be performed.

Section 6. Review of Existing Regulations.

.01 Existing regulations issued within the Office of Science and Technology shall be reviewed annually to determine whether they are achieving the policy goals of Executive Order 12044.

.02 Procedures for review of existing regulations shall, at a minimum, contain the following procedural steps:

a. Inclusion of notice of the review in the semi-annual agenda as required by section 7.02 of this directive, or as appropriate, supplementing the Department Agenda as called for in section 7.03, and notification to the assistant Secretary as called for in section 7.04 of this directive;

b. Agency head oversight as called for in section 4.02, before proceeding with the review;

c. A determination of whether the regulation meets the criteria established for determining if a regulatory analysis must be performed, and, if so, preparing a regulatory analysis in accordance with the procedures established under DAO 218-7;

d. If the review results in a determination that a regulation should be amended or rewritten, compliance with public notice and participation requirements of this directive and DAO 201-9, concerning consultation with state and local governments; and agency head approval of significant regulations before final publication, as set forth in section 4.03 of this directive; and

e. In reviewing existing regulations under this section the agency head shall consider the following:

1. The continued need for the regulation;
2. The type and number of complaints or suggestions received;
3. The burdens imposed on those directly or indirectly affected by the regulation;
4. The need to simplify or clarify language;
5. The need to eliminate overlapping and duplicative regulations; and
6. The degree to which technology, economic conditions or other factors have changed in the area affected by the regulation.

Section 7. Regulatory Agenda.

.01 No later than January 8, 1979, and every six months thereafter, each agency head shall submit its regulatory agenda to the Assistant Secretary. By January 15, 1979, and every six months thereafter, the Assistant Secretary shall submit the regulatory agenda for the Office of Science and Technology to the Assistant Secretary for Policy.

.02 Each regulatory agenda shall include the following:

a. A description of regulations under development or being considered for development, including, to the extent feasible:

1. The need and legal basis for the action being taken;
2. A statement as to whether or not a regulatory analysis will be required;
3. The name, title, and telephone number of knowledgeable official;
4. A listing of major issues to be considered in developing the regulation;
5. A tentative plan for obtaining public comment and, where applicable, a tentative plan for consulting with state and local governments;
6. Proposed dates for completing steps in the development process; and
7. Information on the status (including changes to the information required by this subsection .02a.) of all proposed regulations listed in previous agendas until these regulations are published as final in the FEDERAL REGISTER.

b. A list of existing regulations scheduled to be reviewed within the next 6 months, including the name, title, and telephone number of a knowledgeable official for each such regulation;

c. Information on the status of existing regulations previously scheduled for review; and

d. A list, including the date and FEDERAL REGISTER citation, of all final regulations published in the FEDERAL REGISTER during the previous six months.

.03 Agency heads shall publish supplements to the Department Agenda whenever it becomes apparent that development or review of significant reg-

ulations not listed in the previous Department Agenda will commence before publication of the next Department Agenda or development or review of a regulation listed in the previous Department Agenda will not commence as scheduled.

.04 Agency heads shall immediately notify the Assistant Secretary whenever it becomes apparent that development or review of regulations not listed in their previous agenda will commence before publication of the next Department Agenda, or significant changes have occurred in the status of items listed in their previous agency agenda.

Section 8 Secretarial Approval.

Whenever, under DAO 218-7, Issuing Departmental Regulations, Secretarial approval of a regulation is required, the agency head shall no later than 25 days prior to the proposed date for publication in the FEDERAL REGISTER in final form, submit the regulation to the Assistant Secretary for approval and transmittal to the Secretary.

Section 9. Public Participation.

.01 The public shall be given an early and meaningful opportunity to participate in development of all the regulations.

.02 Agency heads shall, as appropriate, consider a variety of ways to provide this opportunity, including, but not limited to:

- a. Publishing an advance notice of proposed rulemaking;
- b. Holding open conferences or public hearings;
- c. Sending notices of proposed regulations to publications likely to be read by those affected;
- d. Notifying interested parties directly; and
- e. Providing for more than one cycle of public comments.

.03 If none of the methods listed in paragraph .02 of this section are used in a particular rulemaking covered by this directive, the preamble accompanying the final regulation shall briefly explain the reasons and indicate what other steps were taken to assure adequate opportunity for public participation.

.04 The public shall be given at least 60 days to comment on proposed significant regulations. Exceptions to this requirement may be granted only by the agency head and only in those few instances where it is determined that it is not possible to comply. When an exception is made the preamble to the proposed regulation shall include a brief statement of the reasons for the shorter time period.

.05 Regulations exempted by section 2.02(e) of this directive (emergencies or short-term deadlines) shall, when published in the FEDERAL REGISTER, be accompanied by a statement of the

reasons why it is impracticable or contrary to the public interest to follow the procedures of this directive. This statement shall include the name and title of the policy official responsible for the determination.

.06 Regulations exempted by section 2.02(b) (military or foreign affairs functions) or (e) of this directive shall be issued in interim form only. FEDERAL REGISTER publication of these regulations will provide for a public comment period of at least 60 days and republication in final form after public comments have been considered and appropriate modifications, if any, made.

Section 10. Plain English.

Agency heads are responsible for compliance with section 6 of the DAO 205-11, subject to the following conditions:

a. All lists and notices required by section 6.02 shall be transmitted to the Director, OOMS, through the Assistant Secretary.

b. Exceptions under section 6.04 must be coordinated with the Assistant General Counsel for Science and Technology.

APPENDIX M—UNITED STATES TRAVEL SERVICE

Background: The United States Travel Service (USTS) is responsible for promoting international travel to the United States, for encouraging Americans to travel within their own country, and for reviewing applications of U.S. cities interested in hosting international expositions. The regulatory functions of the agency are limited, currently consisting only of (1) procedural regulations governing applications of states, cities and non-profit organizations for matching grants to promote international tourism to the United States (15 C.F.R. Part 1200); and (2) procedural regulations setting forth the criteria for applications for Federal recognition of international expositions (15 C.F.R. Part 1202).

USTS does not have an established procedure for developing new regulations. As a general rule, proposed regulations are published, and interested parties are given 30 days in which to comment. Final regulations, when issued, take any comments received into account.

Regulatory agenda: By January 15, 1979, and every six months thereafter, the Assistant Secretary for Tourism will submit a regulatory agenda to the Assistant Secretary for Policy. This agenda will include a description of regulations under development or being considered for development during the next six months. To the extent possible, it will include statements concerning whether the regulation is a significant regulation; the

need and legal basis for the action being taken; and whether a regulatory analysis is required. It will also provide the name and telephone number of a knowledgeable official; a listing of major issues likely to be considered in developing the regulation; a tentative plan for obtaining public comment (including consultation with State and local governments, where appropriate); proposed dates for completion of the steps in the development process; and information on the status of any proposed regulations previously listed. Finally, the regulatory agenda will include a list of existing regulations scheduled to be reviewed, including the name and telephone number of a knowledgeable official; information on the status of existing regulations previously scheduled for review; and a list of any final regulations published in the FEDERAL REGISTER during the previous six months, including the date of publication and FEDERAL REGISTER citation.

Procedure for developing regulations: USTS will comply with the procedures set forth in DAO 218-7. Thus, prior to issuing any new or amended regulation, the Assistant Secretary for Tourism will ensure that the regulation is needed and is relevant to the mission of USTS; it is written in plain English and understandable to those who must comply; alternative approaches have been considered and the least burdensome of the acceptable alternatives has been chosen; notice of any proposed regulation is sent to publications likely to be read by those affected; public comments are considered and an adequate response prepared prior to issuing any final regulation; and the name, address, and telephone number of a knowledgeable official is included.

Significant Regulations: In developing new regulations, any regulation which meets one or more of the following criteria will be deemed to be a significant regulation: (1) a regulation which has a substantial impact on the travel industry; (2) a regulation which has a substantial impact on the balance of payments; or (3) a regulation which is expected to generate substantial controversy or public interest. The existing regulations are not deemed to be significant, and it is not anticipated, given the present statutory framework of the agency, that any new regulations would meet the criteria for significant regulations.

Regulatory analysis: Should a regulation be determined to be significant, USTS will apply the minimum criteria set forth in Section 5 of DAO 218-7 to determine whether regulatory analysis is required.

Review of existing regulations: Every regulation issued by USTS will be reviewed every two years, or more frequently if the Assistant Secretary for Tourism so requires.

Regulations for initial review: USTS is currently reviewing its regulation governing applications for matching grants (15 C.F.R. Part 1200). A review of the regulation governing applications for Federal recognition of international expositions will be undertaken during CY 1979 (15 CFR Part 1202).

Contact point: Comments should be directed to: Lee J. Wells, Director, Office of Administration, United States Travel Service, 14th and Constitution Avenue, N.W., Washington, D.C. 20230. Phone: Area Code (202) 377-4096.

[FR Doc. 79-669 Filed 1-8-79; 8:45 am]