TIERING

A Practical Guide to the Use of
Tiering as a Regulatory Alternative

September 1981

Project on Alternative Regulatory Approaches

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Guidebook Series on
Alternative Regulatory Approaches

This series is intended to provide a practical introduction -- featuring both the theoretical merits and the proven limitations -- to a special set of regulatory alternatives: approaches that are generally most compatible with the market forces that govern business decisions.

The series includes six books:

1) Overview
2) Marketable Rights
3) Performance Standards
4) Monetary Incentives
5) Information Disclosure
6) Tiering

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Book 6 - TIERING
A Practical Guide to the
Use of Tiering as a
Regulatory Alternative

September 1981

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PREFACE

This guidebook is one of a series that is intended to familiarize regulators -- and regulation watchers -- with market-oriented approaches to reaching regulatory goals.

One of the significant (although not the best-noted) products of the recent campaigns for regulatory reform has been the growth of a sense of self-consciousness about regulatory decisionmaking.

By and large, regulators now agree that their decisions can and should be a deliberate choice among competing alternatives, and should result from a systematic comparison of the relative costs and benefits among the array of choices. A more thorough analysis of such alternatives will be increasingly important during the reviews by the Office of Management and Budget of major new rules under Executive Order 12291 and in light of pending legislation advocating agency use of alternative approaches. Policymaking is becoming a conscious matter of choosing the "right" tool for the job at hand.

One class of regulatory tools that is of particular interest includes those that bring the least disruption to private decisionmaking in the regulated firms and use market forces to reduce the overall direct and indirect costs of regulation. These market-oriented techniques -- alternative regulatory approaches -- stand in contrast to the traditional "command-and-control" form of regulation, which involves a detailed specification of private compliance requirements and formal sanctions against those who violate them. In general, alternative regulatory approaches can have these relative advantages over command-and-control regulation:

- They provide more flexibility and more incentive for regulated firms to devise <u>least-cost</u> ways to comply.
- They impose <u>fewer indirect costs</u> (e.g., red tape, inspections).
- They are <u>results-oriented</u>, rather than means-oriented.
- They reward private <u>innovation</u>.
- They impinge less on <u>private choice</u> and encourage <u>market competition</u>.
- They <u>avoid the pitfalls of centralized, discretionary decisionmaking</u>.

These alternative techniques are not new inventions -- some regulators have been using them for years. However, as a class they are not yet well understood, and they are still more often a subject of rhetorical debate than serious policy discussions. This tendency has caused some agency skepticism about their practicality. These guidebooks attempt to show that market-compatible techniques are more than interesting ideas -- they are interesting ideas that work to solve real governmental problems.

We do not presume that market-oriented solutions will fit every regulatory problem. Only those who know particular programs in detail can determine how appropriate an alternative regulatory approach is in a specific case. Thus, these guidebooks are intended as introductions to the techniques rather than as "how-to-do-it" manuals. We have relied extensively on actual examples of past use. This guidebook on tiering, for example, gives 43 examples of tiering schemes that 20 Federal agencies have used or proposed. These examples are included for illustrative purposes only; no attempt has been made to evaluate the merit of each action.

We hope that a realistic summary of both the merits and drawbacks of these approaches will encourage regulators to begin to count them among the alternative tools at their disposal.

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SUMMARY

Tiering is the tailoring of regulatory requirements to fit the particular circumstances surrounding regulated entities. These diverse circumstances make an across-the-board requirement inappropriate. Treating all regulated entities -- businesses, organizations, and governmental jurisdictions -- in an equal manner places unnecessary burdens on entities that do not contribute significantly to the problem a regulation is designed to address.

Advantages -- Through tiering an agency can: 1) ensure that its regulatory solutions are apportioned according to the nature of the problem; 2) alleviate disproportionate impacts and unnecessary or inequitable demands that across-the-board regulations may place on certain classes of entities and; 3) make more efficient use of its own resources.

Support for Tiering -- Tiering took on increased importance with the passage of the Regulatory Flexibility Act of 1980. The Act requires agencies to consider flexible alternatives -- particularly tiering -- whenever possible in drafting regulations that will have a significant economic impact on a substantial number of small entities. Tiering will help agencies comply with this law.

Where Tiering is Used -- Tiering can be used in each of the three major components of a regulatory program:

- the substantive requirements imposed by the regulation;
- reporting and recordkeeping requirements; and
- enforcement and compliance-monitoring efforts.

Tiering Variables -- Traditionally, tiering according to various size measures has been the most prominent use of tiering. However, differentiating by other indicators is also possible:

Size	Non-Size
- Number of employees	- Degree of risk
- Operating revenues	- Ability to comply
- Assets	- Geographic location
- Market share	- Level of Federal funding

Possible Drawbacks of Tiering -- Possible drawbacks include increased complexity for agency programs; adverse impact on competition; increased inconsistency and confusion; delay in the rulemaking process; reduced incentives for more fundamental reform; and legal constraints such as statutory conflict or questions of constitutionality.

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PART I

TIERING

An Introductory Guide for Regulators

This section presents questions frequently asked about the tiering of regulations. The answers reflect actual agency experiences.

WHAT IS TIERING?

Tiering is the tailoring of regulatory requirements to fit the particular circumstances surrounding regulated entities; these diverse circumstances make an across-the-board requirement inappropriate. Everyone has encountered a familiar example of tiering, though they may not have thought to apply a label to it: some taxpayers fill out Form 1040, while others fill out the shorter 1040A. Agencies tier to reduce disproportionate impacts on certain classes of regulated entities and to avoid regulating entities that do not contribute significantly to a problem. Tiering is a way of making the burdens of regulation more equitable without compromising regulatory goals and objectives.

The variables agencies use to define their tiers will differ from agency to agency, issue to issue, and case to case. Tiering may not always be an appropriate alternative for agencies to use; it will be up to the individual agency to decide how and when tiering can be applied successfully.

Where Tiering is Used

Agencies can use tiering in each of the three major components of a regulatory program:

- the substantive requirements imposed by the regulation to achieve the goals of the underlying statute;
- reporting and recordkeeping requirements; and
- enforcement and compliance monitoring efforts.

Methods of Tiering

Agencies use a variety of methods to tier their regulations. Each method is designed to eliminate the disproportionate burdens placed on some entities by a regulation and to ensure that those entities that do not contribute significantly to the problem are not unnecessarily regulated. The following are some of the ways agencies may reduce burdens through tiering:

- reduce or modify substantive regulatory requirements;
- eliminate some requirements entirely;
- simplify and reduce reporting and recordkeeping requirements;
- provide exemptions from reporting and recordkeeping requirements;
- provide exemptions from inspection and other compliance activities;
- grant waivers;
- delay compliance timetables;
- reduce or modify fine schedules for noncompliance;
- reduce the frequency of inspections.

Variables Upon Which to Base Tiers

Traditionally, "tiering" has meant differentiating regulatory requirements according to size of a regulated entity, as agencies have tried to reduce unnecessary burdens on small businesses. This form of tiering is, for example, encouraged in the Regulatory Flexibility Act. But differentiating by size is not the only method of tiering.

The following are among the most commonly applied tiering criteria:

Size	Non-Size
• Number of Employees	• Degree of Risk
• Operating Revenues	• Technological and Economic Ability to Comply
• Assets	• Geographic Location
• Market Share	• Level of Federal Funding

* * *

WHY DO AGENCIES TIER REGULATIONS?

Tiering may be a more effective and efficient way for an agency to carry out its statutory objectives. Through tiering, an agency can: ensure that its regulatory solutions are proportioned according to the nature of the problem; alleviate disproportionate impacts and unnecessary or inequitable demands that across-the-board regulations may place on certain classes of entities; and make more efficient use of its own resources.

Reducing Disproportionate Burdens

Across-the-board application of certain regulations may impose a disproportionate burden on entities, particularly small entities that cannot absorb legal, accounting, and technical expenses as easily as larger businesses. Some studies estimate that the mean cost level for small businesses to comply -- in terms of dollars, hours, and diversion of scarce resources -- is, on the average, seven to ten times higher than that for larger businesses (Congressional Record, p. S10936, August 6, 1980). Uniform application of regulations may even cause businesses that cannot comply with technological requirements to close. An agency also can use tiering to reduce the anticompetitive effects of regulation and Government-imposed barriers to market entry.

EXAMPLE

The Department of the Treasury's Bureau of Alcohol, Tobacco, and Firearms (ATF) believes its current method of setting bond requirements (for tax collection) for users of denatured alcohol has an anticompetitive effect because it requires small users to buy a proportionately higher bond than large users. ATF, therefore, is proposing to amend its bonding requirements to make it easier for new businesses to begin operations and for small businesses to obtain bonds.

Tiering allows an agency to consider the technological ability of the entity to comply.

EXAMPLE

In developing effluent guidelines for the electroplating industry, the Environmental Protection Agency tiered requirements according to the technology available, the age and size of the plant, manufacturing processes, and compliance costs, in order to minimize the impact on small firms.

Improving the Effectiveness of Regulation

Tiering allows an agency to recognize the relevant differences that exist among regulated entities and their

differing contributions to the problems that a regulation is designed to solve. It is not logical or effective to apply the same standards to entities or products that are not alike and do not present the same problem. Tongue depressors and pacemakers -- two medical devices -- obviously do not pose the same risk to the user and do not require the same degree of control.

EXAMPLE

The Food and Drug Administration requires premarket approval for such life-supporting or life-sustaining devices as heart valve replacements in addition to the regular, less stringent controls it applies to crutches and bandages.

Tiering also may ensure that an agency does not inadvertently limit access to the benefits of its programs.

EXAMPLE

The Department of Health and Human Services tiers the stringency of its day care program requirements to the level of Federal funding a day care center receives (the threshold is 10 children for whom the Federal Government pays the costs of day care). The regulations therefore do not discourage day care centers from accepting some children who are federally funded for fear of being unable to comply with Federal requirements.

Improving Agency Efficiency

Tiering allows an agency to focus its internal resources where the problem is greatest. Tiering also may help an agency target its recordkeeping and reporting requirements toward those regulated entities that need frequent monitoring.

An agency may focus its enforcement efforts on the groups that traditionally have the highest number of violations, or where failure to comply poses the greatest risk to the public. In some cases, tiering initially may increase agency costs (e.g., more training may be necessary to educate inspectors in the differing requirements for tiered classes).

EXAMPLE

To make better use of its limited enforcement resources, the Occupational Safety and Health Administration (OSHA) targets its scheduled inspections toward those industries or firms that pose higher risks to worker health and safety or for which OSHA has received specific worker complaints.

* * *

HOW DOES TIERING WORK?

The First Step -- Assessing Impact

In determining appropriate tiers, agencies must follow a two-step process. The first step is to assess the impact of a particular regulation on each sector the regulation affects to determine whether it will have any undesirable impacts in the course of achieving its underlying objective. If the agency finds that the regulation will result in unwanted impacts, it should consider reducing reporting burdens, delaying compliance dates, or providing exemptions to entities that fall within the tiers it establishes based on criteria relevant to the regulation and the regulated. In some cases, the underlying statutory authority may limit the way an agency can tier a regulation.

Although agencies vary in the way they follow these steps, there appear to be two general approaches: a formalized analytic process and, more commonly, a public comment method. For additional guidance on both of these approaches, agencies can refer to the analytical and public comment procedures they have developed in response to Executive Orders 12044 and 12291.

1) Analytic Approach

Some agencies, such as the Environmental Protection Agency (EPA), have analytical procedures and rely on sophisticated data banks and economic models and formulas to determine the differential impacts of regulations.

EXAMPLE

EPA generally promulgates industry-specific regulations, and is, therefore, able to target its data-collecting activities. In drafting rules, EPA typically classifies industries by production process and by number of employees, the two criteria that EPA has discovered best indicate the amount of pollution generated by an industry. EPA then determines the cost-effectiveness and economic impact of the regulation on each classification and evaluates alternatives designed to eliminate disproportionate burdens. The agency then considers altering the stringency of rules, using the size of the firm as the basis for arranging tiers in such areas as compliance dates, reporting and recordkeeping requirements, and levels of control. To ensure consistency in the way this analysis is conducted, EPA's Office of Planning and Evaluation reviews all analyses completed by EPA's program offices prior to proposal.

2) Information-Gathering Through Public Comment

Other agencies use a more informal process that relies heavily on feedback from affected entities and other interested members of the public. Public participation is particularly important for agencies that do not have sophisticated data banks or elaborate reporting systems. It is also very useful when agencies cannot target their information-gathering efforts because they are unable to readily identify the sectors affected by a regulation.

EXAMPLE

The Securities and Exchange Commission is soliciting public comment on the feasibility of defining classes for reporting obligations for small issuers of securities by the dollar amount of the offering. Similarly, in drafting its aircraft certification standards, the Federal Aviation Administration held a public meeting to solicit comments on tiering options and appropriate size classifications, and it drafted its proposed rule on the basis of these comments.

3) Special Procedures Under the Regulatory Flexibility Act

Some regulations are subject to the special procedures of the Regulatory Flexibility Act (5 U.S.C. §§601-612). These procedures should generally help agencies define appropriate tiers.

The Act applies to every regulation likely to have a substantial economic impact on a significant number of small entities (§§602(a)(1) and 605(b)). For each such proposal, agencies must prepare a Regulatory Flexibility Analysis which: describes the small entities affected by the rule; estimates the resources necessary for these entities to comply with the Act; discusses possible tiering options; explains why options were accepted or rejected; and responds to issues raised by public comments (§§603 and 604). To assure that small entities are given an opportunity to participate, the Act directs agencies to use such methods as: publishing agendas, impact analyses, and notices of rulemakings in publications likely to be obtained by small entities; directly notifying interested small entities; conducting conferences or public hearings; and adopting or modifying agency procedural rules to reduce the cost or complexity of participation in the rulemaking by small entities (§609). (See the Appendix to Part I, page 25, for a summary of the Regulatory Flexibility Act's requirements.)

Multiple Tiers

An agency may use any number of tiers it feels will most effectively solve the problem the regulation addresses and reduce the disproportionate burden it may impose. For example, a regulation may impose an inequitable burden on more than one class of regulated entities. Setting multiple tiers that reflect these disparate burdens will alleviate this unequal treatment. In addition, for many regulations, it may be appropriate to superimpose two or more tiering schemes.

Examples

The Civil Aeronautics Board (CAB) tiers the frequency and scope of reporting and record-keeping requirements for airlines by both the amount of gross revenues and the size of aircraft. For certificated aircraft, the CAB has established three classes based on revenue;

and air taxi operators, who are uncertified and use only small aircraft, have even fewer reporting and virtually no recordkeeping requirements.

In assessing civil penalties under the Federal Insecticide, Fungicide, and Rodenticide Act, the Environmental Protection Agency (EPA) tiers according to gross annual sales volume. EPA classifies businesses in five size categories: less than $100,000; $100,000 to $400,000; $400,000 to $700,000; $700,000 to $1,000,000; and over $1,000,000. These entities also are tiered according to the relative gravity of the violation, with as many as five levels used for some types of violations.

Tiering By Size

Agencies use a wide variety of variables when they tier by the size of the regulated entity. Table 1 (see page 11) lists 19 variables found in our survey of agency practice. When several size variables are appropriate, differences in the complexity of applying the variable, the cost to the agency, and the information-collection burden imposed on the regulated help the agency decide which to choose. For example, the number of employees is easier to determine than the capital acquisition ability of a firm.

Agencies may tier by size in response to the Regulatory Flexibility Act. Although the Act sets cut-off points to define "small entities" (§601) (e.g., jurisdictions with fewer than 50,000 persons) that agencies may use for purposes of triggering the Act, it does not specify what cut-off points should be used to set tiers. A factor that must be considered in setting size standards is the type of entity that is being regulated. For example:

1) Size of a Business

The Small Business Administration's (SBA) general size standards provide a useful initial reference point for choosing appropriate size variables to tier regulations (the Regulatory Flexibility Act adopts these standards in §601(3)). SBA uses the number of employees to indicate size for businesses that are primarily engaged in manufacturing and mining

services and annual receipts for businesses that are engaged primarily in wholesaling and retailing.

In arriving at the appropriate cut-off point for the number of employees or annual receipts for a "small" business in each industry, SBA looked at the following factors: financial resources; competitive status or position; ownership or control of materials, processes, patents, license agreements, facilities, and sales territory; and nature of the business activity (13 CFR Part 121). The factors SBA uses may be appropriate for a large number of regulations, but agencies may find that other variables more adequately reflect their regulatory problems.

The number of employees is the single most common measure of size used by agencies for tiering.

EXAMPLE

The Equal Employment Opportunity Commission exempts employers with fewer than 100 employees from certain recordkeeping requirements.

Agencies often use monetary factors to set tiers. A company's gross operating revenues and its level of assets are two popular variables. Other variables are the dollar amount of bank deposits, securities offerings, and level of sales.

EXAMPLE

The Civil Aeronautics Board and the Interstate Commerce Commission use operating revenue to tier information-gathering requirements because operating revenue is a good indication of the significance of a particular firm to the overall economic conditions within the industry. Regulators of financial institutions such as the Federal Deposit Insurance Corporation tend to use an institution's assets.

Other variables that agencies use to indicate size include: number of bank depositors, number of shareholders, production level, number of business transactions, energy production, and energy consumption.

An agency may find different size variables appropriate for different regulations affecting the same entities, or that two variables are relevant and useful in tiering a single regulation.

EXAMPLE

The Office of the Comptroller of the Currency, Department of the Treasury, tiers one disclosure requirement by the dollar amount of a security offering and tiers another by the number of shareholders. The Environmental Protection Agency uses both volume of sales and volume of production for its toxic substances control reporting requirements.

2) Size of an Organization

Another class of entities for which agencies may wish to tier regulations is not-for-profit organizations. The Regulatory Flexibility Act (5 U.S.C. §§601-612) defines a "small organization" as an enterprise that is independently owned and operated and is not dominant in its field (§601(4)). This may be a useful starting point to set appropriate tiers. However, the legislative history (S. Rept. No. 96-878, at p. 15) indicates that for organizations with nationwide activities, it also may be appropriate to consider organizational structure and resources at the local as well as national level.

3) Size of a Governmental Jurisdiction

Agencies generally use population to tier regulations affecting cities, counties, towns, school districts, and other special jurisdictions. Appropriate population tiers vary from regulation to regulation. The Regulatory Flexibility Act defines a "small governmental jurisdiction" as one with fewer than 50,000 persons (§601(5)). This definition is a useful reference point, but agencies may find it preferable to tier at other levels.

EXAMPLE

The Environmental Protection Agency sets more stringent compliance dates for community water systems that serve more than 75,000 persons; the Department of Housing and Urban Development exempts jurisdictions of fewer than 2,500 people from certain grant eligibility requirements.

Agencies also may use other size characteristics of the jurisdictions.

EXAMPLE

The Department of Education exempts grant recipients with fewer than 15 employees from certain handicap nondiscrimination regulations because these recipients employ a relatively low percentage of all handicapped workers.

Table 1

Examples of Size Variables
(in order of frequency of use)

Number of Citizens	Number of Students
Level of Assets	Number of Depositors
Level of Revenues	Number of Accounts
Level of Deposits	Number of Transactions
Amount of Goods Produced	Number of Vehicles in Fleet
Number of Citizens	Number of Shareholders
Level of Sales	Hospital Admissions/Beds
Income Level	Amount of Energy Used
Size of Securities Offerings	Amount of Energy Produced
Size of Merger	

Tiering Factors Other Than Size

Agencies are tiering by a wide range of variables other than the size of the regulated entity -- in fact, 40 percent of our examples (see Part II) represent non-size tiering. Agencies may tailor their regulations around any organizing principle that realistically alleviates the disproportionate effects of regulation. Table 2 (see page 13) shows the variables discovered by our survey of agency practice.

Some statutes specifically require an agency to tier on the basis of a variable other than size. For example, the Medical Device Amendments of 1976 (21 U.S.C. §§360c-360k) require the Food and Drug Administration to classify all medical devices into three categories according to the degree of risk posed to humans.

1) Degree of Risk

Using the degree of risk posed to humans to set appropriate levels of regulatory controls is becoming more common.

EXAMPLE

The Federal Aviation Administration's safety and technological requirements are tiered according to the weights and dimensions of aircraft, the distances small aircraft travel, the altitudes at which they fly, and the number of passengers they carry.

In health, safety, and environmental regulation, agencies may use size as a proxy for measuring risk. In these cases, in exempting businesses of a particular size from requirements, the significant factor underlying the exemptions is the amount of risk the small business poses, not its size *per se*.

EXAMPLE

The Environmental Protection Agency (EPA) is considering using the number of batteries per day a firm produces as an indicator of the amount of pollution the factory emits to set exemptions from lead-acid battery manufacturing requirements.

EPA and the Occupational Safety and Health Administration (OSHA) often measure the level of effluent or the amount of discharge to determine useful tiers.

EXAMPLE

OSHA varies the permissible exposure limit for workers in industries that produce cotton dust according to the risk -- as measured by the nature of the cotton dust and the length of exposure.

2) Level of Federal Funding

A number of agencies, including the Departments of Housing and Urban Development, Health and Human Services, and Education tier by the level of Federal funding an entity receives. To ensure that the requirements do not prevent recipients of small amounts of Federal funds from participating in the program, the agencies reduce substantive requirements for these recipients.

3) Ability to Comply

Some agencies currently consider the technological and economic ability of the regulated to comply, as well as the hardships the regulation may impose on a particular group. EPA considered the possible closure rate in the metal finishing and printed circuit board industries when tiering effluent guidelines for the electroplating industry.

4) Geographic Variables

Some agencies use geographic variables, such as geographic location, to set regulatory requirements: the Environmental Protection Agency tiered Clean Air Act requirements for motor vehicles produced for sale at high and low altitudes because it is technically difficult to produce vehicles that meet emission standards at both altitudes.

5) Other Common Characteristics

Agencies also tailor their regulations to characteristics that the regulated have in common. Agencies have used all of the following as bases for tiers: the scope and complexity of services, the type of trade, the type of customers, and whether the entity is newly entered in the field.

Table 2

Examples of Non-Size Variables
(in order of frequency of use)

Degree of Risk	Scope and Complexity of Services Offered
Rural vs. Urban	Type of Customer
Geographic Location	New vs. Old
Federal Funding Received	Type of Cargo
Level of Effluent	Operating Conditions
Amount of Discharge	Type of Employee
Level of Industry Concentration/Market Share	Type of Services Offered
Ability of Firm to Comply	Level of Rainfall
Technical Feasibility	Vehicle Horsepower Level
Capital Availability	Level of Performance

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HOW CAN TIERING BE USED TO REDUCE PAPERWORK AND REPORTING REQUIREMENTS?

Tiering is being used by agencies to reduce unnecessary information requirements. About one-third of our survey examples involve paperwork tiering. As they assess the reporting requirements they impose, agencies balance their need for sufficient and accurate information against the burdens they are imposing.

The agencies themselves also benefit, in that tiering paperwork and reporting requirements makes enforcement easier. Agencies may target their efforts to focus on those entities that have the largest number of required reports to file or that pose the greatest risk of noncompliance.

The Costs of Paperwork

Recently, the Federal reporting burden has been estimated by the Federal Paperwork Commission at $100 billion a year (H. Rept. No. 96-519 at p. 4). Reporting and recordkeeping requirements impose both direct and indirect costs on regulated entities. In fact, many small entities perceive reporting and recordkeeping requirements to be among the greatest burdens regulation imposes. One report states that small businesses file over 205 million Federal forms a year, totaling over 850 million pages and containing over 7.3 billion questions, and that the average annual direct cost to each small business is about $1,270, a total direct cost of more than $17 billion (Congressional Record, p. S10936, August 6, 1980).

Some small entities may be forced to hire lawyers and accountants to decipher how new regulations affect them. They also may have to establish new bookkeeping systems to comply with altered reporting requirements. There also are opportunity costs: the owner of a small business may have to spend time trying to comply with Federal reporting requirements instead of developing new and innovative ideas for the company. To simplify recordkeeping and reporting requirements and reduce the time entities must spend to fill out forms, agencies may provide entities with model forms.

EXAMPLE

The Federal Reserve System reduces the reporting burdens on small entities by permitting small financial institutions to use model forms for standard transactions.

Reducing the Existing Paperwork Burden

Tiering existing paperwork and reporting requirements is one of the simplest ways for agencies to use the tiering technique. Many agencies already have the information they are seeking in their established information base. Since agencies have this established base, they can determine easily what information is useful in meeting regulatory goals. Agencies then can tier requirements in order to reduce burdens on those regulated entities that do not provide necessary or useful information. Tiering may, therefore, be a useful way of complying with the Paperwork Reduction Act of 1980 (P.L. 96-511, 94 Stat. 2812), which sets a 25 percent goal for paperwork reduction, with 15 percent due by October 1, 1982, and an additional 10 percent due by October 1, 1983.

EXAMPLE

Finding that small banks generally are in compliance with reserve holding requirements, the Federal Reserve System recently reduced the frequency of their reports from weekly to quarterly; the Equal Employment Opportunity Commission reduced reporting burdens for employers with a small number of employees; and the Department of Education reduced the reporting burden on small school districts.

* * *

HOW CAN AGENCIES USE TIERING IN THEIR COMPLIANCE EFFORTS?

The burden of a regulation goes beyond its substantive requirements. Federal compliance monitoring and enforcement programs may impose additional burdens on the regulated -- generally those of demonstrating compliance to the agency --

and several agencies have reduced these burdens by tiering successfully in the following ways:

Flexibility in Compliance Schedules

Some regulated entities may have more difficulty than others in coming into compliance by a fixed date. Tiered compliance deadlines may be appropriate in these cases. Tiering of compliance deadlines can be based on size or on other appropriate criteria.

EXAMPLE

Environmental Protection Agency (EPA) drinking water regulations covering trihalomethane contamination gave larger community water systems 2 years to comply; smaller systems have 4 years. The Department of Labor's Mine Safety and Health Administration gives small mine operators an extra 60 days to comply with certain miner training regulations; while the Department's Occupational Safety and Health Administration (OSHA) is considering tiering the compliance date for noise regulations according to the type of industry.

Frequency of Inspection/Monitoring

Agencies can tier the frequency of their inspection visits or compliance verification. Tiering permits the agencies to concentrate monitoring resources where the greatest potential problems are.

EXAMPLE

OSHA has targeted its inspection schedule according to the relative degree of risk. Federal agencies that regulate financial institutions are considering a plan to grade the compliance records of regulated firms and to base the level of monitoring attention on that grade.

Varying Levels of Fines

The sanctions for noncompliance can be tiered.

EXAMPLE

EPA's schedule of fines for violating certain pesticide regulations is tiered according to the size of the business, as specified in the pesticide statute. For a given infraction, the proposed penalty for the smallest firms -- with gross sales under $100,000 -- is one-tenth of that suggested for large firms.

Waiver Conditions and Procedures

The granting of waivers or extensions can be tiered to provide a smaller administrative burden or less delay for entities that pose smaller regulatory problems.

EXAMPLE

The Department of Agriculture's Federal Grain Inspection Service has waived from certain inspection and weighing requirements firms exporting less than 15,000 metric tons of grain yearly.

Special Assistance for Small Entities

Some agencies also have lessened the burden of compliance monitoring by targeting special assistance and education programs to small entities to help them deal more efficiently with inspection and monitoring requirements.

EXAMPLE

OSHA and MSHA provide pre-inspection programs for small firms.

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HOW CAN AGENCIES ENSURE THAT TIERING SCHEMES REMAIN APPROPRIATE?

A tiered regulation may require more frequent revision than one that applies "across the board." Tiering may make regulations more complex because it creates a greater number of standards that the agency must accurately maintain. The more sophisticated and graduated the rule, the more care the agency must take to ensure that the regulatory tiers remain appropriate, particularly when the tiering variable is subject to change (e.g., dollar figures are subject to inflation). Agencies tier regulations to ensure fair treatment of all regulated entities. If the tiers are no longer accurate, they cause entities to be misclassified and increase the potential for inequitable treatment.

An agency that adopts a tiered system of regulation, whether for substantive requirements or for paperwork and reporting purposes, may want to maintain an up-to-date information base in order to evaluate the tiers it has established to ensure that the existing tiers still meet their original purpose.

Monitoring Changes That Affect Tiers

To assure that establishing tiers doesn't mean they are set too rigidly -- thereby destroying the very flexibility tiering can bring to the regulatory system -- the following variables are among those that can be monitored with the intention of modifying tiers where changing circumstances dictate:

- Changing demographic characteristics, such as population density or geographic conditions. The Departments of Health and Human Services, Housing and Urban Development, and Transportation are all concerned with population shifts to and from certain geographic areas.

- Changes in the composition of the American workforce. This may mean that an agency such as the Small Business Administration will have to adjust its tiers to reflect differences in employment levels or changes in the nature of

a firm's operations, such as a shift from manufacturing to services. An industry that becomes less labor-intensive may no longer appropriately be tiered by number of employees.

- Changes in the inflation rate requiring revisions in dollar-denominated tiers. The Interstate Commerce Commission tiers its regulations based on the gross revenues and income of truckers. The ICC periodically reviews this classification to ensure that the levels are still appropriate.

- The unintended consequences or effects of tiering. The size of new refineries has been affected by to the Department of Energy's tiered regulations for the Crude Oil Entitlements Program (S. Rept. No. 96-878 at p. 7) (see also page 20).

- Changes in market concentration or segmentation. The growth of deposits in banks may mean new classes of reporting requirements are necessary.

- Advances in technology. The Environmental Protection Agency must take technological changes into consideration when tiering its air and water regulations.

- Changes in legislation. Agencies will want to keep abreast of laws and statutes that may require them to adopt a tiering scheme for new regulations or to review existing regulations for the same purpose. The Regulatory Flexibility Act of 1980 mandates this review.

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WHAT ARE THE POSSIBLE DRAWBACKS OF TIERING?

Increased Complexity for Agency Programs

Those agencies that have not tiered regulations in the past may have to elaborate on their approach to drafting new regulations and reviewing existing regulations. This may require more detailed consideration of new impacts to determine appropriate tiers. Additionally, agencies may have to monitor the tiers to ensure that they remain appropriate, as we discussed in the preceding question. Enforcement techniques also may have to be modified to accommodate the fact that requirements vary among regulatory entities.

Adverse Impact on Competition

If an agency exempts some firms and not others from major regulatory requirements, it may adversely affect the competitive balance among firms in the marketplace. To avoid these inadvertent anticompetitive effects, an agency should consider the effects of its tiering scheme on an industry, not just on firms within that industry.

Increased Inconsistency and Confusion

Agencies will find that no common agreement exists among them as to what criteria are used to define tiers and how these criteria are applied. This inconsistency may place regulated entities at a disadvantage because they will be classified in different tiers for different regulations. This lack of agreement also may complicate agency attempts to coordinate regulatory efforts that have different tiering schemes.

Delay in the Rulemaking Process

Tiering may require additional time for analysis, causing delays in the rulemaking process. For example, before an agency can issue a tiered rule, it must develop definitions for the different classes it has created and for the differentiating variables used to distinguish these classes into tiers.

Unintended Consequences

Tiering may not always eliminate the disproportionate impact of regulation on a given entity or enhance regulatory goals. Tiering may result in unintended consequences that encourage some companies to stay within a given tier or opt to remain small.

EXAMPLE

The Department of Energy's Crude Oil Entitlements Program enabled smaller refineries to purchase crude oil at subsidized prices. An unintended consequence of this program was that although the minimum technologically efficient refinery

size is 175,000 barrels a day, 37 of the 38 refineries built in the United States between January 1974 and September 1977 were designed to process less than 40,000 barrels a day in order to take advantage of the subsidy.

Reduced Incentives for More Fundamental Reform

Agency use of tiering may lessen an agency's incentive for more comprehensive regulatory reform efforts. By tiering its regulations, an agency can decrease the number of entities severely affected by its regulations, resulting in less outside pressure being applied for more aggressive reform measures.

* * *

DOES THE USE OF TIERING RAISE ANY SIGNIFICANT LEGAL ISSUES?

Agencies have expressed concern that using the tiering technique will raise several legal issues. The concerns are: setting classifications may be unconstitutional; tiering may compromise the objectives of the agency's statutory mandate; and, by tiering, an agency may increase the possibility of successful court challenges on both substantive and procedural due process grounds.

Constitutionality

The courts generally have found the concept of tiering, both in statutes and Federal economic regulation, to be constitutional. A court will not set aside a classification if it can be justified by any factual circumstances (McGowan v. Maryland, 366 U.S. 420 (1961)). The U.S. Supreme Court has held that setting different regulatory classifications is not a violation of the equal protection clause of the 14th Amendment to the Constitution, if the classifications are "rationally" related to a valid governmental purpose (New Orleans v. Dukes, 427 U.S. 297 (1976)).

Statutory Constraints

There are cases where some kinds of tiering may be legally impermissible. For example, a statute may require the agency to promulgate "uniform" rules, a Supreme Court decision explicitly may prohibit exemptions, or a health and safety statute may require an agency to eliminate a risk or hazard without regard to cost. The legislative history of the Regulatory Flexibility Act stresses the importance of health and safety agencies exploring flexible alternatives (Congressional Record, p. S10937, August 6, 1980) as long as legislatively mandated goals are not weakened in an effort to reduce regulatory costs (S. Rept. 96-878 at p. 10). It specifically points to adjusting compliance/enforcement efforts and reporting deadlines as useful alternatives that agencies may use to achieve flexible results without compromising the underlying statute (Congressional Record, p. S10938, August 6, 1980).

Judicial Review

Tiering should not seriously affect a regulation's susceptibility to judicial review. Like other agency actions, the decision to establish tiered classifications is subject to the general principles of administrative law. The courts use the standard "arbitrary and capricious" test to review the substance of tiered regulations (Citizens to Preserve Overton Park v. Volpe, 401 U.S. 402 (1971)). If, from the evidence in the agency's rulemaking record, the court finds that the regulation is reasonable, it will declare the regulation valid. The agency also must meet this "reasonableness" test when it amends an existing rule to incorporate or modify a tier. The agencies must comply with the notice and comment procedural requirements of the Administrative Procedure Act. If a rule will affect a substantial number of small entities, agencies will have to comply with the additional notice requirements the Regulatory Flexibility Act imposes.

In general, although the use of tiering should not raise legal issues beyond those encountered in a typical rulemaking, case-by-case evaluations will be necessary.

Note: The Regulatory Flexibility Act reflects Congress' view of the appropriate role of the judiciary in reviewing regulations -- many of which will presumably involve tiering -- issued according to the procedures of the Act. The Act

requires an agency to prepare a Regulatory Flexibility Analysis when a substantial number of small entities may be significantly affected by the regulation (§§603 and 604). To avoid a disruption of agency rulemaking similar to that experienced with Environmental Impact Statements, the Act precludes judicial review of the decision on whether to prepare an Analysis, the process the agency uses to prepare it, and the adequacy of the Analysis. A Regulatory Flexibility Analysis constitutes a part of the whole rulemaking record, however, which is available to the court in determining the reasonableness of the regulation (§611).

* * *

HOW DOES CONGRESS VIEW TIERING?

Congress has frequently incorporated tiering -- based on both size and non-size factors -- into legislation. For example, the Truth-In-Lending Act (15 U.S.C. §§1601 et seq.) reduces requirements for creditors who have fewer than 15,000 accounts; the Medical Device Amendments of 1976 (21 U.S.C. §§ 360c-360k) require the Food and Drug Administration to classify all medical devices into three categories that vary regulation according to the degree of risk posed to humans. Also, the Federal Energy Security Act of 1980 (42 U.S.C. §§8701-8795) allows the Federal Energy Regulatory Commission to exempt certain small hydroelectric power projects with a generating capacity of 5 megawatts or less from standard licensing requirements.

The Regulatory Flexibility Act

Passed with strong bipartisan congressional support, the Regulatory Flexibility Act (5 U.S.C. §§601-612, P.L. 96-354) calls for a more flexible and responsive regulatory policy that considers the impact of regulation on competition in the marketplace, productivity, and innovation; targets regulatory requirements toward the areas of greatest need; and balances the burdens on regulated entities against the benefits to society. The Act supports the use of tiering in all regulations likely to have a significant economic impact on a substantial number of small businesses, organizations, and governmental jurisdictions. The Act specifically directs agencies to consider establishing

different compliance or reporting requirements, timetables, or exemptions to take into account the resources available to small entities (§603(c)). (See the Appendix to Part I, page 25, for a summary of the Act's requirements.)

Continuing Congressional Interest

Strong congressional interest in tiering is also apparent in the oversight mechanisms set up by the Regulatory Flexibility Act. Agency compliance with the Act will be reviewed extensively by congressional committees and the Small Business Administration's Chief Counsel for Advocacy, who is required by law to make annual reports to the House and Senate Small Business and Judiciary Committees (§612). Congressional oversight will include ad hoc review of particular regulations, as well as general oversight of agency compliance.

* * *

APPENDIX TO PART I

A Summary of Requirements of the Regulatory Flexibility Act

A SUMMARY OF REQUIREMENTS OF THE REGULATORY FLEXIBILITY ACT

The Regulatory Flexibility Act amends the Administrative Procedure Act (APA) (5 U.S.C. §§551-559, 701-706) to establish a general principle and specific procedures requiring agencies to fit regulatory and informational requirements to the scale of the business, organization, or governmental jurisdiction subject to the regulation.

The Act defines "small entities" to include "small businesses," "small organizations," and "small governmental jurisdictions" (§610(6)). "Small business" has the same meaning as the Small Business Act's (15 U.S.C. §632) definition (13 CFR Part 121). A small organization is any not-for-profit enterprise that is independently owned and operated and is not dominant in its field (§610(4)). A small governmental jurisdiction is a city, county town, township, village, school district, or special district with a population of less than 50,000 (§601(5)). An agency may establish a different definition of "small entity" after public comment and publication in the Federal Register. To establish a different definition of small business, the agency must consult with the Small Business Administration's (SBA) Office of Advocacy, in addition to receiving public comment (§610(3)).

The Act applies to rules for which the agency must publish a Notice of Proposed Rulemaking pursuant to §553 of the APA or any other law. The Act is triggered when, in the judgment of the agency, a regulation is likely to have "a significant economic impact on a substantial number of small entities" (§§602(a)(1) and 605(b)).

When the Act is triggered, agencies must:

- Publish a Regulatory Flexibility Agenda in the Federal Register each April and October that lists all such regulations under development. For each proposed rule, the Agendas must contain: a brief description of the subject area; a summary of the nature of the rule, including its objectives and legal basis; and a contact person (§602).

- Prepare and publish in the Federal Register initial and final Regulatory Flexibility Analyses. The Analyses must describe: the impact of the proposed rule on small entities; alternatives that agencies considered; reporting, recordkeeping, and compliance requirements anticipated; the objective and legal basis for the proposed rule; and the rationale for the agency's action. They

also must identify Federal rules that may conflict with, duplicate, or overlap the proposed rules (§603 and §604). An agency need not conduct a Regulatory Flexibility Analysis if it certifies that the rule will not have a significant economic impact on a substantial number of small entities (§605).

† The Analyses may provide either a quantifiable (numerical) description of the effects of the proposed rule or alternatives to the proposed rule, or a more general description, if quantification is not practicable or reliable (§607).

† The Regulatory Flexibility Analyses must discuss significant tiering alternatives that will minimize the impact on small entities, such as establishing differing compliance or reporting requirements or timetables that take into account the resources available to small entities; clarifying, consolidating, or simplifying compliance and reporting requirements; using performance standards; and exempting small entities from coverage of the rule (§603).

- Ensure that small entities can participate effectively in the rulemaking process. In addition to publishing in the Federal Register, agencies must take steps to inform small entities directly (§609).

- Prepare a plan to review all such existing rules systematically within 10 years of the Act and review all new rules within 10 years of promulgation (§610(a)). The review must consider the continued need for the rule, the nature of complaints received about the rule, the complexity of the rule, the length of time since the last review, and changes in technology and economic conditions (§610(b)).

To avoid duplication, the Act allows the agencies to prepare the Agendas and perform the Analyses in conjunction with or as part of any other agendas or analyses (§605(a)).

Similarly, Executive Order 12291, "Federal Regulation," provides for the incorporation or combining of Regulatory Flexibility Analyses and Regulatory Flexibility Agendas with Regulatory Impact Analyses and Regulatory Agendas (§§3(a), 5(a)). It also requires the Director of OMB to mesh the overall implementation of the Order with that of the Regulatory Flexibility Act (§6(b)).

The Chief Counsel for Advocacy of SBA is responsible for monitoring agency compliance with the Act. The agencies submit Regulatory Flexibility Agendas and Analyses to the Chief Counsel. The Chief Counsel also comments on Regulatory Flexibility Agendas, reports to Congress, and may serve as amicus curiae (friend of the court) in any action brought to review a rule (§612).

PART II

AGENCY EXPERIENCE WITH TIERING

This section gives detailed descriptions of 43 examples of tiering currently in place or under active consideration by agencies. The examples show the rich variations in the way that agencies tier their regulations. These examples are included for illustrative purposes only; no attempt has been made to evaluate the merit of each action.

DEPARTMENT OF AGRICULTURE

USDA Determines Exemptions by Volume of Business

The Federal Grain Inspection Service (FGIS) considers the volume of grain shipments in setting its licensing requirements. FGIS inspects all grain exports to verify the quality and weight of the shipment and issues licenses to the exporters. In an attempt to reduce or eliminate unnecessary burdens on smaller exporters, FGIS has exempted firms exporting less than 15,000 metric tons of grain per year (approximately 30 percent of all the firms) from certain inspection and weighing requirements. These exports account for 2 percent of all exports and represent mostly "across-the-border" trade with Mexico and Canada.

Reference: 7 CFR Parts 26, Ch. VIII, 800, 801, 802, 810; 45 FR 15802, March 11, 1980.
Contact: J. T. Abshier, (202) 447-8262.

DEPARTMENT OF EDUCATION

ED May Tailor Program Rules by Size of Grant and Student Enrollment

The Department of Education (ED) is considering tiering its administrative regulations under the Elementary and Secondary Education Act for local educational agencies (LEAs) to take into account factors such as the number of students served by the LEA and the amount of grant assistance received by the agency. The Department may waive certain requirements for 1) discretionary grants of less than $50,000; 2) formula grants of less than $3,000; or 3) an LEA student enrollment of less than 1,500 persons. The Department believes that elaborate procedural requirements for public notification may be unnecessarily troublesome for LEAs receiving small grants and that such grants are also less likely to arouse great community interest. Additionally, small communities have less need than larger communities for formal meeting notices to ensure community awareness.

Reference: 34 CFR 75.140-75.141; 45 FR 22504, April 3, 1980.
Contact: Ruth Feldman, (202) 472-1058.

ED Tiers Regulations Prohibiting Handicapped Discrimination by Number of Employees

The Department of Education (ED) uses the size of an organization receiving Federal assistance to tier its regulations prohibiting hiring discrimination against the handicapped in ED-funded programs or activities. Recipients with 15 or more employees are required to 1) designate at least one person to coordinate compliance efforts; 2) adopt grievance procedures; 3) formally notify their employees and others of their nondiscrimination policy; and 4) identify their designated compliance coordinator. ED does not apply these requirements to recipients with fewer than 15 employees unless the Assistant Secretary for Civil Rights orders compliance on an individual basis. ED exempts these small recipients because they employ a relatively low percentage of all handicapped workers and because ED feels these requirements would be unduly expensive for small establishments.

Reference: 34 CFR 104.7-104.9; 42 FR 22677, May 4, 1977.
Contact: Ruth Feldman, (202) 472-1058.

DEPARTMENT OF ENERGY

DOE's Natural Gas Policy Reflects Unique Circumstances of Pipelines

The Department of Energy developed natural gas curtailment policies which the Federal Energy Regulatory Commission (FERC) administers and implements under the Fuel Use Act of 1978. These policies deal with the manner in which natural gas will be allocated to customers of interstate pipelines when there are supply or capacity shortages. The current priority system for curtailment is tiered strictly according to end use. This system ranks residential and small commercial users as highest priority and large-volume, industrial users as lowest. While FERC has generally followed this policy, it has approved departure from this strict application to take into account the unique circumstances of individual pipelines, such as the number and types of customers and suppliers and the climatic conditions under which they operate. This tiered approach to setting priorities provides pipelines the opportunity to be considered for allocations.

Reference: 10 CFR Part 580; 45 FR 45098, July 2, 1980.
Contact: Albert Bass, (202) 653-3286.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

HHS Tiers Day Care Regulations by Amount of Federal Funding

The Department of Health and Human Services (HHS) tiers requirements for day care according to the amount of Federal funds a day care center receives. HHS had the option of requiring day care centers to comply with Federal staffing standards if the day care center receives Federal funds. However, HHS now allows State agencies to waive the staffing requirements if a center receives Federal funds for not more than 20 percent or 10 (whichever is lower) of the children in its care and the center meets State licensing standards. HHS was concerned that an across-the-board application of Federal staffing requirements would limit children's access to day care. By tiering, HHS has liberalized the criteria for Federal funding to the States, thereby allowing the States to serve more children.

Reference: 45 CFR Part 71; 45 FR 17870, March 19, 1980.
Contact: Warren Master, (202) 245-6275.

FDA Classifies Medical Devices According to Risk

The Food and Drug Administration (FDA) has taken several steps to tailor its regulatory activities to the complexity or risk of its regulated products. FDA regulates more than 1,750 types of medical devices. As required by the Medical Device Amendments of 1976, FDA is classifying by regulation all medical devices into three categories that vary the extent to which a device is regulated to assure its safety and effectiveness. Class I devices (e.g., tongue depressors and bandages), comprising approximately 25 percent of all devices, will continue to be subject only to general controls. Approximately 20 percent of all medical device manufacturing firms produce only Class I devices. Class II devices (e.g., hearing aids and hard contact lenses) comprise approximately 66 percent of all devices and will be subject to performance standards. Class III, the most stringent regulatory class, is reserved for such critical or potentially risky devices as cardiac pacemakers. Approximately 9 percent of all devices produced by about 3 percent of the manufacturers have been or will be classified into Class III and be subject to pre-market approval. Thus, the regulatory scheme provides for a tiered approach that appropriately tailors the level of regulatory control to the level of risk. The device

classification regulations also set tiers within Class I by exempting certain manufacturers of new devices from several requirements. In all, approximately 90 percent of medical device manufacturers do not have to keep the extensive records required for critical devices.

Reference: 21 CFR Part 860; 43 FR 32993, July 28, 1978.
Contact: Dr. Robert Kennedy, (301) 427-7230.

FDA Tiers Safety and Effectiveness Testing Rules by Risk

The Food and Drug Administration (FDA) has tiered its rule for medical devices that are being clinically investigated for safety and effectiveness according to the degree of risk of the device. FDA subjects investigations of "significant risk" devices, such as pacemakers or intrauterine devices, to detailed regulatory control, but has streamlined its procedures for nonsignificant risk devices. By streamlining the procedures, FDA avoids unnecessary and costly paperwork for the sponsors of investigations, reduces its processing burden, and reduces delays in approval, all without sacrificing protection of the human subjects.

Reference: 21 CFR Part 812; 45 FR 3732, January 18, 1980 (risk devices); 21 CFR Parts 207, 210, 225, 226, 501, 510, 514, 558; 46 FR 2456-2514, January 9, 1981 (medicated feeds).
Contact: Linda Horton, (202) 443-1345 (risk devices); Dr. George Graber, (301) 443-4438 (medicated feeds).

FDA Allows Small Businesses to Conduct Self-Audit

The Food and Drug Administration (FDA) exempts small manufacturers with fewer than 10 employees from quality assurance requirements for periodic independent audits. Instead, these firms may conduct "self-audits" -- audits performed by an employee who also may be involved in the daily operational activities of the business -- if arranging for an independent audit would be unduly burdensome or impractical. FDA believes that small firms have shorter chains of command and therefore should not need some of the paperwork necessary in larger firms. This action exempts approximately 26 percent of medical device establishments, thereby reducing the work for a considerable number of firms that would have the greatest difficulty in conducting an independent audit.

Reference: 21 CFR 820.20(b).
Contact: H. N. Dunning, (202) 427-7184.

HCFA May Tier Productivity Standards by an "Old vs. New" Classification

The Health Care Financing Administration (HCFA) may use the tiering approach for rural health clinics that participate in the Medicare and Medicaid reimbursement programs. HCFA plans to require new clinics (those in their first 2 years of operation) to furnish only two-thirds of the Medicare or Medicaid patient visits required of well established clinics. The proposed less-stringent productivity standards for new clinics, which are generally less productive than established clinics, will reduce requirements for approximately 50 percent of all clinics. In addition, simplified cost reports will make it easier and less costly for all clinics, which are typically small organizations, to participate in the program.

Reference: 42 CFR Part 405 and 407; 45 FR 59734, September 10, 1980.
Contact: Bernard Truffer, (301) 597-1369.

HCFA Tiers Reporting Requirements by Extent of Federal Funding

The Health Care Financing Administration (HCFA) uses the extent of Federal funding as the variable for tiering its Medicare cost reporting regulations for home health agencies. HCFA defines a "small" home health agency as one that receives less than $35,000 in Medicare reimbursements in the immediately preceding cost-reporting year, as long as the reimbursement represents less than 50 percent of the total operating cost of the home health agency. Certain "small" home health agencies will now be able to use a simplified cost-reporting method, which should reduce reporting and paperwork burdens for these agencies.

Reference: 42 CFR Part 405; 45 FR 57126, August 27, 1980.
Contact: Fred Koenig, (301) 594-8612.

HCFA May Vary Hospital Reporting Requirements by Service Offered

The Health Care Financing Administration (HCFA) is considering regulations for conditions of hospital participation in Medicare and Medicaid programs that will apply to all types of hospitals -- small and large, rural and urban -- but that will recognize variations in services furnished and staff available. Compliance criteria may be applied on the basis of each hospital's bed size; type, scope, and range

of services offered; organization and level of services; type and number of staff required; and administrative controls. HCFA has been concerned that the regulations would impose a disproportionate, though inadvertent, burden on small and rural hospitals. One alternative -- issuing different regulations for each class of hospital -- was rejected after HCFA weighed hospital industry arguments and attempted to develop model standards. Small rural hospitals feared that separate standards might be a stigma in the eyes of the public. Therefore, HCFA has proposed flexible regulations that permit application to differing institutional situations.

Reference: 42 CFR Parts 405, 481 and 482; FR 41794, June 20, 1980.
Contact: Thomas Morford, (301) 597-2750.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

HUD Sets Requirements for Grant Eligibility by Population .

The Department of Housing and Urban Development (HUD) exempts small cities from certain requirements for eligibility in the Urban Development Grant Program. Applicants for these grants must demonstrate progress in providing housing for low- and moderate-income persons. Applicants may be either large cities (in urban counties) or smaller cities that are otherwise qualified for Action Grants. Among the criteria to qualify for these grants is the demonstrated ability to administer the grant program by having the appropriate professional staff. Since many smaller cities only disburse funds to developers who in turn use their professional staffs to carry out the program, HUD exempted cities of under 2,500 from the professional staff member requirements. The Department felt this exemption would not compromise the integrity of the program but would eliminate unnecessary administrative burdens on small cities and barriers to participation in the program.

Reference: 24 CFR Part 570; 44 FR 33372, June 8, 1979; 45 FR 62424, October 30, 1979.
Contact: Catherine Hare, (202) 755-7362.

DEPARTMENT OF THE INTERIOR

BLM is Tailoring Its Level of Compliance Costs for Locatable Mineral Mining Activities on Federal Lands to the Level of Disturbance Created

The Bureau of Land Management (BLM) has recently published its final rule to establish procedures to prevent unnecessary or undue degradation of Federal lands and their resources while not unduly hindering locatable mineral mining activities under the mining laws. These procedures will also provide BLM with knowledge of existing and proposed mining activities on Federal lands. While reclamation is required for all disturbances, BLM is tailoring compliance costs to the level of mining activity, using a three-tier system. The first tier, casual use, requires no formal contact with the Bureau and is primarily designed for the weekend or part-time prospector. The second, a disturbance of less than 5 acres per calendar year, requires a written notification to BLM at least 15 days before operations can commence; however, neither bonding nor BLM approval is required. The third, a disturbance of 5 acres or more per calendar year, requires both the filing and approval of a plan of operations before mining can commence. The plan of operations is more detailed than a notice and is also required for all but casual use in areas of special category lands, e.g., the California Desert Conservation Area. The need for and level of bonding will be decided on a case-by-case basis. By structuring its regulation in this manner, the BLM will fulfill its statutory mandates while not unduly restricting the development of Federal lands.

Reference: 43 CFR Part 3800; 45 FR 78902, November 26, 1980.
Contact: Gene Carlot, (202) 343-8537.

DEPARTMENT OF LABOR

Agencies Use Size to Reduce Reporting Burdens

The Department of Labor (DOL), Internal Revenue Service (IRS), and the Pension Benefit Guaranty Corporation (PBGC) vary their reporting requirements for employee pension and welfare benefit plans according to number of participants. Small plans subject to the Employee Retirement Income Security Act

(ERISA) may file a full financial report once every 3 years rather than annually. Although the report will now be filed only with the IRS, the various enforcement agencies will still receive necessary information. Annual preparation time and costs for small administrators will be reduced. DOL also has exempted most welfare benefit plans with fewer than 100 participants from filing ERISA reports at all. The Department felt this action would eliminate unnecessary burdens on small welfare plans without sacrificing the worker protection ERISA provides.

Reference: 24 CFR Parts 2520; 45 FR 25404, April 15, 1980.
Contact: Timothy Smith, (202) 523-6855.

DOL May Vary Reporting Requirements by Number of Employers

The Department of Labor (DOL) is considering adopting differing reporting and recordkeeping requirements for various employee benefit plans. Single employer plans and multiple employer plans would be subject to separate standards that are appropriate to the differing conditions of each of these plans. In taking this action, the Department is seeking to achieve a balance that would provide participants and beneficiaries with accurate, timely, and useful information but would avoid imposing undue administrative costs on employers and administrators.

Reference: 29 CFR Parts 2520 and 2530; 45 FR 51231, August 1, 1980.
Contact: Mary O. Lin, (202) 523-9395.

OSHA Uses Size and Risk to Reduce Reporting Burdens

The Occupational Safety and Health Administration (OSHA) has taken several actions to reduce the disproportionate impacts of its recordkeeping and reporting requirements on small businesses without sacrificing or compromising worker health and safety. OSHA has exempted from all recordkeeping requirements all businesses with fewer than 10 employees, thus exempting 3.4 million businesses or 90 percent of all workplaces. OSHA also has exempted many of these businesses from injury and illness reporting requirements. OSHA has taken these actions because most of the businesses included in these exemptions pose little risk to workers.

Reference: Administrative Policy.
Contact: Kay Klatt, (202) 523-9690.

OSHA Targets Compliance Inspections by Risk

The Occupational Safety and Health Administration (OSHA) has targeted its scheduled inspections to focus on those industries or firms that pose higher risks to worker health and safety or for which OSHA has received specific worker complaints. Since the majority of small businesses do not fall into the high-hazard category, this new policy of scheduling inspections on a "worst first" principle has resulted in 80 percent of small businesses now being excluded from scheduled inspections.

Reference: Administrative Policy.
Contact: Kay Klatt, (202) 523-9690.

OSHA Varies Cotton Dust Standards by Type of Operation

In setting health and safety requirements for occupational exposure to cotton dust, the Occupational Safety and Health Administration (OSHA) takes into account differing technologies and methods of operation of the industries that produce cotton dust. OSHA also considers the technological and economic feasibility of industry compliance. To set standards, OSHA examined plant operations to determine the chemical makeup of the cotton dust produced, the size of the dust particles, the concentration of dust, and the duration of worker exposure. OSHA varies the permissible exposure limit (PEL) according to risk, as measured by the nature of the cotton dust and the length of exposure: for lower risk operations, OSHA sets a higher PEL. To vary PEL levels further, OSHA considers factors such as the state of the art of the technology, experience in implementing general dust control principles, industry concentration, history of profits, availability of capital, and the ability of firms to pass costs through to consumers.

Reference: 29 CFR Part 1910; 43 FR 27350, June 23, 1978.
Contact: Gail Brinkerhoff, (202) 523-8034.

MSHA Tailors Mine Safety Training to the Special Circumstances of Small Surface Mines

The Mine Safety and Health Administration's (MSHA) safety training regulations for surface mines reflect the limited resources and special employment patterns of small surface mines. Under the original proposed regulations, all surface miners were required to complete a total of 24 hours of safety training before commencing work. However, MSHA recognized

that this requirement had an especially harsh economic effect on small mine operators because of their high employment turnover and their inability to spare employees for training due to their limited resources. MSHA, therefore, drafted its final regulation to allow small mine operators to give only 8 hours of preliminary training, as long as the remaining 16 hours of training are given within 60 days.

Reference: 30 CFR Part 48; 43 FR 47454, October 13, 1978.
Contact: Manuel Lopez, (202) 235-1157.

DEPARTMENT OF TRANSPORTATION

FAA Tailors Safety Regulations to Size of Aircraft

The Federal Aviation Administration's (FAA) air carrier certification and operating standards take into account the special characteristics of small aircraft and the special needs of smaller airline companies. Of the 2,000 certified air carriers, FAA classifies approximately 90 percent as small. The FAA's safety technological requirements reflect the weights and dimensions of these smaller aircraft, the shorter distance they travel, the lower altitudes at which they fly, and the smaller number of passengers they carry. As a result, operators of small aircraft avoid certain unnecessary costs of certifying, building, and operating airplanes to meet large plane standards that are inappropriate for smaller planes. When possible, the FAA also considers the limited capital and unique nature of smaller airline companies in setting certain maintenance and employee training requirements.

Reference: 14 CFR Parts 21, 23, 25, (certification standards);
14 CFR Parts 91, 121, 135 (operating standards).
Contact: Ed Faberman, (202) 426-3073.

FHWA Tiers Requirements for Trucking Operations by Risk

The Federal Highway Administration's (FHWA) Motor Carrier Safety Regulations relieve low-risk trucking operations from certain hours-of-service limitations, driving qualifications, and related reporting requirements. Logging requirements are reduced for operators of lightweight vehicles generally not used for long-distance driving and for drivers traveling within a 100-mile radius of the place the driver reported for work.

Similarly, off-road service operations to oil and gas wells, which involve little highway driving, are exempted from hours-of-service regulations. FHWA does not enforce driver qualifications for small contract mail carriers or farmers operating within 150 miles of their farms because these operations have a low accident rate and usually involve lightweight vehicles, traveling short distances in rural areas at slow speeds. FHWA also suspends hours-of-service regulations for all deliveries from retail stores between December 15 and December 25 to enable drivers to work longer hours during the holiday rush. Safety of the motoring public is not seriously undermined because most of these shipments are short-haul operations.

Reference: 49 CFR 395.8 (driver's log requirements) 45 FR 10683, March 7, 1975 (lightweight vehicles); 45 FR 22042, April 3, 1980 (100-mile radius). 49 CFR 395.3 (hours-of-service regulations). 49 CFR Parts 391-396 (driver's qualifications); 37 FR 26112, December 8, 1972 (small mail carriers); 36 FR 24218, December 22, 1971 (farmers).

Contact: Gerald Davis, (202) 426-9767.

DEPARTMENT OF THE TREASURY

ATF May Structure Bond Requirements by Volume of Use

The Bureau of Alcohol, Tobacco, and Firearms (ATF) is proposing to scale bonding limitations for the approximately 2,800 users of specially denatured alcohol according to the quantities used. Currently, bond limits and exemptions are structured so that small users are required to buy a proportionately higher bond than large users. In order to alleviate this anticompetitive impact, the ATF proposes to raise the bonding exemption to increase the percentage of users exempted from 46 percent to 75 percent. In addition, the ATF plans to raise the points at which bond amounts increase. Both of these changes should make it easier for small users to obtain bonds and for new businesses to begin operations without jeopardizing Treasury tax collection efforts, which are based on annual usage.

Reference: 27 CFR Part 211; 25 FR 5968, June 28, 1960; 25 FR 7738, August 13, 1960.

Contact: Richard Moscolo, (202) 566-7626.

OCC Exempts Small Offerings from Disclosure Requirements

The Office of the Comptroller of the Currency (OCC) uses the dollar amount of a bank's security offering as a general indicator of bank size in order to adjust the cost of disclosure. Previously, OCC required national banks to provide an offering circular to investors when the banks offered or sold their equity or debt securities. OCC now provides a qualified exemption from the offering circular requirements for any offering by a national bank that does not exceed $500,000 in a 12-month period. The regulation also permits a bank to use an abbreviated offering circular where the amount offered does not exceed $2 million in a 12-month period. This action expedites the process through which national banks offer securities while providing the information investors need.

Reference: 12 CFR Part 16; 45 FR 11115, February 20, 1980.
Contact: Jonathan L. Levin, (202) 447-1177.

OCC Tailors Disclosure Requirements to Number of Stockholders

The Office of the Comptroller of the Currency (OCC) varies the requirements for annual financial disclosure to shareholders of national banks according to the number of shareholders. OCC sought to eliminate the required preparation, distribution, and filing of annual reports to shareholders for all national banks that have fewer than 500 shareholders and are not wholly owned by a bank holding company. National banks now have the option of either sending an annual report to shareholders or informing them, in association with the notice of annual shareholders' meetings, that certain basic financial information already in the public domain may be obtained from the bank without charge. The OCC expects these changes to benefit principally the smaller institutions.

Reference: 12 CFR Part 18; 45 FR 15, January 2, 1980.
Contact: Jonathan L. Levin, (202) 477-1177.

ENVIRONMENTAL PROTECTION AGENCY

EPA Tiers Hazardous Waste Regulations by Size of Generator

The Environmental Protection Agency (EPA) has adopted a tiered system that establishes special requirements for hazardous wastes produced by small generators under Subtitle C of the Resource Conservation and Recovery Act of 1976. The regula-

tions exempt generators of less than one metric ton per month from all reporting requirements. EPA feels this approach should allow EPA and the States to focus limited enforcement and implementation resources on the remaining generators, which produce over 95 percent of all hazardous wastes. The exemption also will reduce the burden on the great number of small concerns that contribute only 5 percent of the waste generated. Approximately 695,000 generators, usually smaller businesses, have qualified under the exemption.

Reference: 40 CFR 261.5; 45 FR 76623, November 19, 1980.
Contact: John Lehman, (202) 755-9185.

EPA Tiers Drinking Water Compliance Dates by Population

The Environmental Protection Agency (EPA) is using size of population served to tier the effective date of community compliance with the Safe Drinking Water Act control levels for organic chemicals introduced into drinking water systems. EPA recently revised its regulations to establish a maximum contaminant level for total trihalomethanes, including chloroform, that are introduced into drinking water systems by the reaction of naturally occurring substances with chlorine in the course of water treatment. For community water systems serving 75,000 or more persons, monitoring will begin one year following promulgation of the rule. The effective date of compliance is 2 years following promulgation for community water systems serving 10,000 to 75,000 persons. Monitoring must begin within 3 years of the date of promulgation, and the effective date is 4 years from promulgation.

Reference: 40 CFR Part 141; 44 FR 68624, November 29, 1979.
Contact: Joseph Cotruvo, (202) 472-5016.

EPA Tiers Reporting Requirements by Volume of Sales and Production

The Environmental Protection Agency (EPA) is considering using a manufacturer's total sales and its volume of production as criteria for determining exemptions to the reporting requirements for preliminary assessment of chemicals under Section 8 of the Toxic Substances Control Act (TSCA). The TSCA, which requires EPA to set reasonable reporting requirements that are necessary for the effective enforcement of the Act, provides for small manufacturer or processor exclusion. EPA is considering exempting a manufacturing or processing company if 1) its total sales for all products at

all sites are less than $30 million for the reportable year, and 2) its production volume at each site for the chemical reported was less than 100,000 pounds for the year. According to an EPA economic analysis, as many as two-thirds of the companies that qualify under the sales criterion may not qualify for the exemption because they exceed production volume. This criterion would exempt from reporting requirements approximately 9.5 percent of the companies that manufacture chemicals subject to this proposal, but would exclude only 10 percent of the reports that all manufacturers could submit for each chemical.

Reference: 40 CFR Part 712; 45 FR 13646, February 29, 1980.
Contact: Jenette Wiltse, (202) 426-2632.

EPA Tiers Noise Standards by Machine Type and Horsepower Rating

The Environmental Protection Agency (EPA) is developing noise emission standards for newly manufactured wheel and crawler tractors which tier the stringency of requirements and effective dates for compliance according to machine type and horsepower rating. EPA will base differences among allowable noise levels on the nature of the different machines and their uses, the risk associated with the noise levels emitted, the difficulties of applying necessary control technology, and the attendant costs and potential economic effects. Because most tractor production lines are set up according to horsepower, the use of horsepower as a standard enables a company to phase in the new regulations systematically, on a line-by-line basis. As a result, EPA's noise standards will protect the public while minimizing production disruption and adverse economic and market impacts. To prevent manufacturers from temporarily avoiding the regulation by switching production to tractors that are not yet regulated, the agency took special care to include all alternative use vehicles within the same class.

Reference: 40 CFR Part 204; 42 FR 35804, July 11, 1977.
Contact: Kenneth Feith, (202) 577-2710.

EPA Considers Technological Feasibility in Effluent Guidelines

In establishing effluent guidelines for the electroplating industry, the Environmental Protection Agency (EPA) developed

varying pretreatment standards for each industry subcategory, based on such factors as age and size of plant, raw materials used, manufacturing processes, type of products, treatment technology available, energy requirements, compliance costs, and the availability of Small Business Administration Economic Injury Loans. EPA was particularly concerned that high commercial interest rates and unavailability of long-term financing to comply with its regulations might increase plant closures in the metal finishing and printed circuit board industries. In order to reduce the projected impact on these industries and other similarly situated small firms, EPA applied less stringent controls to plants for which the wastewater flow is less than 10,000 gallons per day. EPA thereby minimized the closure rate in these industries while relaxing controls on less than 3 percent of the total flow to publicly owned treatment works. To further minimize the impact on small firms, EPA developed a third, even less stringent table of controls for point sources with a total employment of fewer than 11 persons, wastewater flow of less than 2,061 gallons per hour, and a production rate of less than 4.9 square meters per hour per employee (52.7 sq. ft. per hour per employee).

Reference: 40 CFR Part 413; 44 FR 52590, September 7, 1979.
Contact: Ernest P. Hall, (202) 426-2576.

EPA Tiers Civil Penalties by Size of Business, Gravity of Problem, and Economic Feasibility

In assessing civil penalties under the Federal Insecticide, Fungicide, and Rodenticide Act, the Environmental Protection Agency (EPA) considers the size of the business, the gravity of the problem, and the effect on the entity's ability to continue in business. Penalty amounts are initially determined according to an assessment schedule, which categorizes potential violations and the size of the business. The agency reduces the assessment schedule penalty to the extent necessary to permit a firm to remain in business. The schedule classifies businesses into five size categories based on total operating revenue (less than $100,000; $100,000 to $400,000; $400,000 to $700,000; $700,000 to $1,000,000; over $1,000,000). Various levels of gravity are established for different types of pesticides, with as many as five levels used for some types.

Reference: 39 FR 27711, July 31, 1974.
Contact: Steve Leifer, (202) 755-0970.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

EEOC Tiers Recordkeeping by Number of Employees

The Equal Employment Opportunity Commission (EEOC) uses the number of employees in a firm to determine appropriate recordkeeping requirements. EEOC recognized that employers with fewer than 100 employees would be burdened significantly by some of the requirements of Section 15 of the Uniform Guidelines on Employee Selection Procedures. EEOC, therefore, exempted these small employers from some of the recordkeeping requirements, but it feels these exemptions will not compromise its ability to eliminate discrimination patterns.

Reference: 29 CFR 1607.15A(1); 43 FR 38303, August 25, 1978.
Contact: Pat Scheehan, (202) 634-7060.

NATIONAL CREDIT UNION ADMINISTRATION

NCUA Uses Bank Assets to Determine Liquidity Reserves

The National Credit Union Administration (NCUA) has tiered a requirement for credit unions to maintain a reserve of 5 percent liquidity according to two variables: the size of the credit union and the type of accounts the credit union offers. NCUA determined that in credit unions with assets below $2 million, the volume of large and traditionally volatile accounts is substantially lower than that in larger credit unions. Also, the smaller credit unions have not required significant liquidity assistance from the National Credit Union Share Insurance Fund; thus, smaller credit unions do not have as great a need to insure availability of contingency funds. NCUA therefore excluded from its 5 percent reserve liquidity requirements those credit unions with less than $2 million in assets, with the exception of those having share draft accounts. Some 13,000 small credit unions are now exempt from any regulatory burden but are still subject to the requirements of sound liquidity management.

Reference: 12 CFR Part 742; 44 FR 51200, August 31, 1979.
Contact: Robert M. Fenner, (202) 632-4870.

CIVIL AERONAUTICS BOARD

CAB Tiers Recordkeeping by Amount of Revenue and Size of Aircraft

The Civil Aeronautics Board (CAB) tiers the frequency and scope of reporting and recordkeeping requirements for airlines by both the amount of gross revenue and the size of aircraft. For certificated air carriers, the CAB has established three classes based on revenue: less than $25 million, $25 to $75 million, and over $75 million. CAB recently proposed to raise the minimum revenue for each class to reflect inflation. Air taxi operators, who are uncertificated and use only small aircraft, are divided into commuter and non-commuter classifications and have even fewer reporting and virtually no recordkeeping requirements. The CAB's new fitness rule also contains reporting requirements tailored to specific classes of air carriers. The Board estimates its initiatives have reduced the industry reporting burden by 62 percent.

Reference: 14 CFR Part 241; 44 FR 77189, December 31, 1979; 45 FR 85064, December 24, 1980 (uniform system of accounts and reports). 14 CFR Part 204; 45 FR 42593, June 25, 1980 (air fitness).

Contact: Clifford Rand, (202) 673-6042 (uniform system of accounts and reports); Sherry Kindred, (202) 673-5333 (air fitness).

FEDERAL DEPOSIT INSURANCE CORPORATION

FDIC Tiers Reporting Requirements by Bank Assets

The Federal Deposit Insurance Corporation (FDIC) tiers certain of its reporting requirements to vary the detail and frequency of reports according to the assets of the banks. All banks must submit reports of condition to FDIC quarterly. However, banks that have less than $100 million in assets may submit an abbreviated "small bank report." This application of tiering has the potential to reduce the reporting burden for approximately 13,000 banks, or 90 percent of the active, insured commercial banks that report. Banks with assets of less than $300 million must submit reports of income semiannually. Banks with assets of less than $100 million also submit reports of income semiannually but in an abbreviated format. FDIC

requires banks with assets of more than $300 million (roughly 470 banks) to submit these reports quarterly instead. These banks must also submit more information in "large bank supplements."

Reference: FDIC Instructions, effective March 31, 1980, Reports of Income and Conditions.
Contact: Carol Galbraith, (202) 389-4422.

FEDERAL ENERGY REGULATORY COMMISSION

FERC May Tier Dam Safety Regulations by Hazard Potential

The Federal Energy Regulatory Commission (FERC) is strongly considering tiering its safety inspection of dams and other waterpower projects according to hazard potential in addition to the current standard of size. FERC inspects projects that have a dam exceeding 35 feet in height above the streambed or a storage capacity of more than 2,000 acre-feet; however, FERC believes that adding the variable of hazard potential will result in increased public safety because some dams do not meet the physical criteria but do have a high hazard potential.

Reference: 18 CFR Parts 3 and 12; 45 FR 41608, June 19, 1980.
Contact: Glenn Berger, (202) 357-8033.

FERC Considers Generating Capacity in Licensing Hydroelectric Projects

In order to encourage development of hydroelectric power, the Federal Energy Regulatory Commission (FERC) exempts certain small hydroelectric power projects from standard licensing requirements. The exemption is available to projects that use the water power potential of a single existing dam or a natural water feature and that will result in a total project generating capacity of 5 megawatts or less. In order to safeguard the environment and the public safety, exemptions are conditioned upon compliance with environmental requirements and periodic inspection of projects with hazard potential. FERC grants exemptions on a case-by-case basis and can revoke them if the project is not constructed within a reasonable time.

Reference: 18 CFR Parts 4 and 375; 45 FR 58368, September 3, 1980.
Contact: Ronald Corso, (202) 357-5321.

FEDERAL MARITIME COMMISSION

FMC Exempts Ships with Limited Cargo and Low Horsepower from Tariffs

The Federal Maritime Commission's (FMC) regulations governing the publication, filing, and posting of tariffs exempt transportation by ships that have limited cargo capacity. The FMC determined that a tariff requirement for ships with limited cargo capacity (100 tons or less) or low horsepower (indicated horsepower of 100 tons or less) was not necessary to protect the competitive nature of the industry because these ships had an insignificant role in total carrier trade. FMC, therefore, found that the burden to these small ships of complying with the tariff requirement clearly outweighed the benefits, and it exempted them from the requirement.

Reference: 46 CFR 531.1; 42 FR 54810, October 11, 1977.
Contact: James A. Warner, (202) 523-5827.

FMC Establishes Special Procedures to Expedite Small Claims

The Federal Maritime Commission (FMC) has adopted an informal procedure for the adjudication of small damage and overcharge claims against common carriers. A settlement officer can preside over hearings for claims of less than $5,000 at which certain procedural requirements are waived or simplified. Information procedures are sufficient to handle these small claims, which are generally routine overcharge cases requiring no evidentiary hearing or special handling. In cases where an evidentiary hearing later becomes necessary, the claimant is allowed to repetition and have the case heard under formal procedures. The end result of FMC's small claims procedures is the more expeditious and less costly resolution of minor commercial disputes. It also makes possible the filing of many minor claims that would be economically infeasible under more expensive and cumbersome formal procedures.

Reference: 46 CFR 502.301; 40 FR 27671, July 1, 1975.
Contact: Joseph Polking, (202) 253-5725.

FEDERAL RESERVE SYSTEM

FRS Uses Amount of Deposits to Vary Reserve Requirements

In accordance with the Monetary Control Act of 1980, the Federal Reserve System (FRS) used the size of deposits to revise reserve requirements that apply to 40,000 financial depository institutions. The Board temporarily exempted institutions with less than $2 million in deposits from holding reserves. This exemption frees over 17,000 institutions, but only 1.2 percent of all deposits, from the requirements, and thus should not undermine the statutory objectives of enhancing monetary control. The Board also postponed the reserve requirements reporting date for financial institutions that have deposits of less than $15 million and revised the reporting schedule to allow quarterly rather than weekly reports. This will provide relief to an additional 10,000 institutions and should not affect compliance because many of those institutions already hold vault cash in excess of the required reserves.

Reference: 20 CFR Part 204; 45 FR 56009, August 22, 1980.
Contact: Barbara Lowry, (202) 452-3742.

FEDERAL TRADE COMMISSION

FTC Exempts Small Mergers and Acquisitions from Anti-Trust Rules

The Federal Trade Commission (FTC) exempts certain mergers or acquisitions on the basis of size from the Hart-Scott-Rodino Anti-Trust Improvement Act pre-merger notification requirements. The Commission staff conducted an analysis of the reported transactions during the first 9 months of the program and found that many actions were small and of no enforcement interest. Therefore, the FTC raised the minimum dollar value of transactions covered by the rules and now exempts about 20 percent of those transactions previously covered.

Reference: 16 CFR Part 802; 44 FR 66781, November 21, 1979.
Contact: Joan S. Pruitt, (202) 523-3894.

INTERSTATE COMMERCE COMMISSION

ICC Structures Reporting Requirements by Gross Operating Revenue

The Interstate Commerce Commission (ICC) structures financial and accounting reporting requirements for the trucking industry according to annual gross operating revenue. ICC has recently adjusted its revenue classifications to reflect inflation rate increases. Firms with gross revenues of up to $1 million file simplified financial forms because the ICC has determined they do not have a significant impact on the economic condition of the trucking industry as a whole. ICC estimates that this classification moved 700 small trucking firms into the simplified reporting class and that each of these firms could save approximately $12,000 a year in accounting costs.

Reference: 49 CFR 1207; 44 FR 55586, September 27, 1979.
Contact: Bryan Brown, Jr., (202) 275-7448.

SECURITIES AND EXCHANGE COMMISSION

SEC Tiers Reporting Requirements by Size of Security Issue

The Securities and Exchange Commission (SEC) tailors its reporting requirements to the dollar amount of a securities issue in order not to impair unnecessarily capital formation by small business. SEC has adopted a new registration statement to allow small issuers to sell up to $5 million in securities without incurring the full range of disclosures and reporting burdens imposed on larger issuers. For example, the modified registration statement calls for less extensive narrative disclosure and requires the issuer to provide audited financial statements for 2 years rather than the 3 years required under the traditional registration form. The Commission believes the simplified disclosure and financial statement requirements should reduce the costs of the registration process for small issuers, thereby easing their entry into the public capital markets. The Commission feels this action is consistent with

its statutory responsibilities to protect investors and ensures that the capital markets operate in a fair and orderly manner.

Reference: 17 CFR Parts 200, 202, 230, 231, 234, 249; 44 FR 21562, April 10, 1979.
Contact: Paula Chester, (202) 272-2644.

SEC May Modify Reporting Obligations for Small Issuers

The Securities and Exchange Commission (SEC) is soliciting public comment on the feasibility of establishing defined classes of small issuers of securities, based on the dollar amount of the offering. It is also considering modifying certain reporting obligations under the Securities and Exchange Act. Based on these public comments, the staff will consider whether to streamline or reduce disclosure obligations for small issuers with respect to the frequency of reports or the type of information reported. Several different tiers or levels of reporting requirements may be established. SEC feels that such actions may reduce unnecessary regulatory burdens on small businesses without impairing its ability to protect investors and the integrity of the securities markets.

Reference: 17 CFR Parts 240 and 249; 45 FR 40145, June 13, 1980.
Contact: Hugh Haworth, (202) 523-5631.

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PART III

ANNOTATED BIBLIOGRAPHY

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  An outline of the agency's policy toward small business used in the regulatory process.

- Levy, Stephen E., "Regulatory Flexibility Act, Agencies Have Difficulty," Legal Times, November 24, 1980: 11, 13, 19.

  A summary of the Regulatory Flexibility Act and problems agencies may encounter in implementing the Act.

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  A memorandum from the President to agency heads encouraging them to use innovative regulatory techniques whenever possible in drafting or reviewing regulations.

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  A memorandum from the President to agency heads encouraging them to take into account the size and nature of regulated entities in drafting or reviewing regulations.

- Regulatory Flexibility Act, P.L. 96-354, 94 Stat. 1164; 5 U.S.C. §§601-612.

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- U.S. Regulatory Council, "Innovative Techniques in Practice and Theory: Proceedings of a Regulatory Council Conference," January 1980.

  A summary of the issues raised and discussed at the workshops on tiering and other innovative regulatory techniques at a conference conducted by the Regulatory Council.

- U.S. Regulatory Council, "Regulating with Common Sense: A Progress Report on Innovative Regulatory Techniques," September 1980.

  A discussion of the recent Federal agency uses of tiering and other innovative techniques that can result in more effective, less burdensome regulation.

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PROJECT ON ALTERNATIVE REGULATORY APPROACHES

The Project on Alternative Regulatory Approaches was a 2-year project initiated by the former U.S. Regulatory Council and completed in September 1981. The Project promoted alternative, market-oriented regulatory strategies. Alternative regulatory approaches are departures from traditional "command-and-control" regulation, which involves strictly specified rules and formal government sanctions for failure to comply.

Market-oriented alternatives avoid unneeded governmental restraints and permit greater private discretion in choosing how to meet regulatory objectives. Among these alternative approaches are marketable rights, performance standards, monetary incentives, information disclosure, and tiering.

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PROJECT ON ALTERNATIVE REGULATORY APPROACHES -- AVAILABLE DOCUMENTS

- Guidebook Series on Alternative Regulatory Approaches, September 1981 -- A series of guidebooks for regulators on market-oriented regulatory techniques. Each guidebook summarizes the advantages, preconditions, and limitations of a particular technique. The series comprises:

  1) Overview
  2) Marketable Rights
  3) Performance Standards
  4) Monetary Incentives
  5) Information Disclosure
  6) Tiering

- Minutes from the Project colloquium series for regulators, September 1981 -- Summaries of ten presentations by leading regulatory scholars, including Robert Crandall of the Brookings Institution, Marvin Kosters of the American Enterprise Institute, and Roger Noll of the California Institute of Technology.

- Bibliography, September 1981 -- A listing of about 100 publications covering alternative regulatory approaches.

- Resource Center File Listings, September 1981 -- A list of approximately 300 Federal applications of alternative regulatory approaches for which there are files currently available for agency and public review.

- "Innovative Techniques in Theory and Practice: Proceedings of a Regulatory Council Conference," January 1981, 49 pp. -- A summary of eight July 1980 workshops in which agency practitioners provided information on their experience with less traditional forms of regulation. Includes "Regulation and the Imagination," a Conference address by Alfred E. Kahn.

- "Regulating with Common Sense: A Progress Report on Innovative Regulatory Techniques," October 1980, 19 pp. -- A summary report to the President on Government-wide progress in implementing his June 13, 1980 directive to agencies on alternative approaches.

- "An Inventory of Innovative Techniques," April 1980, 47 pp. -- A description of 66 early applications of alternative approaches, written for the lay public.

Single copies of these documents can be obtained from:

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