FRIDAY, AUGUST 25, 1978
PART IV

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
CIVIL SERVICE COMMISSION
DEPARTMENT OF LABOR
DEPARTMENT OF JUSTICE

ADOPTION BY FOUR AGENCIES OF UNIFORM GUIDELINES ON EMPLOYEE SELECTION PROCEDURES (1978)
PART 1607—UNIFORM GUIDELINES ON EMPLOYEE SELECTION PROCEDURES (1978)

SUMMARY: The Department of Labor adopted the same approach in 1968 with respect to tests used by Federal contractors under Executive Order 11246 in a more detailed regulation. The Government's view was that the employer's intent was important. If tests or other practices had an adverse impact on protected groups, they were unlawful unless they could be justified. To justify a test which screened out a higher proportion of minorities, the employer would have to show that it fairly measured or predicted performance on the job. Otherwise, it would not be considered to be professionally developed.

In succeeding years, the EEOC and the Department of Labor provided more extensive guidance which elaborated upon these principles and expanded the guidelines to emphasize all selection procedures. In 1971 in *Griggs v. Duke Power Co.*, the Supreme Court announced the principle that employer practices which had an adverse impact on minorities and were not justified by business necessity constituted illegal discrimination under title VII. Congress confirmed this interpretation in the 1972 amendments to title VII. The elaboration of these principles by courts and agencies continued into the mid-1970's, but differences between the EEOC and the other agencies (Justice, Labor, and Civil Service Commission) produced two different sets of guidelines by the end of 1976.

With the advent of the Carter administration in 1977, efforts were intensified to produce a unified government position. The following document represents the result of that effort. This introduction is intended to assist those not familiar with these matters to understand the basic approach of the uniform guidelines. While the guidelines are complex and technical, they are based upon the principles which have been consistently upheld by the courts, the Congress, and the agencies.

The following discussion will cite the sections of the Guidelines which embody these principles.

II. ADVERSE IMPACT

The fundamental principle underlying the guidelines is that employer policies or practices which have an adverse impact on employment opportunities of any race, sex, or ethnic group are illegal, under title VII and the Executive order unless justified by business necessity. A selection procedure

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which has no adverse impact generally does not violate title VII or the Executive order. This means that an employer may usually avoid the application of the guidelines by use of procedures which have no adverse impact.

If adverse impact exists, it must be justified on grounds of business necessity. nonexistent or adequately supported by justification which demonstrates the relation between the selection procedure and performance on the job. The guidelines adopt a "rule of thumb" as a practical means of determining adverse impact for use in enforcement proceedings. This rule is known as the "5/6ths" or "80 percent" rule. It is not a legal definition of discrimination, rather it is a practical device to keep the attention of enforcement agencies on serious discrepancies in hiring or promotion rates or other employment decisions. To determine whether a selection procedure violates the "5/6ths" rule, an employer compares its hiring rates for different groups. But this rule of thumb cannot be applied mechanically. An employer who has conducted an extensive recruiting campaign may have a larger than normal pool of applicants, and the "5/6ths" rule might unfairly expose it to enforcement proceedings. On the other hand, an employer's reputation may have discouraged or "chilled" applicants of particular groups from applying because they believed application would be futile. The application of the "5/6ths" rule in that situation would allow an employer to evade scrutiny because of its own discrimination.

III. IS ADVERSE IMPACT TO BE MEASURED BY THE OVERALL PROCESS?

In recent years some employers have eliminated the overall adverse impact of a selection procedure and employed suitable means of minority hiring. Women or minority groups are not eligible to meet this "5/6ths rule of thumb". However, they might continue to use a component which does have an adverse impact. For example, an employer might insist on a minimum passing score on a written test which is not job related and which has an adverse impact on minorities. However, the employer might compensate for this adverse impact by hiring a sufficient proportion of minorities who do meet its standards, so that its overall hiring is on a par with or higher than the applicant flow. Employers have argued that as long as their "bottom line" shows no overall adverse impact, there is no violation at all, regardless of the operation of a particular component of the process.

Employer representatives have argued that rights under equal employment opportunity laws are individual and that an employer has the burden of proving that adverse discrimination against other minorities. Therefore, they argue that adverse impact is to be determined by examination of each component of the selection procedure, regardless of the "bottom line." This question has not been answered definitively by the courts. There are decisions pointing in both directions.

These guidelines do not address the underlying question of law. They discuss only the exercise of prosecutorial discretion by the Government agencies themselves. The agencies have decided that, generally, their resources to combat discrimination should be used against those respondents whose practices have restricted or excluded some categories of employment opportunities of minorities and women. If an employer is appropriate only including all groups in the work force, it is not engaged in Government time and effort on such a case, when there are so many employers whose practices do have adverse effects which should be challenged. For this reason, the guidelines provide that, in considering whether to take enforcement action, the Government will take into account the general posture of the firm as a whole, the extent to which it has added or required employment opportunities, including its affirmative action plan and results achieved under the plan. There are some circumstances where the Government may intervene even though the "bottom line" has been satisfied. They include the case where a component of a selection procedure restricts promotional opportunities of minorities or women who were discriminatorily assigned to jobs, and where a component, such as a height requirement, has been declared unlawful in other situations.

What of the individual who is denied the job because of a particular component in a procedure which otherwise meets the "bottom line" standard? The individual retains the right to proceed through the appropriate agencies, and into Federal court.

IV. WHERE ADVERSE IMPACT EXISTS: THE BASIC OPTIONS

Once an employer has established that there is adverse impact, what steps are required by the guidelines? As previously noted, the employer can modify or eliminate the procedure which produces the adverse impact, thus taking the selection procedure from the coverage of these guidelines. If the employer does not do that, then it must justify the use of the procedure on grounds of "business necessity." This normally means that it must show a clear relation between performance on the selection procedure and performance on the job. In the language of industrial psychology, the employer must validate the selection procedure. Thus the bulk of the guidelines consist of the Government's interpretation of standards for validation.

V. VALIDATION: CONSIDERATION OF ALTERNATIVES

The concept of validation as used in personnel psychology involves the establishment of the relationship between a test instrument or other selection procedure and performance on the job. Federal equal employment opportunity law requires validation of the instrument or other procedure to the process of validation. In conducting a validation study, the employer should consider available alternatives which will achieve its legitimate business purpose with lesser adverse impact. The employer cannot concentrate solely on establishing the validity of the instrument or procedure which it has been using in the past.

This same principle of using the alternative with lesser adverse impact is applicable to the manner in which an employer uses a valid selection procedure. The guidelines assume that there are at least three ways in which an employer can use scores on a selection procedure: (1) To screen out consideration those who are not likely to be able to perform the job successfully; (2) to group applicants in accordance with the likelihood of their successful performance on the job, and (3) to rank applicants, selecting those with the highest scores for employment.

The setting of a "cutoff score" to determine who will be screened out may have an adverse impact. If so, an employer is required to justify the initial cutoff score by reference to its need for a trustworthy and efficient work force. Similarly, use of results for

9Section 8.
10Section 3B.
11Section 16B (definition of selection rate).
12Section 4D (special recruiting programs).
13Ibid (user's actions have discouraged applicants).
15A few practices may be used without validation even if they have adverse impact. See, e.g., McDonnell Douglas v. Green, 411 U.S. 792 (1973); Albemarle Paper Co. v. Moody, 422 U.S. 405 (1975); Robinson v. Lorillard Corp., 434 F. 2d 791 (4th Cir. 1971).
16Sections 3B, 16.
17Ibid.
18See sections 3B, 5H. See also sections 14D2 (criterion-related validity: 14D3) (content validity): 14D11 (construct validity).
grouping or for rank ordering is likely to have a greater adverse effect than use of scores solely to screen out unqualified candidates. If the employer chooses to use a rank order method, the evidence of validity must be sufficient to justify that method of use.²

VI. TESTING FOR HIGHER LEVEL JOBS

Normally, employers test for the job for which people are hired. However, there are situations where the first job is temporary or transient, and the workers who remain are promoted to work which involves more complex activities. The guidelines restrict testing for higher level jobs to users who promote a majority of the employees who remain with them to the higher level job within a reasonable period of time.³

VII. HOW IS VALIDATION TO BE CONDUCTED

Validation has become highly technical and complex, and yet is constantly changing as a set of concepts in industrial psychology. What follows here is a simple introduction to a highly complex field. There are three components which can be used to validate a selection procedure. These concepts reflect different approaches to investigating the job relatedness of selection procedures and may be interrelated in practice. They are (1) criterion-related validity, (2) content validity, and (3) construct validity.⁴ In criterion-related validity, a selection procedure is justified by a statistical relationship between scores on the test or other selection procedure and measures of job performance. In content validity, a selection procedure is justified by showing that it represents a sample of significant parts of the job, such as a typing test for a typist. Construct validity involves identifying the psychological trait (the construct) which underlies successful performance on the job and then devising a selection procedure to measure the presence and degree of the construct. An example would be a test of "leadership ability." The guidelines contain technical standards and documentation requirements for the application of each of the three approaches.⁵ One of the problems which the guidelines attempt to meet is the "borderline" between "content' validity" and "construct validity." The extreme cases are easy to understand. A secretary, for example, may type jobs which require the separation of important matters which must be handled immediately from those which can be handled routinely. For the typing function, a typing test is appropriate. It is justifiable on the basis of content validity because it is a sample of an important or critical part of the job. The second function can be viewed as involving a capability to exercise selective judgment in light of the surrounding circumstances, a mental process which is difficult to sample.

In addressing this situation, the guidelines attempt to make it practical to validate the typing test by a content strategy,⁶ but do not allow the validation of a test measuring a construct such as "judgment" by a content validity strategy.

The bulk of the guidelines deals with questions such as those discussed in the above paragraphs. Not all such questions can be answered simply, nor will an all problem be in the single document. Once the guidelines are issued, they will have to be interpreted in light of changing factual, legal, and professional circumstances.

VIII. SIMPLIFICATION OF REPORTING AND RECORDKEEPING REQUIREMENTS

The reporting and recordkeeping provisions which appeared in the December 30 draft which was published for comment have been carefully reviewed in light of comments received and President Carter's direction to limit paperwork burdens on those regulated by Government to the minimum necessary for effective regulation. As a result of this review, two major changes have been made in the documentation requirements of the guidelines. A new section 15A(1) provides a simplified recordkeeping option for employers with fewer than 100 employees.

(1) Determinations of the adverse impact of selection procedures need not be made for groups which constitute less than 2 percent of the relevant labor force.

Also, the draft has been changed to make clear that users can assess adverse impact on an annual basis rather than on a continuing basis.

Analysts of comments. The uniform guidelines published today are based upon the proposition that the Federal Government should speak to the public and to those whom it regulates with one voice on this important subject; and that the public ought to impose upon itself obligations for equal employment opportunity which are at least as demanding as those it seeks to impose on others. These guidelines state a uniform Federal position on this subject, and are intended to protect the rights created by Title VII of the Civil Rights Act of 1964, as amended, Executive Order 11246, as amended, and other provisions of Federal law. The uniform guidelines are also intended to represent "professionally acceptable methods" of the psychological profession for demonstrating whether a selection procedure validly predicts or measures performance for a particular job. Albermarle Paper Co. v. Moody, 443 U.S. 457. They are also intended to be consistent with the decisions of the Supreme Court and authoritative decisions of other appellate courts.

Although the development of these guidelines proceeded the issuance by President Jimmy Carter of Executive Order 12044 designed to improve the regulatory process, the spirit of his Executive order was followed in their development. Initial agreement among the Federal agencies was reached early in the fall of 1977, and the months from October 1977 until today have been spent in extensive consultation with civil rights groups whose clients are protected by these guidelines; employers, labor unions, and State and local governments whose employment practices are affected by these guidelines; State and local government antidiscrimination agencies who share with the Federal Government enforcement responsibility for discriminatory practices; and appropriate members of the general public. For example, an earlier draft of these guidelines was circulated informally for comment on October 28, 1977, pursuant to OMB Circular A-85. Many comments were received from representatives of State and local governments, psychologists, private employment agencies, civil rights groups, and many other organizations and individuals submitted written comments on the December 30, 1977, draft. These comments were from representatives of private industry, public employees, labor organizations, civil rights groups, the American Psychological Association and components thereof, and many individual employers, psychologists, and personnel specialists. On March 3, 1978, notice was given of a public hearing and meeting to be held on April 10, 1978, 43 FR 9131. After preliminary review of the comments, the agencies identified four issues of particular interest, and invited the Advisory Panel to comment on these issues, 43 FR 11812 (March 21, 1978). In the same notice the agencies published questions and answers on four issues.
issues of concern to the commenters. The questions and answers were designed to clarify the intent of the December 30, 1977, draft, so as to provide a sharper focus for the testimony at the hearing.

At a full day of testimony on April 10, 1978, representatives of private industry, State and local governments, labor organizations, and civil rights groups, as well as psychologists, personnel specialists, and others testified at the public hearing and meeting. The written comments, testimony, and views expressed in subsequent informal consultations have been carefully considered by the four agencies. We set forth below a summary of the comments, and the major issues raised in the comments and testimony, and attempt to explain how we have resolved these issues.

The statement submitted by the American Psychological Association (A.P.A.) stated that "these guidelines reflect a major thrust forward and with careful interpretation can provide a sound basis for concerned professional work." Most of the A.P.A. comments were directed to clarification and interpretation of the present language of the proposal. However, the A.P.A. recommended substantive change in the construct validity section and in the definition of work behavior.

Similarly, the Division of Industrial and Organizational Psychology (division 14) of the A.P.A. described the technical standards of the guidelines as "superior" in terms of congruence with professional standards to "most previous orders and guidelines but numerous troublesome aspects remain." Division 14 had substantial concerns with a number of the provisions of the guidelines, in part due to the draft.

Civil rights groups generally found the uniform guidelines far superior to the FEA guidelines, and many urged their adoption, with modifications concerning ranking and documentation. Other groups criticized the draft "bottom line" concept and other provisions of the guidelines.

The Ad Hoc Group on Employee Selection Procedures representing many employers in private industry supported the concept of uniform guidelines, but had a number of problems with particular provisions, some of which are described below. The American Society for Personnel Administration (ASPA) and the International Personnel Management Association, which represents State and local governments, generally took the same position as the ad hoc group. Major industrial concerns were directed to clarification of the guidelines and suggested the bottom line concept and the construct validity section.

The building trade unions urged an exemption of construction programs from coverage of the guidelines. The American Council on Education found them inappropriate for employment decisions concerning faculty at institutions of higher education. Other particular concerns were articulated by organizations representing the handicapped, licensing and certifying agencies, and college placement offices.

General Principles

1. Relationship between validation and elimination of adverse impact, and affirmative action. Federal equal employment opportunity law generally does not require evidence of validity for a selection procedure if there is no adverse impact; e.g., Griggs v. Duke Power Co., 401 U.S. 424. Therefore, a user has the choice of complying either by providing evidence of validity (even if not in accord with Federal law), or by eliminating the adverse impact. These options have always been present under Federal law, 29 CFR 1607.3; 41 CFR 60-3.1(a); and the Federal Executive Agency Guidelines, 41 FR 61784 (November 23, 1976). The December 30 draft guidelines, however, clarified the nature of the two options open to users.

Psychologists expressed concern that the December 30 draft of section 6A encouraged the use of invalid procedures as long as there is no adverse impact. Employers added the concern that the section might encourage the use of illegal procedures not having an adverse impact against the groups who have historically suffered discrimination (minorities, women), even if they have an adverse impact on a different group whose intent is not so intended.

Section 6A was not so intended, and we have revised it to clarify the fact that illegal acts purporting to be affirmative action are not the goal of the agencies or of the guidelines; and that any employee selection procedure must be lawful and should be as job related as possible. The delineation of examples of alternative procedures was eliminated to avoid the implication that particular procedures are either prescribed or are necessarily appropriate. The basic thrust of section 6A, that elimination of adverse impact is an alternative to validation, is retained.

The inclusion of excerpts from the 1976 Equal Employment Opportunity Coordinating Council Policy Statement on Affirmative Action in section 13 of the December 30 draft was criticized as not belonging in a set of guidelines for the validation of selection procedures. Section 13 has been revised. The general statement of policy in support of voluntary affirmative action, and the reaffirmation of the policy statement have been retained, but this statement itself is now found in the appendix to the guidelines.

2. The "bottom line" (section 4C). The guidelines provide that when the overall selection process does not have an adverse impact the Government will usually not examine the individual components of that process for adverse impact or evidence of validity. The concept is based upon the view that the Federal Government should not generally concern itself with individual components of a selection process if, the overall effect of that process is nonexclusionary. Many commenters criticized the ambiguity caused by the word "generally" in the December 30 draft of section 4C which provided, "the Federal enforcement agencies generally will not take enforcement action based upon adverse impact of any component of a process that does not have an overall adverse impact. Employer groups stated the position that the "bottom line" should be a rule prohibiting enforcement action by Federal agencies with respect to all or any part of a selection process where the bottom line does not show adverse impact. Civil rights and some labor union representatives expressed the opposing concern that the concept may be too restrictive, that it may be interpreted as a matter of law, and that it might allow certain discriminatory conditions to go unrencognized.

The guidelines have been revised to clarify the intent that the bottom line concept is based upon administrative and prosecutorial discretion. The Federal agencies cannot accept the recommendation that they never inquire into or take affirmative action with respect to any component procedure unless the whole process of which it is a part has an adverse impact. The Federal enforcement agencies believe that the concept can be tailored in unusual circumstances, such as those involving other discriminatory practices, or particular selection procedures which have no validity and have a clear adverse impact on a national basis. Other unusual circumstances may warrant a high level agency decision to proceed with enforcement actions although the "bottom line" has not been satisfied. At the same time the agencies adhere to the bottom line concept of allocating resources primarily to those users whose overall selection procedures have an adverse impact. See overview, above, part III.

The presentation of alternative selection procedures and alternative methods of use (section 3B). The December 30 draft included an obligation on the user, when conducting a validity
study, to investigate alternative procedures and uses, in order to determine which, if any, are other procedures which are substantially equally valid, but which have less adverse impact. The American Psychological Association stated:

"We would concur with the drafters of the guidelines that it is appropriate in the determination of strategy to consider carefully a variety of possible procedures and to think carefully about the question of adverse impact with respect to each of these procedures. Nevertheless, we feel it appropriate to note that a rigid enforcement of these sections, particularly for smaller employers, would impose a substantial and expensive burden on these employers."

Since a reasonable consideration of alternatives is consistent with the underlying principle of minimizing adverse impact consistent with business needs, the provision is retained.

Private employer representatives challenged earlier drafts of these guidelines as being inconsistent with the decisions of the Supreme Court in Albemarle Paper Co. v. Moody, 422 U.S. 405. No such inconsistency was intended. Accordingly, the first sentence of section 3B was revised to paraphrase the opinion in the Albemarle decision, so as to make it clear that section 3B is in accord with the principles of the Albemarle decision.

Section 3B was further revised to clarify the intent of the guidelines that the obligation to investigate alternative procedures is a part of conducting a validity study, so that alternative procedures should be evaluated in light of validity studies meeting professional standards, and that section 3B does not impose an obligation to search for alternatives if the user is not required to conduct a validity study.

4. Establishment of cutoff scores and rank ordering. Some commenters from civil rights groups believed that the December 30 draft guidelines did not provide sufficient guidance as to when it was permissible to use a selection procedure on a ranking basis rather than on a pass-fail basis. They also objected to section 5G in terms of setting cutoff scores. Other commenters noted a lack of clarity as to how the determination of a cutoff score or the use of a procedure for ranking candidates relates to an adverse impact. However, if one way of using a procedure (e.g., for ranking) results in greater adverse impact than another way (e.g., pass/fail), the procedure must be validated for that use. Similarly, cutoff scores which result in adverse impact should be justified. If the use of a validated procedure for ranking results in greater adverse impact than its use as a screening device, the evidence of validity and utility must be sufficient to warrant use of the procedures as a ranking device.

5. Scope of application and general exemptions for certain classes of users. The employer groups and labor organizations (e.g., academic institutions, large public employers, apprenticeship councils) argued that they should be exempted from all or some of the provisions of these guidelines because of their special needs. The intent of Congress as expressed in Federal equal employment opportunity law is to apply the same standards to all users, public and private.

These guidelines apply the same principles and standards to all employers. On the other hand, the nature of the procedures which will actually meet those principles and standards may be different for different employers, and the guidelines recognize that fact. Accordingly, the guidelines are applicable to all employers and other users who are covered by Federal equal employment opportunity law.

Organizations of handicapped persons objected to excluding from the scope of these guidelines the enforcement of laws prohibiting discrimination on the basis of handicap, in particular the Rehabilitation Act of 1973, sections 501, 503, and 504. While this issue has not been addressed in the guidelines, nothing precludes the adoption of the principles set forth in these guidelines for other appropriate situations.

Licensing and certification boards raised the question of the applicability of the guidelines to their licensing and certification functions. The guidelines make it clear that licensing and certification are covered "to the extent" that licensing and certification may be covered by Federal equal employment opportunity law.

Voluntary certification boards, where certification is not required by law, are not users as defined in section 16 with respect to their certifying functions and therefore are not subject to these guidelines. If an employer relies upon such certification in making employment decisions, the employer is the user and must be prepared to justify, under Federal law, that reliance as it would any other selection procedure.

6. The "Four-Fifths Rule of Thumb" (section 4D). Some representatives of employers and some professionals suggested that the basic test for adverse impact should be a test of statistical significance, rather than the four-fifths rule. Some civil rights groups, on the other hand, still regard the four-fifths rule as permitting some unlawful discrimination.

The Federal agencies believe that neither of these positions is correct. The great majority of employers do not hire, promote, or assign enough employees for most jobs to warrant primary reliance upon statistical significance. Nor are federal day-to-day decisions made on the basis of information which does not have the justification of a test of statistical significance. Courts have found adverse impact without a showing of statistical significance.

Accordingly, the undersigned believe that while the four-fifths rule does not define discrimination and does not apply in all cases, it is appropriate as a rule of thumb in identifying adverse impact.

Technical Standards

7. Criterion-related validity (section 14B). This section of the guidelines found general support among the commenters from the professions and, except for the provisions concerning test fairness (sometimes mistakenly equated with differential prediction or differential validity), was generated relatively little comment.

The provisions of the guidelines concerning criterion-related validity studies call for studies of fairness of selection procedures where technically feasible.

Section 14B(8). Some psychologists and employer groups objected that the concept of test fairness or unfairness has been discredited by professionals and pointed out that the term is sometimes misused. We recognize that there is serious debate on the question of test fairness; however, it is accepted professionally that fairness should be examined wherever feasible. The A.P.A. standards for educational and psychological tests, for example, direct users to explore the question of fairness on finding a difference in group performances (section E9, pp. 43-44). Simi-
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5. General

6. Content validity. The Division of Industrial and Organizational Psychology of A.P.A. correctly perceived that the guidelines concerning content validity, with their emphasis on observable work behaviors or work products, were "greatly concerned with minimizing the inferential leap between test and performance." That division expressed the view that the draft guidelines neglect situations where a knowledge, skill or ability is necessary to an outcome but where the work behavior cannot be observed in a test. They recommended that the section be revised.

We believe that the emphasis on observable work behaviors or observable work products is appropriate; and that in order to show content validity, the gap between the test and performance on the job should be a small one. We recognize, however, that content validity may be appropriate to support a test which measures a knowledge, skill, or ability which is a necessary prerequisite to the performance of the job, even though the test might not be close enough to the work behavior to be considered a work sample, and the guidelines have been revised appropriately.

Thus, the Principles for the Validation and Use of Personnel Selection Procedures (Division of Industrial and Organizational Psychology, American Psychological Association, 1975, p. 10), discuss the use of content validity to support tests of "specific items of knowledge, or specific job skills," but call attention to the inappropriateness of attempting to justify tests or constructs on a content validity basis.


Business groups and professionals express concern that the construct validity requirements in the December 30 draft were confusing and technically inaccurate. As section 14D indicates, construct validity is a relatively new procedure in the field of personnel selection and there is not yet substantial guidance in the professional literature as to its use in the area of employment practices. The provisions on construct validity have been revised to meet the concerns expressed by the A.P.A. The construct validity section as revised clarifies what is required by the Federal Equal Employment Opportunity Commission in the development of construct validity. The guidelines leave open the possibility that different evidence of construct validity may be accepted in the future, as new methodologies develop and become incorporated in professional standards and other professional literature.

10. Documentation (section 15). Commenters stated that the documentation section did not conform to the technical requirements of the guidelines or was otherwise inadequate. Section 15 has been clarified, and two significant changes have been made to minimize the recordkeeping burden.

(See overview, part VIII.)

11. Definition of "Job" (section 16). The definition of "work behavior" in the December 30, 1977 draft was criticized by the A.P.A. and others as being too vague to provide adequate guidance to those using the guidelines who must identify work behavior as a part of any validation technique. Other commenters criticized the absence or inadequacies of other definitions, especially "adverse impact." Substantial revisions of sections and additions to this section were therefore made.

UNIFORM GUIDELINES ON EMPLOYEE SELECTION PROCEDURES (1978)

Note.- These guidelines are issued jointly by four agencies. Separate official adoptions follow the guidelines in this part IV as follows: Civil Service Commission, Department of Justice, Equal Employment Opportunity Commission, Department of Labor.

For official citation see section 18 of these guidelines.

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GENERAL PRINCIPLES

SECTION 1. Statement of Purpose.—A. Need for Uniformity—Issuing Agencies.

The Federal government's need for a uniform set of principles on the question of the use of tests and other selection procedures has long been recognized. The Equal Employment Opportunity Commission, the Civil Service Commission, the Department of Labor, and the Department of Justice, jointly, have adopted these uniform guidelines to meet that need, and to apply the same principles to the Federal Government as are applied to other employers.

B. Purpose of Guidelines. These guidelines incorporate a single set of principles which are designed to assist employers, labor organizations, employment agencies, and licensing and certification boards to comply with requirements of Federal law prohibiting employment practices which discriminate on grounds of race, color, religion, sex, and national origin. They are designed to provide a framework for determining the proper use of tests and other selection procedures. These guidelines do not require a user to conduct validity studies of selection procedures where no adverse impact results. However, all users are encouraged to use selection procedures which are valid, especially users operating under merit principles.

C. Relation to Prior Guidelines. These guidelines are based upon and supersede previously issued guidelines on employee selection procedures. These guidelines have been built upon court decisions, the previously issued guidelines of the agencies, and the practical experience of the agencies, as well as the standards of the psychological profession. These guidelines are intended to be consistent with existing law.

Sec. 2. Scope.—A. Application of Guidelines. These guidelines will be applied by the Equal Employment Opportunity Commission in the enforcement of Title VII of the Civil Rights Act of 1964, as amended by the Equal Employment Opportunity Act of 1972 (hereinafter "Title VII"); by the Department of Labor, and the contract compliance agencies until the transfer of authority contemplated by the President's Recommissioning of Job 1 of 1978, in the administration and enforcement of Executive Order 11246, as amended by Executive Order 11375 (hereinafter "Executive Order 11246"); by the Civil Service Commission and other Federal agencies subject to section 717 of Title VII; by the Civil Service Commission in exercising its responsibilities toward State and local governments under section 208(b)(1) of the Intergovernmental Personnel Act; by the Department of Justice in exercising its responsibilities under Federal law; by the Office of Revenue Sharing of the Department of the Treasury under the State and Local Fiscal Assistance Act of 1972, as amended; and by any other Federal agency which adopts them.

B. Employment Decisions. These guidelines apply to tests and other selection procedures which are used as a basis for an employer's decision whether to hire an individual. Employment decisions include, but are not limited to, hiring, promotion, demotion, membership (for example, in a labor organization), referral, retention, and licensing and certification, to the extent that licensing and certification may be covered by Federal equal employment opportunity law. Other selection decisions, such as selection for training or transfer, may also be considered employment decisions if they lead to any of the decisions listed above.

C. Selection Procedures. These guidelines apply only to selection procedures which are used as a basis for making employment decisions. For example, the use of recruiting procedures designed to attract members of a particular race, sex, or ethnic group, which were previously utilized employment opportunities or which are currently underutilized, may be necessary to bring an employer into compliance with Federal law, and is frequently an essential element of any effective af-
firmative action program; but recruitment practices are not considered by these guidelines to be selection procedures. Similarly, these guidelines do not pertain to the question of the lawfulness of a seniority system within the meaning of section 703(h), Executive Order 11246; or other provisions of Federal law or regulation, except to the extent that such systems utilize selection procedures to determine qualifications or abilities to perform the job. Nothing in these guidelines is intended or should be interpreted as discouraging the use of a selection procedure for the purpose of determining qualifications or for the purpose of selection on the basis of relative qualifications, if the selection procedure had been validated in accord with these guidelines for each such purpose for which it is to be used.

D. Limitations. These guidelines apply only to persons subject to Title VII, Executive Order 11246, or other equal employment opportunity requirements of Federal law. These guidelines do not apply to responsibilities under the Age Discrimination in Employment Act of 1967, as amended, not to discriminate on the basis of age, or under sections 501, 503, and 504 of the Rehabilitation Act of 1973, nor to discriminate on the basis of handicap.

E. Indian preference not affected. These guidelines do not restrict any obligation imposed or right granted by Federal law to users to extend a preference in employment to Indians living on or near an Indian reservation in connection with employment opportunities on or near an Indian reservation.

Sec. 3. Discrimination defined: Relationship between use of selection procedures and discrimination.—A. Procedure having adverse impact constitutes discrimination unless justified. The use of a selection procedure which has an adverse impact on the hiring, promotion, or other employment or membership opportunities of members of any race, sex, or ethnic group, which is unrelated to the effective performance of the duties of a position, is discriminatory and inconsistent with these guidelines, unless the procedure has been validated in accordance with these guidelines, or the provisions of section 6 below are satisfied.

B. Consideration of suitable alternative selection procedures. Where two or more selection procedures are available which serve the user's legitimate interest in efficient and trustworthy workmanship, and which are substantively equally valid for a given purpose, the user should use the procedure which has been demonstrated to have the lesser adverse impact. Accordingly, whenever a validity study is called for by these guidelines, the user should include, as a part of the validity study, an investigation of suitable alternative selection procedures and suitable alternative methods of using the selection procedure which have as little adverse impact as possible, to determine whether they can be utilized or validated in accord with these guidelines. If a user has made a reasonable effort to become aware of such alternative selection procedures and validity has been demonstrated in accord with these guidelines, the use of the test or other selection procedure may continue until such time as it should reasonably be reviewed for currency. Whenever the user is shown an alternative selection procedure with evidence of less adverse impact and substantial evidence of validity for the same job in similar circumstances, the user should investigate it to determine the appropriateness of using or validating it in accord with these guidelines. This subsection is not intended to preclude the combination of procedures into a significantly more valid procedure, if the use of such a combination has been shown to be in compliance with the guidelines.

Sec. 4. Information on impact.—A. Records concerning impact. Each user should maintain and have available for inspection records or other information which will disclose the impact which its tests and other selection procedures have upon employment opportunities of persons by identifiable race, sex, or ethnic group as set forth in subparagraph B below in order to determine compliance with these guidelines. Where there are large numbers of applicants and procedures are administered frequently, such information may be retained on a sample basis, provided that the sample is appropriate in terms of the applicant population and adequate in size.

B. Applicable race, sex, and ethnic groups for recording. The records required by this subsection shall be maintained by race, sex, and the following races and ethnic groups: Blacks (Negroes), American Indians (including Alaskan Natives), Asians (including Pacific Islanders), Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish origin (presumptive classification of persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish origin or culture regardless of race), whites (Caucasians) other than persons of Central or South American origin, and Asian Americans. The race, sex, and ethnic classifications called for by this section are consistent with the Equal Employment Opportunity Standard Form 108, Employer Information Report EEO-1 series of reports. The user should adopt safeguards to insure that the records required by this paragraph are used for appropriate purposes such as determining adverse impact, or (where required) for developing and monitoring affirmative action programs, and that such records are not used improperly. See sections 4E and 17(4), below.

C. Evaluation of selection rates. The "bottom line." If the information called for by sections 4A and B above shows that the total selection process does not have an adverse impact, the individual components of the selection process should be evaluated for adverse impact. If this information shows that the total selection process does not have an adverse impact, the Federal enforcement agencies may, in the exercise of their administrative and prosecutorial discretion, in usual circumstances, will not expect a user to evaluate the individual components for adverse impact, or to validate such individual components, and will not take enforcement action based upon adverse impact of any component of that process, including the separate parts of a multistage selection procedure or any separate procedure that is used as an alternative method of selection.

However, in the following circumstances the Federal enforcement agencies will expect a user to evaluate the individual components for adverse impact and may, where appropriate, take enforcement action with respect to the individual components: (1) where the selection process is a significant factor in the continuation of patterns of assignments of incumbent employees caused by prior discriminatory employment practices, (2) where the weight of court decisions or administrative interpretations hold that a specific procedure (such as height or weight requirements or no-arrest records) is not job related in the same or similar circumstances. In unusual circumstances, other than those listed in (1) and (2) above, the Federal enforcement agencies may request a user to evaluate the individual components for adverse impact and may, where appropriate, take enforcement action with respect to the individual components.

D. Adverse impact and the "four-fifths rule." A selection rate for any race, sex, or ethnic group which is less than four-fifths (4%) for eighty percent (80%) of the group with the highest rate will generally be regarded by the Federal enforcement agencies as evidence of adverse impact, while a greater than four-fifths rate will generally not be regarded by Federal enforcement agencies as evidence of adverse impact. Smaller differences in selection rate may nevertheless constitute adverse impact, where they are significant in both statistical and practical terms or where the user's actions have discouraged applicants disproportionately on grounds of race, sex, or ethnic group. Greater differences in selection rate may not constitute adverse impact where the differences are based on small numbers and are not statistically significant, or where special recruiting or other programs cause
the pool of minority or female candidates to be atypical of the normal pool of applicants from that group. Where the user's evidence concerning the impact of a selection procedure indicates adverse impact but is based upon numbers which are too small to be reliable, evidence concerning the impact of the procedure over a longer period of time may be required. Evidence concerning the impact which the selection procedure had when used in the same manner in similar circumstances elsewhere may be considered in determining adverse impact. Where the user has not maintained data on adverse impact as required by the documentation section of applicable guidelines, the Federal enforcement agencies may draw an inference of adverse impact of the selection process from the failure of the user to maintain such data, if the user has an underutilization of a group in the job category, as compared to the group's representation in the relevant labor market, or, in the case of jobs filled from within, the applicable work force.

E. Consideration of user's equal employment opportunity posture. In carrying out their obligations, the Federal enforcement agencies will consider the general posture of the user with respect to equal employment opportunity for the job or group of jobs in question. Where a user has adopted an affirmative action program, the Federal enforcement agencies will consider the provisions of that program, including the goals and timetables which the user has adopted and the progress which the user has made in carrying out that program and in meeting the goals and timetables. While such affirmative action programs may in design and execution be race, color, sex, or ethnic conscious, selection procedures should be essentially similar to those described in the Standards for Educational and Psychological Tests prepared by a Joint committee of the American Psychological Association, the American Educational Research Association, and the National Council on Measurement in Education (American Psychological Association, Washington, D.C., 1974) (hereinafter "A.P.A. standards") and standard textbooks and journals in the field of personnel selection.

D. Need for documentation of validity. For any selection procedure which is part of a selection process which has an adverse impact and which selection procedure has an adverse impact, each user should maintain and have available such documentation as is described in section 18 below.

E. External standardization. Validity studies should be carried out under conditions which assure insofar as possible the adequacy and accuracy of the research and the report. Selection procedures should be administered and scored under standardized conditions.

F. Caution against selection on basis of knowledge, skills, or ability learned in brief orientation period. In general, users should avoid making employment decisions on the basis of measures of knowledge, skills, or abilities which are normally learned in a brief orientation period, and which have an adverse impact.

G. Method of use of selection procedures. The evidence of both the validity and utility of a selection procedure should support the method the user chooses for operational use of the procedure, if that method of use has a greater adverse impact than another method of use. Evidence which may be sufficient to support the use of a selection procedure on a pass/fail (screening) basis may be insufficient to support the use of the same procedure on a ranking basis under these guidelines. If a user decides to use a selection procedure on a ranking basis, and that method of use has a greater adverse impact than use on an appropriate pass/fail basis (see section 6H below), the user should have sufficient evidence of validity and utility to support the use on a ranking basis. See sections 3B, 14B (5) and (6), and 14C (8) and (9).

H. Cut-off scores. Where cutoff scores are used, they should normally be set so as to be reasonable and consistent with normal expectations of acceptable proficiency within the work force. Where applicants are ranked on the basis of properly validated selection procedures and those applicants scoring below a higher cutoff score than appropriate in light of such expectations have little or no chance of being selected, the higher cutoff score may be appropriate, but the degree of adverse impact should be considered.

I. Use of selection procedures for higher level jobs. If job progression structures are so established that employees will probably, within a reasonable period of time and in a majority of cases, progress to a higher level, it may be considered that the applicants are being evaluated for a job or jobs at the higher level. However, where job progression is not so nearly automatic, or the time span is such that higher level jobs or employees' potential may be expected to change in significant ways, it should be considered that applicants are being evaluated for a job at or near the entry level. A "reasonable period of time" will vary for different jobs and employment situations but is seldom beyond users.

Use of selection procedures to evaluate applicants for a higher level job would not be appropriate:

1. If the majority of those remaining unemployed do not progress to the higher level job;
2. If there is a reason to doubt that the higher level job will continue to require essentially similar skills during the progression period; or
3. If the selection procedures measure knowledge, skills, or abilities required for advancement which would be expected to develop principally from the training or experience on the job.

J. Interim use of selection procedures. Users may continue the use of a selection procedure which is not at the moment fully supported by the required evidence of validity, provided:

1. The user has available substantial evidence of validity; and
2. The user has in progress, when technically feasible, a study which is designed to pro-

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duce the additional evidence required by these guidelines within a reason-
able time. If such a study is not technically feasible, see section 6B. If the study does not demonstrate validity, this provision of these guidelines fo-
lots a mandatory commitment to defense in any action, nor shall it relieve the user of any obligations arising under Federal law.

K. Review of validity studies for curr-

cency. Whenever validity has been shown in accord with these guidelines for the use of a particular selection procedure for a job or group of jobs, additional studies need not be per-
formed until such time as the validity study is subject to review as provided in section 3B above. There are no ab-
solutes in the area of determining the currency of a validity study. All cir-
cumstances concerning the study, in-
cluding the job situation and changes in the relevant labor market and the job should be consid-
ered in the determination of when a validity study is outdated.

Sec. 5. Use of selection procedures which have not been validated.—A. Use of alternate selection procedures to eliminate adverse impact. A user may choose to utilize alternative selec-
tion procedures in order to eliminate adverse impact or as part of an affir-
mative action program. See section 13 below. Such alternative procedures should eliminate the adverse impact in the total selection process, should be lawful and should be as job related as possible.

B. Where validity studies cannot or need not be performed. There are cir-
cumstances in which a user cannot or need not utilize the validation tech-
niques contemplated by these guide-
lines. In such circumstances, the user should utilize selection procedures which are as job related as possible and which will minimize or eliminate adverse impact as forthwith below.

(1) Where informal or unscored proce-
dures are used. When an informal or unscored selection procedure which has an adverse impact is utilized, the user should eliminate the adverse impact, or modify the procedure to one which is a formal, scored or quan-
tified measure or combination of measures and then evaluate the procedure in accord with these guidelines, or otherwise justify continued use of the procedure in accord with Federal law.

(2) Where formal and scored proce-
dures are used. When a formal and scored selection procedure is used which has an adverse impact, the validation techniques contemplated by these guidelines usually should be fol-
lowed if technically feasible. Where the user cannot or need not follow the techniques contemplated by these guidelines, the user should either modify the procedure to elimi-
nate adverse impact or otherwise justi-
fy continued use of the procedure in accord with Federal law.

Sec. 7. Use of other validity stud-

tes.—A. Validity studies not conducted by the user. Where certain cir-
cumstances, support the use of selec-
tion procedures by validity studies conducted by other users or conducted by test publishers or distributors and described in test manuals. While pub-
lishers of selection procedures have a professional obligation to provide evi-
dence of validity which meets general-
ly accepted professional standards (see section 5C above), users are cautioned that they are responsible for compli-
ance with these guidelines. Accord-
ingly, users seeking to obtain selection procedures from publishers and dis-
tributors should be careful to deter-
mine that the user becomes subject to the validity require-
ments of these guidelines, the neces-
sary information to support validity has been determined and will be made available. A user may choose to use selec-
tion procedures not currently validated but which are

Sec. 8. Cooperative studies.—A. En-
couragement of cooperative studies. The agencies issuing these guidelines encourage employers, labor organiza-
tions, and employment agencies to co-
operate in research, development, search for lawful alternatives, and va-
idity studies in order to achieve proced-
ures which are consistent with these guidelines.

B. Standards for use of cooperative studies. If validity evidence from a co-
operative study satisfies the require-
ments of section 14B below, evidence of validity specific to each user will not be required unless there are variables in the user's situation which are likely to affect validity significantly.

Sec. 9. No assumption of validity.—A. Unacceptable substitutes for evi-
dence of validity. Under no circum-
stances will the general reputation of a test or other selection procedures, its author or its publisher, or casual re-
ports of its validity be accepted in lieu of evidence of validity. Specifically ruled out are: assumptions of validity based on a procedure's name or de-
scription; generic labels; all accounts of promotional literature; data bearing on the frequency of a procedure's usage; testi-
monial statements and credentials of sellers, users, or consultants; and other nonempirical or anecdotal accounts of selection practices or selection out-
comes.

B. Encouragement of professional supervision. Professional supervision of selection activities is encouraged but is not a substitute for documented evidence of validity. The enforcement agencies will take into account the fact that, a thorough job analysis was conducted and that careful develop-
ment and use of a selection procedure. In accordance with professional stand-
ards enhance the probability that the selection procedure is valid for the job.

Sec. 10. Employment agencies and employ-
ment services.—A. Where selec-
tion practices are used by employment agencies. An employment agency, including pri-
vate employment agencies and State employment agencies, which agrees to a request by an employer or labor organization to device and utilize a selection procedure should follow the standards in these guidelines for determining adverse impact. If adverse impact results, the employment agency should comply with these guidelines. An employment agency is not relieved of its obligation herein because the user did not request such validation or has requested the use of some lesser standard of validation than is provided in these guidelines. The use of an employment agency does not relieve an employer or labor organization or other user of its responsibilities under Federal law to provide equal employment opportunity or its obligations as a user under these guidelines.

B. Where selection procedures are devised elsewhere. Where an employer, employer group, or service seeks to comply with these guidelines, it should obtain and use validated selection procedures. The use of an employment agency which has been devised elsewhere and to which selection procedures are published pursuant to the results, the employment agency or service should maintain and have evidence of the impact of the selection and referral procedures which it administers. If adverse impact results the agency or service should comply with these guidelines. If the agency or service seeks to comply with these guidelines by reliance upon validation studies or other data in the possession of the employer, it should obtain and have available such information.

Ssc. 11. Disparate treatment. The principles of disparate or unequal treatment must be distinguished from the concepts of validation. A selection procedure—especially validated against job performance in accordance with these guidelines—cannot be imposed upon members of a race, sex, or ethnic group where other employees, applicants, or members have not been subjected to that standard. Disparate treatment occurs when members of any race, sex, or ethnic group have been denied the same employment, promotion, membership, or other employment opportunities as have been available to other employees or applicants. These employees or applicants who have been denied equal treatment, because of prior discriminatory practices or policies, must at least be afforded the same opportunities as had existed for other employees or applicants during the period of discrimination. Thus, the persons who were in the class of persons discriminated against during the period the user followed the discriminatory practices should be allowed the opportunity to qualify under less stringent selection procedures previously followed, unless the user demonstrates that the increased standards are required by business necessity. This section does not prohibit a user who has not previously followed merit standards from adopting merit standards which are in compliance with these guidelines; nor does it preclude a user who has previously used invalid or unvalidated selection procedures from developing and using procedures which are in accord with these guidelines.

Ssc. 12. Retesting of applicants. Users should provide a reasonable opportunity for retesting and reconsideration. When examination are administered periodically with public notice, such reasonable opportunity exists, unless persons who have previously been tested are precluded from retesting. The user may however take reasonable steps to preserve the security of its procedures.

Ssc. 13. Affirmative action.—A. Affirmative action obligations. The use of selection procedures which have been validated pursuant to these guidelines does not relieve users of any obligations they may have to undertake affirmative action to assure equal employment opportunity. Nothing in these guidelines is intended to preclude the use of lawful selection procedures which assist in remedying the effects of prior discriminatory practices, or the achievement of affirmative action objectives.

B. Encouragement of voluntary affirmative action programs. These guidelines are also intended to encourage the adoption and implementation of voluntary affirmative action programs by users who have no obligation under Federal law to adopt them; but are not intended to impose any new obligations in that regard. The agencies issuing and endorsing these guidelines endorse for all private employers and reaffirm for all governmental employers the Equal Employment Opportunity Coordinating Council's "Policy Statement on Affirmative Action Programs for State and Local Government Employers" (SEP 6, 1976). This policy statement is attached hereto as appendix, section 17.

TECHNICAL STANDARDS

Ssc. 14. Technical standards for validity studies. The following minimum standards, as applicable, should be met in conducting a validity study. Nothing in these guidelines is intended to preclude the development and use of other professionally acceptable techniques with respect to validation of selection procedures. Where it is not technically feasible for a user to conduct a validity study, the user has the obligation to comply with these guidelines. See sections 6 and 7 above.

A. Validity studies should be based on review of information about the job. Any validity study should be based upon a review of information about the job for which the selection procedure is to be used. The review should include a job analysis except as provided in section 14B(3) below with respect to criterion-related validity. A user choosing to validate a selection procedure by a criterion-related validity strategy should determine whether it is technically feasible (as defined in section 10) to conduct such a study in the particular employment context. The determination of the number of persons necessary to permit the conduct of a meaningful criterion-related study should be made by the user on the basis of all relevant information concerning the selection procedure, the potential sample and the employment situation. Where appropriate, jobs with substantially the same major work behaviors may be combined together for validity studies, in order to obtain an adequate sample. These guidelines do not require a user to hire or promote persons for the purpose of making it possible to conduct a criterion-related study.

(2) Analysis of the job. There should be a review of job information to determine measures of work behavior(s) or performance that are relevant to the job or group of jobs in question. These measures or criteria are relevant to the extent that they represent critical or important job duties, work behaviors or work outcomes as developed from the review of job information. The possibility of bias should be considered, but the selection of this criterion measures and their application. In view of the possibility of bias in subjective evaluations, supervisory rating techniques and instructions to supervisors, these criteria should be developed. All criterion measures and the methods for gathering data need to be examined for freedom from factors which would unfairly alter scores of members of any group. The relevance of criteria and their freedom from bias are of particular concern when there are significant differences in measures of job performance for different groups.

(3) Criterion measures. Proper safeguards should be taken to insure that scores on selection procedures do not enter into any judgments of employee adequacy that are to be used as criterion measures. Whatever criteria are used should be based on critical work behaviors or work outcomes. Certain criteria may be used without a full job analysis if the user can show the importance of the criteria to the particular employment con-
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text. These criteria include but are not limited to production rate, error rate, tardiness, absenteeism, and length of service. A standardized rating of overall work performance may be used where a study of the job shows that it is feasible. Where selection performance in training is used as a criterion, success in training should be properly measured and the relevance of the training should be shown either through a comparison of the content of the training program with the critical or important work behavior(s) of the job(s), or through a demonstration of the relationship between measures of performance in training and measures of job performance. Measures of relative success in training include but are not limited to instructor evaluations, performance samples, or tests. Criterion measures consisting of paper and pencil tests should be closely reviewed for job relevance.

(4) Representativeness of the sample. Whether the study is predictive or concurrent, the sample subjects should be considered representative of the candidates normally available in the relevant labor market for the job or group of jobs in question, and should include as feasible include the races, sexes, and ethnic groups normally available in the relevant labor market. In determining the representativeness of the sample in a concurrent validity study, the user should take into account the extent to which the specific knowledge or skills which are the primary focus of the test are those which employees learn on the job.

Where samples are combined or compared, attention should be given to see that such samples are comparable in terms of the actual jobs they perform, the length of time on the job where time on the job is likely to affect performance, and other relevant factors that can affect validity differences; or that these factors are included in the design of the study and their effects identified.

(6) Statistical relationships. The degree of relationship between selection procedure scores and criterion measures should be examined and computed, using professionally acceptable statistical procedures. Generally, a selection procedure is considered related to the criterion, for the purposes of these guidelines, when the relationship between performance on the procedure and performance on the criterion measure is statistically significant at the 0.05 level of significance, which means that it is sufficiently high as to have a probability of no more than one (1) in twenty (20) to have occurred by chance. Absence of a statistically significant relationship between a selection procedure and job performance should not necessarily discourage other investigations of the validity of that selection procedure.

(8) Fairness. This section generally calls for studies of unfairness where technically feasible. The concept of unfairness or unfairness of selection procedures is a developing concept. In addition, fairness studies generally require substantial numbers of employees in the job or group of jobs being studied. For these reasons, the Federal enforcement agencies recognize that the obligation to conduct studies of fairness imposed by the guidelines generally will be upon users or groups of users; persons in a job class, or test developers; and that small users utilizing their own selection procedures will generally not be obligated to conduct such studies because it will be technically infeasible for them to do so.

(c) Investigation of fairness. Where a selection procedure results in an adverse impact on a race, sex, or ethnic group identified in accordance with the classifications set forth in section 4 above and that group is a significant factor in the operation of the procedures. Generally, the user should investigate the possible existence of unfairness for that group if it is technically feasible to do so. The greater the severity of adverse impact on the group, the greater the need to investigate the possible existence of unfairness. Where the weight of evidence from other studies shows that the selection procedure predicts fairly for the group in question and for the same or similar jobs, such evidence may be relied on in connection with the selection procedure at issue.

(e) General considerations in fairness investigations. Users conducting a study of fairness should review the A.P.A. Standards regarding investigation of possible bias in testing. An investigation of fairness of a selection procedure depends on both evidence of validity and the manner in which the selection procedure is to be used in a particular employment context. Fairness of a selection procedure cannot necessarily be specified in advance of conducting the investigation. Investigation of fairness of a selection procedure in samples where the range of scores on selection procedures or criterion measures is severely restricted for any subgroup sample (as these small users) may produce misleading evidence of unfairness. That factor should accordingly be taken into account in conducting such studies and before reliance is placed on the results.

(d) When unfairness is shown. If unfairness is demonstrated through a showing that members of a particular group perform better or poorer on the job than their scores on the selection procedure would indicate through comparison with how members of other groups perform, the user may either revise or replace the selection instrument in accordance with the guidelines. In the meantime, the user may continue to use the selection instrument operationally.
with appropriate revisions in its use to assure compatibility between the probability of successful job performance and the probability of being selected.

(c) Technical feasibility of fairness studies. In addition to the general conditions for technical feasibility for the conduct of a criterion-related study (see section 16, below) an investigation of fairness requires the following:

(1) An adequate sample of persons in each group available for the study to achieve findings of statistical significance. Guidelines do not require a user to hire or promote persons on the basis of group classifications for the purpose of making it possible to conduct a study of fairness, but the user has the obligation otherwise to comply with these guidelines.

(2) The samples for each group should be comparable in terms of the actual job they perform, length of time on the job, and other relevant factors likely to affect performance, and other relevant factors likely to affect validity differences; or such factors should be included in the design of the study and their effects identified.

Continued use of selection procedures when fairness studies not feasible. If a study of fairness should otherwise be performed, but is not technically feasible, a selection procedure may be used which has otherwise met the validity standards of these guidelines, unless the technical infeasibility resulted from discriminatory employment practices which are demonstrated by facts other than past failure to conform with appropriate revisions. In addition, to be technically feasible for the user to perform a study of fairness and such a study is otherwise called for, the user should conduct the study in accordance with fairness.

C. Technical standards for content validity studies.—(1) Appropriateness of content validity studies. Users choosing to evaluate a selection procedure by a content validity strategy should determine whether it is appropriate to conduct such a study in the particular employment context. A selection procedure can be supported by a content validity strategy to the extent that it is a representative sample of the content of the job. Selection procedures which purport to measure the desired knowledge, skills, or abilities may in certain circumstances be justified by content validity, although they may not be representative samples. If the knowledge, skill, or ability measured by the selection procedure can be operationally defined as provided in section 14(4) below, and if that knowledge, skill, or ability is a necessary prerequisite to successful job performance.

A selection procedure based upon inferences about mental processes cannot be supported solely or primarily on the basis of content validity. Thus, a content strategy is not appropriate for demonstrating the validity of selection procedures which purport to measure traits or constructs, such as intelligence, aptitude, personality, common sense, judgment, leadership, and spatial ability. Content validity is also not an appropriate strategy when the selection procedure involves knowledge, skills, or abilities which an employee will be expected to learn on the job.

(2) Job analysis for content validity. There should be a job analysis which includes an analysis of the important work behavior(s) required for successful performance and their relative importance and, if the behavior results in work products, an analysis of the work product(s). Any job analysis should focus on the work behavior(s) and the tasks associated with them. If work behavior(s) are not observable, the job analysis should identify and analyze those aspects of the behavior(s) that can be observed and the observed work products. Work behavior(s) selected for measurement should be critical work behavior(s) and/or important work behavior(s) constituting most of the job.

(3) Development of selection procedures. A selection procedure designed to measure the work behavior may be developed specifically from the job and job analysis in question, or may have been previously developed by the user, or by other users or by a test publisher.

(4) Standards for demonstrating content validity. To demonstrate the content validity of a selection procedure, a user should show that the behavior(s) demonstrated in the selection procedure are a representative sample of the content of the job. In the case of a selection procedure measuring a knowledge, skill, or ability, the knowledge, skill, or ability being measured should be operationally defined. In the case of a selection procedure measuring a knowledge, the knowledge being measured should be operationally defined as that body of learned information which is used in and is a necessary prerequisite for observable aspects of work behavior of the job. In the case of skills or abilities, the skill or ability being measured should be operationally defined in terms of observable aspects of work behavior of the job. For any selection procedure measuring a knowledge, skill, or ability the user should show that the selection procedure is a representative sample of that knowledge, skill, or ability; and (b) that knowledge, skill, or ability is used in and is a necessary prerequisite to performance of critical or important work behavior(s). In addition, to be content valid, a selection procedure measuring a skill or ability should either closely approximate an observable work behavior, or its product should closely approximate an observable work product. If a test purports to sample a work behavior or to provide a sample of a work product, the manner and setting of the selection procedure and its level and complexity should closely approximate the work situation. The closer the content and the context of the selection procedure are to work samples or work behaviors, the stronger is the basis for showing content validity. As the content of the selection procedure less resembles a work behavior, or the setting and manner of the administration of the selection procedure less resembles a work situation, or the result less resembles a work product, the less likely the selection procedure is to be content valid, and the greater the need for other evidence of validity.

(5) Reliability. The reliability of selection procedures justified on the basis of content validity should be a matter of concern to the user. Whenever it is feasible, appropriate statistical analyses should be made of the reliability of the selection procedure.

(6) Prior training or experience. A requirement for or evaluation of specific prior training or experience based on content validity, including a specification of level or amount of training or experience, should be justified on the basis of the relationship between the content of the training or experience and the content of the job for which the training or experience is to be required or evaluated. The critical consideration is the resemblance between the specific behaviors, products, knowledges, skills, or abilities required on the job, whether or not there is close resemblance between the experience or training as a whole and the job as a whole.

(1) Content validity of training success. Where a measure of success in a training program is used as a selection procedure and the content of a training program is justified on the basis of content validity, the use should be justified on the relationship between the content of the training program and the content of the job.

(8) Operational use. A selection procedure which is supported on the basis of content validity may be used for a job if it represents a critical work behavior (i.e., a behavior which is necessary for performance of the job) or
work behaviors which constitute most of the important parts of the job.

(9) Ranking based on content validity studies. If a user can show, by a job analysis or other selection procedure and by content validity, that measures the job or jobs in question which satisfy the provisions of section 14B above.

(10) Unpublished study without new criterion-related evidence.-(a) Standards for use. Until such time as professional literature provides more guidance on the use of construct validity in employment situations, the procedures in subparagraph (2) above will accept a claim of construct validity without a criterion-related study which satisfies section 14B above only when the selection procedure has been used elsewhere in a situation in which a criterion-related study has been conducted and the use of a criterion-related validity study in this context meets the standards for transportability of criterion-related validity studies set forth above in section 7. However, if a study pertains to a number of jobs having common critical or important work behaviors at a comparable level of complexity, and the evidence satisfies paragraphs (1) and (3) above for those jobs with criterion-related validity evidence for those jobs, the selection procedure may be used for all the jobs to which the study pertains. If construct validity is to be generalized to other jobs or groups of jobs not in the group studied, the Federal enforcement agencies will expect at a minimum additional empirical research evidence meeting the standards of subsections section 14B (2) and (3) above for the additional jobs or groups of jobs.

(b) Determination of common work behaviors. In determining whether two or more jobs have one or more work behavior(s) in common, the user should compare the observed work behavior(s) in each of the jobs and should compare the observed work product(s) in each of the jobs. If neither the work behaviors nor the work product(s) in each of the jobs nor the observed work product(s) in each of the jobs are the same, the Federal enforcement agencies will presume that the work behaviors are not comparable.

If the work behaviors are not observable, then evidence of similarity of work products and any other relevant research evidence will be considered in determining whether the work behavior(s) in the two jobs are the same.

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**Documentation of Impact and Validity Evidence**

Sec. 15. Documentation of impact and validity evidence.—A. Required information. Users of selection procedures other than those complying with section 15A(1) above should maintain and have available for each job records, such users may satisfy the requirements of this section 15 if they maintain and have available records showing, for each year:

(a) The number of persons hired, promoted, and terminated for each job, by sex, and where appropriate by race and national origin;

(b) The number of applicants for hire and promotion by sex and where appropriate by race and national origin; and

(c) The selection procedures utilized (either standardized or not standardized).

These records should be maintained for the labor force in the relevant labor area.

(b) Information on impact.—(a) Collection of information on impact. Users of selection procedures other than those complying with section 15A(1) above should maintain and have available for each job records, such users may satisfy the requirements of this section 15 if they maintain and have available records showing, for each job, the number of job applicants for hire or promotion by sex and where appropriate by race and national origin; and

(c) The selection procedures utilized (either standardized or not standardized).

These records should be maintained for the labor force in the relevant labor area.

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the procedure used to determine adverse impact should be available.

(b) When adverse impact has been eliminated in the total selection process. Whenever the total selection process for a particular job has had an adverse impact, as defined in section 4 above, in any year, but no longer has an adverse impact, the user should maintain and have available the information required in section 15(A)(2)(a) above until the information is sufficient to determine that the overall selection process does not have an adverse impact as defined in section 4 above, or until the job has changed substantially.

(c) When data insufficient to determine impact. Where there has been an insufficient number of selections to determine whether there is an adverse impact of the total selection process for a particular job, the user should continue to collect such information for at least two (2) years after the adverse impact has been eliminated.

(d) Whem user not satisfying re-quirements in section 15(A)(2)(a). Whenever the user fails to maintain and have available the information required in section 15(A)(2)(a) above until the information is sufficient to determine that the overall selection process does not have an adverse impact as defined in section 4 above, or until the job has changed substantially, the user should continue to collect such information for at least two (2) years after the adverse impact has been eliminated.

(e) Completeness. In the event that evidence of validity is reviewed by an enforcement agency, the validation re-ports completed after the effective date of these guidelines are expected to contain the information set forth below. Evidence denoted by use of the word ("Essential") is considered critical. If information denoted essential is not included, the report will be considered incomplete unless the user affirmatively demonstrates either its unavailability due to circumstances beyond the user's control or special circumstances of the user's study which make the information irrele-vant. Evidence not so denoted is desirable but its absence will not be a basis for considering a report incomplete. The user should maintain and have available the information called for under the heading "Source Data" in sections 15B(11) and 15D(11). While it is a necessary part of the study, it need not be submitted with the report. All statistical results should be organized and presented in tabular or graphic form to the extent feasible.

B. Criterion-related validity studies. Reports of criterion-related validity for a selection procedure should include the following information:

(1) User(s), location(s), and date(s) of study. Dates and location(s) of the job analysis or review of job information, the date(s) and location(s) of the administration of the sample proce-dures and collection of criterion data, and the time between collection of data on selection procedures and crite-rion measures should be provided (Essential). If the study is conducted at several locations, the address of each location, including city and State, should be shown.

(2) Problem and setting. An explicit definition of the purpose(s) of the study and the program(s) of which the study was conducted should be provided. A description of existing se-l-ection procedures and cutoff scores, if any, should be provided.

(3) Job analysis or review of job information. A description of the procedure used to analyze the job or group of jobs, or to review the job information should be provided (Essential). Where the study is in combination in the selection process results in criteria which may be used without a full job analysis (see section 14B(3)), the basis for the selection of these criteria should be reported (Essential). Where a job analysis is re-quired a complete description of the work behavior(s) or outcome(s), and measures of their criticality or im-portance should be provided (Essential). The report should describe the basis on which the behavior(s) or outcome(s) were determined to be critical or important, such as the proportion of time spent on the respective behaviors, their level of difficulty, their frequency of performance, the consequences of error, or other appro-priate factors (Essential). Where two or more jobs are grouped for a validity study, the information called for in this subsection should be provided for each of the jobs, and the justification for the grouping (see section 14B(1)) should be provided (Essential).

(4) Job titles and codes. It is desirable to provide the user's job title(s) for the job(s) in question and the corresponding job title(s) and code(s) from U.S. Employment Service's Dictionary of Occupational Titles (see section 15E, below).

(5) Criterion measures. The bases for the selection of the criterion measures should be provided, together with references to the evidence considered in making the selection of criterion measures (essential). A full description of all criteria on which data were collected and means by which they were observed, recorded, evaluated, and quantified, should be provided (essential). If rating techniques are used as criterion measures, the appraisal form(s) and instructions to the rater(s) should be included as part of the validation evidence, or should be explicitly described and available (essential). All steps taken to insure that criterion measures are free from factors which would unfairly alter the scores of members of any group should be described (essential).

(c)靶当ear previous measure of the basis of the research sample was identified and selected should be included (essential). The race, sex, and ethnic composition of the sample, including the numbers of members in each group set forth in sections 15A(11) and 15D(11) above, should be described (essential). This description should include the size of each subgroup (essential). A description of how the research sample compares with the relevant labor market or work force, the method by which the relevant labor market or work force was defined, and a discus-sion of the likely effects on validity of differences between the sample and the relevant labor market or work force, are also desirable. Descriptions of educational levels, length of service, and age are also desirable.

(7) Description of selection procedure. In addition to criterion measure, combination of measures, or process studied should be completely and explicitly described or attached (essential). If commercial-
ly available selection procedures are studied, they should be described by title, form, and publisher (essential). Reports of reliability estimates and how they were established are desirable.

(8) Techniques and results. Methods used in analyzing data should be described (essential). Measures of central tendency (e.g., means) and measures of dispersion (e.g., standard deviations and ranges) for all selection procedures and all criteria should be reported for each race, sex, and ethnic group which constitutes a significant factor in the relevant labor market (essential). The magnitude and direction of all relationships between selection procedures and criterion measures investigated should be reported for each relevant race, sex, and ethnic group and for the total group (essential). Where groups are too small to obtain reliable evidence of the magnitude of the relationship, need not be reported separately. Statements regarding the significance or unfairness of results should be made (essential). Any statistical adjustments, such as for less than perfect reliability or for restriction of score range in the selection procedure or criterion should be described and explained, and uncorrected correlation coefficients should also be shown (essential). Where the statistical technique categorizes continuous data, such as biserial correlation and the phi coefficient, to a significant factor in the relevant labor market (essential). The behaviors measured with the phi coefficient should also be shown (essential). Where the statistical technique categorizes continuous data, such as biserial correlation and the phi coefficient, to a significant factor in the relevant labor market (essential). The behaviors measured with the phi coefficient should also be shown (essential). Where the statistical technique categorizes continuous data, such as biserial correlation and the phi coefficient, to a significant factor in the relevant labor market (essential). 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Where the statistical technique categorizes continuous data, such as biserial correlation and the phi coefficient, to a significant factor in the relevant labor market (essential). The behaviors measured with the phi coefficient should also be shown (essential).
the work situation (essential). If any steps were taken to reduce adverse impact on a race, sex, or ethnic group in the content of the procedure or in its administration, these steps should be described. Establishment of time limits, if any, and how these limits are related to the speed with which duties must be performed on the job, should be explained. Measures of central tendency (e.g., means) and measures of dispersion (e.g., standard deviations) and estimates of reliability should be reported for all selection procedures if available. Such reports should be made for relevant race, sex, and ethnic subgroups, at least on a statistically reliable sample basis.

Alternative procedures investigated. The alternative selection procedure investigated and available evidence of their impact should be identified (essential). The scope, method, and findings of the investigation, and the conclusions reached in light of the findings, should be fully described (essential). The report should also include the rationale for choosing the method for operational use, and the evidence of the validity and utility of the procedure as it is to be used (essential). The purpose for which the procedure is to be used (e.g., hiring, transfer, promotion) should be described (essential). If the selection procedure is used with a cutoff score, the user should describe the way in which normal expectations of proficiency within the work force were determined and the way in which the cutoff score was determined (essential). The selection procedure is to be used for ranking, the user should specify the evidence showing that a higher score on the selection procedure is likely to result in better job performance (essential).

Contact person. The name, mailing address, and telephone number of the person who may be contacted for further information about the validity study should be provided (essential).

Accuracy and completeness. The report should describe the steps taken to assure the accuracy and completeness of the collection, analysis, and report of data and results.

Validity studies. Reports of construct validity for a selection procedure should include the following information:

1. User(s), location(s), and dates of use (essential). Information on the job analysis and the gathering of other evidence called for by these guidelines should be provided (essential).

2. Problem and setting. An explicit definition of the purpose(s) of the study and the circumstances in which the study was conducted should be provided. A description of existing selection procedures and cutoff scores, if any, should be provided.

3. Construct definition. A clear definition of the construct(s) which are believed to underlie successful performance of the critical or important work behavior(s) should be provided (essential). This definition should include the levels of construct performance relevant to the job(s) for which the selection procedure is to be used (essential). There should be a summary of the position of the construct in the psychological literature, or in the absence of such a position, a description of the way in which the definition and meaning of the construct was developed and the psychological theory underlying it (essential). Any quantitative data which identify or define the job constructs, such as factor analyses, should be provided (essential).

4. Job analysis. A description of the method used to analyze the job should be provided (essential). A complete description of the work behavior(s) and, to the extent appropriate, work outcomes and measures of their criticality and/or importance should be provided (essential). The report should also describe the basis on which the behavior(s) or outcomes were determined to be important, such as their level of difficulty, their frequency of performance, the consequences of error or other appropriate factors (essential). Where jobs are grouped or compared for the purposes of generalizing validity evidence, the work behavior(s) and work product(s) for each of the jobs should be described, and comments concerning the similarity of the jobs in terms of observable work behaviors or work products should be made (essential).

5. Job titles and codes. It is desirable to provide the selection procedure user's job title(s) for the job(s) in question and the corresponding job title(s) and code(s) from the United States Employment Service's dictionary of occupational titles.

6. Selection procedure. The selection procedure used as a measure of the construct should be completely and explicitly described or attached (essential). If commercially available selection procedures are used, they should be identified by title, form and publisher (essential). The research evidence of the relationship between the selection procedure and the construct, such as factor analyses, should be included (essential). Measures of central tendency, variability and reliability of the selection procedure should be provided (essential). Whenever feasible, these measures should be provided separately for each relevant race, sex and ethnic group.

7. Relationship to job performance. The criterion-related study(ies) and the general indication of the relationship between the construct measured by the selection procedure and the related work behavior(s) for the job or jobs in question should be provided (essential). Documentation of the criterion-related study(ies) should satisfy the provisions of section 15B above or section 15E(1) below, except for studies conducted prior to the effective date of these guidelines (essential). Where a study pertains to a group of jobs, or based on the basis of the study, validity is asserted for a job in the group, the observed work behaviors and the observed work products for each of the jobs should be described (essential). Any other evidence used in determining whether the work behavior(s) in each of the jobs is the same should be fully described (essential).

8. Alternative procedures investigated. The alternative selection procedure investigated and available evidence of their impact should be identified (essential). The scope, method, and findings of the investigation, and the conclusions reached in light of the findings, should be fully described (essential).

9. Uses and applications. The methods considered for use of the selection procedure (e.g., as a screening device with a cutoff score, for grouping or ranking, or combined with other procedures in a battery) and available evidence of their impact should be described (essential). If the selection procedure is used with a cutoff score, the user should describe the way in which normal expectations of proficiency within the work force were determined and the way in which the cutoff score was determined (essential). The selection procedure is to be used for ranking, the user should specify the evidence showing that a higher score on the selection procedure is likely to result in better job performance (essential).

10. Accuracy and completeness. The report should describe the steps taken to assure the accuracy and completeness of the collection, analysis, and report of data and results.

11. Source data. Each user should maintain records showing all pertinent
information relating to its study of construct validity.

(12) Contact person. The name, mailing address, and telephone number of the person in charge of studies not done by the user, the evidence from the original study or studies should be compiled in a manner similar to that required in the appropriate section of this section 15 above. In addition, the following evidence should be supplied:

(1) Evidence from criterion-related validity studies—A. Job information. A description of the important job behavior(s) of the user's job and the basis on which the behaviors were determined to be important should be provided (essential). A full description of the basis for determining that these important work behaviors are the same at the time of the job in the original study (or studies) should be provided (essential).

b. Relevance of criteria. A full description of the basis on which the criteria used in the original studies are determined to be relevant for the user should be provided (essential). The similarity of important applicant pool or sample characteristics reported in the original studies to those of the user should be described (essential). A description of the comparison between the race, sex and ethnic composition of the user's relevant labor market and the sample in the original validity studies should be provided (essential).

c. Other variables. The similarity of important applicant pool or sample characteristics reported in the original studies to those of the user should be described (essential). The category of the user should provide evidence that the knowledge, skill or ability is required for the higher level job and the basis for the conclusion that the knowledge, skill or ability is not expected to develop from the training or experience on the job.

d. Use of the selection procedure. A full description should be provided showing that the use to be made of the selection procedure is consistent with the use of the original validity studies (essential).

e. Bibliography. A bibliography of reports of validity of the selection procedure for the job or jobs in question should be provided (essential). Where any of the studies included an investigation of test fairness, the results of this investigation should be provided (essential). Copies of reports published in journals that are not commonly available should be described in detail or attached (essential). Where a user is relying upon unpublished studies, a reasonable effort should be made to obtain these studies. If these unpublished studies are the sole source of validity evidence they should be described in detail or attached (essential). If these studies are not available, the name and address of the source, an adequate abstract or summary of the validity study and data, and a contact person in the source organization should be provided (essential).

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(2) Evidence from content validity studies. See section 14C(3) and section 15C above.

(3) Evidence from construct validity studies. See sections 14D(2) and 15D above.

F. Evidence of validity from cooperative studies. Where a selection procedure has been validated through a cooperative study, evidence that the study satisfied the requirements of sections 7, 8 and 15E should be provided (essential).

G. Selection for higher level job. If a selection procedure is used to evaluate candidates for jobs at a higher level than those for which they will initially be employed, the validity evidence should satisfy the documentation provisions of this section 15 for the higher level job or jobs, and in addition, the user should provide: (1) a description of the job progression structure, formal or informal; (2) the data showing how many employees progress to the higher level job and the order of time needed to make this progression; and (3) an identification of any anticipated changes in the higher level job. In addition, if the test measures a knowledge, skill or ability, the user should provide evidence that the knowledge, skill or ability is required for the higher level job and the basis for the conclusion that the knowledge, skill or ability is not expected to develop from the training or experience on the job.

H. Interim use of selection procedures. If a selection procedure is being used on an interim basis because the procedure is not fully supported by the required evidence of validity, the user should maintain and have available (1) substantial evidence of validity for the procedure, and (2) a report showing the date on which the study to gather the additional evidence commenced, the estimated completion date of the study, and a description of the data to be collected (essential).

DEFINITIONS

Sec. 16. Definitions. The following definitions shall apply throughout these guidelines:

A. Ability. A present competence to perform an observable behavior or a behavior which results in an observable product.

B. Adverse impact. A substantially different rate of selection in hiring, promotion, or other employment decision which works to the disadvantage of members of a race, sex, or ethnic group.

C. Compliance with these guidelines. Use of a selection procedure is in compliance with these guidelines if such use has been validated with these guidelines (as defined below), or if such use does not result in adverse impact on any race, sex, or ethnic group (see section 4, above), or, in unusual circumstances, if use of the procedure is otherwise justified in accord with Federal law. See section 6B, above.

D. Content validity. Demonstrated by data showing that the content of a selection procedure is representative of important aspects of performance on the job. See section 5B and section 14C.

E. Construct validity. Demonstrated by data showing that the selection procedure measures the degree to which candidates have identifiable characteristics which have been determined to be important for successful job performance. See section 5B and section 14D.

F. Criterion-related validity. Demonstrated by empirical data showing that the selection procedure is predictive of or significantly correlated with important elements of work behavior. See sections 5B and 14B.

G. Employer. Any employer subject to the provisions of the Civil Rights Act of 1964, as amended, including Federal or local governments and any Federal agency subject to the provisions of section 117 of the Civil Rights Act of 1964, as amended, and any Federal contractor or subcontractor or federally assisted contractor or subcontractor covered by Executive Order 11246, as amended.

H. Employment agency. Any employment agency subject to the provisions of the Civil Rights Act of 1964, as amended.

I. Enforcement action. For the purposes of section 4 a proceeding by a Federal enforcement agency such as a lawsuit or an administrative proceeding leading to debarment from or withholding, suspension, or cancellation of Federal Government contracts or the suspension or withholding of Federal Government funds; but not a finding of reasonable cause or a conciliation process or the issuance of right to sue letters under Title VII or under Executive Order 11246 where such finding, conciliation, or issuance of notice of right to sue is based upon an individual complaint.

J. Enforcement agency. Any agency of the executive branch of the Federal Government, which adopts these guidelines for purposes of the enforcement of the equal employment opportunity laws or which has responsibility for securing compliance with them.

K. Job analysis. A detailed statement of work behaviors and other information relevant to the job.

L. Job description. A general statement of job duties and responsibilities.

M. Knowledge. A body of information applied directly to the performance of a function.
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No labor organization. Any labor organization subject to the provisions of the Civil Rights Act of 1964, as amended, and any committee subject thereto controlling apprenticeship or other training.

1. Observer. Able to be seen, heard, or otherwise perceived by a person other than the person performing the action.

2. Race, sex, or ethnic group. Any group of persons identifiable on the grounds of race, color, religion, sex, or national origin.

3. Selection procedure. Any measure, combination of measures, or procedure used as a basis for any employment decision. Selection procedures include the full range of assessment techniques from traditional paper and pencil tests, performance tests, training programs, or probationary periods and physical, educational, and work experience requirements through informal or casual interviews and unsecured application forms.

4. Job performance. May consist of one or more measurable and relevant measures of job performance or other criteria of employee performance or other criteria of employee performance.

5. Selection procedure. Assurance of compliance with the guidelines, while recognizing that there are circumstances where alternative courses of action are open to users.


7. Technical feasibility. The existence of conditions permitting the conduct of meaningful criterion-related validity studies. These conditions include: (1) An adequate sample of persons available for the study to achieve findings of statistical significance; (2) having or being able to obtain a sufficient number on the selection, procedure and job performance measures to produce validity results which can be expected to be representative of the results if the ranges normally expected are utilized; and (3) having or being able to devise unbiased, reliable and relevant measures of job performance or other criteria of employee adequacy. See section 14B(2). With respect to investigation of possible unfairness, the same considerations are applicable to each group for which the study is made. See section 14B(8).

8. Unfairness of selection procedure. A condition in which members of one race, sex, or ethnic group characteristics obtain lower scores on a selection procedure than members of another group, and the differences are not reflected in differences in measures of job performance. See section 14B(7).

W. User. Any employer, labor organization, employment agency, or licensing or certification board, to the extent it may be covered by Federal equal employment opportunity law, which uses a selection procedure as a basis for any employment decision. Whenever an employer, labor organization, or employment agency is required to restrict recruitment for any occupation to those applicants who have met licensing or certification requirements, the licensing or certifying authority to the extent it may be covered by Federal equal employment opportunity law will be considered the user with respect to those licensing or certification requirements. Whenever a State employment agency or service does no more than administer or monitor a procedure as permitted by Department of Labor regulations, and does not without making referrals or taking any other action on the basis of the results, the State employment agency will not be deemed to be a user.

X. Validated in accord with these guidelines or properly validated. A demonstration that one or more valid study or studies meeting the standards of these guidelines has been conducted, including investigation and, where appropriate, use of suitable alternative selection procedures as contemplated by section 31B, and has produced evidence of validity sufficient to warrant use of the procedure for the intended purpose under the standards of these guidelines.

Y. Work behavior. An activity performed to achieve the objectives of the job. Work behaviors involve observable (physical) components and unobservable (mental) components. A work behavior consists of the performance of one or more tasks. Knowledge, skills, and abilities are not behaviors, although they may be applied in work behaviors.

APPENDIX

17. Policy statement on affirmative action (see section 13B). The Equal Employment Opportunity Coordinating Council was established by act of Congress in 1972, and charged with responsibility for developing and implementing affirmative action policies. For this reason, the Council urges all State and local governments to develop and implement results oriented affirmative action plans which deal with the problems so identified. The following policy statement is intended to assist State and local governments by illustrating the kinds of analyzes and activities which may be appropriate for a public employer's voluntary affirmative action plan. This statement does not address remedies imposed after a finding of unlawful discrimination.

(2) Voluntary affirmative action to assure equal employment opportunity is appropriate at any stage of the employment process. The first step in the construction of any affirmative action plan should be an analysis of the employer's work force to determine whether percentages of sex, race, or ethnic groups in individual job classifications are substantially similar to the percentages of those groups available in the relevant job market who possess the basic job-related qualifications.

When substantial disparities are found through such analyses, each element of the overall selection process should be examined to determine.
which elements operate to exclude persons on the basis of sex, race, or ethnic group. Such elements include, but are not limited to, recruitment, testing, ranking certification, interview, recommendations for selection, hiring, promotion, etc. The examination of each element of the selection process should at a minimum include a determination of its validity in predicting job performance.

(3) When an employer has reason to believe that its selection procedures have the exclusionary effect described in paragraph (2) above, it should initiate affirmative steps to remedy the situation. Such steps, which in design and execution may be race, color, sex, or ethnic “conscious,” include, but are not limited to, the following:

(a) The establishment of a long-term goal, and short-range, interim goals and timetables for the specific job classifications, all of which should take into account the availability of basically qualified persons in the relevant job market;

(b) A recruitment program designed to attract qualified members of the group in question;

(c) A systematic effort to organize work and redesign jobs in ways that provide opportunities for persons lacking “journeymen” level knowledge or skills to enter and, with appropriate training, to progress in a career field;

(d) Revamping selection instruments or procedures which have not yet been validated in order to reduce or eliminate exclusionary effects on particular groups in particular job classifications;

(e) The initiation of measures designed to assure that members of the affected group who are qualified to perform the job are included within the pool of persons from which the selecting official makes the selection;

(f) A systematic effort to provide career advancement training, both classroom and on-the-job, to employees locked into dead end jobs; and

(g) The establishment of a system for regularly monitoring the effectiveness of the particular affirmative action program, and procedures for making timely adjustments in this program where effectiveness is not demonstrated.

(4) The goal of any affirmative action plan should be achievement of genuine equal employment opportunity for all qualified persons. Selection under such plans should be based upon the ability of the applicant(s) to do the work. Such plans should not require the selection of the unqualified, or the unqualified, affirmative action plans should not require the selection of persons on the basis of race, color, sex, religion, or national origin. Moreover, while the Council believes that this statement should serve to assist State and local employers, as well as Federal agencies, it recognizes that affirmative action cannot be viewed as a standardized program which must be accomplished in the same way at all times in all places.

Accordingly, the Council has not attempted to set forth here either the minimum or maximum voluntary steps that employers may take to deal with their respective situations. Rather, the Council recognizes that under applicable authorities, State and local employers have flexibility to formulate affirmative action plans that are best suited to their particular situations. In this manner, the Council believes that affirmative action programs will best serve the goal of equal employment opportunity.

Respectfully submitted,

HAROLD R. TYLER, JR.,
Deputy Attorney General and Chairman of the Equal Employment Coordinating Council.

MICHAEL H. MOSKOW,
Under Secretary of Labor.

ETHEL BENT WALSHE,

ROBERT E. HAMPTON,
Chairman, Civil Service Commission.

ARTHUR E. FLEMMING,
Chairman, Commission on Civil Rights.

Because of its equal employment opportunity responsibilities under the State and Local Government Fiscal Assistance Act of 1972 (the revenue sharing act), the Department of Treasury was invited to participate in the formulation of this policy statement; and it concurs and joins in the adoption of this policy statement.

Done this 26th day of August 1976.

RICHARD ALCHEMICH,
General Counsel, Department of the Treasury.

Section 18. Citations. The official title of these guidelines is “Uniform Guidelines on Employee Selection Procedures (1978).” The Uniform Guidelines on Employee Selection Procedures (1978) are intended to establish a uniform Federal position in the area of prohibiting discrimination in employment practices on grounds of race, color, religion, sex, or national origin. These guidelines have been adopted by the Equal Employment Opportunity Commission, the Department of Labor, the Department of Justice, and the Civil Service Commission.

The official citation is: “Section 18, Uniform Guidelines on Employee Selection Procedure (1978); 43 FR — (August 25, 1978).”


When the guidelines are cited in connection with the activities of one of the issuing agencies, a specific citation to the regulations of that agency can be added at the end of the above citation. The specific additional citations are as follows:

Equal Employment Opportunity Commission
29 CFR Part 1607
Department of Labor
Office of Federal Contract Compliance Programs
41 CFR Part 60-3
Department of Justice
28 CFR 50.14
Civil Service Commission
5 CFR 300.11(c)

Normally when citing these guidelines, the section number immediately preceding the title of the guidelines will be from these guidelines series 1–18. If a section number from the codification for an individual agency is needed it can also be added at the end of the agency citation. For example, section 6A of these guidelines could be cited for EEOC as follows: “Section 6A, Uniform Guidelines on Employee Selection Procedures (1978); 43 FR — (August 25, 1978); 29 CFR Part 1607, section 6A.”

ELEANOR HOLMES NORTON,
Chair, Equal Employment Opportunity Commission.

ALAN K. CAMPBELL,
Chairman, Civil Service Commission.

RAY MARSHALL,
Secretary of Labor.

GRIFFIN B. BELL,
Attorney General.
[6570-06]

CIVIL SERVICE COMMISSION

Title 5—Administrative Personnel

CHAPTER 1—CIVIL SERVICE COMMISSION

PART 300—EMPLOYMENT (GENERAL)

Uniform Guidelines on Employee Selection Procedures (1978)

The Uniform Guidelines on Employee Selection Procedures (1978) which are printed at the beginning of this part IV in today's Federal Register are adopted by the Civil Service Commission, in conjunction with the Equal Employment Opportunity Commission, Department of Justice, and the Department of Labor to establish uniformity in prohibiting discrimination in employment practices on grounds of race, color, religion, sex, age, national origin, partisan political affiliation, or other non-merit factor. Employee selection procedures shall meet the standards established by the "Uniform Guidelines on Employee Selection Procedures (1978), 43 FR—(August 25, 1978)."

The Civil Service Commission rescinds the Guidelines on Employee Selection Procedures, 41 FR 51782, Federal Personnel Manual part 900, subpart F and adopts the Uniform Guidelines on Employee Selection Procedures (1978), to be issued as identical supplement appendices to supplements 271-1, Development of Qualification Standards; 271-2, Tests and Other Applicant Appraisal Procedures; 335-1, Evaluation of Employees for Promotion and Internal Placement; and 990-1 (Book III), part 900, subpart F, Administration of Standards for a Merit System of Personnel Administration of the Federal Personnel Manual in order to insure the examining, testing standards, and employment practices are not affected by discrimination on the basis of race, color, religion, sex or national origin.

Effective date: September 25, 1978.

ALAN K. CAMPBELL, Chairman, Civil Service Commission.
The Uniform Guidelines on Employee Selection Procedures which are provided at the beginning of this part IV in today's Federal Register are adopted by the Department of Justice, in conjunction with the Civil Service Commission, Equal Employment Opportunity Commission, and the Department of Labor to establish a uniform Federal position in the area of prohibiting discrimination in employment practices on grounds of race, color, religion, sex, or national origin. Cross reference documents are published at 5 CFR 300.103(c), (Civil Service Commission) 29 CFR 1607 (Equal Employment Opportunity Commission), and 41 CFR 60-3 (Department of Labor), elsewhere in this issue of the Federal Register.


Effective date: September 25, 1978.

Griffin B. Bell,
Attorney General.
RULES AND REGULATIONS

B. Consideration of Suitable Alternative Selection Procedures

1607.4 Information on Impact
A. Records Concerning Impact
B. Applicable Race, Sex, and Ethnic Group Data
C. Evaluation of Selection Rates. The "Bottom Line"
D. Disparate Impact and the "Four-Fifths Rule"
E. Consideration of User's Equal Employment Opportunity Pasture

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B. Criterion-Related, Content, and Construct Validity
C. Guidelines Are Consistent With Professional Standards
D. Need for Documentation of Validity
E. Accuracy and Standardization
F. Caution Against Selection on Basis of Knowledge, Skills, or Abilities Learned in Brief Orientation Period
G. Method of Use of Selection Procedures
H. Cutoff Scores
I. Use of Selection Procedures for Higher Level Positions
J. Interim Use of Selection Procedures
K. Review of Validity Studies for Currency

1607.6 Use of Selection Procedures Which Have Not Been Validated
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B. Where Validity Studies Cannot or Need Not Be Performed
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(2) Where Formal and Scored Procedures Are Used

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B. Use of Criterion-Related Validity Evidence From Other Sources
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(2) Job Similarity
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C. Validity Evidence From Multi-Unit Study
D. Other Significant Variables

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A. Encouragement of Cooperative Studies
B. Standards for Use of Cooperative Studies

1607.9 No Assumption of Validity
A. Unacceptable Substitutes for Evidence of Validity
B. Encouragement of Professional Supervision

1607.10 Employment Agencies and Employment Services
A. Where Selection Procedures Are Designed by Agency
B. Where Selection Procedures Are Designed Elsewhere

1607.11 Disparate Treatment

1607.12 Retesting of Applicants

1607.13 Affirmative Action
A. Affirmative Action Obligations
B. Encouragement of Voluntary Affirmative Action Programs

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1607.14 Technical Standards for Validity Studies
A. Validity Studies Should Be Based on Review of Information About the Job
B. Technical Standards for Criterion-Related Validity Studies
(1) Technical Feasibility
(2) Analysis of the Job
(3) Criterion Measures
(4) Representativeness of the Sample
(5) Statistical Relationships
(6) Operational Use of Selection Procedures
(7) Over-State­ment of Validity Findings
(8) Fairness
(a) Unfairness Defined
(b) Investigation of Fairness
(c) General Considerations in Fairness Investigations
(d) When Unfairness is Shown
(9) Technical Feasibility of Fairness Studies
(10) Continued Use of Selection Procedures When Fairness Studies Not Feasible

C. Technical Standards for Content Validity Studies
(1) Appropriateness of Content Validity Studies
(2) Job Analysis for Content Validity
(3) Development of Selection Procedures
(4) Standards for Demonstrating Content Validity
(5) Reliability
(6) Prior Training or Experience
(7) Training Success
(8) Operational Use
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D. Technical Standards for Construct Validity Studies
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(3) Relationship to the Job
(4) Use of Construct Validity Study Without New Criterion-Related Evidence
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B. Criterion-Related Validity Studies
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(2) Problem and Setting
(3) Job Analysis or Review of Job Information
(4) Job Titles and Codes
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(7) Description of Selection Procedure
(8) Techniques and Results
(9) Alternative Procedures Investigated
(10) Uses and Applications
(11) Source Data
(12) Contact Person(s)
(13) Accuracy and Completeness
C. Content Validity Studies

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(2) Problem and Setting
(3) Job Analysis—Content of the Job
(4) Selection Procedure and Its Content
(5) Relationship Between Selection Procedure and the Job
(6) Alternative Procedures Investigated
(7) Uses and Applications
(8) Contact Person
(9) Accuracy and Completeness
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(2) Problem and Setting
(3) Construct Definition
(4) Job Analysis
(5) Job Titles and Codes
(6) Selection Procedure
(7) Relationship to Job Performance
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(9) Uses and Applications
(10) Accuracy and Completeness
(11) Source Data
(12) Contact Person
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B. Consideration of Suitable Alternative Selection Procedures

60-3.4 Information on Impact
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B. Applicable Race, Sex, and Ethnic Groups for Recordkeeping
C. Evaluation of Selection, Rates, the "Bottom Line"
D. Adverse Impact and the "Four-Fifths Rule"
E. Consideration of User's Equal Employment Opportunity Pursuit

60-3.5 General Standards for Validity Studies
A. Acceptable Types of Validity Studies
   B. Criterion-Related, Content, and Construct Validity
   C. Guidelines Are Consistent With Professional Standards
   D. Need for Documentation of Validity
   E. Accuracy and Standardization

F. Caution Against Selection on Basis of Knowledge, Skills, or Abilities Learned in Brief Orientation Period

G. Method of Use Selection Procedures
   H. Cutoff Score
   I. Use of Selection Procedures for Higher Level Jobs
J. Interim Use of Selection Procedures
K. Humanization of Validity Studies for Currency

60-3.6 Use of Selection Procedures Which Have Not Been Validated
A. Use of Alternate Selection Procedures To Eliminate Adverse Impact
B. Where Validity Studies Cannot or Need Not Be Performed
   (1) Where Informal or Unscored Procedures Are Used
   (2) Where Formal and Scored Procedures Are Used

60-3.7 Use of Other Validity Studies
A. Validity Studies Not Conducted by the User
   B. Use of Criterion-Related Validity Evidence From Other Sources
      (1) Validity Evidence
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      (3) Fairness Evidence
      C. Validity Evidence From Multifield Studies
      D. Other Significant Variables

60-3.8 Cooperative Studies
A. Encouragement of Cooperative Studies
B. Standards for Use of Cooperative Studies

60-3.9 No Assumption of Validity
A. Unacceptable Substitutes for Evidence of Validity
B. Encouragement of Professional Supervision

60-3.10 Employment Agencies and Employment Services
A. Where Selection Procedures Are DeVised by Agency
B. Where Selection Procedures Are DeVised Elsewhere

60-3.11 Disparate Treatment
60-3.12 Retesting of Applicants
60-3.13 Affirmative Action
A. Affirmative Action Obligations
B. Encouragement of Voluntary Affirmative Action Programs

TECHNICAL STANDARDS

60-3.14 Technical Standards for Validity Studies
A. Validity Studies Should be Based on Review of Information About the Job

B. Technical Standards for Criterion-Related Validity Studies
   (1) Technical Feasibility
   (2) Analysis of the Job
   (3) Criterion Measures
   (4) Representativeness of the Sample
   (5) Statistical Relationships
   (6) Operational Use of Selection Procedures
   (7) Over-Statement of Validity Findings
   (8) Fairness
      (a) Unfairness Defined
      (b) Investigation of Fairness
      (c) General Considerations in Fairness Investigations
      (d) When Unfairness Is Shown
      (e) Technical Feasibility of Fairness Studies
   (f) Continued Use of Selection Procedures When Fairness Studies Not Feasible

C. Technical Standards for Content Validity Studies
   (1) Appropriateness of Content Validity Studies
   (2) Job Analysis for Content Validity
   (3) Development of Selection Procedure
   (4) Standards for Demonstrating Content Validity
   (5) Reliability
   (6) Prior Training or Experience
   (7) Training Success
   (8) Operational Use
   (9) Ranking Based on Content Validity Studies

D. Technical Standards for Construct Validity Studies
   (1) Appropriateness of Construct Validity Studies
   (2) Job Analysis for Construct Validity Studies
   (3) Relationship to the Job
   (4) Use of Construct Validity Study Without New Criterion-Related Evidence
      (a) Standards for Use
      (b) Determination of Common Work Behaviors

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60-3.15 Documentation of Impact and Validity Evidence
A. Required Information
   (1) Simplified Recordkeeping for Users With Less Than 100 Employees
   (2) Information on Impact
      (a) Collection of Information on Impact
      (b) When Adverse Impact Has Been Eliminated in the Total Selection Process
      (c) What Data Insufficient to Determine Impact
   (3) Documentation of Validity Evidence
      (a) Type of Evidence
      (b) Form of Report
      (c) Completeness

B. Criterion-Related Validity Studies
   (1) User(s), Location(s), and Date(s) of Study
   (2) Problem and Setting
   (3) Job analysis or Review of Job Information
   (4) Job Titles and Codes
   (5) Criterion Measures
   (6) Sample Description
   (7) Description of Selection Procedure
   (8) Techniques and Results
   (9) Alternative Procedures Investigated
   (10) Uses and Applications
   (11) Source Data
   (12) Contact Person

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C. Content Validity Studies
(1) User(s), Location(s), and Date(s) of Study
(2) Problem and Setting
(3) Job Analysis—Content of the Job
(4) Selection Procedure and Its Content
(5) Relationship Between Selection Procedure and the Job
(6) Alternative Procedures Investigated
(7) Uses and Applications
(8) Contact Person

D. Construct Validity Studies
(1) User(s), Location(s), and Date(s) of Study
(2) Problem and Setting
(3) Construct Definition

(4) Job Analysis
(5) Job Titles and Codes
(6) Selection Procedure
(7) Relationship to Job Performance
(8) Alternative Procedures Investigated
(9) Uses and Applications
(10) Accuracy and Completeness
(11) Source Data
(12) Contact Person

E. Evidence of Validity From Other Studies
(1) Evidence From Criterion-Related Validity Studies
(a) Job Information
(b) Relevance of Criteria
(c) Other Variables
(d) Use of the Selection Procedure
(e) Bibliography

(2) Evidence From Content Validity Studies
(3) Evidence From Construct Validity Studies
F. Evidence of Validity From Cooperative Studies
G. Selection for Higher Level Jobs
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60-3.17 Policy Statement on Affirmative Action (see section 13B)
60-3.18 Citations

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