

weapons. A separate Washington Post analysis revealed that the ban was associated with a 60 percent decline in the number of guns with high-capacity magazines recovered at Virginia crime scenes between 1998 and 2004. But since the ban expired in 2004, the number of guns recovered with high-capacity magazines has more than doubled. A Department of Justice study of several cities found that high-capacity magazines are used in 14 to 26 percent of gun crimes and in 31 to 41 percent of fatal police shootings in the cities analyzed.

It is long past time to take concrete action to support our law enforcement communities and to prevent more of these massacres. That is why I am a cosponsor of the Assault Weapons Ban of 2013. By preventing the future possession, manufacture, sale and importation of assault type weapons and high-capacity ammunition magazines, this bill would stop the flood of these weapons of war into our communities. It would support law enforcement officers across our Nation, who should not be forced to confront lawbreakers armed with military weapons. And it would protect the rights of hunters by specifically naming thousands of firearms with legitimate sporting, sentimental or other value that would remain legal to possess.

Mr. President, we must face reality. We live in a nation trapped in an epidemic of gun violence. Where a day at the mall or a trip to the movies can become a nightmare. Where parents send their children to school and have to worry about whether they will come home.

Is this the Nation we want, or the Nation we want to leave to our children? We must not wait for the next madman to easily and legally purchase a military-style assault weapon and a high capacity magazine. I urge my colleagues to protect the American people by enacting measures to stem the tide of gun tragedies. It is long past time for this kind of violence to end.

#### TANF

Mr. HATCH. Mr. President, I ask unanimous consent to have printed in the RECORD the GAO opinion letter dated September 4, 2012, and the TANF Information Memorandum dated July 12, 2012.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

U.S. GOVERNMENT  
ACCOUNTABILITY OFFICE,  
Washington, DC, September 4, 2012.

Hon. ORRIN HATCH,  
Ranking Member, Committee on Finance, U.S.  
Senate.

Hon. DAVE CAMP,  
Chairman, Committee on Ways and Means,  
House of Representatives.

By letter of July 31, 2012, you asked whether an Information Memorandum issued by the Department of Health and Human Services (HHS) on July 12, 2012 concerning the Temporary Assistance for Needy Families (TANF) program constitutes a rule for the

purposes of the Congressional Review Act (CRA). The CRA is intended to keep Congress informed of the rulemaking activities of federal agencies and provides that before a rule can take effect, the agency must submit the rule to each House of Congress and the Comptroller General. For the reasons discussed below, we conclude that the July 12, 2012 Information Memorandum is a rule under the CRA. Therefore, it must be submitted to Congress and the Comptroller General before taking effect.

#### BACKGROUND

The Temporary Assistance for Needy Families block grant, administered by the U.S. Department of Health and Human Services, provides federal funding to states for both traditional welfare cash assistance as well as a variety of other benefits and services to meet the needs of low-income families and children. While states have some flexibility in implementing and administering their state TANF programs, there are numerous federal requirements and guidelines that states must meet. For example, under section 402 of the Social Security Act, in order to be eligible to receive TANF funds, a state must submit to HHS a written plan outlining, among other things, how it will implement various aspects of its TANF program. More specifically, under section 402(a)(1)(A)(iii) of the Social Security Act, the written plan must outline how the state will ensure that TANF recipients engage in work activities. Under section 407 of the Social Security Act, states must also ensure that a specified percentage of their TANF recipients engage in work activities as defined by federal law.

In its July 12 Information Memorandum, HHS notified states of HHS' willingness to exercise its waiver authority under section 1115 of the Social Security Act. Under section 1115, HHS has the authority to waive compliance with the requirements of section 402 in the case of experimental, pilot, or demonstration projects which the Secretary determines are likely to assist in promoting the objectives of TANF. In its Information Memorandum, HHS asserted that it has the authority to waive the requirement in section 402(a)(1)(A)(iii) and authorize states to "test approaches and methods other than those set forth in section 407," including definitions of work activities and the calculation of participation rates. HHS informed states that it would use this waiver authority to allow states to test various strategies, policies, and procedures designed to improve employment outcomes for needy families. The Information Memorandum sets forth requirements that must be met for a waiver request to be considered by HHS, including an evaluation plan, a set of performance measures that states will track to monitor ongoing performance and outcomes, and a budget including the costs of program evaluation. In addition, the Information Memorandum provides that states must seek public input on the proposal prior to approval by HHS.

#### ANALYSIS

The definition of "rule" in the CRA incorporates by reference the definition of "rule" in the Administrative Procedure Act (APA), with some exceptions. Therefore, our analysis of whether the July 12 Information Memorandum is a rule under the CRA involves determining whether it is rule under the APA and whether it falls within any of the exceptions contained in the CRA. The APA defines a rule as follows:

"[T]he whole or a part of an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice

requirements of an agency and includes the approval or prescription for the future of rates, wages, corporate or financial structures or reorganizations thereof, prices, facilities, appliances, services or allowances therefor or of valuations, costs, or accounting, or practices bearing on any of the foregoing[.]"

This definition of a rule has been said to include "nearly every statement an agency may make."

The CRA identifies 3 exceptions from its definition of a rule: (1) any rule of particular applicability; (2) any rule relating to agency management or personnel; or (3) any rule of agency organization, procedure, or practice that does not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3).

The definition of a rule under the CRA is very broad. See B-287557, May 14, 2001 (Congress intended that the CRA should be broadly interpreted both as to type and scope of rules covered). The CRA borrows the definition of a rule from 5 U.S.C. § 551, as opposed to the more narrow definition of legislative rules requiring notice and comment contained in 5 U.S.C. § 553. As a result, agency pronouncements may be rules within the definition of 5 U.S.C. § 551, and the CRA, even if they are not subject to notice and comment rulemaking requirements under section 553. See B-316048, April 17, 2008 (the breadth of the term "rule" reaches agency pronouncements beyond those that require notice and comment rulemaking) and B-287557, cited above. In addition to the plain language of the CRA, the legislative history confirms that it is intended to include within its purview almost all rules that an agency issues and not only those rules that must be promulgated according to the notice and comment requirements in section 553 of the APA. In his floor statement during final consideration of the bill, Representative McIntosh, a principal sponsor of the legislation, emphasized this point:

"Although agency interpretive rules, general statements of policy, guideline documents, and agency policy and procedure manuals may not be subject to the notice and comment provisions of section 553(c) of title 5, United States Code, these types of documents are covered under the congressional review provisions of the new chapter 8 of title 5.

Under section 801(a), covered rules, with very few exceptions, may not go into effect until the relevant agency submits a copy of the rule and an accompanying report to both Houses of Congress. Interpretive rules, general statements of policy, and analogous agency policy guidelines are covered without qualification because they meet the definition of a 'rule' borrowed from section 551 of title 5, and are not excluded from the definition of a rule."

On its face, the July 12 Information Memorandum falls within the definition of a rule under the APA definition incorporated into the CRA. First, consistent with our prior decisions, we look to the scope of the agency's action to determine whether it is a general statement of policy or an interpretation of law of general applicability. That determination does not require a finding that it has general applicability to the population as a whole; instead, all that is required is that it has general applicability within its intended range. See B-287557, cited above (a record of decision affecting the issues of water flow in two rivers was a general statement of policy with general applicability within its intended range). Applying these principles, we have held that a letter released by the Centers for Medicare and Medicaid Services to state health officials concerning the State Children's Health Insurance Program

(SCHIP) was of general applicability because it extended to all states that sought to enroll children with family incomes exceeding 250 percent of the federal poverty level in their SCHIP programs, as well as all states that had already enrolled such children. Similarly, the July 12 Information Memorandum is of general, rather than particular, applicability because it extends to all states administering Temporary Assistance for Needy Families (TANF) programs that seek a waiver for a demonstration project.

Next we must determine whether the action is prospective in nature, that is, whether it is concerned with policy considerations for the future and not with the evaluation of past conduct. In B-316048, we held that the SCHIP letter was intended to clarify and explain the manner in which CMS applies statutory and regulatory requirements to states that wanted to extend coverage under the SCHIP programs. Similarly, the July 12 Information Memorandum is concerned with authorizing demonstration projects in the future, rather than the evaluation of past or present demonstration projects. Specifically, the Information Memorandum informs states that HHS will use its statutory authority to consider waiver requests, and sets out requirements that waiver requests must meet. Accordingly, it is designed to implement, interpret, or prescribe law or policy.

In addition, the Information Memorandum does not fall within any of the three exclusions for a rule under the CRA. As discussed above, the Information Memorandum applies to all states that administer TANF programs, and therefore is of general applicability, rather than particular applicability. The Information Memorandum applies to the states, and does not relate to agency management or personnel. Finally, the Information Memorandum sets out the criteria by which states may apply for waivers from certain requirements of the TANF program. These criteria affect the obligations of the states, which are non-agency parties.

GAO has consistently emphasized the broad scope of the definition of "rule" in the CRA in determining the applicability of the CRA to an agency document. Other documents deemed to be rules include letters, records of decision, booklets, interim guidance, and memoranda. See, for example, B-316048, April 17, 2008 (a letter released by the Centers for Medicare & Medicaid Services of HHS concerning a State Children's Health Insurance Program measure, to ensure that coverage under a state plan does not substitute for coverage under group health plans, described by the agency as a general statement of policy, was a rule) and B-287557, May 14, 2001 (a "record of decision" issued by the Fish and Wildlife Service of the Department of Interior in connection with a federal irrigation project was a rule).

Finally, the cases where we have found that an agency pronouncement was not a rule involved facts that are clearly distinguishable from the July 12 Information Memorandum.

We requested the views of the General Counsel of HHS on whether the July 12 Information Memorandum is a rule for purposes of the CRA by letter dated August 3, 2012. HHS responded on August 31, 2012, stating that the Information Memorandum was issued as a non-binding guidance document, and that HHS contends that guidance documents do not need to be submitted pursuant to the CRA. Furthermore, HHS notes that it informally notified Congress by providing notice to the Majority and Minority staff members of the House Ways and Means Committee and Senate Finance Committee on the day the Information Memorandum was issued.

We cannot agree with HHS's conclusion that guidance documents are not rules for

the purposes of the CRA and HHS cites no support for this position. The definition of "rule" is expansive and specifically includes documents that implement or interpret law or policy. This is exactly what the HHS Information Memorandum does. It interprets section 402(a) and section 1115 to permit waivers for a demonstration program HHS is initiating. We have held that agency guidance, including guidance characterized as non-binding, constitutes a rule under the CRA. See B-281575, cited above. In addition, the legislative history of the CRA specifically includes guidance documents as an example of an agency pronouncement subject to the CRA. A joint statement for the record by Senators Nickles, Reid, and Stevens, submitted to the Congressional Record upon enactment of the CRA, details four categories of rules covered by the definition in section 551. These categories include formal rulemaking under sections 556 and 557, notice-and-comment rulemaking under section 553, statements of general policy and interpretations of general applicability under section 552, and "a body of materials that fall within the APA definition of a 'rule' . . . but that meet none of procedural specifications of the first three classes. These include guidance documents and the like." Finally, while HHS may have informally notified the cited Congressional committees of the issuance of the Information Memorandum, informal notification does not meet the reporting requirements of the CRA.

#### CONCLUSION

We find that the July 12 Information Memorandum issued by HHS is a statement of general applicability and future effect, designed to implement, interpret, or prescribe law or policy with regard to TANF. Furthermore, it does not come within any of the exceptions to the definition of rule contained in the CRA. Accordingly, the Information Memorandum is a rule under the Congressional Review Act.

We note that this opinion is limited to the issue of whether the Information Memorandum is a rule under the CRA. We are not expressing an opinion on the applicability of any other legal requirements, including, but not limited to, notice and comment rulemaking requirements under the APA, or whether the Information Memorandum would be a valid exercise or interpretation of statutes or regulations.

Accordingly, given our conclusions above, and in accordance with the provisions of 5 U.S.C. 801(a)(1), the Information Memorandum is subject to the requirement that it be submitted to both Houses of Congress and the Comptroller General before it can take effect.

If you have any questions concerning this opinion, please contact Edda Emmanuelli Perez, Managing Associate General Counsel.

LYNN H. GIBSON,  
General Counsel.

#### TEMPORARY ASSISTANCE FOR NEEDY FAMILIES INFORMATION MEMORANDUM

U.S. Department of Health and Human Services, Administration for Children and Families, Office of Family Assistance, Washington, DC.

Transmittal No. TANF-ACF-IM-2012-03, July 12, 2012

To: States administering the Temporary Assistance for Needy Families (TANF) Program and other interested parties

Subject: Guidance concerning waiver and expenditure authority under Section 1115

Reference: Section 1115 of the Social Security Act. [42 U.S.C. 1315]; Section 402 of the Social Security Act. [42 U.S.C. 602]

Background: Section 1115 of the Social Security Act provides authority for the Sec-

retary of the Department of Health and Human Services (HHS) to consider and approve experimental, pilot, or demonstration projects which, in the Secretary's judgment, are likely to assist in promoting the objectives of Title IV-A. Section 1115 allows for waiver of compliance with section 402 of the Social Security Act to the extent and for the period necessary to enable a state to carry out an approved project. The statute also provides authority for costs of such projects which would not otherwise be an allowable use of funds under Part A of Title IV to be regarded as an allowable use of funds, to the extent and for the period approved.

As specified in statute, the purpose of Part A is to increase the flexibility of states in operating a program designed to: (1) provide assistance to needy families so that children may be cared for in their own homes or in the homes of relatives; (2) end the dependence of needy parents on government benefits by promoting job preparation, work, and marriage; (3) prevent and reduce the incidence of out-of-wedlock pregnancies and establish annual numerical goals for preventing and reducing the incidence of these pregnancies; and (4) encourage the formation and maintenance of two-parent families.

Purpose: HHS is encouraging states to consider new, more effective ways to meet the goals of TANF, particularly helping parents successfully prepare for, find, and retain employment. Therefore, HHS is issuing this information memorandum to notify states of the Secretary's willingness to exercise her waiver authority under section 1115 of the Social Security Act to allow states to test alternative and innovative strategies, policies, and procedures that are designed to improve employment outcomes for needy families.

States led the way on welfare reform in the 1990s—testing new approaches and learning what worked and what did not. The Secretary is interested in using her authority to approve waiver demonstrations to challenge states to engage in a new round of innovation that seeks to find more effective mechanisms for helping families succeed in employment. In providing for these demonstrations, HHS will hold states accountable by requiring both a federally-approved evaluation and interim performance targets that ensure an immediate focus on measurable outcomes. States must develop evaluation plans that are sufficient to evaluate the effect of the proposed approach in furthering a TANF purpose as well as interim targets the state commits to achieve. States that fail to meet interim outcome targets will be required to develop an improvement plan and can face termination of the waiver project.

The demonstration authority provided by section 1115 and sound evaluation of approved projects will provide valuable knowledge that will help lead to improvements in achieving the purposes of the TANF program.

Information: *Scope of Authority.* Section 1115 authorizes waivers concerning section 402. Accordingly, other provisions of the TANF statute are not waivable. For example, the purposes of TANF are not waivable, because they are contained in section 401. The prohibitions on assistance are not waivable, because they are contained in section 408.

While the TANF work participation requirements are contained in section 407, section 402(a)(1)(A)(iii) requires that the state plan "[e]nsure that parents and caretakers receiving assistance under the program engage in work activities in accordance with section 407." Thus, HHS has authority to waive compliance with this 402 requirement and authorize a state to test approaches and

methods other than those set forth in section 407, including definitions of work activities and engagement, specified limitations, verification procedures, and the calculation of participation rates. As described below, however, HHS will only consider approving waivers relating to the work participation requirements that make changes intended to lead to more effective means of meeting the work goals of TANF.

Moreover, HHS is committed to ensuring that any demonstration projects approved under this authority will be focused on improving employment outcomes and contributing to the evidence base for effective programs; therefore, terms and conditions will require a federally-approved evaluation plan designed to build our knowledge base. TANF funds may be used to fund an approved evaluation and state funds spent on an approved evaluation may be considered state maintenance-of-effort (MOE) expenditures. In addition, terms and conditions will require either interim targets for each performance measure or a strategy for establishing baseline performance on a set of performance measures and a framework for how interim goals will be set after the baseline measures are established. The terms and conditions will establish consequences for failing to meet interim performance targets including, but not limited to, the implementation of an improvement plan and, if the failure to meet performance targets continues, termination of the waivers and demonstration project.

**HHS Priorities.** In exercising her broad discretion for waivers, the Secretary is interested in approaches that seek to improve employment outcomes. Accordingly:

Waivers will be granted only for provisions related to section 402.

The purposes of TANF, the prohibitions contained in section 408 (including the time limits on assistance contained in that section), or any other provision of TANF other than those specified in section 402 will not be waived.

The Secretary will not approve a waiver for an initiative that appears substantially likely to reduce access to assistance or employment for needy families.

The Secretary will not use her authority to allow use of TANF funds to provide assistance to individuals or families subject to the TANF prohibitions on assistance.

The Secretary will not waive section 402(a)(5) relating to requirements to provide equitable access to Indians.

Waiver demonstration projects may be conducted in limited geographic areas or statewide. The Administration for Children and Families (ACF) is interested in more efficient or effective means to promote employment entry, retention, advancement, or access to jobs that offer opportunities for earnings and advancement that will allow participants to avoid dependence on government benefits. The following are examples of projects that states may want to consider—these are illustrative only:

Projects that improve coordination with other components of the workforce investment system, including programs operated under the Workforce Investment Act, or to test an innovative approach to use performance-based contracts and management in order to improve employment outcomes.

Projects that demonstrate attainment of superior employment outcomes if a state is held accountable for negotiated employment outcomes in lieu of participation rate requirements.

Projects under which a state would count individuals in TANF-subsidized jobs but no longer receiving TANF assistance toward participation rates for a specified period of time in conjunction with an evaluation of the effectiveness of a subsidized jobs strategy.

Projects that improve collaboration with the workforce and/or post-secondary education systems to test multi-year career pathways models for TANF recipients that combine learning and work.

Projects that demonstrate strategies for more effectively serving individuals with disabilities, along with an alternative approach to measuring participation and outcomes for individuals with disabilities.

Projects that test the impact of a comprehensive universal engagement system in lieu of certain participation rate requirements.

Projects that test systematically extending the period in which vocational educational training or job search/readiness programs count toward participation rates, either generally or for particular subgroups, such as an extended training period for those pursuing a credential. The purpose of such a waiver would be to determine through evaluation whether a program that allows for longer periods in certain activities improves employment outcomes.

Note that this is not a comprehensive list, and HHS will consider other projects consistent with the statute and the guidance provided in this IM. HHS is especially interested in testing approaches that build on existing evidence on successful strategies for improving employment outcomes.

Waiver requests must include an evaluation plan. In order to provide the strongest evidence about the effectiveness of the demonstration, the preferred evaluation approach is a random assignment methodology, unless the Secretary determines that an alternative approach is more appropriate in light of the demonstration proposed. All evaluation plans and funds to support them must reflect an adequate level of effort and sound methods to produce credible findings. ACF anticipates actively engaging with states to ensure that evaluation plans are appropriate in light of the nature of the demonstration and that the evaluation findings can reasonably be expected to provide information that will enhance understanding of whether the initiative was successful in furthering HHS priorities. ACF staff members are available to work collaboratively with states to develop further or refine the evaluation plan.

Waiver requests must include a set of performance measures that states will track to monitor ongoing performance and outcomes throughout the length of the demonstration project, along with the evaluation. Waiver applications must specify interim targets for each performance measure, including a framework for how often the measures will be reported, or a strategy for establishing baseline performance on a set of performance measures and a framework for how interim goals will be set after the baseline measures are established. Performance measures must be designed to track improvement across the entire set of families targeted as well as appropriate subgroups. In developing the final terms and conditions for an approved waiver, ACF will work with the state to further refine the appropriate performance measures and interim targets as needed. All approved waivers will include a provision that requires timely reporting to HHS on the agreed upon performance measures and progress toward meeting established interim targets. States that fail to meet interim targets will be required to develop improvement plans. Repeated failure to meet performance benchmarks may lead to the termination of the waiver demonstration pilot.

The request must specify the proposed length of time for the demonstration project. The final terms and conditions will specify the approved length of the project. Absent special circumstances, the length of an approved project will not exceed five years.

A state will need to develop and submit a budget that includes the costs of program evaluation. TANF and state MOE funds can be used for the costs of evaluation, including third party contributions counting toward meeting a state's MOE requirement.

HHS recognizes the importance of public input into the process of developing and implementing a waiver demonstration project. Therefore, the state must provide the public with a meaningful opportunity to provide input into the decision-making process prior to the time a proposal is approved by HHS. Further guidance concerning this requirement will be forthcoming.

Waivers are subject to HHS and Office of Management and Budget (OMB) approval and terms and conditions may include additional requirements, such as site visits, before implementation.

Terms and conditions will require periodic reporting on how the implementation and operation of the demonstration is progressing, including reporting on the performance measures, in addition to evaluation reports. To support learning and knowledge development, ACF staff may conduct on-site visits to observe demonstration operations and meet with relevant managers and staff.

Inquiries: Inquiries and applications for projects involving waiver requests should be directed to the appropriate Regional TANF Program Manager.

EARL S. JOHNSON,  
*Director, Office of Family Assistance.*

JULY 12, 2012.

DEAR STATE HUMAN SERVICE OFFICIAL: Today, the Administration for Children and Families' Office of Family Assistance issued an Information Memorandum that informs states that the Department of Health and Human Services will use its statutory authority to consider waiver requests that strengthen the Temporary Assistance for Needy Families (TANF) program. This Information Memorandum reflects the Department's commitment to provide states, tribes, and territories with more flexibility to innovate in the TANF program with the goal of helping more families find jobs and move toward self-sufficiency.

On February 28, 2011, President Obama issued a Presidential Memorandum that directed federal agencies "to work closely with state, local, and tribal governments to identify administrative, regulatory, and legislative barriers in Federally funded programs that currently prevent states, localities, and tribes, from efficiently using tax dollars to achieve the best results for their constituents."

The Administration for Children and Families took this charge seriously and held a series of consultation meetings with states, tribes, and territories on a variety of topics including TANF. During those consultations, many jurisdictions expressed a strong interest in greater flexibility in TANF and indicated that greater flexibility could be used by states to improve program effectiveness. We also heard concerns that some TANF rules stifle innovation and focus attention on paperwork rather than helping parents find jobs. States offered a range of suggestions for ways in which expanded flexibility could lead to more effective employment outcomes for families. Two states—Utah and Nevada—submitted written comments that specifically identified waivers as one mechanism for testing new approaches to promoting employment and self-sufficiency, and a number of others states—including California, Connecticut, and Minnesota—have asked about the potential for waivers.

As described in more detail in the Information Memorandum, the Social Security Act provides the Secretary of the Department of

Health and Human Services with the authority to grant states waivers of certain TANF provisions for the purpose of testing new approaches to meeting the goals of the TANF statute. The Secretary is interested in using her authority to allow states to test alternative and innovative strategies, policies, and procedures that are designed to improve employment outcomes for needy families. The statute does not permit tribes to receive waivers under Section 1115, however we are committed to using the underlying flexibility in federal law to help tribes innovate in their programs.

TANF Waiver demonstration projects under Section 1115 must be accompanied by a high quality evaluation plan, which is critical to ensuring that the pilots result in rigorous evidence about what works and what doesn't in order to inform future decisions made by policymakers at the federal, state, tribal, territorial, and local levels. In addition, states that apply for a waiver must identify interim performance targets that will be used to hold states accountable for improving outcomes for families. We will work with states interested in developing waiver demonstration projects to design these performance measures and targets.

The Information Memorandum outlines the types of waivers that will and will not be considered. The Secretary is only interested in approving waivers if the state can explain in a compelling fashion why the proposed approach may be a more efficient or effective means to promote employment entry, retention, advancement, or access to jobs that offer opportunities for earnings and advancement that will allow participants to avoid dependence on government benefits.

States have shown their ability to innovate in ways that help parents find jobs. In 2009 and 2010, 42 states used the TANF Emergency Fund authorized under the American Recovery and Reinvestment Act to create 260,000 subsidized jobs for jobless parents and disadvantaged youth. Over a short period of time, states exhibited enormous creativity as they developed new subsidized employment initiatives that responded to an urgent need for jobs in communities across the country.

It is critical that we work together to develop effective employment strategies that prepare workers for the jobs of the 21st century. We stand ready to work with states interested in developing innovative demonstration projects that test new approaches to helping parents succeed in the labor market.

Sincerely,

GEORGE SHELDON,  
*Acting Assistant Secretary.*

## COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

### RULES OF PROCEDURE

Mrs. BOXER. Mr. President, the Committee on Environment and Public Works has adopted rules governing its procedures for the 113th Congress. Pursuant to Rule XXVI, paragraph 2, of the Standing Rules of the Senate, I ask unanimous consent that a copy of the Committee rules be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

## COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

### Jurisdiction

#### Rule XXV, Standing Rules of the Senate

1. The following standing committees shall be appointed at the commencement of each Congress, and shall continue and have the power to act until their successors are appointed, with leave to report by bill or otherwise on matters within their respective jurisdictions:

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- (h)(1) Committee on Environment and Public Works, to which committee shall be referred all proposed legislation, messages, petitions, memorials, and other matters relating to the following subjects:
    1. Air pollution.
    2. Construction and maintenance of highways.
    3. Environmental aspects of Outer Continental Shelf lands.
    4. Environmental effects of toxic substances, other than pesticides.
    5. Environmental policy.
    6. Environmental research and development.
    7. Fisheries and wildlife.
    8. Flood control and improvements of rivers and harbors, including environmental aspects of deepwater ports.
    9. Noise pollution.
    10. Nonmilitary environmental regulation and control of nuclear energy.
    11. Ocean dumping.
    12. Public buildings and improved grounds of the United States generally, including Federal buildings in the District of Columbia.
    13. Public works, bridges, and dams.
    14. Regional economic development.
    15. Solid waste disposal and recycling.
    16. Water pollution.
    17. Water resources.
  - (2) Such committee shall also study and review, on a comprehensive basis, matters relating to environmental protection and resource utilization and conservation, and report thereon from time to time.

### RULES OF PROCEDURE

#### RULE 1. COMMITTEE MEETINGS IN GENERAL

(a) REGULAR MEETING DAYS: For purposes of complying with paragraph 3 of Senate Rule XXVI, the regular meeting day of the committee is the first and third Thursday of each month at 10:00 a.m. If there is no business before the committee, the regular meeting shall be omitted.

(b) ADDITIONAL MEETINGS: The chair may call additional meetings, after consulting with the ranking minority member. Subcommittee chairs may call meetings, with the concurrence of the chair, after consulting with the ranking minority members of the subcommittee and the committee.

(c) PRESIDING OFFICER:

(1) The chair shall preside at all meetings of the committee. If the chair is not present, the ranking majority member shall preside.

(2) Subcommittee chairs shall preside at all meetings of their subcommittees. If the subcommittee chair is not present, the ranking majority member of the subcommittee shall preside.

(3) Notwithstanding the rule prescribed by paragraphs (1) and (2), any member of the committee may preside at a hearing.

(d) OPEN MEETINGS: Meetings of the committee and subcommittees, including hearings and business meetings, are open to the public. A portion of a meeting may be closed to the public if the committee determines by roll call vote of a majority of the members present that the matters to be discussed or the testimony to be taken—

(1) will disclose matters necessary to be kept secret in the interests of national de-

fense or the confidential conduct of the foreign relations of the United States;

(2) relate solely to matters of committee staff personnel or internal staff management or procedure; or

(3) constitute any other grounds for closure under paragraph 5(b) of Senate Rule XXVI.

(e) BROADCASTING:

(1) Public meetings of the committee or a subcommittee may be televised, broadcast, or recorded by a member of the Senate press gallery or an employee of the Senate.

(2) Any member of the Senate Press Gallery or employee of the Senate wishing to televise, broadcast, or record a committee meeting must notify the staff director or the staff director's designee by 5:00 p.m. the day before the meeting.

(3) During public meetings, any person using a camera, microphone, or other electronic equipment may not position or use the equipment in a way that interferes with the seating, vision, or hearing of committee members or staff on the dais, or with the orderly process of the meeting.

#### RULE 2. QUORUMS

(a) BUSINESS MEETINGS: At committee business meetings, and for the purpose of approving the issuance of a subpoena or approving a committee resolution, one third of the members of the committee, at least two of whom are members of the minority party, constitute a quorum, except as provided in subsection (d).

(b) SUBCOMMITTEE MEETINGS: At subcommittee business meetings, a majority of the subcommittee members, at least one of whom is a member of the minority party, constitutes a quorum for conducting business.

(c) CONTINUING QUORUM: Once a quorum as prescribed in subsections (a) and (b) has been established, the committee or subcommittee may continue to conduct business.

(d) REPORTING: No measure or matter may be reported to the Senate by the committee unless a majority of committee members cast votes in person.

(e) HEARINGS: One member constitutes a quorum for conducting a hearing.

#### RULE 3. HEARINGS

(a) ANNOUNCEMENTS: Before the committee or a subcommittee holds a hearing, the chair of the committee or subcommittee shall make a public announcement and provide notice to members of the date, place, time, and subject matter of the hearing. The announcement and notice shall be issued at least one week in advance of the hearing, unless the chair of the committee or subcommittee, with the concurrence of the ranking minority member of the committee or subcommittee, determines that there is good cause to provide a shorter period, in which event the announcement and notice shall be issued at least twenty-four hours in advance of the hearing.

(b) STATEMENTS OF WITNESSES:

(1) A witness who is scheduled to testify at a hearing of the committee or a subcommittee shall file 100 copies of the written testimony at least 48 hours before the hearing. If a witness fails to comply with this requirement, the presiding officer may preclude the witness' testimony. This rule may be waived for field hearings, except for witnesses from the Federal Government.

(2) Any witness planning to use at a hearing any exhibit such as a chart, graph, diagram, photo, map, slide, or model must submit one identical copy of the exhibit (or representation of the exhibit in the case of a model) and 100 copies reduced to letter or