



technical bulletin

Municipal Technical Advisory Service
Institute for Public Service, The University of Tennessee
In cooperation with the Tennessee Municipal League

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NEW GUIDELINES ON EMPLOYEE SELECTION PROCEDURES: SOME COMPLIANCE CONSIDERATIONS

Two different sets of federal government guidelines for employee selection procedures are in force now. One set is a re-publication of EEOC guidelines first issued in 1970. Another, in which EEOC does not concur, was issued jointly in November 1976 by the Labor and Justice Departments and Civil Service Commission. Both sets apply to local governments.

MTAS personnel consultants advise that on points where the two documents differ, cities should try to meet the stronger standards. If this isn't possible, officials should carefully consider and document each issue.

For your information, MTAS is including with this bulletin several sections from the Federal Register. The "Introduction," from Page 51734, Nov. 23, 1976, explains the evolution of the guidelines adopted by the Justice Department. These differ from the Labor Department and Civil Service Commission guidelines only in the numbering system in the Code of Federal Regulations (CFR).

The "Questions and Answers," from Pages 4052-56, Jan. 21, 1977, outline in easy-to-understand terms and the most common queries about the three agencies' guidelines. Further interpretation will be provided on request from any of the three federal departments.

Finally, a copy of the complete Department of Justice guidelines is included (from Pages 51736-43, Nov. 23, 1976,) for cities which may not have access to the Federal Register.

MTAS personnel consultants are at your service to answer questions and provide assistance with problems concerning compliance with these guidelines and those adopted by EEOC.

FEDERAL EXECUTIVE AGENCY GUIDELINES ON EMPLOYEE SELECTION PROCEDURES

Introduction

The Equal Employment Opportunity Coordinating Council, which is composed of the Department of Labor, the Equal Employment Opportunity Commission, the Civil Rights Commission, the Civil Service Commission and the Department of Justice, is charged by law (sec. 715 of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e-14) to eliminate inconsistency among the operations of the agencies and departments responsible for enforcement of Federal equal employment opportunity law. Pursuant to that mandate, the Coordinating Council began work on proposed uniform guidelines

on employee selection procedures early in 1973. A proposed draft of August 23, 1973 was circulated for comment pursuant to the procedures continued in OMB circular A-85. Later drafts also received wide circulation and have been the subject of written and oral comments.

Based upon these comments, the case law, and the American Psychological Association's Standards for Educational and Psychological Tests (1974), the Staff Committee of the Council, working pursuant to decisions made by the Council at its November, 1974, meeting, undertook a redraft of the proposed uniform guidelines.

A draft "Staff Committee Proposal, Sept. 24, 1975, Uniform Guidelines on Employee Selection Procedures" was

agreed upon by the designated representatives on the Staff Committee of the four agencies having operational responsibility—the Department of Labor, the Equal Employment Opportunity Commission, the Civil Service Commission and the Department of Justice—for purposes of Council consideration, and for circulation for analysis and comments.

The Equal Employment Opportunity Commission reviewed the Staff Committee Proposal, Sept. 24, 1975, and determined that it did not represent the position of that agency, and for that reason opposed circulating the Staff Committee Proposal for prepublication comment pursuant to the A-85 procedure.

However, a majority of the Council believed that the Staff Committee Proposal,

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September 24, 1975, should be widely circulated for comment, as a step toward achievement of the goal of Uniform Guidelines on Employee Selection Standards.

The Staff Committee Proposal, Sept. 24, 1975, was accordingly circulated for prepublication comment pursuant to the A-85 procedure. Substantial additional comments were received, and modifications of the proposal were made.

A majority of the Coordinating Council believed that the proposed guidelines, as modified, should be published in the *Federal Register* for formal comment as a step toward achievement of the goal of uniformity in guidelines on employee selection procedures. Accordingly, the revised proposed uniform guidelines on employee selection procedures were published for comment in the *Federal Register* on July 14, 1976, 41 Fed. Reg. 29016. Many additional comments were received, and additional modifications in the proposed guidelines have been made.

On October 13, 1976, at a meeting of the Coordinating Council, the Equal Employment Opportunity Commission, determined that the resulting draft continued not to represent the views of that agency and opposed the adoption of the proposed guidelines and any action to recommend adoption of the proposed guidelines.

It has become clear that the Coordinating Council has not been successful in achieving a uniform federal position on the issue of employee selection procedures at this time.

The three undersigned have, however, determined to adopt and endorse the guidelines which were developed under the auspices of the Coordinating Council. We do so in the issuances set forth below. Because unanimity does not appear feasible at this time, the term uniform has been deleted from the title, and the guidelines are now referred to as "Federal Executive Agency Guidelines on Employee Selection Procedures." We have determined to adopt and endorse the Federal agency guidelines for the following reasons:

1. One of the most important functions of federal guidelines in this area is to represent "professionally acceptable methods" for demonstrating whether a selection procedure has validity for a particular job. *Albemarle v. Moody*, 422 U.S. 405, 425. The American Psychological Association has described the proposed guidelines as being "essentially consistent with the Standards for Educational and Psychological Tests and with the best available knowledge concerning effective use of selection procedures in employment decisions" and as "concise, realistic and much-needed." We believe that the proposed guidelines better represent professionally accepted standards for determining validity than any existing set of guidelines.

2. While existing federal agency guidelines have been granted "great deference" by the courts, and have been of assistance in litigation, the most recent of them is more than five years old. They therefore are based upon the American Psychological Association's 1956 "Standards" rather than their 1974 "Standards," and do not take into account subsequent developments in the field of industrial psychology. Similarly, they do

not take into account the judicial decisions, most of which were rendered after their publication. Accordingly, the federal agency guidelines set forth below are, in our judgment, more consistent with the Supreme Court and the authoritative decisions of the other appellate courts, than any set of existing guidelines.

3. Because federal agency guidelines are applicable to the Federal Government itself as well as to those employers doing business with the Federal Government and others subject to federal law, any apparent anomaly of applying a lesser standard to the federal Government than it demands from others will be removed.

4. The federal agency guidelines provide practical guidance which will enable those users who seek to do so to bring themselves into compliance with Federal law. They are, in our judgment, more practical and realistic and will do more to provide actual equality of opportunity on a widespread basis, than any existing set of guidelines.

5. At present there are at least three sets of federal guidelines: the Regulations of the Civil Service Commission, and instructions which may be applicable to state and local governments as well as to the federal government itself; the regulations of the Secretary of Labor concerning selection procedures (41 CFR Part 60-3); and the guidelines on employee selection procedures of the EEOC (29 CFR Part 1607). The adoption of the federal agency guidelines will therefore be a step toward achievement of a uniform federal position and uniform guidelines.

For the above reasons, we also recommend the adoption of the proposed Federal Executive Agency Guidelines by each Federal agency having responsibility for enforcement of Federal law prohibiting discrimination on the grounds of race, color, religion, sex and national origin. Such adoption will lead to the achievement of a uniform federal position and uniform guidelines in this vital area.

HAROLD R. TYLER, Jr.,
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Under Secretary of Labor.

ROBERT E. HAMPTON,
Chairman, Civil Service Commission.

QUESTIONS AND ANSWERS ON THE FEDERAL EXECUTIVE AGENCY GUIDELINES ON EMPLOYEE SELECTION PROCEDURES

1. Q. What is the purpose of the Guidelines?

A. The Guidelines are designed to aid in the achievement of our Nation's goal of equal employment opportunity without discrimination on the grounds of race, color, sex, religion or national origin, by providing a set of principles governing use of employment selection procedures that is consistent with applicable legal and psychological standards, is workable, and which the adopting agencies will apply in the discharge of their respective responsibilities. The Guidelines deal only with this one as-

pect of the overall equal employment opportunity question and do not purport to provide guidance for anything other than use of selection procedures.

2. Q. What is the basic principle of the guidelines?

A. Selection procedures which have an adverse impact on members of a racial, sex or ethnic group and thus operate to exclude them disproportionately are unlawfully discriminatory unless the user validates the procedure in accord with the Guidelines, or the user otherwise justifies them in accord with Federal law. See § 3. The basis for this principle was adopted by the Supreme Court unanimously in *Griggs v. Duke Power Co.*, 401 U.S. 424, and was ratified and endorsed by the Congress when it passed the Equal Employment Opportunity Act of 1972.

3. Q. What is adverse impact, and how is it measured?

A. Adverse impact is a substantially different rate of selection in hiring, promotion or other employment decision which works to the disadvantage of members of a racial, sex or ethnic group. § 4b. Rate of selection for each group is determined by dividing the number of applicants selected from that group by the total number of applicants from that group and by comparing the results with the result derived in the same way for the group with the highest selection rate. For example, a user may have had over a six month period 120 applicants, 80 white, and 40 black; of whom 60 were hired, 48 whites, and 12 blacks. The selection rate of white applicants was thus $48/80=60\%$; while that for black applicants was $12/40=30\%$. In this example, the selection process adversely affected the employment opportunities of blacks because their selection rate (30%) was only one half that of whites (60%).

4. Q. What is a substantially different rate of selection?

A. The Guidelines adopt a 4/5 (80%) Rule of thumb for guidance and operational use. See § 4b. If the selection rate for a group is within 4/5 or 80% of the rate for the group with the highest rate, the enforcement will generally not consider adverse impact to exist. In the prior example, the selection rate for blacks was 30%, while that for whites was 60%; so that the black selection rate was $1/2$ or 50% of the highest group and there was adverse impact. If, on the other hand, there were 120 applicants, of which 80 were white and 40 black, and the user had selected 42 whites and 18 blacks, the selection rate for blacks would be $18/40$ or 45%, while that for whites would be $42/80$ or 52.5%. Because the selection rate for blacks as compared to that for whites is $45/52.5$ or 85.4% (i.e., more than 80% (or 4/5)), the difference in impact would not be re-

garded as substantial in the absence of additional information.

5. Q. Does the 4/5 rule of thumb mean that the Guidelines will tolerate up to 20% discrimination?

A. No. The 4/5 rule of thumb speaks only to the question of adverse impact, and is not intended to resolve the ultimate question of unlawful discrimination. Regardless of the amount of difference in selection rates, unlawful discrimination may be present, and may be demonstrated through appropriate evidence. The 4/5 rule merely establishes a numerical basis for drawing initial inference and for requiring additional information.

With respect to adverse impact, the Guidelines expressly state (§ 4b) that differences in selection rates of less than 20% may still amount to adverse impact where the differences are significant in both statistical and practical terms. In the absence of differences which are large enough to meet the 4/5ths rule of thumb or a test of statistical significance, there is no reason to assume that the differences are reliable, or that they are based upon anything other than chance.

Two examples will be illustrative. If, for the sake of illustration we assume that nationwide statistics show that use of an arrest record would disqualify 10% of all Spanish-surnamed persons but only 4% of all Anglo persons, the "selection rate" for that selection procedure is 90% for Spanish-surnamed Americans and 96% for Anglos. Therefore, the 4/5 rule of thumb would not indicate the presence of adverse impact (90% is approximately 94% of 96%). But in this example, the sample is large enough to be statistically significant, and the difference (Spanish-surnamed Americans are 2½ times as likely to be disqualified as Anglos) is large enough to be practically significant. Thus, the enforcement agencies would consider use of arrest record alone as having an adverse impact. See *Gregory v. Litton Industries*, 472 F.2d 631 (9th Cir., 1972).

Similarly, a difference of more than 20% in rates may not provide a basis for finding adverse impact if the numbers are very small. For example, if the employer selected three men and one woman from an applicant pool of 20 men and 10 women, the 4/5 rule would indicate adverse impact (selection rate for women is 10%; for men 15%; 10/15 or 66⅔% is less than 80%), yet the numbers are so small that a difference in one person hired would show an adverse impact the other way. In these circumstances, the enforcement agency would not require validity evidence in the absence of additional information.

6. Q. Is adverse impact determined on the basis of the overall selection

process or for the components in that process?

A. Adverse impact is determined first for the overall selection process for each job category. If there is no adverse impact from the selection process, there is no obligation under the Guidelines to validate the selection procedures used for that job. If the overall selection process has an adverse impact, the adverse impact of the individual selection procedures should be analyzed. For any selection procedure in the process having an adverse impact which the user continues to use, the user is expected to have evidence of validity satisfying the guidelines, § 4b and § 5c.

7. Q. If adverse impact is determined initially on the basis of the overall selection process, does this allow discrimination in one selection procedure to be balanced by another discriminatory procedure?

A. No. As shown above (see answer to Question 5), discrimination and adverse impact have different meanings; and these Guidelines do not permit any kind of discrimination. There are, moreover, many methods of determining proficiency. In some cases, proficiency may be best demonstrated by a written examination, while for others a review of experience or an interview, or a combination of all three may be best. Many employers and other users are utilizing alternative or combinations of approaches. Where the overall selection process of a user results in equal employment opportunities for members of racial, sex or ethnic groups for a job, the Guidelines reflect the position that it would be inappropriate for the federal enforcement agencies to expend their limited enforcement resources examining the validity of each procedure utilized in the process.

8. Q. Is the user obliged to keep records which show whether its selection procedures have an adverse impact on race, sex or ethnic groups?

A. Yes. Under the Guidelines the user is obliged to maintain evidence indicating the impact (if any) which their selection procedures have on identifiable racial, sex or ethnic groups. § 4 a and b. If the selection procedure does have an adverse impact on one or more such groups, the user is expected to maintain documentation evidence showing the validity of the procedure. § 13a.

9. Q. What is the relationship between affirmative action and the requirements of the Guidelines?

A. The two subjects are different, although related. The Guidelines state that compliance with these Guidelines does not relieve users of any affirmative action obligations they may have. § 11. The Guidelines, however, encourage the development and effective implementation of affirmative action plans or programs in two ways. First, the Guidelines state

(§ 4c) that in determining whether to institute action against a user on the basis of a selection procedure which has adverse impact and which has not been validated, the enforcement agency will take into account the general equal employment opportunity posture of the user with respect to the job classifications for which the procedure is used and the progress which has been made in carrying out any affirmative action program. If the user has demonstrated over a substantial period of time that it is in fact providing equal employment opportunity in the job or job groups in question, the enforcement agency will generally exercise its discretion by not initiating enforcement proceedings. Secondly, the Guidelines encourage affirmative action programs by stating (§ 11) that nothing in them is intended to preclude the use of selection procedures, consistent with Federal law, which assist in the achievement of affirmative action objectives.

10. Q. Does the language of § 4c and § 11 concerning non-discrimination in the making of employment decisions prevent the adoption of effective affirmative action programs?

A. No. The Equal Employment Opportunity Coordinating Council has adopted a policy statement on affirmative action programs (41 Fed. Reg., Sept. 13, 1976). A copy of that statement is attached hereto and incorporated herein. The language of § 4c

and § 11 is based upon and merely intended as a reminder of the non-discrimination provisions contained in Title VII and Executive Order 11246. The policy statement on affirmative action contains a similar prohibition for the same reason. The kind of color conscious affirmative action steps outlined in the Coordinating Council's policy statement do not, in the judgment of the enforcement agencies, violate the language of § 4c or § 11 of the Guidelines. This view is consistent with the well established principle that affirmative action programs of this kind do not violate the comparable antipreference provisions of Title VII or Executive Order 11246.

11. Q. If it is not feasible or appropriate to validate a selection procedure, what obligations does the user of such a procedure have?

A. The Guidelines recognize that it is not always feasible or appropriate to utilize the validation techniques of the psychological profession as contemplated by the Guidelines. If the procedure cannot be validated because it is informal, unstandardized or unscored, the user should insofar as possible eliminate adverse impact, or if feasible modify the procedure to one which is formal, scored or quantified, and then validate the procedure in accord with these Guidelines. If it is not feasible to validate a standardized

selection procedure, the user should either adopt an alternative procedure to eliminate adverse impact or modify the procedure to eliminate the adverse impact. The continued use of either a standardized or unstandardized procedure may also be permitted if the user can otherwise justify such use in accord with the federal law. See § 3b.

12. Q. How can users justify continued use in accord with federal laws of a procedure which has an adverse impact and which it is not feasible or appropriate to validate?

A. That subject is one to which the Guidelines are not addressed. In *Griggs v. Duke Power Co.*, 401 U.S. 424, the Supreme Court indicated that the burden on the user was a heavy one, but that the selection procedure could be used if there was a "business necessity" for its continued use. The federal agencies will consider evidence which shows "business necessity" to justify continued use of a selection procedure. Evidence of any other justification would have to be considered on a case by case basis.

13. Q. Do the Guidelines apply to the selection procedures utilized by state and local government licensing and certification boards and agencies?

A. The Guidelines neither broaden nor narrow the coverage of the underlying federal law. The Guidelines state however that licensing and certification are employment decisions to the extent that they may be covered by federal law. The courts are divided on that question. The Department of Justice has taken the position that at least some kinds of licensing and certification which deny persons access to employment opportunity may be enjoined in an action brought pursuant to Section 707 of the Civil Rights Act of 1964, as amended. See, *United States v. North Carolina*, 400 F.Supp. 343 (E.D.N.C. 1975) (three judge court) (certification of teachers).

14. Q. Where can a user obtain a "certification of validity"?

A. The federal enforcement agencies do not recognize any certification of validity or validation. See § 7a. If a user's selection procedures have an adverse impact, the user is expected to produce evidence of the validity of the procedure, not a certificate that they have been validated. Thus, the assertion by anyone, including a State employment service representative, that a test battery or other selection procedure has been validated is not sufficient to satisfy the Guidelines.

15. Q. What is the relationship between the Guidelines and other statements of psychological principles, such as the Standards for Education and Psychological tests published by the American Psychological Association

(Wash., D.C., 1974) (hereinafter "APA Standards")?

A. The Guidelines are designed to be consistent with the generally accepted standards of the psychological profession. However, to the extent that there may be differences between particular provisions of the Guidelines and expressions of principles found elsewhere, the Guidelines will be given precedence by the enforcement agencies. With respect to any matters not addressed by the Guidelines, users are, of course, free to follow the standards of the profession so long as doing so is consistent with applicable equal employment opportunity requirements.

16. Q. When should a validity study be carried out?

A. The Guidelines call for a validation study whenever a selection procedure has adverse impact on any racial, sex or ethnic group. If a selection procedure has adverse impact, its use in making employment decisions without adequate evidence of validity would be inconsistent with the Guidelines. Waiting until a selection procedure is challenged increases the risk that the user will be found to be discriminating and be liable for back pay awards, plaintiffs' attorneys fees, loss of Federal contracts or grants and the like. Validation studies begun on the eve of litigation have seldom been found to be adequate. Users of selection procedures should consider the potential benefit to their employment systems and the savings in resources which can result from having a validation study completed or well under way the procedures are administered for use in employment decisions. Public merit systems typically have a special obligation to validate selection procedures regardless of any expectation that adverse impact may result.

17. Q. Are there any special requirements as to who is allowed to perform a validity study?

A. No, a validity study is judged on its own merits, and may be performed by a member of the user's staff, a consultant, or any person knowledgeable of the principles of validity research. However, it is the user's responsibility to see that the study meets these Guidelines which are based upon professionally accepted standards.

18. Q. Can a selection procedure be a valid predictor of performance on a job in a certain location and be invalid for predicting success on a different job or the same job in a different location?

A. Yes. Differences in job duties, locations or study samples can affect validity, so that a selection procedure found to have validity in one situation may not have validity in different circumstances. Conversely, a selection procedure not found to have validity in one situation may have

validity in different circumstances.

19. Q. Does the way a selection procedure is used affect its validity?

A. Yes. Selection procedures which have been properly validated can be used in improper ways. For this reason selection procedures must be administered and scored in a standardized manner during the research and must continue to be administered and scored in the same way while being used operationally, § 5d. A selection procedure which has been validated as predicting success on one job might be invalid for predicting success on another job.

Even if the selection procedure is properly administered and scored and the same job is involved, it may be used improperly. For instance, it would be improper to use a selection procedure to rank applicants if the validity study only supported the use of minimum acceptance levels ("pass/fail"). The validity study should reflect the way the selection procedure will be used in practice.

20. Q. Is the user of a selection procedure required to develop the procedure from scratch?

A. No, a selection procedure developed elsewhere may be used. However, the user has the obligation to show that its use for the job in question is consistent with the Guidelines.

21. Q. Is evidence that a selection procedure which has been validated in one context has validity in another context (validity generalization) alone sufficient justification for its use elsewhere (transportability)?

A. No. The conditions governing transportability are stated in § 6 of the Guidelines. While some degree of validity generalization is necessary for transportability, it is not sufficient.

Validity generalization refers to the degree to which the results of a criterion-related validity study conducted on a selection procedure in one situation lead to inferences concerning the degree of validity of that selection procedure or similar selection procedures in other situations. Transportability refers to the permissible use of a selection procedure in more than one context. Validity generalization is a statistical concept concerning validity evidence, while transportability is a judgment concerning use of selection procedure.

22. Q. Under what circumstances can a criterion-related validity study done elsewhere be used as sufficient validity evidence to meet the Guidelines (on other than an interim basis)?

A. A validity study done elsewhere may be used as sufficient evidence if four conditions are met (see § 6b);

1. The weight of the evidence from one or more studies must show that the procedure was valid in its use elsewhere.

2. The job(s) for which the selection procedure will be used must closely match the job(s) in the original

study as shown by a comparison of results (in terms of job duties) of the job analyses in both contexts.

3. A fairness study must be contained in the original evidence for those groups constituting a significant factor in the user's labor market (see Answer to Questions 31-34 below).

4. There are no variables in the other study or studies which are likely to affect validity or fairness significantly (see Answer to Question 23 below).

23. Q. Under what circumstances can a selection procedure supported either by criterion-related validity evidence obtained elsewhere or by a partially completed validity study be used on an interim basis?

A. Interim use of criterion-related validity evidence is permitted in three situations:

1. If it is technically feasible for a user to conduct an internal validity study and there are significant differences between the research sample in a study done elsewhere and the user's job applicants in terms of such variables as age, education, job experience, etc., the selection procedure may only be used on an interim basis pending an internal validity study.

2. If validity evidence obtained elsewhere does not contain an investigation of fairness the selection procedure may only be used on an interim basis until evidence of fairness or unfairness is shown either from other sources or the user's own study.

3. If a user has substantial validity evidence either from other sources or from studies being conducted by or for the user, but which are not in complete compliance with the Guidelines, the selection procedure may be used only on an interim basis pending completion of validity studies.

24. Q. What are the potential consequences to a user when a selection procedure is used on an interim basis?

A. The fact that the Guidelines permit interim use of a selection procedure does not immunize the user from liability for back pay, attorney fees and the like, should use of the selection procedures later be found to be in violation of the Guidelines (e.g., because of a showing of unfairness), and for this reason users should take steps to come into full and complete compliance with the guidelines as soon as possible. It is also appropriate for users to consider ways of minimizing adverse impact during the period of interim use.

25. Q. Under what circumstances may a validity study conducted cooperatively among users or in different units of a multi-unit organization be used in locations not included in the validity study?

A. A selection procedure supported by validity evidence obtained from a cooperative or multi-unit study may be used in new situations where the

conditions described in the answer to Question 22 are met, and where there are no significant differences between the applicant populations and the research subjects in such characteristics as age, education, job experience, or the like.

26. Q. How does a user choose which validation strategy to use?

A. A user should select the validation strategy which is most appropriate for the type of selection procedure, the job, and the employment situation. Content validity by itself is inappropriate where the selection procedures are measures of aptitude or personality traits, and for jobs in which the employee is expected to gain the measured skills or knowledges while on the job. In such circumstances criterion-related or construct validation strategies should be used. On the other hand where the selection procedures are work samples or measures of fully developed skills or knowledges, content validity is appropriate although criterion-related validation techniques could be used where technically feasible. Where a sample of sufficient size cannot be obtained, where appropriate measures of employees proficiency to be used as criteria cannot be developed, or where there is a severe range restriction in scores on selection procedures, and this range restriction cannot be reduced or appropriately corrected, criterion-related validity may be technically infeasible.

27. Q. Why don't the Guidelines contain a preference for criterion related validity over content or construct validity?

A. Generally accepted principles of the psychological profession do not recognize any such preference, but contemplate the use of criterion related, content, or construct validity strategies as appropriate. APA Standards, E, pp. 25-26; Washington v. Davis — U.S. —, 44 U.S.L.W. 4789, fn. 13. Moreover, the Guidelines normally require criterion related evidence as a component part of any construct validity study § 12d. With respect to content validity, where the content of the selection procedure closely matches the behaviors or activities required for job performance, as in a typing test for typists or a truck driving test for truck drivers, a content validity approach is the most appropriate way of showing validity. Because the Guidelines make it clear that content validity by itself is not appropriate for aptitude, intelligence, personality or interest tests (§ 12c (1)), and that evidence of content validity depends upon the closeness of the resemblance between work behavior and the selection procedure, there is no need or justification for a general preference for criterion related validity over content validity. All three strategies are empirically based. Construct validity requires empirical research evidence, which is normally

criterion-related, linking the selection procedure to the job, while content validity requires a factually based linkage of the selection procedure to the activities of the job.

28. Q. Is the use of a content validity strategy appropriate for measuring in the selection process skills or knowledges which are taught in a training academy after initial employment?

A. No. The Guidelines state (§ 12c (1)) that content validity is not appropriate where the selection procedure involves knowledges, skills, or abilities which the employee will be expected to learn "on the job." The phrase "on the job" is intended to apply to training which occurs after hiring, promotion or the like.

29. Q. Is a full job analysis necessary for all validity studies?

A. It is required for all content and construct studies, but not for all criteria in a criterion related study. See § 12a. and § 12b(3). Proper measures of the results or outcomes of job behaviors such as production rate or error rate may be used without a full job analysis where a review of information about the job shows that these criteria are important to the employment situation of the user. Similarly, measures such as absenteeism, tardiness or turnover may be used if these behaviors are shown by a review of information about the job to be important in the specific situation. A standardized rating of overall job performance may be used if the user can demonstrate its appropriateness for the specific job and employment situation through a study of the job. Measures of overall job performance should be carefully developed and standardized, and their use should be carefully controlled. See, Albemarle Paper Co. v. Moody, 422 U.S. 405 (1975).

30. Q. Under what circumstances may success in training be used as a criterion in criterion-related validity studies?

A. Success in training is an appropriate criterion when: (1) The job analysis shows that success in training is necessary for successful job performance or related to increasing proficiency on the job; and (2) training success is properly measured. § 12b (3). Where the measure of success in training is a paper and pencil test, the measure should be carefully developed to ensure that factors which are not job related do not unfairly inflate or depress the measures of training success and to ensure that the measures are in fact job related. § 12b(3).

31. Q. What does "unfairness of a selection procedure" mean?

A. When a specific score on a selection procedure has a different meaning in terms of expected job

performance for members of one racial, sex or ethnic group than the same score does for members of another group, the use of that selection procedure may be unfair for members of one of the groups. See § 14(k). For example, if members of one group have an average score of 40 on the selection procedure, but perform on the job as well as another group which has an average score of 50, then the selection procedure is unfair to the members of the lower scoring group. (The concept of test fairness has sometimes been referred to as differential validity or differential prediction).

32. Q. When should the user investigate the question of fairness?

A. Fairness should be investigated generally at the same time that a criterion-related validity study is conducted, or as soon thereafter as feasible.

33. Q. Why do the Guidelines require that users look for evidence of unfairness?

A. The consequences of using unfair selection procedures are severe in terms of discriminating against applicants on the basis of race, sex or ethnic group membership, or in terms of perpetuating the effects of past discrimination. Accordingly, these studies should be performed routinely where technically feasible and appropriate, even if the probability of finding unfairness is small. See *Albemarle Paper Co. v Moody*, 422 U.S. 405, 435. Moreover, the APA Standards published in 1974 call for the investigation of test fairness in criterion related studies wherever feasible (pp. 43-44).

34. Q. What should be done if a selection procedure is unfair for one or more groups in the relevant labor market?

A. The user has three options. See, § 12b(7) (iv). First, the selection instrument may be replaced by another validated instrument which is fair to all groups. Second, the selection instrument may be revised to eliminate the sources of unfairness. For example, certain items may be found to be the only ones which cause the unfairness to a particular group, and these items may be replaced by others. Finally, revisions may be made in the use of the selection procedure to ensure that the probability of being selected is compatible with the probability of successful job performance.

35. Q. If there are not enough members of an adversely affected race, sex or ethnic group in the potential research sample to make it feasible to study test fairness, should the group still be included in the sample?

A. Yes, normally the study should be conducted on a sample which is representative of the expected candi-

dates for the job in question. However, there may be situations in which the members of the race, sex or ethnic group available for the study are so dissimilar from other persons in the sample that the information should not be combined for data analyses.

36. Q. Do the Guidelines require a search for alternative selection procedures?

A. The Guidelines provide that while a validity study is being conducted, the user should attempt to find and apply procedures that have as little adverse impact as possible. However, once that effort has been made and the chosen procedure has been studied and shown to be valid, the Guidelines do not require the user to search further for alternative procedures. The Guidelines do call for a user to take steps to ensure that selection procedures are kept current, and to investigate any alternative procedures shown to have at least equal validity and less adverse impact. The obligation to investigate alternative procedures is greater when the user is in an interim use status.

37. Q. What does a user do if there are not enough persons in a job to conduct a criterion related study?

A. There are a number of options the user should consider, depending upon the particular facts and circumstances.

1. Changing the procedure so as to eliminate adverse impact;

2. Validating the procedure through a content validity strategy, if appropriate (see § 12c and answer to Question 25 and 27);

3. Using a selection procedure validated elsewhere in conformity with the Guidelines (see § 6 and answers to Questions 22-24);

4. Engaging in a cooperative study with other facilities or users (in cooperation with such users either bilaterally or through industry or trade association), or participating in research studies conducted by the state employment security system. Where different locations are combined, care is needed to insure that the jobs studied are in fact the same and that the study is adequate and in conformity with the Guidelines (see § 6);

5. Combining essentially similar jobs into a single study sample may in some circumstances be consistent with the Guidelines (see § 5g and § 12b).

38. Q. If a user has previously engaged in discrimination against members of a racial, sex or ethnic group, is the user precluded from making its selection procedures more stringent?

A. In such circumstances, the Guidelines provide (§ 9) that the user should afford those members of the group discriminated against, who were available in the relevant job market during the period of discriminatory practices, an opportunity to qualify under the less stringent pro-

cedures, unless the user demonstrates that the more stringent procedures are required for the safety or efficiency of the operation. The user is not precluded from using the more stringent procedures for all other persons.

39. Q. If a user has all selection procedures administered by an employment agency or a consultant, does that relieve the user of responsibilities under the Guidelines?

A. No. The user remains responsible for the selection procedures utilized by others on behalf of the user. It is therefore expected that the user will have sufficient information available to show: (a) what selection procedures are being used on its behalf; (b) the adverse impact of those procedures, and evidence of the validity of any such procedures; and (c) the number of persons by race, sex and ethnic group referred, and the total number considered for referral or for job applications.

Following is the text of the Guidelines on Employee Selection Procedures issued by the Department of Justice, Civil Service Commission, and Department of Labor, three of the five members of the Equal Employment Opportunity Coordinating Council. The guidelines, issued by the Labor Department as 41 CFR 60-3, by the Civil Service Commission as an appendix to the Federal Personnel Manual Supplement, and by the Department of Justice as an appendix to Part 42, Subpart D—Nondiscrimination in Federally Assisted Programs, were published in the Federal Register November 23, 1976, effective December 23, 1976.

Title 41—Public Contracts and Property Management

CHAPTER 60—OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS, EQUAL EMPLOYMENT OPPORTUNITY, DEPARTMENT OF LABOR

PART 60-3—GUIDELINES ON EMPLOYEE SELECTION PROCEDURES

Subpart A—General Principles

§ 60-3.1 Statement of purpose.

These guidelines are intended to be a set of principles which will assist employers, labor organizations, employment agencies, and licensing and certification boards in complying with equal employment opportunity requirements of Federal law with respect to 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 consistent with Federal law. 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. Nothing in these guidelines is intended or should be

interpreted as discouraging the use of procedures which have been properly validated in accordance with these guidelines for the purpose of determining qualifications or selecting on the basis of relative qualifications. Nothing in these guidelines is intended to apply to persons not subject to the requirements of Title VII, Executive Order 11246, or other equal employment opportunity requirements of Federal law. These guidelines are not intended to apply to any responsibilities an employer, employment agency or labor organization may have under the Age Discrimination Act of 1975 not to discriminate on the basis of age, or under section 503 of the Rehabilitation Act of 1973 not to discriminate on the basis of handicap. Nothing contained in these guidelines is intended to interfere with any obligation imposed or right granted by Federal law to users to extend a publicly announced preference in employment to Indians living on or near an Indian reservation in connection with employment opportunities on or near an Indian reservation.

§ 60-3.2 Scope.

(a) These guidelines will be applied by the Department of Labor to contractors and subcontractors subject to Executive Order 11246 as amended by Executive Order 11375 (hereinafter "Executive Order 11246"); and by the Civil Service Commission to Federal agencies subject to Sec. 717 of the Civil Rights Act of 1964, as amended by the Equal Employment Opportunity Act of 1972 (hereinafter "the Civil Rights Act of 1964") and to 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; and by any other Federal agency which adopts them. The Department of Justice and the Civil Service Commission have codified these guidelines in 28 CFR Part 50 and Appendices to Federal Personnel Manual Supplements 271-1, 271-2, 335-1, and 990-1 (Book 3), Part 900, subpart F, respectively.

(b) These guidelines apply to selection procedures which are used as a basis for any employment decisions. Employment decisions include but are not limited to hire, promotion, demotion, membership (for example in a labor organization), referral, retention, licensing and certification, to the extent that licensing and certification may be covered by Federal equal employment opportunity law. Selection for training is also considered an employment decision if it leads to any of the decisions listed above.

(c) These guidelines do not apply to the use of a bona fide seniority system within the meaning of Title VII of the Civil Rights Act of 1964, as amended, as defined by Federal appellate court decisions, for any employment decision. These guidelines do not call for the validation of such a seniority system used as a basis for such employment decisions, and the use of such a seniority system as a basis for such employment decisions is consistent with these guidelines.

(d) These guidelines do not apply to the entire range of Federal equal employment opportunity law, but only to selection procedures which are used as a basis for making employment deci-

sions. For example, the use of recruiting procedures designed to attract racial, ethnic or sex groups which were previously denied employment opportunities or which are presently underutilized may be necessary to bring an employer into compliance with Federal law, and is frequently an essential element to any effective affirmative action program; but the subject of recruitment practices is not addressed by these guidelines because that subject concerns procedures other than selection procedures.

§ 60-3.3 Relationship between use of selection procedures and discrimination.

(a) The use of any selection procedure which has an adverse impact on the members of any racial, ethnic or sex group with respect to any employment decision will be considered to be discriminatory and inconsistent with these guidelines, unless the procedure is validated in accordance with the principles contained in these guidelines or unless use of the procedure is warranted under § 60-3.2b.

(b) There are circumstances in which it is not feasible or not appropriate to utilize the validation techniques contemplated by these guidelines. In such circumstances, the user should utilize selection procedures which are as job related as possible and which will minimize or eliminate adverse impact. (i) When an unstandardized, informal or unscored selection procedure which has an adverse impact is utilized, the user should seek insofar as possible to eliminate the adverse impact, or, if feasible, to modify the procedure to one which is a formal, scored or quantified measure or combination of measures and then to validate the procedure in accord with these guidelines, or otherwise to justify continued use of the procedure in accord with Federal law. (ii) When a standardized, formal or scored selection procedure is used for which it is not feasible or not appropriate to utilize the validation techniques contemplated by these guidelines, the user should either modify the procedure to eliminate the adverse impact or otherwise justify continued use of the procedure in accord with Federal law.

(c) Generally, where alternative selection procedures are available which have been shown to be 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 make a reasonable effort to investigate suitable alternative selection procedures which have as little adverse impact as possible, for the purpose of determining the appropriateness of using or validating them in accord with these guidelines. If a user has made a reasonable effort to become aware of such alternative procedures and a validity study for a job or group of jobs has been made in accord with these guidelines, the use of the selection procedure may continue until such time as it should reasonably be reviewed for currency. Whenever the user is shown a suitable alternative selection procedure with evidence of at least equal validity and less adverse impact, the user should investigate it for the purpose of determining 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 such a combination has been properly validated.

§ 60-3.4 Information on impact.

(a) Each user should have available for inspection records or other information which will disclose the impact which its selection procedures have upon employment opportunities of persons by identifiable racial, ethnic or sex groups in order to determine compliance with the provisions of § 60-3.3 above. 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. The records called for by this section are to be maintained by sex, and by racial and ethnic groups as follows: blacks (Negroes), American Indians (including Alaskan Natives), Asians (including Pacific Islanders), Hispanic (including persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish origin or culture regardless of race), whites (Caucasians) other than Hispanic and totals. The classifications called for by this section are intended to be consistent with the Employer Information (EEO-1 et seq.) series of reports. The user should adopt safeguards to insure that records of race, color, religion, sex, or national origin 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 for making employment decisions.

(b) The information called for by this section should be examined for possible adverse impact. If the records called for by this section indicate that the total selection process for a job has no adverse impact, the individual components of the selection process need not be evaluated separately for adverse impact. If a total selection process does have adverse impact, the individual components of the selection process should be evaluated for adverse impact.

A selection rate for any racial, ethnic or sex group which is less than four-fifths (4/5) (or eighty percent) of the rate for the group with the highest rate will generally be regarded as evidence of adverse impact, while a greater than four-fifths rate will generally not be regarded as evidence of adverse impact. Smaller differences in selection rate may nevertheless be considered to constitute adverse impact, where they are significant in both statistical and practical terms. Greater differences in selection rate would not necessarily be regarded as constituting 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.

(c) Federal agencies which adopt these guidelines for purposes of the enforcement of the equal employment opportunity laws or which have responsibility for securing compliance with them

(hereafter referred to as enforcement agencies) will consider in carrying out their obligations the general posture of the user with respect to equal employment opportunity for the job classification or group of classifications 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 employer has adopted and the progress which the employer has made in carrying out that program and in meeting the goals and timetables. These guidelines recognize that a user is prohibited by Federal law from the making of employment decisions on the basis of race and color and (except for bona fide occupational qualifications) on the basis of sex, religion and national origin; and nothing in this subsection or in these guidelines is intended to encourage or permit the granting of preferential treatment to any individual or to any group because of the race, color, religion, sex or national origin of such individual or group.

§ 60-3.5 General standards for validity studies.

(a) For the purposes of satisfying these guidelines users may rely upon criterion-related validity studies, content validity studies or construct validity studies. In accordance with the standards set forth in Part II of these guidelines, § 60-3.12 *infra*.

(b) These guidelines are intended to be consistent with generally accepted professional standards for evaluating standardized tests and other assessment techniques, such as 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 "APA Standards"), and standard text books and journals in the field of personnel selection.

(c) For any selection procedure which has an adverse impact each user should maintain and have available such documentation as is described in Subpart C of these guidelines, § 60-3.13 *infra*.

(d) Selection procedures subject to validity studies under § 60-3.3(a) above should be administered and scored under standardize conditions.

(e) 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.

(f) Where cut-off 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 other factors are used in determining cut-off scores, such as the relationship between the number of vacancies and the number of applicants, the degree of adverse impact should be considered.

(g) Selection procedures may be used to predict the performance of candidates for a job which is at a higher level than the job for which the person is initially being selected if a majority of the indi-

viduals who remain employed will progress to the higher level within a reasonable period of time. A "reasonable period of time" will vary for different jobs and employment situations but will seldom be more than five years. Examining for a higher level job would not be appropriate (1) if the majority of those remaining employed 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 knowledge, skills or abilities required for advancement would be expected to develop principally from the training or experience on the job.

(h) 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 can cite substantial evidence of validity in accord with these guidelines and (2) the user has in progress, when technically feasible, studies which are designed to produce the additional data required within a reasonable time.

If the additional studies do not produce the data required to demonstrate validity, the user is not relieved of or protected against any obligations arising under Federal law.

(i) Whenever a validity study has been made 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 performed until such time as the validity study is subject to review as provided in § 60-3.3(c) above. There are no absolutes in the area of determining the currency of a validity study. All circumstances concerning the study, including the validation strategy used, and changes in the relevant labor market and the job should be considered in the determination of when a validity study is outdated.

§ 60-3.6 Cooperative validity studies and use of other validity studies.

(a) It is the intent of the agencies issuing these guidelines to encourage and facilitate cooperative development and validation efforts by employers, labor organizations and employment agencies to achieve selection procedures which are consistent with these guidelines.

(b) Criterion-related validity studies conducted by one test user, or described in test manuals and the professional literature, will be considered acceptable for use by another user when: (1) the weight of the evidence from studies meeting the standards of § 60-3.12(b) below shows that the selection procedure is valid; (2) the studies pertain to a job which has substantially the same major job duties as shown by appropriate job analyses and (3) the studies include a study of test fairness for those racial, ethnic and sex subgroups which constitute significant factors in the borrowing user's relevant labor market for the job or jobs in question. If the studies relied upon satisfy (1) and (2) above but do not contain an investigation of test fairness, and it is not technically feasible for the borrowing user to conduct an internal study of test fairness, the borrowing user may utilize the study until studies conducted elsewhere show test fairness, and it is not technically becomes technically feasible to conduct an internal study of test fairness and the

results of that study can be acted upon.

If it is technically feasible for a borrowing user to conduct an internal validity study, and there are variables in the other studies which are likely to affect validity or fairness significant, the user may rely upon such studies only on an interim basis in accord with § 60-3.5(h), and will be expected to conduct an internal validity study in accord with § 60-3.12(b) below. Otherwise the borrowing user may rely upon such acceptable studies for operational use without an internal study.

(c) Selection procedures shown by one user to be content valid in accord with § 60-3.12(c) will be considered acceptable for use by another user for a performance domain if the borrowing user's job analysis shows that the same performance domain is present in the borrowing user's job. The selection procedure may be used operationally if the conditions of § 60-3.12(c) (3) and § 60-3.12(c) (6) are satisfied by the borrowing user.

(d) The conditions under which findings of construct validity may be generalized are described in § 60-3.12(d) (4).

(e) If validity evidence from a multi-unit or cooperative study satisfies the requirements of subparagraphs b, c or d above, evidence of validity specific to each unit or user usually will not be required unless there are variables in the units not studied which are likely to affect validity significantly.

§ 60-3.7 No assumption of validity.

(a) Under no circumstances will the general reputation of a selection procedure, its author or its publisher, or casual reports 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 descriptive labels; all forms of promotional literature; data bearing on the frequency of a procedure's usage; testimonial statements and credentials of sellers, users, or consultants; and other non-empirical or anecdotal accounts of selection practices or selection outcomes.

(b) 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 and careful development of a selection procedure enhances the probability that the selection procedure is valid for the job.

§ 60-3.8 Employment agencies and employment services.

(a) An employment agency, including private employment agencies and State employment agencies, which agrees to a request by an employer or labor organization to devise and utilize a selection procedure should follow the standards for determining adverse impact and, if adverse impact is demonstrated, show validity as set forth in 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 of its responsibilities under Federal law to provide equal employment opportunity or its obligations as a user under these guidelines.

(b) Where an employment agency or service is requested to administer a selection program which has been devised elsewhere and to make referrals pursuant to the results, the employment agency or service should obtain evidence of the absence of adverse impact, or of validity, as described in these guidelines, before it administers the selection program and makes referrals pursuant to the results. The employment agency must furnish on request such evidence of validity. An employment agency or service will be expected to refuse to make referrals based on the selection procedure where the employer or labor organization does not supply satisfactory evidence of validity or lack of adverse impact.

§ 60-3.9 Disparate treatment.

The principle of disparate or unequal treatment must be distinguished from the concepts of validation. A selection procedure—even though validated against job performance in accordance with the guidelines in this part—cannot be imposed upon members of a racial, sex or ethnic group where other employees, applicants, or members have not been subjected to that standard. Disparate treatment occurs where members of a racial, sex, or ethnic group have been denied the same employment, promotion, transfer or membership opportunities as have been made available to other employees or applicants. Those 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 and were available in the relevant job market during the period the user followed the discriminatory practices should be allowed the opportunity to qualify under the less stringent selection procedures previously followed, unless the user demonstrates that the increased standards are required for the safety or efficiency of the operation. Nothing in this section is intended to prohibit a user who has not previously followed merit standards from adopting merit standards; nor does it preclude a user who has previously used invalid or unvalidated selection procedures from developing and using procedures which are validated in accord with these guidelines.

§ 60-3.10 Retesting.

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

§ 60-3.11 Affirmative action.

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 selection procedures (consistent with

Federal law—see § 60-3.4(c)) which assist in the achievement of affirmative action objectives.

Subpart B—Technical Standards

§ 60-3.12 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.

(a) 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 § 60-3.12 (b) (3) below with respect to criterion-related validity. Any method of job analysis may be used if it provides the information required for the specific validation strategy used.

(b) *Criterion-related validity.* (1) Users choosing to validate a selection procedure by a criterion-related validity strategy should determine whether it is technically feasible (as defined in Subpart D) 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. 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; and do not require such a study on a sample of less than thirty (30) persons.

(2) There should be a review of job information to determine measures of work behaviors or performance that are relevant to the job 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 both in selection of the measures and their application. In view of the possibility of bias in subjective evaluations, supervisory rating techniques should be carefully developed. All criteria 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) 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. Criteria may consist of measures other than work proficiency including, but not limited to length of service, regularity of attendance, training time or properly measured success in job relevant training. Measures of training success based upon pencil and paper tests will be closely reviewed for job relevance. Whatever criteria are used should represent important or critical work behaviors or work outcomes. Job behaviors including but not limited to production rate, error rate, tardiness, absenteeism and turnover, may

be used as criteria without a full job analysis if the user can show the importance of the criterion to the particular employment context. A standardized rating of overall work performance may be utilized where a study of the job shows that it is an appropriate criterion.

(4) The sample subjects should insofar as feasible be representative of the candidates normally available in the relevant labor market for the job or jobs in question, and should insofar as feasible include the racial, ethnic and sex groups normally available in the relevant job market. Where samples are combined or compared, attention should be given to see that such samples are comparable in terms of the actual job they perform, the length of time on the job where time on the job is likely to affect performance and other relevant factors likely to affect validity differences; or that these factors are included in the design of the study and their effects identified.

(5) 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.

Users should evaluate each selection procedure to assure that it is appropriate for operational use. Generally, if other factors remain the same, the greater the magnitude of the relationship (e.g., correlation coefficient) between performance on a selection procedure and one or more criteria of performance on the job, and the greater the importance or number of aspects of job performance covered by the criteria, the more likely it is that the procedure will be appropriate for use. Reliance upon a selection procedure which is significantly related to a criterion measure, but which is based upon a study involving a large number of subjects and has a low correlation coefficient will be subject to close review if it has a large adverse impact. Sole reliance upon a single selection instrument which is related to only one of many job duties or aspects of job performance will also be subject to close review. The appropriateness of a selection procedure is best evaluated in each particular situation and there are no minimum correlation coefficients applicable to all employment situations. In determining whether a selection procedure is appropriate for operational use the following considerations should also be taken into account: the degree of adverse impact of the procedure, the availability of other selection procedures of greater or substantially equal validity; and the need of an employer, required by law or regulation to follow merit principles, to have an objective system of

selection.

(6) Users should avoid reliance upon techniques which tend to overestimate validity findings as a result of capitalization on chance unless an appropriate safeguard is taken. Reliance upon a few selection procedures or criteria of successful job performance, when many selection procedures or criteria of performance have been studied, or the use of optimal statistical weights for selection procedures computed in one sample, are techniques which tend to inflate validity estimates as a result of chance. Use of a large sample is one safeguard; cross-validation is another.

(7) *Fairness of the selection procedure.*

(i) When members of one racial, ethnic, or sex group characteristically 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, use of the selection procedure may unfairly deny opportunities to members of the group that obtains the lower scores.

(ii) Where a selection procedure results in an adverse impact on a racial, ethnic or sex group identified in accordance with the classifications set forth in § 60-3.4 above and that group is a significant factor in the relevant labor market, the user generally should investigate the possible existence of unfairness for that group if it is technically feasible to do so.

The greater the severity of the adverse impact on a 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 is a fair predictor 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 and may be combined with data from the present study; however, where the severity of adverse impact on a group is significantly greater than in the other studies referred to, a user may not rely on such other studies.

(iii) Users conducting a study of fairness should review the APA 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 without investigating these factors. 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 compared to other subgroup samples) 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.

(iv) 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 these guide-

lines, or 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.

(v) In addition to the general conditions needed for technical feasibility for the conduct of a criterion-related study (see § 60-3.14(j), below) an investigation of fairness requires the following:

(1) A sufficient number of persons in each group for findings of statistical significance. These 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; and do not require a user to conduct a study of fairness on a sample of less than thirty (30) persons for each group involved in the study.

(2) The samples for each group should be comparable in terms of the actual job they perform, length of time on the job where time on the job is 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.

(vi) If a study of fairness should otherwise be performed, but is not technically feasible, the use of a selection procedure which has otherwise met the validity standards of these guidelines will be considered in accord with these guidelines, unless the technical infeasibility resulted from discriminatory employment practices which are demonstrated by facts other than past failure to conform with requirements for validation of selection procedures. However, when it becomes 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 of fairness.

(c) *Content validity.* (1) There should be a definition of a performance domain or the performance domains with respect to the job in question. Performance domains may be defined through job analysis, analysis of the work behaviors or activities, or by the pooled judgments of persons having knowledge of the job. Performance domains should be defined on the basis of competent information about job tasks and responsibilities. Performance domains include critical or important work behaviors, work products, work activities, job duties, or the knowledges, skills or abilities shown to be necessary for performance of the duties behaviors activities or the production of work. Where a performance domain has been defined as a knowledge, skill or ability, that knowledge, skill or ability must be used in job behavior. A selection procedure based on inferences about psychological processes cannot be supported by content validity alone. Thus content validity by itself is not an appropriate validation strategy for intelligence, aptitude, personality or interest tests. Content validity is also not an appropriate strategy when the selection procedure involves knowledges, skills or abilities which an employee will be expected to learn on the job.

(2) If a higher score on a content valid selection procedure can be expected to result in better job performance the results may be used to rank persons who score above minimum levels. Where a selection procedure supported solely by

content validity is used to rank job candidates, the performance domain should include those aspects of performance which differentiate among levels of job performance.

(3) A selection procedure which is a representative sample of a performance domain of the job as defined in accordance with subsection (1) above is a content valid procedure for that domain. Where the domain or domains measured are critical to the job, or constitute a substantial proportion of the job, the selection procedure will be considered to be content valid for the job. 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 to do so, appropriate statistical estimates should be made of the reliability of the selection procedures.

(4) A demonstration of the relationship between the content of the selection procedure and the performance domain of the job is critical to content validity. Content validity may be shown if the knowledges, skills or abilities demonstrated in and measured by the selection procedure are substantially the same as the knowledges, skills or abilities shown to be necessary for job performance. The closer the content of the selection procedure is to actual work samples, behaviors or activities, the stronger is the basis for showing content validity. The need for careful documentation of the relationship between the performance domain of the selection procedure and that of the job increases as the content of the selection procedure less resembles that of the job performance domain.

(5) A requirement for specific prior training or for work 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 performance domain of the job for which the training or experience is to be required.

(6) If a selection procedure is supported solely on the basis of content validity, it may be used operationally if it represents a critical performance domain or a substantial proportion of the performance domains of the job.

(d) *Construct Validity.* Construct validity is a more complex strategy than either criterion-related or content validity. Accordingly, users choosing to validate a selection procedure by use of this strategy should be careful to follow professionally accepted standards, such as those contained in the APA Standards and the standard text books and journals.

(1) There should be a job analysis. This job analysis should result in a determination of the constructs that underlie successful performance of the important or critical duties of the job.

(2) A selection procedure should be selected or developed which measures the construct(s) identified in accord with subparagraph (1) above.

(3) A selection procedure may be used operationally if the standards of subparagraphs (1) and (2) are met and there is sufficient empirical research evidence showing that the procedure is validly related to performance of critical job duties. Normally, sufficient empirical research evidence would take the form of one or more criterion-related

validity studies meeting the requirements of § 60-3.12(b). See also second sentence of § 60-3.12.

(4) Where a selection procedure satisfies the standards of subsections (1), (2) and (3) above, it may be used operationally for other jobs which are shown by an appropriate job analysis to include the same construct(s) as an essential element in job performance.

Subpart C—Documentation of Validity Evidence

§ 60-3.13 Documentation.

(a) For each selection procedure having an adverse impact (as set forth in § 60-3.4) the user should maintain and have available the data on which the adverse impact determination was made and one of the following types of documentation evidence:

(1) Documentation evidence showing criterion-related validity of the selection procedure (see § 60-3.13(b) *infra*).

(2) Documentation evidence showing content validity of the selection procedure (see § 60-3.13(c) *infra*).

(3) Documentation evidence showing construct validity of the selection procedure (see § 60-3.13(d) *infra*).

(4) Documentation evidence from other studies showing validity of the selection procedure in the user's facility (see § 60-3.13(e) *infra*).

(5) Documentation evidence showing what steps were taken to reduce or eliminate adverse impact, why validation is not feasible or not appropriate and why continued use of the procedure is consistent with Federal law.

This evidence should be compiled in a reasonably complete and organized manner to permit direct evaluation of the validity of the selection procedure. Previously written employer or consultant reports of validity are acceptable if they are complete in regard to the following documentation requirements, or if they satisfied requirements of guidelines which were in effect when the study was completed. If they are not complete, the required additional documentation should be appended. If necessary information is not available the report of the validity study may still be used as documentation, but its adequacy will be evaluated in terms of compliance with the requirements of these guidelines.

In the event that evidence of validity is reviewed by an enforcement agency, the reports completed after the effective date of these guidelines are expected to use one of the formats set forth below. Evidence denoted by use of the word "(Essential)" is considered critical and reports not containing such information will be considered incomplete. Evidence not so denoted is desirable, but its absence will not be a basis for considering a report incomplete.

(b) *Criterion-related validity.* Reports of criterion-related validity of selection procedures are to contain the following information:

(1) *User(s), and location(s) and date(s) of study.* Dates of administration of selection procedures and collection of criterion data and, where appropriate, the time between collection of data on selection procedures and criterion measures should be shown (ESSENTIAL). If the study was 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 circumstances in which the study was conducted should be provided. A description of existing selection procedures and cut-off scores, if any, should be provided.

(3) *Review of job information or job analysis.* Where a review of job information results in criteria which are measures other than work proficiency (see § 60-3.12(b)(3)), the basis for the selection of these criteria should be reported (Essential). Where a job analysis is required, the report should include either: (a) the important duties performed on the job and the basis on which such duties were determined to be important, such as the proportion of time spent on the respective duties, their level of difficulty, their frequency of performance, the consequences of error, or other appropriate factors; or (b) the knowledge, skills, abilities and/or other worker characteristics and bases on which they were determined to be important for job performance (Essential). Published descriptions from industry sources or Volume I of the Dictionary of Occupational Titles, Third Edition, United States Government Printing Office, 1965, are satisfactory if they adequately and completely describe the job. If appropriate, a brief supplement to the published description should be provided.

If two or more jobs are grouped for a validity study, a justification for this grouping, as well as a description of each of the jobs, 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 United States Employment Service Dictionary of Occupational Titles, Volumes I and II. Where standard titles and codes do not exist, a notation to that effect should be made.

(5) *Criteria.* A full description of all criteria on which data were collected, including a rationale for selection of the final criteria, 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 (Essential).

(6) *Sample.* A description of how the research sample was selected should be included (Essential). The racial, ethnic and sex composition of the sample should be described, including the size of each subgroup (Essential). Racial and ethnic classifications should be those set forth in § 60-3.4a above. A description of how the research sample compares with the racial, ethnic and sex composition of the relevant labor market is also desirable. Where data are available, the racial, ethnic and sex composition of current applicants should also be described. Descriptions of educational levels, length of service, and age are also desirable.

(7) *Selection procedure.* Any measure, combination of measures, or procedures used as a basis for employment decisions should be completely and explicitly described or attached (Essential). If commercially available selection procedures are used, they should be described by title, form, and publisher (Essential). Reports of reliability estimates and how

they were established are desirable. A rationale for choosing the selection procedures investigated in the study should be included.

(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 all relevant racial, ethnic and sex subgroups (Essential). Statistical results should be organized and presented in tabular or graphical form, by racial, ethnic and/or sex subgroups (Essential). All selection procedure-criterion relationships investigated should be reported, including their magnitudes and directions (Essential). Statements regarding the statistical significance 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, or both, should be described; and uncorrected correlation coefficients should also be shown (Essential). Where the statistical technique used categorizes continuous data, such as biserial correlation and the phi coefficient, the categories and the bases on which they were determined should be described (Essential). Studies of test fairness should be included where called for by the requirements of § 60-3.12(b)(7) (Essential). These studies should include the rationale by which a selection procedure was determined to be fair to the group(s) in question. Where test fairness has been demonstrated on the basis of other studies, a bibliography of the relevant studies should be included (Essential). If the bibliography includes unpublished studies, copies of these studies, or adequate abstracts or summaries, should be attached (Essential). Where revisions have been made in a selection procedure to assure compatibility between successful job performance and the probability of being selected, the studies underlying such revisions should be included (Essential).

(9) *Uses and applications.* A description of the way in which each selection procedure is to be used (e.g., as a screening device with a cut-off score or combined with other procedures in a battery) and application of the procedure (e.g., selection, transfer, promotion) should be provided (Essential). If weights are assigned to different parts of the selection procedure, these weights and the validity of the weighted composite should be reported (Essential).

(10) *Cut-off scores.* Where cut-off scores are to be used, both the cut-off scores and the way in which they were determined should be described (Essential).

(11) *Source data.* Each user should maintain records showing all pertinent information about individual sample members in studies involving the validation of selection procedures. These records (exclusive of names and social security number) should be made available upon request of a compliance agency. These data should include selection procedure scores, criterion scores, age, sex, minority group status, and experience on the specific job on which the validation study was conducted and may

also include such things as education, training, and prior job experience. If the user chooses to include, along with a report on validation, a worksheet showing the pertinent information about the individual sample members, specific identifying information such as name and social security number should not be shown. Inclusion of the worksheet with the validity report is encouraged in order to avoid delays.

(12) *Contact person.* It is desirable for the user to set forth the name, mailing address, and telephone number of the individual who may be contacted for further information about the validity study.

(c) *Content validity.* Reports of content validity of selection procedures are to contain the following information:

(1) *Definition of performance domain.* A full description should be provided for the basis on which a performance domain is defined (Essential). A complete and comprehensive definition of the performance domain should also be provided (Essential). The domain should be defined on the basis of competent information about job tasks and responsibilities (Essential). Where the performance domain is defined in terms of knowledges, skills, or abilities, there should be an operational definition of each knowledge, skill or ability and a complete description of its relationship to job duties, behaviors, activities, or work products (Essential).

(2) *Job title and code.* It is desirable to provide the user's job title(s) and the corresponding job title(s) and code(s) from the United States Employment Service Dictionary of Occupational Titles Volumes I and II. Where standard titles and codes do not exist, a notation to that effect should be made.

(3) *Selection procedures.* Selection procedures including those constructed by or for the user, specific training requirements, composites of selection procedures, and any other procedure for which content validity is asserted should be completely and explicitly described or attached (Essential). If commercially available selection procedures are used, they should be described by title, form, and publisher (Essential). Where the performance domain is defined in terms of knowledges, skills or abilities, evidence that the selection procedure measures those knowledges, skills or abilities should be provided (Essential).

(4) *Techniques and results.* The method by which the correspondence between the content of the selection procedure and the job performance domain(s) was established and the relative emphasis given to various aspects of the content of the selection procedure as derived from the performance domain(s) should be described (Essential). If any steps were taken to reduce adverse racial, ethnic, or sex impact 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. The adequacy of the sample coverage of the performance domain should be described as precisely as possible. Measures of central tendency (e.g., means) and measures of dispersion

(e.g., standard deviations) should be reported for all selection procedures as appropriate. Such reports should be made for all relevant racial, ethnic, and sex subgroups, at least on a statistically reliable sample basis.

(5) *Uses and applications.* A description of the way in which each selection procedure is to be used (e.g., as a screening device with a cut-off score or combined with other procedures in a battery) and the application of the procedure (e.g., selection, transfer, promotion) should be provided (Essential).

(6) *Cut-off scores.* The rationale for minimum scores, if used, should be provided (Essential). If the selection procedure is used to rank individuals above minimum levels, or if preference is given to individuals who score significantly above the minimum levels, a rationale for this procedure should be provided (Essential).

(7) *Contact person.* It is desirable for the employer to set forth the name, mailing address and telephone number of the individual who may be contacted for further information about the validation study.

(d) *Construct validity.* Reports of construct validity of selection procedures are to contain the following information:

(1) *Construct definition.* A clear definition of the construct should be provided, explained in terms of empirically observable behavior, including levels of construct performance relevant to the job(s) for which the selection procedure is to be used (Essential).

(2) *Job analysis.* The job analysis should show how the constructs underlying successful job performance of important or critical duties were determined (Essential). The job analysis should provide evidence of the linkage between the construct and the important duties of the job and how this linkage was determined (Essential).

(3) *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 Dictionary of Occupational Titles, Volumes I and II. Where standard titles and codes do not exist, a notation to that effect should be made.

(4) *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 evidence demonstrating that the selection procedure is in fact a proper measure of the construct should be included (Essential). Reports of reliability estimates and how they were established are desirable.

(5) *Anchoring.* The empirical evidence showing that performance on the selection procedure is validly related to performance of critical job duties should be included (Essential).

(6) *Uses and applications.* A description of the way in which each selection procedure is to be used (e.g., as a screening device with a cut-off score or combined with other procedures in a battery) and application of the procedure (e.g., selection, transfer, promotion) should be provided (Essential). If weights are as-

signed to different parts of the selection procedure, these weights (and the validity of the weighted composite) should be reported (Essential).

(7) *Cut-off scores.* Where cut-off scores are to be used, both the cut-off scores and the way in which they were determined should be described (Essential).

(8) *Source data.* Each user should maintain records showing all pertinent information about individual sample members in studies involving the validation of selection procedures. These records (exclusive of names and social security number) should be made available upon request of a compliance agency. These data should include selection procedure scores, criterion scores, age, sex, minority group status, and experience on the specific job on which the validation study was conducted and may also include such things as education, training, and prior job experience. If the user chooses to include, along with a report on validation, a worksheet showing the pertinent information about the individual sample members, specific identifying information such as name and social security number should not be shown. Inclusion of the worksheet with the validity report is encouraged in order to avoid delays.

(9) *Contact person.* It is desirable for the user to set forth the name, mailing address, and telephone number of the individual who may be contacted for further information about the validity study.

(e) *Evidence of validity from other studies.* When validity of a selection procedure is supported by 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 § 60-3.13 above. In addition, the following evidence should be supplied:

(1) *Evidence from criterion-related validity studies.* (i) *Job information.* A description of the important duties of the user's job and the basis on which the duties were determined to be important should be provided (Essential). A full description of the basis for determining that these important job duties are sufficiently similar to the duties of the job in the original study (or studies) to warrant use of the selection procedure in the new situation should be provided (Essential).

(ii) *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).

(iii) *Other variables.* The similarity of important applicant pool/sample characteristics reported in the original studies to those of the user should be described (Essential). A description of the comparison between the race and sex composition of the user's relevant labor market and the sample in the original validity studies should be provided (Essential).

(iv) *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 findings of the original validity studies (Essential).

(v) *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).

(2) *Evidence from content validity studies.* (i) *Similarity of performance domains.* A full description should be provided of the similarity between the performance domain in the user's job and the performance domain measured by a selection procedure developed and shown to be content valid by another user (Essential). The basis for determining this similarity should be explicitly described (Essential).

(3) *Evidence from construct validity studies.* (i) *Uniformity of construct.* A full description should be provided of the basis for determining that the construct identified as underlying successful job performance by the user's job analysis is the same as the construct measured by the selection procedure (Essential).

Subpart D—Definitions

§ 60-3.14 Definitions.

The following definitions shall apply throughout these guidelines:

(a) *Ability.* The present observable competence to perform a function.

(b) *Averse impact.* Defined in § 60-3.4 of these guidelines.

(c) *Employer.* Any employer subject to the provisions of the Civil Rights Act of 1964, as amended, including state or local governments and any Federal agency subject to the provisions of Sec. 717 of the Civil Rights Act of 1964, as amended, and any Federal contractor or subcontractor or federally assisted construction contractor or subcontractor covered by Executive Order 11246, as amended.

(d) *Employment agency.* Any employment agency subject to the provisions of the Civil Rights Act of 1964, as amended.

(e) *Labor organization.* Any labor organization subject to the provisions of the Civil Rights Act of 1964, as amended, and any committee controlling apprenticeship or other training.

(f) *Enforcement agency.* Any agency of the executive branch of the Federal Government which adopts these guidelines for purpose of the enforcement of the equal employment opportunity laws or which has responsibility for securing compliance with them.

(g) *Labor organization.* Any labor organization subject to the provisions of the Civil Rights Act of 1964, as amended, and any committee controlling apprenticeship or other training.

(h) *Racial, sex or ethnic group.* Any group of persons identifiable on the grounds of race, color, religion, sex, or national origin.

(i) *Selection procedure.* Any measure, combination of measures, or procedure, other than a bona fide seniority system,

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 unscored application forms.

(j) *Selection Rate.* The proportion of applicants or candidates who are hired, promoted or otherwise selected.

(k) *Technical feasibility.* The existence of conditions permitting the conduct of meaningful criterion-related validity studies. These conditions include: (a) an adequate sample of persons available for the study to achieve findings of statistical significance; (b) having or being able to obtain a sufficient range of scores 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 were utilized; and (c) having or being able to devise unbiased, reliable and relevant measures of job performance or other criteria of employee adequacy. See § 60-3.12(b)(1). With respect to investigation of possible unfairness, the same considerations are applicable to each group for which the study is made. See § 60-3.12(b)(7).

(l) *Unfairness of selection procedure (differential prediction).* A condition in which members of one racial, ethnic, or sex group characteristically 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 § 60-3.12(b)(7).

(m) *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 by law 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 so 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.

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