

**COMMITTEE ON SUBORDINATE LEGISLATION
(FOURTEENTH LOK SABHA)
(2005-2006)**

TENTH REPORT

**[ACTION TAKEN REPORT OF THE COMMITTEE ON THE RECOMMENDATIONS
/OBSERVATIONS CONTAINED IN NINTH REPORT (2002-2003) (THIRTEENTH
LOK SABHA)]**

(PRESENTED ON 20.12.2005)

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LOK SABHA SECRETARIAT

NEW DELHI

PRICE:

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COMPOSITION OF THE COMMITTEE ON SUBORDINATE LEGISLATION
(2005-2006)

- | | | | |
|-----|---------------------------------|---|----------|
| | Shri N.N. Krishnadas | - | Chairman |
| 2. | Shri Omar Abdullah | | |
| 3. | Shri Ajoy Chakraborty | | |
| 4. | Shri Bikram Keshari Deo | | |
| 5. | Shri N.Y. Hanumanthappa | | |
| 6. | Shri Ram Singh Kaswan | | |
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| 8. | Shri Sudam Marandi | | |
| 9. | Shri Anantha Venkata Rami Reddy | | |
| 10. | Shri Chandra Shekhar Sahu | | |
| 11. | Shri Sitaram Singh | | |
| 12. | Shri Bhupendrasinh Solanki | | |
| 13. | Shri Ramjilal Suman | | |
| 14. | Shri P.C. Thomas | | |
| 15. | Shri Madhu Goud Yaskhi | | |

SECRETARIAT

- | | | | |
|----|--------------------------------|---|----------------------------|
| 1. | Shri R. C. Ahuja | - | Joint Secretary |
| 2. | Shri R. K. Bajaj | - | Deputy Secretary |
| 3. | Shri J. V. G. Reddy | - | Under Secretary |
| 4. | Shri Ajay Kumar | - | Assistant Director |
| 5. | Smt. K. Rangamani
Narsimhan | - | Senior Executive Assistant |

INTRODUCTION

I, the Chairman, Committee on Subordinate Legislation having been authorised by the Committee to submit the report on their behalf, present this Tenth Report.

2. This Report relates to the action taken by the Government on the recommendations of the Committee contained in the Ninth Report (2002-2003) (Thirteenth Lok Sabha).
3. The Committee considered and adopted this report at their sitting held on 14.12.2005.
4. The summary of recommendations contained in the Ninth Report and action taken reply of the Government thereon have been reproduced in Appendix I of the Report.
5. Minutes of the sitting of the Committee relevant to this report are brought out in Appendix II.
6. An analysis of action taken by Government on the recommendations contained in the Ninth Report of the Committee (13th Lok Sabha) is given in Appendix III.

**New Delhi:
14 December, 2005**

**N. N. KRISHNADAS,
Chairman,
Committee on Subordinate Legislation**

REPORT

This Report of the Committee on Subordinate Legislation deals with the action taken by Government on the recommendations contained in their Ninth Report (Thirteenth Lok Sabha) which was presented to Lok Sabha on 21.11.2002. The Ninth Report dealt with the following rules: -

- I. The Railway Claims Tribunal (Group 'A' and 'B' Posts) Recruitment Rules, 1997 (GSR 134-E of 1998)
- II. The Bureau of Indian Standards (Certification) (Amendment) Regulations, 1997 (GSR 634-E of 1997)
- III.
 - i) The Central Reserve Police Force (Amendment) Rules, 1998(GSR 272-E of 1998); and
 - ii) The Border Security Force (Seniority, Promotion and Superannuation of Officers) Amendment Rules, 1998 (GSR 273-E of 1998).
- IV. The Central Apprenticeship Council (Amendment) Rules, 1996 (GSR 187 of 1996).
- V. The Delhi Development Authority, Deputy Director Recruitment Regulations, 1998 (GSR 147-E of 1998).
- VI. The Ministry of Health and Family Welfare Staff Car/Field Car Drivers (Ordinary Grade, Grade-II and Grade-I) Recruitment Rules, 1998 (GSR No. 119 of 1998).

2. Action taken Notes have been received from the Government in respect of all the recommendations contained in the Report. A Statement showing the action taken by the Government on the recommendations in the Ninth Report (13th Lok Sabha) is given at Appendix-I.

3. The Committee note with satisfaction that the recommendations contained in five out of the above mentioned six chapters of the report have been accepted by the Government. Only on chapter second, the Government have not accepted the recommendations contained therein but their explanation is satisfactory. The explanation of the Government on the recommendations contained in this chapter is dealt with in the following paragraphs:-

The Bureau of Indian Standards (Certification) (Amendment) Regulations, 1997
(GSR 634-E of 1997) (Chapter-II)

Recommendations contained in Para Nos. 2.4 and 2.5

2.4. The Committee observe that Regulation 8A(f) of the above Regulations are giving unfettered discretionary powers to the Bureau in the matter of fixing time-limits within which it may direct an applicant to furnish any supplementary information and note that as per the existing guidelines in the Ministry the time limit for complying with the various requirements mentioned in regulation 8A(f) could vary from 30 days to six months depending upon the type of inadequacy observed in the application.

2.5 The Committee desire that since the minimum and maximum time-limits have already been prescribed in the existing guidelines, the same should be incorporated in the regulations so as to make the regulations self contained. In this regard, Committee reiterate their recommendation made in para 22-24 of their 13th Report (Sixth Lok Sabha) namely that the administrative instructions are no substitute to statutory rules/regulations, since such instructions are not being published in the official gazette, and therefore escape the notice of the Committee. The Committee further desire that provisions should also be made for due consideration if the applicant fails to furnish information within the prescribed time due to some circumstances beyond his control.

Reply of Government

BIS is offering Quality Systems Certification service in competition with several other local and multinational organisations in the country. Therefore, this is not a regulatory function. Moreover, the Quality Systems Certification Scheme documentation allows for a complete transparency and offers adequate opportunities to the applicants to present their viewpoints. Since BIS is working in a competitive environment, BIS cannot take any unilateral actions and the interests of the applicants are protected.

Clarification sought from the Ministry

The Government's reply to paras 2.4 and 2.5 has not explained how incorporation in regulations of the time limits which are already in vogue in the form of Ministry's guidelines and making suitable provision for dealing with cases which were delayed for reasons beyond control would affect the functioning of BIS in a competitive environment.

Further reply of the Government

The fixing of time limits and indication of the same in the regulations reduce flexibility in the operation of Management Systems Certification Schemes as many changes required to be undertaken in regulations take lot of time and the decision making is costly. It

will be appreciated that in the environment of fierce competition, BIS has to take faster decision to adapt itself with the existing market situation. For example, because of some technical reasons like calibration of equipment and purchase of equipment, the applicant may be given more time to get the equipment calibrated depending upon the availability of calibration facility in the country for which the time frame cannot be fixed.

Further clarification sought from the Ministry

How many times during the past five years, the minimum and maximum time limits prescribed in the guidelines were changed due to circumstances indicated by the Ministry and whether the instance cited in the reply necessitated any change in the guidelines.

Reply of the Ministry

The guidelines are operational documents which are not referred to in the Regulations and changes in the operational documents or deviations in them do not in any manner effect the implementations of the Regulations. It is clarified that no deviation or alteration has been made in the Regulations.

The provision in one of the internal procedures for closure of applications was changed only once in the last five years in Jan. 2004 to make provision for reopening of application in case the request is received within two years from the date of registration. This amendment was incorporated to enable one of the applicants i.e. a department of Government of India to complete corrective actions needed for obtaining IS/ISO 9000 approval.

4. The Committee note that the Ministry is not inclined to accept the recommendation on the ground that the quality system certification service is being offered by the BIS in competition with other organisations and as such it is not a regulatory function; adequate opportunity is given to the applicants to present their view point; there are chances of reduction of flexibility with the fixing of time-limit which can be extended depending upon the technicality of the case. From the facts presented by the Ministry and also keeping in view the competitive environment, the Committee feel that the misuse of the provision is very unlikely. The Committee, therefore, treat the reply of the Ministry as satisfactory and do not want to pursue the matter any further.

Recommendation contained in Para 2.8

2.8. The Committee observe that Regulation 8A(g) as added in the above regulations provide for communication of the reasons to the applicant for the rejection of his application and feel that the applicant should be given an opportunity of being heard before such rejection. The Committee note from the reply of the Ministry that the application is rejected only due to non-compliance with the requirements of regulation 8A(f) i.e. for non-furnishing of required information within the time limits prescribed in the guidelines for operating the scheme and that as per the guidelines a time of 15 days has been given by the Bureau to the applicant to respond to the notice. The Committee reiterate their earlier

recommendation that the guidelines issued by the Government are no substitute to the properly framed statutory rules/regulations and therefore it should be clearly provided in the regulations that the applicant will be given a reasonable opportunity to present his case or of being heard before his application is rejected by the Bureau and desire that the Ministry should suitably amend the above Regulations.

Reply of the Government

Before rejecting the application, the Bureau give ample opportunities to the applicant through personal contact or through correspondence to enable him to provide sufficient explanation and facts as per documented Quality Systems procedure for Closure of Application.

Clarification sought from the Ministry

The reply to para 2.8 also does not indicate why the practice of giving opportunities to an applicant to present his case before his application is rejected should not be reflected in the regulations.

Further reply of the Government

The reference is drawn towards the clause 7(1) A(d), (e) and (f) wherein sufficient provision has been made to give ample opportunity to the applicant regarding actions to be taken by the applicant to meet the requirements of the scheme and also for obtaining information with regards to the application. However, in the operating procedure and guidelines for Management Systems Certification Scheme, provision exists for time frame and also for review by the competent authority depending upon the merit of the case.

5. The Committee note that the clarification furnished by the Ministry satisfactorily explains that ample opportunity is given to the applicant regarding action to be taken by him. The Committee, therefore, do not wish to pursue the matter further.

Recommendation contained in Para 2.12

2.12 The Committee observe that Regulation 8C(a) as added in the above regulations provide that Audit Fee shall depend upon the nature of the activities of the firm and that the fee determined shall be intimated to the applicant prior to the visit. The Committee note from the reply of the Ministry that the authority to levy fee is derived from Sec. 15(2) of the BIS Act, 1986 and that the audit fee is charged at the fixed rate i.e. Rs. 5000/- per auditor per day depending on the man days involved in auditing and that the audit fee is also subject to such changes as per market trends and organisational expenses. The Committee feel that in the absence of any provision of a maximum limit of the audit fee in the regulations, the provisions could be misused and the audit fee may reach huge amounts and therefore desire that the Ministry should fix some upper limit or prescribe some other suitable safeguards regarding the audit fee to be charged from the applicant and incorporate the same in the regulations themselves so as to do away with any misuse of such a provision.

Reply of the Government

Considering that Management Systems Certification is being offered by about 40 other certification agencies operating in India, mostly in the private sector, it is not possible for the Bureau to charge unreasonably high fee due to the competition.

Clarification sought from the Ministry

There should be no difficulty in fixing a ceiling regarding audit fee or prescribing other suitable safeguards in the regulations/rules as such a step would in no way affect the working of BIS which in actual practice cannot charge high fee due to competition.

Further reply of the Government

BIS is operating various Management Systems Certification Schemes like Quality Management Systems Certification, Environmental Management Systems Certification etc. Depending upon the type of work involved i.e. expertise involved, cost of training and the existing competition, BIS decides about the audit fee to be charged which may vary for various schemes. Also from time to time BIS introduces new schemes which would call for more expertise and ultimately resulting into higher audit fees. Therefore, fixing of upper ceilings at a high level at this point of time will bind BIS to fix audit fee lower than that prescribed in the BIS regulations for the existing and if fixed at existing levels, may take away flexibility indirectly giving an advantage to the foreign/private certification agencies operating in India.

6. The Committee note that according to clarification given by the Ministry, fixing of upper limit on the Audit fee to be charged by the BIS for various clarifications may not be feasible because it involves various schemes. In view of this any fixing of the audit fee would take away the flexibility which may be advantageous to foreign/private certification agencies. The Committee, therefore, find the reply of the Ministry as satisfactory.

Recommendations contained in Paras 2.15 to 2.17

2.15 Under Regulation 8D(c) & (e), 8O (c) & (d) the Committee observe that the applicant for license shall produce evidence that corrective actions have been taken to meet all the relevant requirements within the time limits specified by the Bureau, which may undertake a full or partial audit or accept written declaration to that effect and it is to be confirmed by the Bureau during a surveillance visit and that if corrective action have not been taken to meet all the relevant requirements within the specified time limit, the Bureau may refuse to grant the license.

2.16 Similarly the Bureau may revoke the suspension of license after satisfying itself that the licensee has taken necessary actions to remove the deficiencies. License is liable to be canceled, if the Licensee is unable to rectify any deficiency, which makes the licensee unable to comply with the requirements of this Scheme, within time limits specified by the Bureau.

The Committee feel that the wordings “within the time-limits specified by the Bureau” occurring in the aforesaid regulations is giving discretionary powers to the Bureau in setting out such time-limits for the applicant to take corrective measures and the same should be specified in the regulations themselves to prevent any misuse of such powers.

2.17 The Committee note that according to the Ministry the time limits to be specified by the Bureau would depend on the type of non-conformity observed and corresponding corrective action to be taken by the applicant which may vary according to the nature of operation of the organisation and therefore cannot be assessed before hand. The Committee feel that some criteria should be evolved by the Ministry in specifying the limits within which the applicant may be required to take corrective measures and while specifying the time-limits, due consideration should also be given for such cases where the applicant is not able to take corrective measures within the specified time limits because of some circumstances beyond his control and desire that the regulations be suitably amended to this effect.

Reply of the Ministry

The time limits have not been specified in the regulations because time limit depends upon the individual cases and non-conformities observed during the audits and kind of actions that are required to be taken. However, BIS is also under surveillance by an accreditation agency and BIS is in competition with other certification bodies which ensures that BIS cannot act in an arbitrary or unreasonable manner.

Clarification sought from the Ministry

BIS is stated to be under surveillance by an accreditation agency. What is that agency and what is the nature of surveillance? The Government also need to indicate how prescribing lower and upper time limit in Regulation 8D (c) [now 7D (c)], 8 O(C) [now 7.O(C)] will hamper its functioning. With the experience gained by BIS so far, it could easily know the maximum time taken in various cases.

Further reply of the Government

BIS Quality System Certification Scheme is accredited by Raad voor Accreditatie (RvA), Netherlands, body of an international repute, which is the founder member of International Accreditation Forum (IAF) and is offering accreditation services through the world. The accreditation has been granted and renewed from time to time by RvA after verifying compliance of our systems with the international guide ISO/IEC Guide 62 “General Requirements for Bodies Operating Assessment and Certification/Registration of Quality Systems.” Once a year surveillance audit is undertaken by examining our documentation as well as auditing the operation of the scheme at BIS Head Quarter and one of the Regional Offices and even conducting witness audits at the premises of BIS licensees/applicants to evaluate the performance of our auditors.

Regarding prescribing lower and upper time limit in case of corrective actions and revoking of suspension of licence, these situations require technical actions to be taken and decision is taken by BIS depending upon the merit of the case which depends on availability of equipment, material, competent manpower, etc. with the licensee. If the time frames are

prescribed in regulations and subsequently any amendments are to be made, it only delays the decision making process at BIS level which ultimately effects the efficiency of services to be provided by BIS.

7. The Committee note that according to the clarification/further information obtained from the Ministry, the BIS quality system certification Scheme is accredited by Raad voor Accreditation(RvA), Netherlands. The accreditation is granted and renewed from time to time after verifying compliance of various systems operated by BIS and conducting a surveillance audit every year. Regarding prescribing time limit in corrective action and revoking of suspension of licence, etc. the Ministry has stated that it depends upon merit of each case. Any time fixation is likely to delay the decision making process at BIS level which would effect efficiency of services of BIS.

8. The Committee in general feel that BIS which is a statutory body is functioning in a competitive environment and needs flexibility in its operation. It is also under surveillance of an accreditation agency of international repute. Further the services offered by the BIS are not binding on any one and are provided by private agencies also. As such the BIS is not performing any regulatory functions. In view of this overall instruction, it is most unlikely that BIS would resort to any arbitrary misuse of powers relating to various provisions prescribed in the regulations and in day-to-day working would require flexibility and autonomy in its operations to compete within the co-competitors in the field and to function on commercial basis. The Committee, therefore, feel satisfied with the explanations furnished by the Ministry in pursuance of the recommendations of the Committee contained in this chapter.

**New Delhi:
14 December, 2005**

**N. N. KRISHNADAS,
Chairman,
Committee on Subordinate Legislation**

APPENDIX-I
(*Vide* para 2 of the Report)

STATEMENT SHOWING THE ACTION TAKEN BY THE GOVERNMENT ON THE
RECOMMENDATIONS CONTAINED IN THE NINTH REPORT OF THE COMMITTEE
(13TH LOK SABHA)

I. The Railway Claims Tribunal (Group 'A' and 'B' Posts) Recruitment Rules, 1997 (GSR 134-E of 1998)

Recommendation contained in Para No. 1.4

1.4 The Committee observe from the above rules that for promotion to the post of Assistant Registrar carrying the scale of pay as Rs. 6500-200-10500, the feeder categories are Senior Personal Assistant and Office Superintendent which are also carrying the same scale of pay i.e. of Rs. 6500-200-10500. The Committee feel the provision to be anomalous inasmuch as the promotion or even transfer on deputation coupled with some experience normally involve recruitment from a lower scale to a higher scale and not from same scale to same scale. The Committee note from the reply of the Ministry of Railways that the Railway Claims Tribunals do not have any regular recruitment cadre and the posts are filled up on deputation/transfer basis and there is no system of promotions. The Committee recalled that the Ministry had earlier prescribed promotion as one of the methods of recruitment and are now stating that UPSC has suggested them to fill the post of Assistant Registrar on transfer/deputation basis. In view of the clarification so furnished by the Ministry, the Committee desire that the Ministry should amend the rules so as to reflect the correct position as stated by them and be more careful in future while drafting rules relating to service matters.

Reply of the Ministry

All the posts of Asstt. Registrars have been filled by serving railway employees, in appropriate analogous grades on a tenure basis on the expiry of which they are repatriated to their parent cadre. The new rules provided for filling up the post by way of deputation. The requisite amendment in the recruitment rules have been notified vide GSR 692-E dated 27.8.2003.

[Ministry of Railways Letter No. 90/TC(RCT)/1-2 dated 28-10-2003]

II. The Bureau of Indian Standards (Certification) (Amendment) Regulations, 1997 (GSR 634-E of 1997)

Recommendation contained in Para Nos. 2.4 to 2.5

2.4. The Committee observe that Regulation 8A(f) of the above Regulations are giving unfettered discretionary powers to the Bureau in the matter of fixing time-limits within which it may direct an applicant to furnish any supplementary information and note that as per the existing guidelines in the Ministry the time limit for complying with the various requirements mentioned in regulation 8A(f) could vary from 30 days to six months depending upon the type of inadequacy observed in the application.

2.5 The Committee desire that since the minimum and maximum time-limits have already been prescribed in the existing guidelines, the same should be incorporated in the regulations so as to make the regulations self contained. In this regard, Committee reiterate their recommendation made in para 22-24 of their 13th Report (Sixth Lok Sabha) namely that the administrative instructions are no substitute to statutory rules/regulations, since such instructions are not being published in the official gazette, and therefore escape the notice of the Committee. The Committee further desire that provisions should also be made for due consideration if the applicant fails to furnish information within the prescribed time due to some circumstances beyond his control.

Reply of Government

BIS is offering Quality Systems Certification service in competition with several other local and multinational organisations in the country. Therefore, this is not a regulatory function. Moreover, the Quality Systems Certification Scheme documentation allows for a complete transparency and offers adequate opportunities to the applicants to present their viewpoints. Since BIS is working in a competitive environment, BIS cannot take any unilateral actions and the interests of the applicants are protected.

Clarification sought from the Ministry

The Government's reply to paras 2.4 and 2.5 has not explained how incorporation in regulations the time limits which are already in vogue in the form of Ministry's guidelines and making suitable provision for dealing with cases which were delayed for reasons beyond control would affect the functioning of BIS in a competitive environment.

Further reply of the Government

The fixing of time limits and indication of the same in the regulations reduce flexibility in the operation of Management Systems Certification Schemes as many changes required to be undertaken in regulations take lot of time and the decision making is costly. It will be appreciated that in the environment of fierce competition, BIS has to take faster decision to adapt itself with the existing market situation. For example, because of some

technical reasons like calibration of equipment and purchase of equipment, the applicant may be given more time to get the equipment calibrated depending upon the availability of calibration facility in the country for which the time frame cannot be fixed.

Further clarification sought from the Minsitry

How many times during the past five years, the minimum and maximum time limits prescribed in the guidelines were changed due to circumstances indicated by the Minsitry and whether the instance cited in the reply necessitated any change in the guidelines.

Reply of the Government

The guidelines are operational documents which are not referred to in the Regulations and changes in the operational documents or deviations in them do not in any manner effect the implementations of the Regulations. It is clarified that no deviation or alteration has been made in the Regulations.

The provision in one of the internal procedure for closure of applications was changed only once in the last five years in Jan. 2004 to make provision for reopening of application in case the request is received within two years from the date of registration. This amendment was incorporated to enable one of the applicants i.e. a department of Government of India to complete corrective actions needed for obtaining IS/ISO 9000 approval.

(Please see comments of the Committee in paras 4 and 8 of this Report)

Recommendation contained in Para 2.8

2.8. The Committee observe that Regulation 8A(g) as added in the above regulations provide for communication of the reasons to the applicant for the rejection of his application and feel that the applicant should be given an opportunity of being heard before such rejection. The Committee note from the reply of the Ministry that the application is rejected only due to non-compliance with the requirements of regulation 8A(f) i.e. for non-furnishing of required information within the time limits prescribed in the guidelines for operating the scheme and that as per the guidelines a time of 15 days has been given by the Bureau to the applicant to respond to the notice. The Committee reiterate their earlier recommendation that the guidelines issued by the Government are no substitute to the properly framed statutory rules/regulations and therefore it should be clearly provided in the regulations that the applicant will be given a reasonable opportunity to present his case or of being heard before his application is rejected by the Bureau and desire that the Ministry should suitably amend the above Regulations.

Reply of the Government

Before rejecting the application, the Bureau give ample opportunities to the applicant through personal contact or through correspondence to enable him to provide sufficient explanation and facts as per documented Quality Systems procedure for Closure of Application.

Clarification sought from the Ministry

The reply to para 2.8 also does not indicate why the practice of giving opportunities to an applicant to present his case before his application is rejected should not be reflected in the regulations.

Further reply of the Government

The reference is drawn towards the clause 7(1) A(d), (e) and (f) wherein sufficient provision has been made to give ample opportunity to the applicant regarding actions to be taken by the applicant to meet the requirements of the scheme and also for obtaining information with regards to the application. However, in the operating procedure and guidelines for Management Systems Certification Scheme, provision exists for time frame and also for review by the competent authority depending upon the merit of the case.

(Please see comments in Paras 5 and 8 of this Report)

Recommendation contained in Para 2.12

2.12 The Committee observe that Regulation 8 C(a) as added in the above regulations provide that Audit Fee shall depend upon the nature of the activities of the firm and that the fee determined shall be intimated to the applicant prior to the visit. The Committee note from the reply of the Ministry that the authority to levy fee is derived from Sec. 15(2) of the BIS Act, 1986 and that the audit fee is charged at the fixed rate i.e. Rs. 5000/- per auditor per day depending on the man days involved in auditing and that the audit fee is also subject to such changes as per market trends and organisational expenses. The Committee feel that in the absence of any provision of a maximum limit of the audit fee in the regulations, the provisions could be misused and the audit fee may reach huge amounts and therefore desire that the Ministry should fix some upper limit or prescribe some other suitable safeguards regarding the audit fee to be charged from the applicant and incorporate the same in the regulations themselves so as to do away with any misuse of such a provision.

Reply of the Government

Considering that Management Systems Certification is being offered by about 40 other certification agencies operating in India, mostly in the private sector, it is not possible for the Bureau to charge unreasonably high fee due to the competition.

Clarification sought from the Ministry

There should be no difficulty in fixing a ceiling regarding audit fee or prescribing other suitable safeguards in the regulations/rules as such a step would in no way affect the working of BIS which in actual practice cannot charge high fee due to competition.

Further reply of the Government

BIS is operating various Management Systems Certification Schemes like Quality Management Systems Certification, Environmental Management Systems Certification etc. Depending upon the type of work involved i.e. expertise involved, cost of training and the existing competition, BIS decides about the audit fee to be charged which may vary for various schemes. Also from time to time BIS introduces new schemes which would call for more expertise and ultimately resulting into higher audit fees. Therefore, fixing of upper ceilings at a high level at this point of time will bind BIS to fix audit fee lower than that prescribed in the BIS regulations for the existing and if fixed at existing levels, may take away flexibility indirectly giving an advantage to the foreign/private certification agencies operating in India.

(Please see comments in Paras 6 and 8 of this Report)

Recommendations contained in Paras 2.15 to 2.17

2.15 Under Regulation 8D(c) & (e), 8O (c) & (d) the Committee observe that the applicant for license shall produce evidence that corrective actions have been taken to meet all the relevant requirements within the time limits specified by the Bureau, which may undertake a full or partial audit or accept written declaration to that effect and it is to be confirmed by the Bureau during a surveillance visit and that if corrective action have not been taken to meet all the relevant requirements within the specified time limit, the Bureau may refuse to grant the license.

2.16 Similarly the Bureau may revoke the suspension of license after satisfying itself that the licensee has taken necessary actions to remove the deficiencies. License is liable to be cancelled, if the Licensee is unable to rectify any deficiency, which makes the licensee unable to comply with the requirements of this Scheme, within time limits specified by the Bureau. The Committee feel that the wordings “within the time-limits specified by the Bureau” occurring in the aforesaid regulations is giving discretionary powers to the Bureau in setting out such time-limits for the applicant to take corrective measures and the same should be specified in the regulations themselves to prevent any misuse of such powers.

2.17 The Committee note that according to the Ministry the time limits to be specified by the Bureau would depend on the type of non-conformity observed and corresponding corrective action to be taken by the applicant which may vary according to the nature of operation of the organisation and therefore cannot be assessed before hand. The Committee feel that some criteria should be evolved by the Ministry in specifying the limits within which the applicant may be required to take corrective measures and while specifying the time-

limits, due consideration should also be given for such cases where the applicant is not able to take corrective measures within the specified time limits because of some circumstances beyond his control and desire that the regulations be suitably amended to this effect.

Reply of the Ministry

The time limits have not been specified in the regulations because time limit depends upon the individual cases and non-conformities observed during the audits and kind of actions that are required to be taken. However, BIS is also under surveillance by an accreditation agency and BIS is in competition with other certification bodies which ensures that BIS cannot act in an arbitrary or unreasonable manner.

Clarification sought from the Ministry

BIS is stated to be under surveillance by an accreditation agency. What is that agency and what is the nature of surveillance? The Government also need to indicate how prescribing lower and upper time limit in Regulation 8D (c) [now 7D (c)], 8 O(C) [now 7.O(C)] will hamper its functioning. With the experience gained by BIS so far, it could easily know the maximum time taken in various cases.

Further reply of the Government

BIS Quality System Certification Scheme is accredited by Raad voor Accreditatie (RvA), Netherlands, body of an international repute, which is the founder member of International Accreditation Forum (IAF) and is offering accreditation services through the world. The accreditation has been granted and renewed from time to time by RvA after verifying compliance of our systems with the international guide ISO/IEC Guide 62 "General Requirements for Bodies Operating Assessment and Certification/Registration of Quality Systems." Once a year surveillance audit is undertaken by examining our documentation as well as auditing the operation of the scheme at BIS Head Quarter and one of the Regional Offices and even conducting witness audits at the premises of BIS licensees/applicants to evaluate the performance of our auditors.

Regarding prescribing lower and upper time limit in case of corrective actions and revoking of suspension of licence, these situations require technical actions to be taken and decision is taken by BIS depending upon the merit of the case which depends on availability of equipment, material, competent manpower, etc. with the licensee. If the time frames are prescribed in regulations and subsequently any amendments are to be made, it only delays the decision making process at BIS level which ultimately effects the efficiency of services to be provided by BIS.

(Please see comments in Paras 7 and 8 of this Report)

**[Ministry of Consumer Affairs, Food & Public Distribution Letter No. 6/5/97-BIS dated 26.4.2004]
Ministry of Consumer Affairs, Food & Public Distribution Letter No.MSCD/2:1 dated 9.7.2003]**

- III. i) **The Central Reserve Police Force (Amendment) Rules, 1998(GSR 272-E of 1998); and**
- iii) **The Border Security Force (Seniority, Promotion and Superannuation of Officers) Amendment Rules, 1998 (GSR 273-E of 1998).**

Recommendations contained in Para Nos. 3.7 & 3.8)

3.7 The Committee observe in the aforesaid amendment Rules that the retirement age of members of the CRPF has been increased from 55 years to 57 years. Similar provisions are there in the Border Security Force (Seniority, Promotion and Superannuation of Officers) Amendment Rules, 1998. In this connection, the Committee feel that it is only in view of the nature of duties being performed by the Members of the CRPF and BSF that the age of retirement has been kept as 55 years which has now been increased by 2 years i.e. upto 57 years in view of the increase in the age of retirement from 58 to 60 years of the employees of all Ministerial and other public undertakings on the basis of recommendations of the Fifth Central Pay Commission.

3.8 The Committee note that the retirement age of those Officers have been enhanced only keeping in view the recommendations of the 5th Pay Commission for enhancing the age of retirement for civil employees by 2 years. However the Committee do not find any justification regarding the enhancement of the age of superannuation vis-a-vis the nature of duties being performed by the personnel of the Para Military Forces and also it is not known whether such increase in the retirement age is going to adversely affect the field operations being performed by these Para-Military forces. While the Committee feel that the benefit of the increase in the retirement age should be extended to these Forces also and leave it to the decision of the government, they desire that the Govt. should ensure that the enhanced age limit does not affect the field/active duties which are required to be performed by the officers so deputed.

Reply of the Ministry

The retirement age of 55 years upto the rank of Commandant in BSF and CRPF was fixed long back. With the increase in life expectancy and overall health standards, the performance of the personnel in these Forces even upto the age of 57 years is in no way inferior to the standards envisaged at the time of fixing the retirement age at 55 years. Hence the enhancement of retirement age in BSF and CRPF is considered well justified. As per the report by these Forces no deterioration in operational performance of the Force personnel due to increase in the age of retirement has been noticed.”

[Ministry of Home Affairs O. M. No. I-11019/3/02-Pers-II, dated 26.2.2003]

IV. The Central Apprenticeship Council (Amendment) Rules, 1996 (GSR 187 of 1996).

Recommendation contained in Para No. 4.11

4.11 The Committee feel that the exercise of formation of Standing or Special Committees or determining their functions by the Council is a substantive provision which cannot be incorporated in the rules unless there is an express authorisation thereof in the main Act viz. the Apprentices Act, 1961. In this regard, the Committee observe from the preamble that the aforesaid rules have been notified by the Central Government in exercise of general powers conferred by section 37(1) of the Apprentices Act, 1961. On scrutiny of this section it has been observed that said section 37(1) does not confer any authorisation to the Central Government to delegate such power to the Council. The Committee note that as per the reply of the Ministry, Section 34 of the Act empowers the Central Government to delegate any of its functions to any other authority subordinate to it and as such the Central Government is authorised to sub-delegate its powers to the Central Apprenticeship Council. The Committee desire that the Ministry should amend the Central Apprenticeship Council Rules, 1962 so as to reflect the correct statutory authority in the preamble viz. section 34 of the Apprenticeship Council Act, 1962 which empowers the Central Government to form Standing or Special Committee. The Committee further desire that they should ensure to quote the correct statutory authority while framing such rules in future.

Reply of the Ministry

As per the opinion of the Ministry of Law and Justice, the delegating powers under Section 34 of the Act are executive in nature and the powers under Section 37 relating to rule making are legislative in character and as such the said powers should be exercised independently by separate notifications. The Ministry have now issued two separate notifications under Section 37 & 34 respectively. The notification under Section 37 has been issued to amend aforesaid Rules 14(2) and 14(3) by substituting 'Central Government' in place of 'Council' and 'Chairman of Council'. The notification under Section 34 sub-delegated the powers of the Central Government under Section 14(2) and 14(3) on the 'Council' and the 'Chairman of the Council' respectively. This notification will be executive in nature. A copy each of the notifications issued under Section 34 and 37 of the Apprentices Act, 1961 vide GSRs 216 and 217 respectively published in the Gazette of India, Part II, Section 3(i) dated 24.5.2003 are enclosed.

The notifications under Section 34 and Section 37 of the Apprentices Act, 1961 seeks to replace the earlier notification of 1996 which was wrongly issued under Section 37 of the Act.

[Ministry of Labour O. M. No. DGET-2/10/2002-AP dated 9.7.2003]

V. The Delhi Development Authority, Deputy Director Recruitment Regulations, 1998 (GSR 147-E of 1998).

Recommendation contained in Para Nos. 5.4 to 5.5

5.4 The Committee note from the reply of the Ministry that the post of Deputy Director in DDA has been created way back in April, 1978 by re-designating the post of Executive Officer. Further, the Recruitment Rules for this post have been notified only in 1998 i.e. after a gap of three years after their approval in 1995. According to the Ministry, for the intervening period between 1978 to 1995, the earlier Recruitment Rules of the Executive Officers were being followed to regulate the post of Deputy Director. In this connection, the Committee observe that the extant Regulations have been brought into force from the date of their publication in the official Gazette i.e. 26.3.1998 which was giving an impression that the post of Deputy Director has been newly created whereas the said post was in existence way back in 1978. The Committee feel this, a serious lacuna in the extant regulations as these do not reflect the correct position and further that the regulations should have been given retrospective effect from 1978 so as to regularise the services of those Deputy Directors who have served during the intervening period from 1978 when this post was created to 26.3.1998 when these Regulations have been brought into force. The Committee do not find any justification for the inordinate delay of 20 years in framing and notification of the regulations. The Committee desire that the Ministry should suitably amend the Regulations so as to do away with the above-mentioned anomalies and to devise suitable procedural safeguards to avoid recurring of such lapses in future.

5.8 The Committee observe from the above regulations that the pay-scales indicated against the post of Deputy Director in the Delhi Development Authority were pre-revised although the recommendation of the Fifth Central Pay Commission has been implemented from 1.1.1996. As to the reasons for indicating pre-revised pay-scale instead of the revised one for the post of Deputy Director, the Committee noted from the reply of the Ministry of Urban Affairs and Employment that the pre-revised pay scale was indicated because when the regulations were approved by the Delhi Development Authority in April, 1995 i.e. before implementation of the recommendations of the Fifth Pay Commission. The Committee do not find any justification for publishing a rule after a gap of 3 years, and desire the Ministry to amend the Regulations suitably so as to indicate the revised pay-scales in accordance with the recommendations of Fifth Pay Commission and to evolve suitable procedural safeguards to avoid recurrence of such lapses in the future.

Reply of the Ministry

Since the Delhi Development Authority had simply re-designated the post of Executive Officer as Deputy Director and the recruitment rules were not modified and it had followed the recruitment regulations for the post of Executive Officer, and due to the fact that the mode of recruitment prescribed in the recruitment regulations for the posts of Executive

Officer and the rules notified in March, 1998 was different, it was inferred that the following of the recruitment rules for the intervening period was in order.

According to the opinion of Department of Legal Affairs, it was not proper for the Ministry of Urban Development to regulate the condition of service for the post of Deputy Director by the RRs meant for Executive Officer. Accordingly, for the intervening period of 1978 to 1998, the RRs of 1998 should be given retrospective effect from 1978. In accordance with the opinion of the Department of Legal Affairs, the Law Ministry notified the requisite amendment to the RRs of 1998 giving them retrospective effect from 1978 vide Gazette of India notification no. GSR 777-E dated 29 November, 2004.

[Ministry of Urban Development O. M. No. H-11013/1/98-DDIA (Vol.II) dated 28.1.2005]

VI. The Ministry of Health and Family Welfare Staff Car/Field Car Drivers (Ordinary Grade, Grade-II and Grade-I) Recruitment Rules, 1998 (GSR No. 119 of 1998).

Recommendation contained in Para Nos. 6.3 and 6.7

6.3 The Committee observe from the above rules that they were published in the Gazette of India in 1998 and the year in the short title has been indicated as 1994 whereas as per the recommendation of the Committee on Subordinate Legislation the year in the short-title should conform to the year of their publication in the Official Gazette. According to the reply of the Ministry rules which were sent for publication in the year 1994, were actually got printed in the year 1998 i.e. after a gap of four years. The Committee express concern over the lackadaisical manner in which such an important piece of subordinate legislation is being dealt with by the Ministry who did not bother to check whether the rules have actually been published or not or whether the same have been published correctly and feel that the duty of the Ministry is not over merely by sending the notification to the Press. They are also suppose to keep a track of the final publication of the rules. The Committee desire that the Ministry should devise suitable procedural safeguards to avoid recurrence of such type of serious lapses in future.

6.7 The Committee observed that the above rules were given effect retrospectively w.e.f. 1.8.1993. However, the usual explanatory memorandum which is normally appended to certify that the interests of nobody would be affected adversely by such retrospective effect as recommended by the Committee was not appended to the rules. The Committee are surprised to note that the Ministry are not even aware of this recommendation and desire them to devise appropriate procedure so as to ensure that such important recommendations of the Committee do not escape their attention while framing the rules. The Committee also desire the Ministry to notify an amendment by incorporating the requisite explanatory memorandum certifying that interest of no person would be adversely affected by giving such retrospective effect to the rules.

Reply of the Ministry

The Staff Car/Field Car Drivers (Ordinary Grade, Grade-II and Grade-I) Recruitment Rules, 1998 have been amended by incorporating the requisite explanatory memorandum certifying that interest of no person would be adversely affected by giving retrospective effect to the rules. A corrigendum has been issued vide GSR No. 341 dated 23.9.2003, incorporating the explanatory memorandum.

[Ministry of Health and Family Welfare O. M. No. 12023/26/93-ESTT.IV dated
24.11.2003]

APPENDIX-II

(Vide para 5 of the Introduction)

MINUTES OF THE FOURTH SITTING OF THE COMMITTEE ON SUBORDINATE LEGISLATION (FOURTEENTH LOK SABHA)(2005-2006)

The Committee met on Wednesday, 14 December, 2005 from 15.00 to 15.45 hours in Chairman's Room No. '143', Parliament House, New Delhi.

PRESENT

Shri N.N. Krishnadas - Chairman

MEMBERS

2. Shri Ajoy Chakraborty
3. Shri Bikram Keshari Deo
4. Shri Vijaykumar Khandelwal
5. Shri Anantha Venkata Rami Reddy
6. Shri Chandra Sekhar Sahu
7. Shri P.C. Thomas

SECRETARIAT

1. Shri R.K. Bajaj, Deputy Secretary
2. Shri J. V. G. Reddy, Under Secretary
3. Shri Ajay Kumar Assistant Director

2. At the outset, the Chairman, Committee on Subordinate Legislation welcomed the members to the sitting of the Committee.

3. Thereafter, the Committee took up for consideration the draft Ninth & Tenth Reports and adopted the same without any modification.

The Committee then adjourned.

APPENDIX-III

(Vide para 4 of the Introduction)

ANALYSIS OF THE ACTION TAKEN BY THE GOVERNMENT ON THE RECOMMENDATIONS CONTAINED IN THE NINTH REPORT OF THE COMMITTEE ON SUBORDINATE LEGISLATION (THIRTEENTH LOK SABHA)

I. Total number of recommendations 11
(Sl. Nos. 1.4, 2.5, 2.8, 2.12, 2.17, 3.8 4.11, 5.4, 5.7, 6.3 and 6.7)

I. Recommendations that have been accepted by the Government 07
(vide recommendations at Sl. Nos. 1.4, 3.8, 4.11, 5.4, 5.7, 6.3 and 6.7)

Percentage of total: 63% Approx.