

MINUTE ITEM

Title Calendar Item No. 17
was introduced as Minute Item
17 on State Lands
Commission by a vote of 3
to 0 at its 5-31-78
meeting.

MINUTE ITEM

5/78
Horn
Lynch
Poe

17. REPEAL OF REGULATIONS IN TITLE 2, DIVISION 3 OF THE CALIFORNIA ADMINISTRATIVE CODE, ARTICLES 1 AND 2 AND ADOPTION OF NEW REGULATIONS RELATIVE TO THE COMMISSION'S GENERAL LEASING ACTIVITIES - W 5125.1.

During consideration of Calendar Item 17 attached, Chairman Kenneth Cory asked if the Office of the Attorney General has issued an opinion on the constitutionality of Chapter 431, Statutes of 1977 regarding recreational piers. Allan Goodman, of the Attorney General's Office, explained that due to the specific legislative findings, it would be very difficult to challenge the unconstitutionality of this bill, however, there is no Attorney General opinion available at this time.

Initially, Commission-Alternate Sid McCausland asked to defer the item until the staff had received an opinion from the Attorney General's office. However, after discussing the matter further, they adopted the regulations.

Upon motion duly made and carried, the resolution as presented in Calendar Item 17 was approved by a vote of 3-0.

Attachment: Calendar Item 17 (16 pages).

CALENDAR ITEM

17.

5/78
W 5125.1
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REPEAL OF REGULATIONS IN TITLE 2, DIVISION 3 OF
THE CALIFORNIA ADMINISTRATIVE CODE, ARTICLES 1 AND 2
AND ADOPTION OF NEW REGULATIONS RELATIVE TO
THE COMMISSION'S GENERAL LEASING ACTIVITIES

Pursuant to the Commission's authorization of November 30, 1977 (Minute Item 29) and in compliance with the Administrative Procedures Act (specifically Government Code Sections 11423-25) a public hearing was held in Sacramento on May 17, 1978. The purpose of the hearing was to take oral and written comments on proposed changes to the Commission's general leasing regulations.

Briefly, the regulations are being revised to make specific and implement SB 349-Nejedly (Chapter 431, Statutes of 1977) relative to the permitting of private recreation piers. Other changes have been proposed which will help clarify existing leasing practices.

As a result of the hearing and other comments received on the proposed regulations, staff has made revisions to the draft regulations and is recommending adoption of the proposed changes as set forth in Exhibit "A" attached hereto.

EXHIBIT: A. Proposed Amendments to Division 3,
2 Cal. Adm. Code, Articles 1 and 2.

IT IS RECOMMENDED THAT THE COMMISSION:

1. DETERMINE THAT THERE HAS BEEN COMPLIANCE WITH GOVERNMENT CODE SECTIONS 11423 THROUGH 11425 RELATING TO PUBLICATION, PUBLIC HEARING AND NOTIFICATION TO THE SENATE COMMITTEE ON RULES AND THE SPEAKER OF THE ASSEMBLY AND DELIVERY TO THE OFFICE OF ADMINISTRATIVE HEARINGS AND OTHER INTERESTED PERSONS.
2. ADOPT AMENDMENTS TO ITS REGULATIONS IN 2 CAL. ADM. CODE, ARTICLES 1 AND 2 AS SET FORTH IN EXHIBIT "A" ATTACHED AND BY REFERENCE MADE A PART HEREOF, RELATING TO GENERAL AND NON-EXTRACTIVE LEASING, WHICH SHALL BE EFFECTIVE ON THE THIRTIETH DAY AFTER FILING WITH THE SECRETARY OF STATE AS PROVIDED IN SECTION 11422 OF THE GOVERNMENT CODE.

CALENDAR ITEM NO. 17.. (CONTD)

3. DETERMINE THAT, PURSUANT TO SECTION 2231 OF THE REVENUE AND TAXATION CODE, THERE WILL BE NO INCREASED OR NEW COSTS TO LOCAL GOVERNMENT RESULTING FROM THESE REGULATIONS.

Attachment: Exhibit "A"

EXHIBIT "A"

PROPOSED AMENDMENTS TO REGULATIONS OF THE STATE LANDS COMMISSION
IN DIVISION 3, CHAPTER 1, 2 CALIFORNIA ADMINISTRATIVE CODE;
REPEAL OF ARTICLES 1 AND 2; AND ADOPTION OF NEW ARTICLES
1 AND 2.

ARTICLE 1

GENERAL PROVISIONS

1900. OPERATING AND ADMINISTRATIVE DUTIES.

The staff of the State Lands Commission shall perform such duties and functions as may be directed by the Commission.

1901. DEFINITIONS.

The following definitions shall govern the construction of terms used in this chapter unless otherwise indicated.

(a) The term "Commission" means the State Lands Commission.

(b) The term "applicant" includes any person who files an application under these rules.

(c) The term "person" includes any individual, firm, partnership, business entity, business trust, association, corporation, or governmental entity.

(d) The term "lease" includes a permit, right-of-way, easement, license, compensatory agreement, or other entitlement of use.

(e) The term "structure" means any manmade construction.

(f) The term "submerged lands" means the area lying below the elevation of ordinary low water in the beds of all tidal waters and below the elevation of ordinary high water in the beds of all nontidal navigable waters.

(g) The term "tidelands" means the area lying between the elevations of ordinary low water and ordinary high water in the beds of all tidal waters (filled or unfilled).

(h) The term "uplands" includes all other

classes of land which are neither submerged lands nor tidelands, excluding school lands.

(i) The terms "merchandise", "product" and "commodity" are interchangeable and shall include, but not be limited to, goods, wares, chattels, and personal property of every description, as well as cargo, freight, mail, vessel's stores and supplies, articles, matter and material.

(j) The term "recreational pier" as defined in Public Resources Code section 6503 includes any fixed facility for the docking or mooring of boats constructed for the use of the littoral landowner, but does not include swimming floats or platforms, sun decks, swim areas, fishing platforms, residential, recreational, dressing, storage or eating facilities or areas attached or adjacent to recreational piers, or any other facilities not constructed for the docking or mooring of boats owned by the littoral landowner.

1902. APPLICATION REQUIREMENTS.

(a) An applicant or bidder for the purchase of State school lands, swamp and overflowed lands, or vacant United States lands must be:

(1) Persons or associations of persons who are citizens of the United States or who have filed declarations of their intention to become citizens; or

(2) Any corporation 90 per cent or more of the shares of which are owned by persons eligible to purchase lands or to hold a lease or permit under subdivision (1) of this subsection (a); or any corporation 90 per cent of the shares of which are owned either by a corporation eligible to purchase lands or to hold a lease or permit hereunder, or by any combination of such eligible persons or corporations, or both.

(b) Applications or bids to purchase lands by corporations must be made in the name of the purchaser, subscribed and sworn to by the authorized officer thereof, whose authorization must accompany the application. The seal of the applicant or bidder, if any, must be affixed.

(c) Applications for the purchase or lease of State lands by the United States or any agency thereof, by the State of California or any agency thereof, or by local agencies of the State including county, city and county, city, district, or other public agency of the State, are excepted from compliance with subsections (a) and (d) of this section.

(d) In every case of joint application, the names of all persons interested in a particular joint bid shall be specified.

(e) Applicants must meet the requirements established by the appropriate Public Resources Code section and as provided in other sections of these regulations and the Commission's application lists and criteria.

1903. MISCELLANEOUS FEE SCHEDULE.

(a) Except as may otherwise be provided for by law, fees of the Commission shall be charged according to the following schedule:

(1) Filing fees as required by sections 6502 and 7706 of the Public Resources Code \$25.00

(2) Charges for other Commission services shall be based on costs.

1903.1. COMPUTATION OF COSTS AND EXPENSES.

(a) In those instances where Commission costs and expenses are chargeable to the applicant, the Commission shall either:

(1) Determine the average cost of such service and require a minimum nonrefundable expense deposit in that amount; or

(2) Estimate the actual cost of such service and require a minimum refundable expense deposit in that amount.

(3) Such costs will be based upon the complicated or uncomplicated nature of the application, pursuant to sections 1903.2 and 1903.3

(b) At the time of filing the application, the applicant shall deposit the minimum expense deposit required by the Commission.

1903.2. NONREFUNDABLE EXPENSE DEPOSITS.

(a) The amounts of nonrefundable expense deposits are determined for those services that are sufficiently routine so that an average cost can be determined. Such average costs are for servicing typical, uncomplicated applications.

(b) If a transaction requires special activities or costs not normally incurred in the processing of like transactions, an additional expense deposit, sufficient for such purpose, shall be made by applicant within 21 days after written notice of the amount thereof and demand therefor shall have been mailed to the address of applicant supplied to the Commission by applicant. Should applicant fail to make such additional expense deposit with the Commission, the application may be cancelled without further notice and any existing structures on State land at the site shall be removed by the applicant at his own expense.

(c) No refund shall be made to the applicant except where additional expense deposits were required, or where otherwise provided by law. Where additional expense deposits were required, any unexpended portion thereof shall be refunded to the applicant.

1903.3. REFUNDABLE EXPENSE DEPOSITS.

(a) Refundable expense deposits are established for those transactions or services where costs are so varied that it is impractical or inequitable to determine an average cost.

(b) Should a refundable expense deposit so established be insufficient to cover the Commission's costs and expenses, an additional expense deposit, sufficient for such purpose, shall be made by the applicant from time to time, within 21 days after written notice of the amount thereof and demand therefor shall have been mailed to the applicant at the address of applicant supplied to the Commission by applicant. Should applicant fail to make such additional expense deposit with the Commission, the application may be cancelled without further notice and any existing structures on State land at the site shall be removed by the applicant at his own expense.

(c) Any unexpended portion of a refundable expense deposit shall be refunded to applicant.

1904. GUARANTY DEPOSITS - BOND OR CASH.

The Commission may require deposits of either bond, cash or other such acceptable security to insure compliance with terms and conditions of bids, leases, or any other agreements.

1905. OFFICE OF COMMISSION.

The principal office of the Commission is 1807 13th Street, Sacramento, California 95814, telephone (916) 445-7738. The extractive development office is located at 100 Oceangate, Suite 300, Long Beach 90802, telephone (213) 590-5201. Applications for extractive developments including oil and gas leases and geothermal and mineral prospecting permits and leases shall be sent to the extractive development office. All other applications shall be addressed to the principal office.

1906. MEETINGS OF THE COMMISSION.

The Commission shall meet at Sacramento on the last Thursday of each month unless the date and place of meeting are, upon due notice, otherwise designated by at least two members.

1907. RESERVATIONS.

(a) Whenever it appears that such action is in the public interest, the Commission may reject any application or bid or refuse to approve any work or to execute any lease or other instrument.

(b) The Commission reserves the right to deviate from the rules in this chapter whenever it determines that such deviation is in the public interest.

(c) The Commission may reject any application or bid if satisfactory evidence of ability to furnish all necessary sites and rights of way for all operations contemplated is not furnished or if the experience, equipment, or financial status of the applicant or bidder is not considered adequate by the Commission.

1908. BIDDING PROCEDURES.

(a) In cases where the law or these rules require that an award be made to the highest qualified bidder, the Commission shall cause notice of intention to receive bids to be published.

(b) The notice shall describe the lands offered, state the time for receiving and opening bids and indicate that forms for bidding may be obtained at an office of the Commission. Except as otherwise provided by law such notice shall be published at least once in a newspaper of general circulation in the county in which the lands are situated and may be published at least once in a newspaper of general circulation in the City of Los Angeles, or San Francisco, or Sacramento.

(c) At the time and place specified in the notice, the sealed bids shall be opened publicly and an award shall be made to the highest qualified bidder unless, in the opinion of the Commission, the acceptance of the highest qualified bid is not in the best interests of the State, in which event the Commission may reject all bids. Thereupon, new bids may be called for by the Commission.

(d) Not later than 15 days after receipt of written notice of the award, except as otherwise provided in article 5, section 2302(e), a successful bidder shall pay the first annual rental or other consideration as required and execute and deliver any required documents to the Commission.

1909. EXECUTION AND DELIVERY OF DOCUMENTS.

(a) The Commission may authorize execution, sealing and delivery of such instruments as are necessary and appropriate to accomplish its business.

(b) All documents to be executed on behalf of the Commission shall first be signed by the applicant and certified, witnessed and/or acknowledged as necessary prior to its execution and delivery by the Commission.

1910. INSPECTIONS.

Inspection of books, records, and accounts pertaining to leases, and of areas under lease and facilities thereon, may be made by the staff of the State Lands Commission. Holders of leases as defined in section 1901(d) of this article shall provide means of access and other safe and reasonable facilities enabling the staff of the State Lands Commission to make inspections, but such inspections shall not relieve the lease holder of any responsibility to discharge the lease obligations.

1911. LIABILITY.

(a) Each leaseholder shall indemnify, save harmless and at the option of the State, defend the State of California, its officers, agents and employees against any and all claims, demands, loss, action or liability of any kind which the State of California, or any of its officers, agents or employees may sustain or incur or which may be imposed upon them or any of them arising out of or in connection with the issuance of any lease, including, without in any way limiting the foregoing, any claim, demand, loss, or liability arising from any failure of title or any alleged violation of the property or contractual rights of any third person or persons in the leased lands.

ARTICLE 2

LEASING OR OTHER USE OF LANDS

2000. GENERAL.

(a) This article applies to leases of lands for all surface uses except to leases for the exploration or salvage of abandoned property, and for the prospecting for or extraction of mineral resources, including, but not limited to, oil, gas, and geothermal resources, the rules for which are set forth in other articles within Title 2. All leases granted pursuant to this article shall be subject to the right of the State to grant separate leases for additional uses. However, such leases shall not unreasonably interfere with or endanger activities under any lease issued pursuant to the provisions of this article, nor shall any lease issued pursuant to the provisions of this article unreasonably interfere with or endanger any lease issued pursuant to any other article.

(1) GENERAL LEASE: Uses under a General Lease include but are not limited to the following:

(A) Commercial uses by enterprises producing income either directly or indirectly including but not limited to private marinas, restaurants, clubhouses, amusements, fishing piers, accommodation docks, helicopter pads, decks, service stations, mooring sites, buoys, watercraft rental, and water ski facilities;

(B) Industrial uses such as oil terminals, pipelines appurtenant thereto, wharves, piers, stowage sites, dolphins, moorings and islands;

(C) Right-of-way uses such as power lines, pipelines, roadways, outfall lines, and similar facilities; and

(D) Public Agency leases for marinas, recreational piers, concessionaires, boating facilities and other similar income-producing ventures.

(2) GENERAL PERMIT: Uses under a General Permit include but are not limited to the following:

(A) Structures not producing direct or indirect income, such as piers, boathouses, cabins, arks, campsites, docks, buoys, floats and water ski facilities.

(B) Uses by public agencies having a statewide public benefit such as public bridges, public roads, certain recreational structures and wildlife refuges; and

(C) Permits granted under the authority of section 6321 of the Public Resources Code for groins, jetties, seawalls, bulkheads, breakwaters and other similar structures. The Commission reserves the right to revoke any authorization issued under said section 6321 when in its judgment it is in the best interests of the public to do so.

(3) GRAZING OR AGRICULTURAL LEASE: Uses under a Grazing or Agricultural Lease shall include grazing or agricultural pursuits such as livestock, silviculture, horticulture and seasonal crops.

(4) PRIVATE RECREATIONAL PIER PERMITS: This category is limited to permits granted pursuant to the provisions of section 6503 of the Public Resources Code. The uses under a recreational pier permit are defined in section 1901(j) of Article 1.

(b) Applications for leases or permits under this article shall be filed with the Principal Office of the State Lands Commission.

(c) Priorities of application shall be as provided in section 6223 of the Public Resources Code.

(d) Expense deposits required by section 2004 of this article will be governed by the rules and regulations of the Commission in effect on the date of filing of the application for lease or permit.

(e) The Commission may require liability insurance coverage and/or surety bond, or other acceptable security to insure the performance of lease or permit terms and conditions in the amount and form it deems appropriate.

2001. APPLICATIONS.

The date of receipt of an application is that date on which the appropriate official of the Commission has received an executed application form, identifying the applicant and the nature of the proposed project.

2002. LESSEES OR PERMITTEES.

(a) Leases or permits to occupy tidelands and submerged lands may be granted to the littoral owner, to others with the consent of such littoral owner or to governmental entities; however, such lands may, consistent with development and utilization to the maximum economic, social or environmental benefit to the State and consistent with the legal rights of the littoral owner, be leased to the best-qualified applicants as determined by the Commission, whether or not the applicant is the littoral owner. The Commission may advertise and invite bids where in its judgment it is in the best interests of the State.

(b) Leases or permits of State lands other than tidelands and submerged lands under this article may be issued to qualified applicants.

2003. DURATION OF LEASES.

The term of any lease granted hereunder shall be for the period deemed by the Commission to be in the best interest of the State as set forth in the following schedule, except, however, that upon a special finding of the Commission that a term in excess of that specified below is in the best interests of the State, the term may be so extended in excess of said schedule where otherwise permitted by law. In no event shall the term of any lease exceed 66 years. The schedule of lease terms, including optional renewal periods is as follows:

(a) General Lease	Not to exceed
General Permit	49 years
Silviculture	
Horticulture	
(b) Livestock (See	Not to exceed
Public Resources	10 years
Code Section 6505.5)	
Seasonal Crops	
(c) Private Recreational Pier	Not to exceed
Permit	10 years

2004. EXPENSE DEPOSITS.

An applicant for Commission action shall remit with the application the required minimum expense deposit, in addition to any filing fee required by law. Expense deposit requirements approved by the Commission are available at any office of the Commission.

2005. RENTAL RATES.

(a) Amount: Leases executed pursuant to this Article shall contain provisions for the payment of rental based upon the rates established by the following schedule in fixed sums, in sums based in whole or in part on a percentage of appraised value, gross income, volume or quantity of commodities passing over State land, or for such other consideration as, in the judgment of the Commission, may be in the best interests of the State.

(b) Rental Rate Schedule: The following rental rates shall apply to the classifications listed below:

(1) Commercial Use: The rental may be a percentage, based on analysis of market and other considerations, of annual gross income; and/or 8% per annum of the appraised value of the leased land; and/or an annual rental with a specified minimum, based upon the volume of commodities passing over State land. The minimum rental under any of these alternative methods shall not be less than \$225 per annum.

(2) Industrial Use: The rental may be based on eight percent (8%) per annum of the appraised value of leased land together with 1-1/2 cents per diameter inch per lineal foot for pipelines and conduits within the leased premises; and/or an annual rental, with a specified minimum, based upon the volume of commodities passing over State land. The minimum rental under either of these alternative rentals shall not be less than \$550 per annum.

(3) Right-of-Way Use: Eight percent (8%) per annum of the appraised land value, together with damages, if any; and/or for pipelines and conduits, 1-1/2 cents per diameter inch per lineal foot per annum, or, in lieu of either of the foregoing, an annual rental, with a specified minimum, based upon the volume of commodities passing over State land. The minimum rental under any of the above alternatives shall not be less than \$100 per annum.

(4) Grazing and Agricultural Leases: Rental shall be based on appraisal for the use intended.

(5) Public Agency Use: Leases of State land to public agencies shall provide for monetary rental equivalent to that prescribed for other leases and permits according to intended land use and as set forth in this

section, unless the Commission determines that a statewide public benefit accrues. If the Commission determines that statewide public benefit accrues from public agency uses under this subsection, no monetary rental will be changed.

(6) General Permit: Permits fees shall be determined on the basis of the following schedule:

<u>Number of Square Feet Within Permit Area</u>	<u>Permit Fee Schedule (per annum)</u>
0 - 1000	\$ 30
1001 - 2000	\$ 40
2001 - 3000	\$ 50
3001 - 4000	\$ 70
4001 - 5000	\$ 90
5001 - 6000	\$110
6001 - 7000	\$130
7001 - 8000	\$150
8001 - 9000	\$170
9001 - 10000	\$190
over 10000	\$200 plus \$20 per each additional 1,000 sq. ft. or frac- tion thereof

The charge for recreational buoys not qualifying under Public Resources Code section 6503 shall be \$30 per annum per buoy.

A nominal charge not to exceed \$10.00 per annum under this sub-section shall be required of any natural person 65 years of age or older who applies for a structure occupying no more than 1,000 square feet of permit area and who submits proof of having an active insurance policy indemnifying the State for the intended use.

(7) Private Recreational Pier Permit: pursuant to Public Resources Code 6503 these permits shall be issued

free of rent to applicants demonstrating that they qualify as littoral landowners under that section.

(c) Rentals Subject to Law: In cases where lease holders are exempted by law from assesment or payment of a rental, such charges shall be governed by the applicable law.

(d) Review: Leases may contain provisions for review of rental rates at intervals as the Commission may require. Such leases shall provide that any new rental rate shall be effective upon reasonable notice to the Lessee as more specifically set forth in the lease.

(e) Time of Payment: The first year's rental shall be paid in advance of the beginning date of leases; minimum or fixed rentals for subsequent years shall be paid on or before the anniversary of the lease. Rentals under leases requiring computations to ascertain the amount of or rental rate on commodities, or percentage of income, shall be paid in whole or in part at other times as specified in the lease.

(f) Interest on Retroactive Payments: In the event that, for purposes of lease renewal or extension, a lessee does not agree to an annual rental, as offered by the Commission at the expiration of the lease period, and the lessee remains in possession of the leased lands while continuing to pay interim rental until a firm rental is agreed upon by the parties; then at such time as Lessee submits payment for any or all retroactive rentals, the lessee shall pay interest to the State on said retroactive payments at the rate specified in section 6224 of the Public Resources Code at the time of said retroactive payment.

(g) Penalties: Leasing may contain provisions for penalties on accrued and unpaid rentals, royalties or other considerations.

(h) Selection among Alternative Rentals for Commercial, Industrial and Right-of-Way Uses: The following factors shall be considered by the Commission in determining which of the alternative rentals provided for said uses is in the best interests of the State:

(1) Whether the land to be leased has been classified as environmentally significant under article 11 of this Division;

(2) The actual and potential environmental damage inhering in the lessee's proposed use of the land, and the extent to which such damage is quantifiable;

(3) The revenue that would accrue to the State under each alternative;

(4) Whether a particular rental rate, if imposed by the Commission, would have the result of compelling the use of substitute facilities by the prospective lessee;

(5) The availability, reliability, and applicability of comparable or related data concerning the value of the land to be leased;

(6) Such other factors as, in the opinion of the Commission, reasonably bear on the appropriateness of the rental to be charged.

(1) Protective Structures: Leases issued under the authority of section 6321 of the Public Resources Code shall provide for a monetary rental as set forth in section 2006 (b) (6) of this article; provided that the Commission may waive such monetary rental if it determines that a public benefit accrues from the installation of such structure.

2006. PERCENTAGE RENTALS AND LIMITATIONS ON RENTALS
BASED ON VOLUME OF COMMODITIES.

If the Commission determines that a rental based on the volume of commodities passing over State land is in the best interests of the State, the following limitations to such volume rentals shall apply:

(a) Rental shall not be imposed for passage of a commodity over State land if rental has already accrued on that identical commodity for passage over the same State land over which it is again passing, provided the commodity is still in the same ownership as upon the next preceding passage over said State land for which rental has accrued.

(b) The rental rates for rights-of-way shall be apportioned in the proportion that the length of the pipeline or other structure over State land bears to the total length of the subject pipeline or structure over the land of the State and other persons. "Subject pipeline or structure" is defined as the pipeline or structure by which

the commodity is being transported on a route between two facilities, uninterrupted by another facility. "Facility" includes terminal, production facility, storage facility, refinery or other manufacturing or processing facility, or point at which the commodity is or may be intermixed with the same or a different commodity.

2007. TERMINATION OF GRAZING LEASES:

Leases for grazing purposes may be terminated by the State Lands Commission upon the sale or exchange of the leased premises.

2008. MARKER:

Leases and permits to public agencies may specify that any signs or other types of printed notices installed to provide notification of the public use and/or benefit of the project shall contain and reasonably display a statement that the State Lands Commission has contributed the lands underlying the public project.

2009. PUBLIC NOTICE, WARNING AND OWNERSHIP SIGNS.

Where required by the terms of any lease, warning signs and/or other appropriate markers describing public ownership or means of public access shall be installed and maintained showing established public access ways, the name and address of the owner, and the location of hazards, if any. Such signs and markers shall conform to the requirements of the Commission; and any other bodies having jurisdiction over access, navigation, or safety.

2010. CONSUMMATION OF LEASE.

The Commission shall determine the term of occupancy, amount of rental and/or other consideration, and the amount of bond and insurance as it deems appropriate. The Commission may then authorize the execution and delivery of the appropriate instrument permitting occupancy of the land for the approved purposes, subject to the payment and delivery of all fees, costs, bonds, insurance, rent or other consideration required by these rules and the instrument.