deadline. Thus, the maximum period between the first carrier action and final Commission decision is slightly more than 3 years. The statute imposes no time limit on court consideration of a Commission decision. While these changes made by the 4R Act [4] have been a major improvement over the pre-1976 lack of any time deadline for Commission decision, we do not believe that the statute necessarily precludes alternative procedures which would take less time where expedited decisionmaking would be practical and helpful in light of a limited inquiry.

Accordingly, we are reopening the Official—Southern Divisions proceeding to put all parties to that proceeding on notice that the Commission may approve a resettlement of divisions with respect to the commodities involved in this proceeding if doing so is found to be necessary and appropriate.

Parties to this proceeding, *Official—Southern Division*, 287 I.C.C. 497 (1953) 289 I.C.C. 4 (1953), 291 I.C.C. 90 (1953), 294 I.C.C. 739 (1955) and 298 I.C.C. 83 (1956), will be served with a copy of this decision.

We recognize the complexity of the issues raised in this proceeding. We are using our statutory authority under 49 U.S.C. 10707(b)(1) at this time to extend the deadline for decision in this proceeding to June 30, 1980. Since the issues must be decided by then, no recommended report and order is contemplated. No additional special studies are contemplated, although the parties are free to introduce the details of such studies as they may have made. No extensions of time for filing pleadings are contemplated.

Protestants shall timely advise respondents and this Commission of the identity and addresses of the individuals composing the protestants defense committtee, if any, and shall specify the number of copies of respondents' statement which are desired, and to whom the copies are to be sent.

This decision shall be printed in the **Federal Register** in order that all interested parties be given the opportunity to address these matters.

By the Commission, Chairman O'Neal, Vice Chairman Stafford, Commissioners Gresham, Clapp, Christian, Trantum, Gaskins and Alexis.

Agatha L. Mergenovich,

Secretary.

Representatives of the Parties Protestants

F. X. Biasi, American Can Company, American Lane, Greenwich, OR 06830.
B. Gordon, The Family Lines, 500 Water St., Jacksonville, FL 32202.
G. N. Weegar, Brown Company, 243 E. Paterson St., Kalamazoo, MI 49007.
J. P. Deehan, Union Camp Corp., 1600 Valley Road, Wayne, NJ 07470.
J. M. O'Malley, Consolidated Rail Corporation, 1138 Six Penn Center, Philadelphia, PA 19104.
J. F. Donelan, J. K. Maser III, Donelan, Cleary, Wood & Maser, 914 Washington Bldg., 15th St. and New York Ave., NW., Washington, DC 20005. (For the National Industrial Traffic League, American Paper Institute, Inc.).
P. R. Hitchcock, J. J. Paylor, Chessie System Law Department, Terminal Tower, P.O. Box 6419, Cleveland, OH 44101.
J. A. Helm, St. Regis Paper Company, 150 E. 42nd St., New York, NY 10017.
R. M. VanHook, Southern Railway System, P.O. Box 1808, Washington, DC 20013.
R. N. Kharasch, R.W. Ginnane, E.D. Greenberg, K. Mahon, Galland, Kharasch, Calkings, 1054 31st St. NW. and Short, Washington, DC 20007 (For the Southern Paper Traffic Conference).

Tariff Publishing Agent

J. L. Twiggs, Southern Freight Assn., Agent, 151 Ellis St., NE., Atlanta, GA 30303.

Respondents

R. M. VanHook, Southern Railway Corporation, P.O. Box 1808, Washington, DC 20013.
C. N. Marshall, Consolidated Rail Corporation, 1138 Six Penn Center, Philadelphia, PA 19104.
S. P. Petraitis, Illinois Central Gulf Railroad, 233 N. Michigan Ave., Chicago, IL 60601.
B. H. Gordon, The Family Lines, 500 Water St., Jacksonville, FL 32202. P.R. Hitchcock, Chessie System—Law Dept., Terminal Tower, P.O. Box 6419, Cleveland, OH 44101.

[FR Doc. 79-36591 Filed 11-27-79; 8:45 am]

BILLING CODE 7035-01-M

[4] Section 201 of the Railroad Revitalization and Regulatory Reform Act of 1976; Pub. L. 94-210.

[Rev. I.C.C. Order No. 56 Under S. O. No. 1344]

Rerouting or Diversion of Traffic

In the opinion of Robert S. Turkington, Agent, the Chicago, Milwaukee, St. Paul and Pacific Railroad Company is unable to transport promptly all traffic offered for movement via its lines, because of disruption of service in the previously embargoed territory.

It is ordered, (a) *Rerouting traffic.* The Chicago, Milwaukee, St. Paul and Pacific Railroad Company, being unable to transport promptly all traffic offered for movement via its lines, because of disruption of service in the previously embargoed territory, that line is authorized to divert or reroute such traffic via any available route to expedite the movement. Traffic necessarily diverted by authority of this order shall be rerouted so as to preserve as nearly as possible the participation and revenues of other carriers provided in the original routing. The billing covering all such cars rerouted shall carry a reference to this order as authority for the rerouting.

(b) *Concurrence of receiving roads to be obtained.* The railroad rerouting cars in accordance with this order shall receive the concurrence of other railroads to which such traffic is to be diverted or rerouted, before the rerouting or diversion is ordered.

(c) *Notification to shippers.* Each carrier rerouting cars in accordance with this order, shall notify each shipper at the time each shipment is rerouted or diverted and shall furnish to such shipper the new routing provided for under this order.

(d) Inasmuch as the diversion or rerouting of traffic is deemed to be due to carrier disability, the rates applicable to traffic diverted or rerouted by said Agent shall be the rates which were applicable at the time of shipment on the shipments as originally routed.

(e) In executing the directions of the Commission and of such Agent provided for in this order, the common carriers involved shall proceed even though no contracts, agreements or arrangements now exist between them with reference to the divisions of the rates of transportation applicable to said traffic. Divisions shall be, during the time this order remains in force, those voluntarily agreed upon by and between said carriers; or upon failure of the carriers to so agree, said divisions shall be those hereafter fixed by the Commission in accordance with pertinent authority conferred upon it by the Interstate Commerce Act.

(f) *Effective date.* This order shall become effective at 2:00 p.m., November 6, 1979.

(g) *Expiration.* This order shall remain in effect until modified or vacated by order of this Commission.

This order shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association. A copy of this order shall be filed with the Director, Office of the Federal Register.

Issued at Washington, D.C., November 6, 1979.

Interstate Commerce Commission.

Robert S. Turkington,

Agent.

[FR Doc. 79-36589 Filed 11-27-79; 8:45 am]

BILLING CODE 7035-01-M

Fourth Section Application for Relief

Correction

In FR 79–35204 appearing on page 65853 in the issue for Thursday, November 15, 1979, in the fourth line, the date "December 30, 1979", should be corrected to read "November 30, 1979".

BILLING CODE 1505–01–M

[Finance Docket No. 29170F]

Golden Triangle Railroad; Construction and Operation of a Line of Railroad in Mississippi

Correction

In FR 79–34989 appearing on page 65692 in the issue for Wednesday, November 14, 1979, the Finance Docket No. in the heading should have read as set out in the heading of this document.

BILLING CODE 1505–01–M

[Finance Docket No. 29171]

Richard B. Ogilvie, Trustee of the Property of Chicago, Milwaukee, St. Paul & Pacific Railroad Co.; Submissions Under Section 6 of the Milwaukee Railroad Restructing Act

Correction

In FR 79–34997 appearing on page 65233 in the issue for Friday, November 9, 1979, the Finance Docket No. in the heading should have read as set out in the heading of this document.

BILLING CODE 1505–01–M

Sunshine Act Meetings

Federal Register
Vol. 44, No. 230
Wednesday, November 28, 1979

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

[M-256, Amdt. 3; Nov. 23, 1979]

CIVIL AERONAUTICS BOARD.

Notice of addition of item to the November 21, 1979, meeting agenda.

TIME AND DATE: 9:30 a.m., November 21, 1979.

PLACE: Room 1027, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428.

SUBJECT: 1a. Draft consumer program for publication in the **Federal Register,** in voluntary compliance with Executive Order 12160. (Memo 9309, BCP, OCCR).

STATUS: Open.

PERSON TO CONTACT: Phyllis T. Kaylor, the Secretary (202) 673-5068.

SUPPLEMENTARY INFORMATION: Item 1a is being added to the November 21, 1979 meeting agenda due to the tight time limits imposed on publication by the President's Special Assistant for Consumer affairs. According, the following Members have voted that Item 1a be added to the November 21, 1979 agenda and that no earlier announcement of this addition was possible:

Chairman, Marvin S. Cohen
Member, Richard J. O'Melia
Member, Elizabeth E. Bailey

[S-2299-79 Filed 11-23-79; 4:32 pm]

BILLING CODE 6320-01-M

2

[M-257, Nov. 21, 1979]

CIVIL AERONAUTICS BOARD.

TIME AND DATE: 9:30 a.m., November 28, 1979.

PLACE: Room 1027 (Open), Room 1011 (Closed), 1825 Connecticut Avenue, N.W., Washington, D.C. 20428.

SUBJECT:

1. Ratification of Items adopted by notation.
2. Docket 35568, Final rule to deregulate foreign air freight forwarders. (Memo 8698-D, BIA, OGC, BDA, BALJ, BCP)
3. Dockets 32660 and 35635, Petition of the International Air Transport Association for reconsideration of Order 79-9-123. (Memo 9116-A, BIA)
4. Docket 34941, Bahamasair Holdings Limited's application to renew and amend its foreign air carrier permit to operate scheduled services between The Bahamas and eight coterminal U.S. points, including four new U.S. points, subject to conditions and limitations. (Memo 9295, BIA, OGC, BALJ)
5. Dockets 35362, 33542, 33655, 33675, 34090, 34202, 34219, 35571, 35575, 35567, and 35572; New Orleans-Baltimore/Washington Show-Cause Proceeding; Applications for Texas International, Braniff, Northwest, USAir, Continental, Ozark, Western, American, and Republic; petition of the State of Maryland for reconsideration of Order 79-10-20. (Memo 8696-B, BDA)
6. Dockets 35660 and 35847; *(Portland-Seattle-Hawaii Show-Cause Proceeding)*, and (DHL Airways). (Memo 9296, BDA)
7. Dockets 32773, 33026, 33508, 34333, 34349, 34350, and 34465; amendments to various Allegheny Commuter agreements. (Memo 9298, BDA, OGC, BCP)
8. Docket 37042, Application of Swift Aire, commuter air carrier, for exemption to permit it to suspend service at Visalia, California, on less than the 90-days' notice required in connection with joint fares. (Memo 9297, BDA)
9. Dockets 36869, Air Florida's ninety day notice of suspension of all service at St. Croix, U.S. Virgin Islands. (Memo 9299, BDA, OCCR)
10. Docket 36930, United's notice of intent to suspend service in several markets. (BDA)
11. Dockets 36523, 36524, 36616, 36772, 36773, 36774, 36793, 36794, and 36795; USAir's notices to terminate service at Reading, Lancaster, Altoona, Bellefonte/State College, and Johnstown, PA, New London/Groton, CT, Danville, IL, and Terre Haute and Bloomington, IN. (Memo 9300, BDA, OCCR)
12. Docket 35394, Application of Kodiak-Western Alaska Airlines, Inc. and Charles F. Willis III for approval of the acquisition of control of Kodiak by Mr. Willis and the resulting control and interlocking relationships. (Memo 9138-A, BDA, OGC, BCP)
13. Docket 34772, Cancellation of Rule 1(G), CAB No. 352 (formerly CAB No. 142), and similar tariff rules that state that no employees or agents of carriers have authority to waive or modify tariff provisions. (Memo 8503-A, 8503-B, BDA, BCP, OGC, BIA, OEA)
14. Dockets 31133 and 36595; ATC agreements requiring personal guarantees from spouses and shareholders of certain agents. (Memo 8620-A, BDA, OGC, BCP)
15. Docket 33618, *Robert G. Herriot* v. *Air New Zealand*, review on petition of BCP dismissal of third-party complaint for unlawful discrimination under Section 404(b) by reservations cancellation. (OGC)
16. Dockets 34241 and 33363, *Application of Air Berlin Charter Company d.b.a. Air Berlin USA* and *Former Large Irregular Air Service Investigation.* (OGC)
17. Dockets 35301, 35302, and 33363, *Applications of Overseas Military Travel Corporation d.b.a. Militair* and *Former Large Irregular Air Service Investigation.* (OGC)
18. Dockets 33285, 33286, 33287, and 33363; Application of Air Fleets International, Inc.; Former Large Irregular Air Service Investigation, Draft Order. (OGC)
19. Docket 37011, 30-day notice of Munz Northern Airline of intent to terminate subcontract service for Wien at 22 bush points in Alaska. (BDA, OCCR)
20. Dockets 34476, 34477, and 33363; Applications of R & B Air Travel; *Former Large Irregular Air Service Investigation,* Order on Discretionary Review. (OGC)
21. Consumer protections for participants of Super Bowl charters. (OGC)
22. Northwest Alaska Bush Points Christmas Mail Service Exemptions. (OGC)
23. Docket 36068, Air Transport Association petition on behalf of certain member carriers to amend Part 399 of the Board's Policy Statements regarding international passenger fares. (OGC)
24. Discussion on IATA Show Cause Proceeding. (BDA, BIA)

STATUS: Open (Items 1-23), Closed (Item 24).

PERSON TO CONTACT: Phyllis T. Kaylor, the Secretary (202) 673-5068.

SUPPLEMENTARY INFORMATION: Public disclosures, particularly to foreign governments, of opinions, evaluations, and strategies relating to the issues could seriously compromise the ability of the United States Delegation to achieve agreements which would be in the best interests of the United States. Accordingly, the following Members have voted that the meeting on this subject would involve matters the premature disclosure of which would be likely to significantly frustrate implementation of proposed agency action within the meaning of the exemption provided under 5 U.S.C. 552(c)(9)(B) and 14 CFR Section 310b.5(9)(B) and that the meeting will be closed:

Chairman, Marvin S. Cohen

Member, Richard J. O'Melia
Member, Elizabeth E. Bailey

Persons Expected To Attend

Board Members.—Chairman, Marvin S. Cohen; Member, Richard J. O'Melia; Member, Elizabeth E. Bailey; and Member Gloria Schaffer.
Assistants to Board Members.—Mr. David Kirstein, Mr. James L. Deegan, Mr. Daniel M. Kasper, and Mr. Stephen H. Lachter.
Managing Director.—Mr. Cressworth Lander.
Executive Assistant to the Managing Director.—Mr. John R. Hancock.
Office of the General Director.—Mr. Michael E. Levine and Mr. Steven A. Rothenberg.
Bureau of International Aviation.—Mr. Sanford Rederer, Mr. Douglas Leister, Mr. Vance Fort, Mr. Ivars V. Mellups, Mr. Parlen L. McKenna, Mr. Peter H. Rosenow, Mr. Herbert P. Aswall, and Mr. John H. Kiser.
Bureau of Domestic Aviation.—Ms. Barbara A. Clark, Mr. Paul L. Gretch, Mr. Paul H. Karlsson, Mr. Charles W. McNagny, Mr. Steven Baron, and Ms. Susan L. Blankenheimer.
Office of the General Counsel.—Ms. Mary Schuman, Mr. Gary Edles, and Mr. Peter Schwartzkopf.
Office of Economic Analysis.—Mr. Robert H. Frank and Mr. Robert Preece.
Bureau of Consumer Protection.—Mr. Reuben B. Robertson and Mr. William H. Wentz.
Office of the Secretary.—Mrs. Phyllis T. Kaylor, Ms. Deborah A. Lee, and Ms. Louise Partick.

General Counsel Certification

I certify that this meeting may be closed to the public under 5 U.S.C. 552(c)(9)(B) and 14 CFR 310b.5(9)(B) and that the meeting may be closed to the public observation:

Gary Edles,

Deputy General Counsel.

[S-2300-79 Filed 11-23-79; 4:32 pm]

BILLING CODE 6320-01-M

3

COMMODITY FUTURES TRADING COMMISSION.

TIME AND DATE: 11:00 a.m., Friday, December 7, 1979.

PLACE: 2083 K Street, N.W., Washington, D.C., 8th floor conference room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance briefing.

CONTACT PERSON FOR MORE INFORMATION: Jane Stuckey, 254-6314.

[S-2303 Filed 11-26-79; 11:06 am]

BILLING CODE 6351-01-M

4

NATIONAL MEDIATION BOARD.

TIME AND DATE: 2:00 p.m., Wednesday, December 5, 1979.

PLACE: Board Hearing Room, 8th Floor, 1425 K Street, N.W., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Ratification of Board actions taken by notation voting during the month of November, 1979.
2. Other priority matters which may come before the Board for which notice will be given at the earliest practical time.

SUPPLEMENTARY INFORMATION: Copies of the monthly report of the Board's notation voting actions will be available from the Executive Secretary's Office following the meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Rowland K. Quinn, Jr., Executive Secretary, telephone (202) 523-5920.

Date of notice: November 26, 1979.

[S-2305-01 Filed 11-26-79; 2:20 pm]

BILLING CODE 7550-01-M

5

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION.

TIME AND DATE: November 19, 1979, at 2 p.m.

PLACE: Room 1101, 1825 K Street, N.W., Washington, D.C.

STATUS: Because of the subject matter, this meeting was closed.

MATTERS TO BE CONSIDERED: Internal personnel rules and practices.

CONTACT PERSON FOR MORE INFORMATION: Mrs. Patricia Bausell (202) 634-4015.

Dated: November 26, 1979.

[S-2304-79 Filed 11-26-79; 1:52 pm]

BILLING CODE 7600-01-M

6

POSTAL SERVICE.

The Committee on Audit of the Board of Governors of the United States Postal Service, pursuant to the Bylaws of the Board (39 CFR 5.2, 7.5) and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice that it intends to hold a meeting at 2:00 p.m. on Monday, December 3, 1979, in the Benjamin Franklin Room, 11th Floor, Postal Service Headquarters, 475 L'Enfant Plaza S.W., Washington, D.C. 20260. The meeting is open to the public. Requests for information about the meeting should be addressed to the Secretary of the Board, Louis A. Cox, at (202) 245-4632.

The Committee will review with representatives of the Postal Service's outside auditors the Postal Service's Balance Sheet and Financial Statements for FY 1979.

This Committee meeting is to be held in anticipation of a meeting of the Board of Governors which is scheduled to commence at 9:00 a.m. on December 4, 1979. A report of the Committee is on the agenda for the Board meeting.

Louis A. Cox,

Secretary.

[S-2301-01 Filed 11-26-79; 9:45 am]

BILLING CODE 7710-12-M

7

POSTAL SERVICE.

The Board of Governors of the United States Postal Service, pursuant to its Bylaws (39 CFR 7.5) and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice that it intends to hold a meeting at 9:00 a.m. on Tuesday, December 4, 1979, in the Benjamin Franklin Room, 11th Floor, Postal Service Headquarters, 475 L'Enfant Plaza, S.W., Washington, D.C. 20260. Except as indicated in the following paragraphs, the meeting is open to the public. The Board expects to discuss the matters stated on the Agenda which is set forth below. Requests for information about the meeting should be addressed to the Secretary of the Board, Louis A. Cox, at (202) 245-4632.

On November 6, 1979, the Board of Governors of the United States Postal Service voted to close to public observation a portion of the December 4, 1979, meeting. Each of the members of the Board voted in favor of partially closing the meeting, which is expected to be attended by the following persons: Governors Wright, Hardesty, Allen, Camp, Ching, Robertson and Sullivan; Postmaster General Bolger; Deputy Postmaster General Conway; Senior Assistant Postmaster General Finch and Secretary to the Board Cox.

The portion of the meeting to be closed will consist of a discussion of the Postal Service's possible strategies concerning future postal ratemaking.

Agenda

1. Minutes of the Previous Meeting.
2. Remarks of the Postmaster General. (In keeping with its consistent practice, the Board's agenda provides this opportunity for the Postmaster General to inform the members of miscellaneous current developments concerning the Postal Service. He might report, for example, the appointment or assignment of a key official, or the effect on postal operations of unusual weather or a major strike in the transportation industy. Nothing that requires a decision by the Board is brought up under this item.)
3. Adjusting Reduced Third-Class Rates for Certain Political Committee Mailings. (The Governors will consider an adjustment under

39 U.S.C. § 3627 for bulk third-class mailings of qualified political committees in the light of a proviso in the Postal Service Appropriation Act, 1980 (Public Law 96–74) stating that no funds appropriated by that Act shall be available for implementing special bulk third-class rates for qualified political committees other than those of a major or minor party as defined in the Presidential Election Campaign Fund Act (26 U.S. § 9002).)

4. Report of the Audit Committee on FY 1979 Financial Statement. (Mr. Sullivan, as Chairman of the Audit Committee of the Board, will report to the members on the meeting of the Audit Committee (which is to be held on December 3, 1979) with representatives of the Postal Service's outside auditors concerning the Service's Balance Sheet and Financial Statements for FY 1979.)

5. Review of the Postal Service Budget Program. (Mr. Finch, Senior Assistant Postmaster General for Finance will present the Postal Service's budget for FY 1981 as it is proposed for transmission to the OMB and the Congress.)

6. Review of the Annual Comprehensive Statement to the Congress. (Public Law 94–421 amended 39 U.S.C. § 2401 to require the Postal Service to present a "Comprehensive Statement" to the Legislative and Appropriations Committee of the Congress having cognizance over postal matters. The Comprehensive Statement is to be presented concurrently with the Service's annual budget submission. The Compreshensive Statement is to describe the plans, policies, and procedures of the Postal Service designed to comply with the policies of the Postal Reorganization Act; postal operations generally; and financial summaries and projections. The Comprehensive Statement is on the Board's agenda because approval of the annual Comprehensive Statement is included in the list of matters that the Board has reserved for its own decision. Mr. Horgan, Assistant Postmaster General for Government Relations will present a draft of the Statement.)

7. Proposed Capital Investment Project: New General Mail Facility for Santa Ana, California. (Mr. Morris, Regional Postmaster General for the Western Region, will present a proposed project for the construction of a new General Mail Facility in Santa Ana, California.)

8. Discussion of Postal Service Ratemaking Strategy. (The Board will discuss Postal Service ratemaking plans. As stated above in the Notice of Meeting, the part of the meeting that will be devoted to this matter will be closed to the public.)

Louis A. Cox,

Secretary.

[S–2302–79 Filed 11–26–79; 9:45 am]

BILLING CODE 7710–12–M

federal register

Wednesday
November 28, 1979

Part II

Department of Energy

Office of Conservation and Solar Energy

Energy Performance Standards for New Buildings; Proposed Rule

DEPARTMENT OF ENERGY

Office of Conservation and Solar Energy

10 CFR Part 435

Energy Performance Standards for New Buildings; Proposed Rulemaking and Public Hearings

AGENCY: Department of Energy.

ACTION: Proposed rulemaking; notice of public hearings.

SUMMARY: The Department of Energy proposes to establish energy performance standards for new buildings to achieve the maximum practicable inprovements in energy efficiency and increases in the use of renewable sources of energy. The standards will apply to the designs of new residential and commercial buildings.

The proposed standards consist of three fundamental elements:

- Energy Budget Levels for different classifications of buildings in different climates, expressed as an annual rate of energy consumption.
- A method for applying these Energy Budget Levels to a specified building design to obtain a specific annual rate of energy consumption, which is its Design Energy Budget.
- A method for calculating the estimated annual rate of energy consumption of a building design, which is referred to as its Design Energy Consumption.

The proposed rule requires that the Design Energy Consumption of a building design for a new building may not exceed its Design Energy Budget.

States and local governments will be encouraged to adopt, enforce, and implement the energy performance standards through their existing building codes, other construction control mechanisms, or an alternate approval process. Although such implementation is discussed in the preamble to this proposed rule, an implementation methodology is not formally proposed.

The Department anticipates that, after the final rule is promulgated, the standards will be revised periodically to reflect advances in energy conservation and renewable energy technologies, changes in energy prices and supplies, and knowledge gained from experience in administering the standards.

DATES: Written comments on this proposed rule and the Technical Support Documents, including the Draft Environmental Impact Statement, must be received by the Department on or before February 26, 1980. Five public hearings will be held, on the dates given in the table.

ADDRESSES: The hearings will begin at 9:30 a.m., local time. The hearings will be conducted as stated in Section 7.0 of the preamble to this proposed rule. The locations of the hearings are given in the table. Written comments and requests to speak at the hearings, as well as questions regarding the conduct of the hearings, should be directed to Joanne Bakos.

Interested persons are invited to participate in this rulemaking by submitting data, views, and comments to Joanne Bakos, Office of Conservation and Solar Energy, Department of Energy, Docket Number CAS–RM–79–112, Mail Station 2221C, 20 Massachusetts Avenue, NW., Washington, D.C. 20585.

City	Hearing date	Location	Requests to speak to be submitted by	Speakers selected notified by
Washington, D.C.	Jan. 28, 29, 30, 1980.	Bethesda Holiday Inn, 8120 Wisconsin Ave., Bethesda, Md.	Jan. 16, 1980	Jan. 23, 1980.
Atlanta, Ga	Feb. 4, 5, 6, 1980.	Atlanta Civic Center, 395 Piedmont Ave., N.E., Atlanta, Ga. 30308.	Jan. 16, 1980	Jan. 23, 1980.
Kansas City, Mo.	Feb. 4, 5, 6, 1980.	Holiday Inn, 1301 Wyandotte St., Kansas City, Mo. 64105.	Jan. 16, 1980	Jan. 23, 1980.
Los Angeles, Calif.	Feb. 11, 12, 13, 1980.	Holiday Inn, Convention Center, 1020 South Figueroa St., Los Angeles, Calif. 90015.	Jan. 16, 1980	Jan. 23, 1980.
Boston, Mass.	Feb. 11, 12, 13, 1980.	J. W. McCormack, Post Office and Courthouse Building, Post Office Square, Boston, Mass. 02102.	Jan. 16, 1980	Jan. 23, 1980.

252-9839

FOR FURTHER INFORMATION CONTACT:

James L. Binkley, AIA (Buildings and Community Systems), U.S. Department of Energy, Office of Conservation and Solar Energy, Mail Station 2114C, 20 Massachusetts Avenue, NW., Washington, D.C. 20585, (800) 424–9040 (Continental U.S.), (800) 424–9081 (Alaska, Hawaii, territories and possessions), (202) 252–2855 (Washington, D.C.).

Joanne Bakos (Hearing Procedures), U.S. Department of Energy, Office of Conservation and Solar Energy, Mail Station 2221C, 20 Massachusetts Avenue, NW., Washington, D.C. 20585, (202) 376–1651.

Richard F. Kessler (Office of General Counsel), U.S. Department of Energy, Mail Station 3228, 20 Massachusetts Ave., NW., Washington, D.C. 20585, (202) 376–4543.

SUPPLEMENTARY INFORMATION: The following table of contents details the organization of this Notice of Proposed Rulemaking.

Table of Contents

Technical Support Documents

1.0 The Standards Program
2.0 The Research Effort
3.0 Selection of the Proposed Energy Budget Levels
4.0 Building Design Evaluation Techniques
5.0 Implementation
6.0 Other Matters
7.0 Opportunities for Public Comments
8.0 A Guide to the Proposed Rule

The Proposed Rule

Technical Support Documents

In support of this proposed rule, the Department has developed ten Technical Support Documents. These documents provide detailed information on important aspects of the proposed rule and are referred to throughout the preamble. The Draft Environmental Impact Statement (Technical Support Document No. 7) will be available at the time of publication of this proposed rule in the **Federal Register.** The other documents will be available on or before December 19, 1979. All documents may be obtained at the addresses given below.

Number	Title	Administrative record number
1	The Standard Evaluation Technique.	9561.00
2	Statistical Analysis	9562.00
3	Energy Budget Levels Selection.	9563.00
4	Weighting Factors	9564.00
5	Standard Building Operating Conditions.	9565.00
6	Draft Regulatory Analysis.	9566.00
7	Draft Environmental Impact Statement.	9567.00
8	Economic Analysis	9568.00
9	Passive and Active Solar Heating Analysis.	9569.00
10	Climate Classification Analysis.	9670.00

Copies of the proposed rule and all of the Technical Support Documents, as well as other documents specifically identified in this proposed rule, may be obtained from and will be available for public review under Docket No. CAS–RM–79–112 in the following Offices, between the hours of 8:00 a.m. and 4:30

p.m., Monday through Friday, except Federal holidays:

- Department of Energy, Freedom of Information Officer, 150 Causeway Street, Boston, MA 02114, (617) 223–5207.
- Department of Energy 26 Federal Plaza, Room 3200, New York, NY 10007, (212) 264–4780.
- Department of Energy, 1421 Cherry Street, 10th Floor, Philadelphia, PA 19102, (215) 597–9067.
- Department of Energy, 1655 Peachtree Street, NE., Atlanta, GA 30309, (404) 881–2696.
- Department of Energy, 175 West Jackson Blvd., Room A333, Chicago, IL 60604, (312) 886–5170.
- Chicago Operations & Regional Office, 9800 South Cass Avenue, Argonne, IL 60439, (312) 972–2002.
- Department of Energy, P.O. Box 35228, Dallas, TX 75235, (214) 767–7701.
- Department of Energy, 324 East 11th Street, Kansas City, MO 64106, (816) 374–5182.
- Department of Energy, 1075 South Yukon Street, P.O. Box 26247, Belmar Branch, Lakewood, CO 80226, (303) 234–2420.
- Department of Energy, 111 Pine Street, 3rd Floor, San Francisco, CA 94111, (415) 556–7216.
- Department of Energy, 1992 Federal Building, 915 Second Avenue, Seattle, WA 98174, (206) 442–7303.
- Department of Energy, Freedom of Information Reading Room, Forrestal Building, 1000 Independence Ave., SW., Washington, D.C. 20585, (202) 252–5953.
- Department of Energy, Albuquerque Operations Office, Albuquerque, New Mexico, Attn: National Atomic Museum, Public Document Room, P.O. Box 5400, (505) 264–6938.
- Chicago Operations & Regional Office, 175 West Jackson Blvd., Chicago, IL 60604, Attn: Freedom of Information Office, Room A–136, (312) 353–5769.
- Department of Energy, Idaho Operations Office, 550 Second Street, Idaho Falls, ID 83401 Attn: R. L. Blackledge, Assistant to Mgr. for Public Affairs, (208) 526–1317.
- Morgantown Energy Tech. Center, P.O. Box 880, Morgantown, W.V. 26505, Attn: Dorthy Simon, Librarian, (304) 599–7184.

Single copies of the documents may also be obtained by contacting James L. Binkley at the address given previously.

The Draft Environmental Impact Statement only will also be available at the following offices, in addition to those previously listed:

- Department of Energy, Nevada Operations Office, Director, Office of Public Affairs, P.O. Box 14100, Las Vegas, NV 89114.
- Department of Energy, Oak Ridge Operations Office, P.O. Box E, Public Document Room, Oakridge, TN 37830.
- Department of Energy, Hanford Science Center, 825 Jaswin Avenue, Richland, WA 99352.

1.0 The Standards Program

1.1 Introduction

The Department of Energy (DOE) today proposes to amend Chapter II of Title 10, Code of Federal Regulations, to establish energy performance standards for new commercial and residential buildings. In August of 1976, in response to the need to encourage in new buildings greater conservation of depletable energy resources and the increased use of renewable energy resources, Congress passed the Energy Conservation Standards for New Buildings Act of 1976 (42 U.S.C. 6831–6840) (the Act). The Act mandated the development, promulgation, implementation and administration of energy performance standards for new buildings (the Standards). This proposed rule has been prepared by DOE in direct response to Section 304 of the Act, which calls for the development and promulgation of the Standards.

Responsibility for the development and promulgation of the energy performance standards was transferred from the Department of Housing and Urban Development (HUD) to DOE by Section 304(a), 42 U.S.C. 7154(a), of the Department of Energy Organization Act, Pub. L. 95–91, 42 U.S.C. 7101 *et seq.*

The proposed rule and this preamble are presented in a manner that DOE hopes will be easily understood by those who will be expected to comply with, or who may be affected by, the final rule, including: The general public; consumer, environmental, and public interest groups; the real estate community; State and local governments; public and private utilities; design professionals; builders; building product manufacturers; and others concerned with buildings.

This Notice of Proposed Rulemaking is presented in two parts: the preamble, and the proposed rule. The proposed rule, which includes four Appendices and three subparts, is presented at the end of this issuance, following the preamble.

The preamble, of which this section is a part, describes the Standards program and the contents of the proposed rule (Section 1.0); presents in summary form a description of the program conducted to develop the proposed rule (Sections 2.0 through 4.0); discusses issues surrounding implementation of the Standards (Section 5.0); summarizes the draft Regulatory Analysis proposed by DOE (Section 6.0); gives the procedures to be followed for public comment on the Standards and for the public hearings on the proposed rule (Section 7.0); and finally, gives an illustration of how the proposed rule could be applied to a building design process (Section 8.0).

1.1.1 Summary

Congress determined that significant amounts of energy were unnecessarily consumed for space conditioning and domestic hot water in newly constructed residential and commercial buildings, because such buildings lacked adequate energy conservation features. (Section 302(a) of the Act.)

To respond to this problem, Congress directed the development and promulgation of Standards for "new residential and commercial buildings which are designed to achieve the maximum practicable improvements in energy efficiency and increases in the use of nondepletable sources of energy." (Section 302(2)).

Such standards will reduce energy waste in new buildings, a major energy-using sector of the Nation's economy. Estimates show that buildings currently use about one-third of the total U.S. energy consumption. Research, outlined in Section 2.0 of this preamble, affirms the Congressional finding that major opportunities exist to reduce this energy consumption, while realizing significant savings in operating costs to building owners and users.

This reduction is expected to result from accelerated investments in energy conservation in buildings over and above what would result from market forces alone. For example, single-family residential buildings designed to comply with the proposed Standards might use between 22% and 51% less energy than current practice [1]; and commercial and multifamily residential buildings might use between 17% and 52% less energy, depending on the type of building and the climate.[2]

DOE's initial analyses also show that the proposed Standards will result in greater conservation than existing building standards, as well as recently revised standards such as a draft version (April 1978) of the Department of Housing and Urban Development (HUD) Minimum Property Standards [3] and the American Society of Heating, Refrigerating and Air-Conditioning Engineers, Inc. (ASHRAE) proposed Standard 90–75R (November 1977).[4]

[1] Technical Support Document No. 8, Economic Analysis.

[2] Average reductions for building types derived from Brown Associates, Inc., "Budget Percentiles for Baseline and Redesigned Commercial Type Buildings for Cities with TRY Weather Tapes" (Sept. 1979).

[3] Research on the HUD Minimum Property Standards is discussed in Technical Support Document No. 8, Economic Analysis.

[4] Research on ASHRAE 90–75R is discussed in a memorandum to DOE from AIA Research Corporation, "Preliminary Results of Potential Improvements to ASHRAE 90–75R to Determine Possible Equivalence to the Mean of the Phase-2 Redesign Buildings" (August 30, 1979).

As mentioned, significant savings are expected for building owners and users. Studies assessing the probable costs and benefits to individuals show that the total cost of owning and operating a building designed in compliance with the proposed Standards (i.e., the capital cost of the building and the energy costs for heating, cooling, ventilation, lights, vertical transportation, and domestic hot water will decrease compared to current practice (Technical Support Document No. 8, Economic Analysis)).

1.1.2 Summary Description of the Proposed Standards

The Act calls upon DOE to develop Standards for new buildings which are to be implemented at the State and local level through building codes. The Act defines Standards to mean:

"an energy consumption goal or goals to be met without specification of the methods, materials, and processes to be employed in achieving that goal or goals, but including statements of the requirements, criteria and evaluation methods to be used, and any necessary commentary." (Section 303(9) of the Act)

A building is defined in Section 303(2) of the Act as "* * * any structure to be constructed which includes provision for a heating or cooling system, or both, or for a hot water system."

The proposed Standards are applied during the design of a building and regulate its design energy conservation potential. They do not regulate the operation, maintenance or energy consumption of the building once built. The Standards thus take advantage of the great opportunity to save energy and to increase the use of renewable resources by requiring that buildings be designed to be energy efficient. The efficient operation and maintenance of the resulting energy-efficient buildings provides an opportunity to save even more energy.

The proposed Standards regulate the design of a whole building rather than prescribing requirements for its individual parts. This approach is markedly different from existing component performance standards, which specify the minimum energy-related performance of a building's parts, components or subsystems. Component-based standards do not consider that the same set of building components, assembled in different ways, can result in varying levels of design energy consumption for the whole building. Whole building performance standards take this into account by permitting a designer to meet an overall energy goal for a building by considering not only the efficiencies of parts of the building but also the tradeoffs among building components or among alternate overall design strategies.

The proposed Standards do not specify the methods, materials or processes used to meet the energy goals. As such, they can accommodate changes in design and technology over time.

The proposed Standards do not regulate only heat gain and heat loss through a building's skin. Instead, they set energy limits for the building as a whole. This includes projected combined energy use of specific energy using systems in a building such as the heating, cooling, lighting and domestic hot water systems.

The proposed Standards consist of three elements. First, Energy Budget Levels must be set for different classifications of buildings [5] in different climates.[6] The Energy Budget Levels are stated in terms of thousands of British thermal units per square foot of gross area of the building design per year (MBtu/sq. ft./yr).

Second, the proposed Standards provide the method for applying the Energy Budget Levels to a specific building design to obtain an annual rate of energy consumption, which is its Design Energy Budget. This method covers (1) buildings that have only one primary function, and (2) multifunctional buildings.

Third, the proposed Standards establish a method for calculating the estimated annual rate of energy consumption of a building design, which is referred to as its Design Energy Consumption. Accordingly, the Standards can be reduced to the simple design requirement that the Design Energy Consumption of a new building design may not exceed its Design Energy Budget.

Section 1.4 of this preamble describes in more detail the contents of each section of the proposed Standards, and Section 8.0 gives an example of how the proposed Standards might be used in a typical building design process.

[5] The classifications of building designs are given in the proposed rule. It should be noted that goals are not provided for three classifications, restaurants, industrial buildings, and mobile homes, at this time. These three classifications are all published "space reserved" for this proposed rule, pending the outcome of further research. Also, it should be noted that mobile homes are currently regulated under the provisions of the HUD Mobile Home Construction and Safety Standards and that, once the performance Standards are final, the HUD standards will be modified for compliance with the performance Standards.

[6] The climate conditions are included in the proposed Standards in response to the requirement that they "* * * take account of * * * climate variations among the different regions of the country." (Section 304(b) of the Act).

1.1.3 Summary Description of the Standards Program

The Standards program is comprised of both the development of the Standards and their implementation. The development of the Standards is dealt with in this proposed rule.

The implementation of the Standards, which is the second part of the program, is not formally proposed in this NOPR. However, issues surrounding implementation are discussed in Section 5.0. Implementation will center on the concept that States and local governments will be encouraged "to adopt and enforce such standards through their existing building codes and other construction control mechanisms, or to apply them through a special approval process." (Section 302(b)(3) of the Act)

1.2 Advance Notice of Proposed Rulemaking

The effort to develop the proposed Standards has included an Advance Notice of Proposed Rulemaking (ANOPR), published in the Federal Register on November 21, 1978, and three public meetings, held in December 1978 in Washington, D.C., Chicago, IL and San Francisco, CA. Thirty-four individuals testified at the public meetings and 186 written comments were submited. The purpose of the ANOPR and the public meetings was to solicit public comment on the status of the development program and a number of issues unresolved at that time. The comments received were central in shaping the additional research that followed the ANOPR, as well as the form and presentation of this Notice of Proposed Rulemaking (NOPR). Public comment is also requested on this proposed rule, and the comments received within the specified comment period will be considered in the formulation of the final rule.

1.3 Elements of the Proposed Rule

The proposed rule has three major subparts. Subpart A, "The Performance Standards," is presented in detail. Subpart B, "Implementation," and Subpart C, "Administrative Review," are to be published in the future. This means that these subparts are still being developed, but are expected to become part of the final rule.

The proposed rule also has four Appendices. Appendix I, "Energy Budget Level Tables," contains the proposed Energy Budget Levels for single-family residential, commercial and multifamily residential buildings for identified building classifications and for various geographic locations.

Appendix II, "Climate Tables," sets forth the procedures for selecting the climate conditions applicable for locations not included in the tables in Appendix I.

Appendix III, "Approved Alternate Evaluation Techniques," and Appendix IV, "Model Codes and Standards," are expected to be published in the final rule.

The following discussion is intended to serve as a guide to understanding these elements of the proposed rule and is organized in the same manner as the proposed rule.

1.4 Content of the Proposed Rule

Subpart A, "The Performance Standards," has six sections, as described below.

1.4.1 Purpose and Scope (§ 435.01)

This section of the proposed rule describes why the Standards are being proposed, gives a brief explanation of their nature and indicates what the Standards are generally expected to accomplish. For the most part, this is a direct response to language contained in the Act.

1.4.2 Definitions (§ 435.02)

This section of the proposed rule defines terminology used throughout the proposed rule and is crucial to its proper interpretation. Some of the terms used are widely recognized by the building industry, but are given precise meaning for their use in the proposed rule.

1.4.3 Requirements for the Performance Standards (§ 435.03)

This section of the proposed rule sets forth the design requirements of the Standards and the method for determining whether a building design complies with the Standards. Simply stated, the Design Energy Consumption of a new building must not exceed the Design Energy Budget for that building type in its applicable climate area. This requirement is the essence of the proposed rule.

The proposed Energy Budget Levels are displayed in Appendix I. The research program that was used as the basis for selecting the proposed Energy Budget Levels is described in Section 2.0 of the preamble. The reasons for this are described in Section 3.0.

1.4.4 Building Design and Building Function Classifications (§ 435.04)

This section of the proposed rule provides detailed definitions of the building design and building function classifications covered by the proposed Standards. As such, the section provides guidance in determining the applicable Design Energy Budget for a given building design and is the first major element used in that determination. The procedure used to develop the building classifications is described in Section 2.4.3 of the preamble.

1.4.5 Selection of Applicable Climate Conditions (§ 435.05)

This section of the proposed rule outlines a procedure whereby a proposed building design may be related to any location in the United States, either by proximity or by similarity in weather characteristics, to one or more of the 78 Standard Metropolitan Statistical Areas (SMSA's) and cities. It refers to Appendix II, which provides climate data for the 78 SMSA's and cities. It also sets forth procedures for selecting applicable climate conditions in localities outside those listed. This section is the second major element used to determine the applicable Design Energy Budget for a given building design and is discussed at greater length in Section 2.4.5 of the preamble. An extensive review of DOE's research concerning the relationship between Climate and Design Energy Consumption is presented in Technical Support Document No. 10, Climate Classification Analysis.

1.4.6 Procedure for Establishing Alternate Evaluation Techniques (§ 435.06)

This section of the proposed rule establishes a procedure whereby a calculation method other than the Standard Evaluation Technique can be submitted for consideration as an approved alternate. The procedure requires the submission of data and information for review and evaluation.

A discussion of evaluation techniques is provided in Section 4.0 of the preamble. A comprehensive overview of energy calculation methods in general, and the Standard Evaluation Technique in particular, is provided in Technical Support Document No. 1, The Standard Evaluation Technique.

1.4.7 Subpart C, Administrative Review

Subpart C, "Administrative Review," is expected to provide a procedure for administrative interpretations of and exceptions to the Standards. It is expected to include exceptions procedures for designs involving:

- Special health and safety requirements or considerations.
- Unique climate conditions.
- Difficult problems in calculating Design Energy Consumption.
- Unique building classifications.
- Other matters or concerns, as determined by DOE.

1.5 Updating the Standards

As required by Section 304(c) of the Act, "The Secretary * * * shall periodically review and provide for the updating of [the] Standards."

DOE has considered two approaches for updating the Standards. The first is to provide for a review of the Standards for possible updating at periodic intervals (perhaps every three to five years). The other alternative is to propose a long-term plan with Energy Budget Levels defined for a period of 10 years or more. Such a long-term schedule could provide a degree of certainty, as well as more lead time for the building industry. If technical or economic circumstances dictate, such a long-term schedule could be revised.

DOE would like to receive comments on whether periodic updating or predetermined Energy Budget Levels is preferable.

1.6 Monitoring the Standards

Sections 311 (1), (2) and (3) of the Act require the Secretary to "* * * monitor the progress made by the States * * *," to "* * * identify any procedural obstacles or technical constraints inhibiting implementation * * *," and to "* * * evaluate the effectiveness * * *" of the Standards. In addition to answering these requirements, a monitoring plan may respond to such questions as:

- How can the accomplishments and costs of the regulation or program be measured?
- What kinds of information are required to measure program costs and benefits and how can this information be collected?

The following measures may be used to evaluate the accomplishments and costs of the Standards:

- The extent of compliance as measured by the percentage of newly constructed buildings complying with the Standards.
- The amount of energy saved, expressed by fuel type, in Btu's and in dollars, due to the Standards. This will be accomplished by the use of national surveys of the design and actual energy consumption of a stratified sample of pre-Standards construction and a similar sample of post-Standards construction. Comparisons of the difference in energy consumption by building type will indicate the difference the Standards have had, and the results will be aggregated to allow for the calculation of the national energy savings.

• The extent of additional cost due to compliance with the Standards, including user costs, design costs, building construction costs, State and local certification costs, and costs incurred to satisfy any alternate approval process.

• The cost per unit of energy saved, using the data referred to above.

DOE will coordinate data collection with the Energy Information Agency (EIA) and obtain energy consumption information from EIA's national residential and nonresidential building surveys by building type. The latest pre-Standards survey information will be compared to the initial post-Standards survey.

DOE would like to receive comments on its proposed monitoring plan.

1.7 Summary

The above section provides an overview of the Standards program and the elements of the proposed rule. Section 2.0, which follows, details the research activities conducted in support of the program, in order to develop an information base from which DOE could determine not only the proposed Energy Budget Levels, but also the most appropriate structure and unit of measure for presenting the Standards.

2.0 The Research Effort

In developing the proposed rule, DOE conducted analyses of building designs relative to energy efficiency, stimulation of the use or renewable resources, building functions and operating conditions, environmental impacts, institutional resources, habitability, economic cost and benefit, and impacts on affected groups.

When the Act was passed, there was little information available on the Design Energy Consumption of buildings and thus limited technical information on which to establish Energy Budget Levels. Furthermore, there was little information on the economic, environmental, or regulatory impacts of requiring that new buildings be designed to use less energy than current practice. In order to establish reasonable Energy Budget Levels, this information had to be developed. The research program addressed these issues.

The research effort was both extensive and complex. It consisted of concurrent research activities in a number of areas, over more than a two-year period, with many of the research activities exploring new issues.

The following is a guide to the contents of this section:

2.1 Introduction
2.1.1 Organization of the Research
2.1.2 Research Chronology
2.2 Research to Develop Energy Budget Levels
2.2.1 Commercial and Multifamily Residential Buildings
2.2.2 Single-Family Residences
2.2.3 Mobile Homes
2.3 Additional Research Affecting Energy Budget Levels
2.3.1 Environmental Issues
2.3.2 Commercial and Multifamily Residential Buildings
2.3.3 Single-Family Residences
2.4 Research Affecting the Format of the Energy Budget Levels
2.4.1 Weighting Factors
2.4.2 Renewable Sources of Energy
2.4.3 Building Design Classifications
2.4.4 Standard Building Operating Conditions
2.4.5 Climate
2.4.6 Unit of Measure

2.1 Introduction

This section provides a general description of the information upon which DOE based this proposed rule. The introduction describes the research program and its chronology.

The research program pursued two general directons: (1) It provides an information base for determining appropriate Energy Budget Levels; and (2) it develops a structure and unit of measure for the proposed Standards, to reflect the fuels used, expected types of building uses, building operating conditions, and climate variations.

2.1.1 Organization of the Research

During the development of the information base, the organizational structure of the program shifted considerably, because of the changes in DOE and HUD responsibilities over time, and because of the shift in emphasis of the research program from strictly an energy analysis to an energy, economic, environmental and regulatory analysis.

The structure of the initial research effort is shown in Figure 2.1. The initial research program was directed by HUD (Box 1). The HUD effort was coordinated with the U.S. Energy Research and Development Administration, a predecessor of DOE (Box 2). Under HUD's direction, The American Institute of Architects, AIA Research Corporation (AIA/RC) (Box 4) managed the research program. A technical Advisory Group (TAG) (Box 3) to AIA/RC provided general technical advice in key areas. An Educational Advisory Group provided advice on the structuring of certain elements of the buildings design experiments (Box 5).[7]

The current organization and management of the research program is shown in Figure 2–2. The program is managed by DOE (Box 1) in coordination with other Federal agencies (Box 2).

The initial research program is continuing, with a focus on life-cycle cost studies on commercial buildings and mobile homes, an analysis of competent performance standards, climate analysis, building function analysis, statistical analysis and data analysis (Box 3). DOE is also undertaking new research which includes economic analysis, environmental analysis, life-cycle cost studies for single-family residences, building classification analysis, weighting factor analysis, development of an evaluation technique and preparation of a regulatory analysis (Boxes 4 and 5).[8]

2.1.2 Research Chronology

The research program to date has been conducted in three phases (see Figure 2–3). Phases 1 and 2, conducted in 1977 through mid-1978, focused on the development of an energy information base for current building design. Research in the third phase includes energy, economic and environmental studies.

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[7] The major research activities included building surveys, statistical studies, building design experiments, data collection, data processing, building classification studies, design contract administration and climate classification studies (Box 6). Major subcontractors to AIA/RC included: Syska & Hennessey, Inc., and S&H Information Systems, Inc., for data collection, analysis and processing for commercial and multifamily residential buildings; The Ehrenkrantz Group, Inc., for building classification and code studies; Brown Associates, Inc., for sample design and statistical analysis; the National Association of Home Builders Research Foundation (NAHB/RF), for residential data collection, analysis and processing; T. R. Arnold & Associates, for mobile home data analysis and processing; Stephen Winters Associates, for mobile home cost analysis; DTM, Inc., for statistical analysis; Heery & Heery, Inc., for design contract administration; Bickle-CM, Inc., for comparative analysis of computer program results; Ayres Associates, for comparative analysis of computer program results; Duke University Center for the Study of Energy Conservation, for comparative analysis of results of computer and manual calculation results; and R&D Associates, Inc., for climate analysis.

[8] The major contracts have been further architectural and engineering research activities, supported by most of the same general subcontractors as in the initial period, plus: Hanscomb Associates, Inc., for commercial life-cycle cost studies; Reynolds, Smith and Hills, for mobile home life-cycle cost studies; IDC, Inc., for building function analysis; and with continuing advice from the TAG. Battelle Pacific Northwest Laboratory and Brookhaven National Laboratory are managing and conducting major economic, environmental, life-cycle cost and related analyses, with assistance from Lawrence Berkeley Laboratory, Los Alamos Scientific Laboratory, and Oak Ridge National Laboratory. OAO Corporation is providing program support and conducting a Regulatory Analysis, with assistance from Thomas Vonier Associates, Inc.

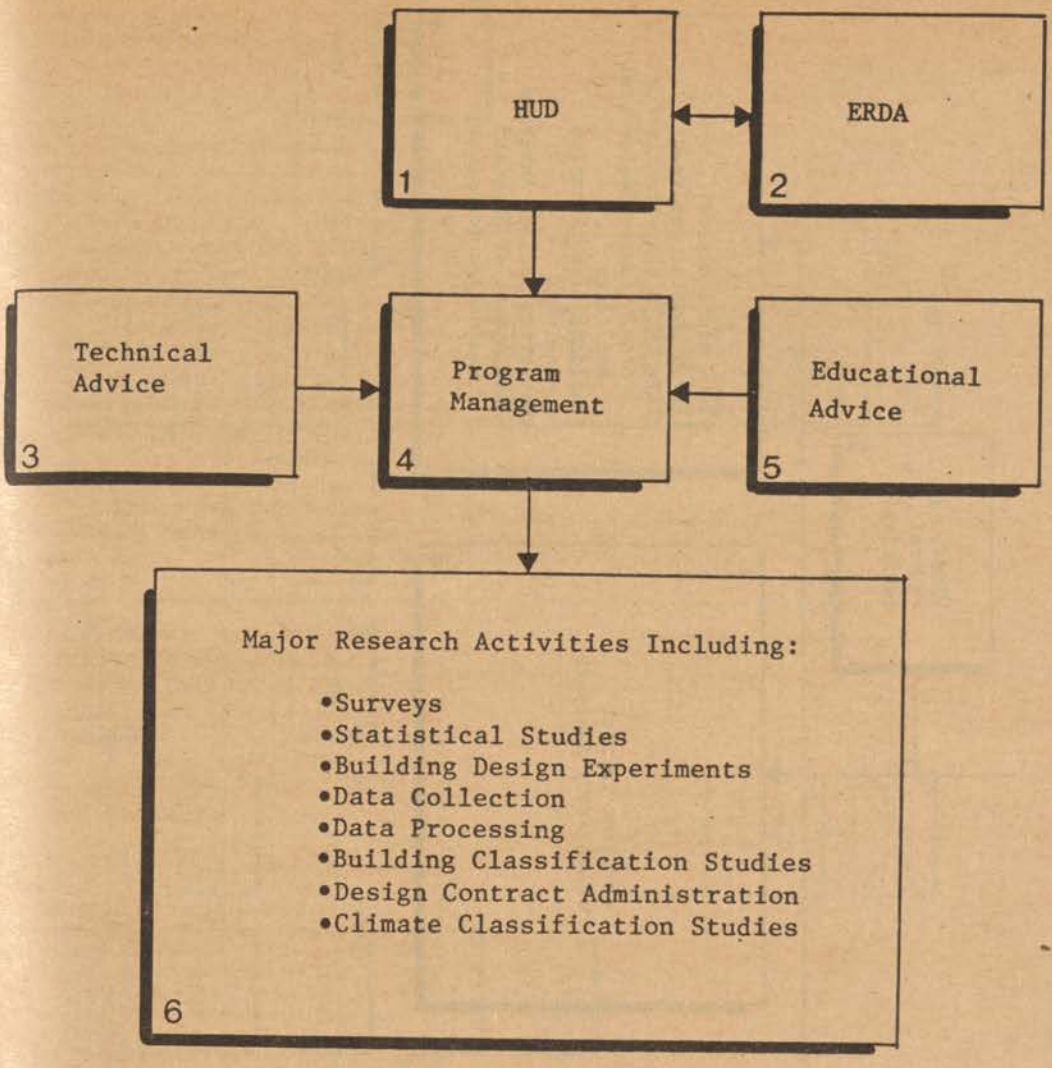
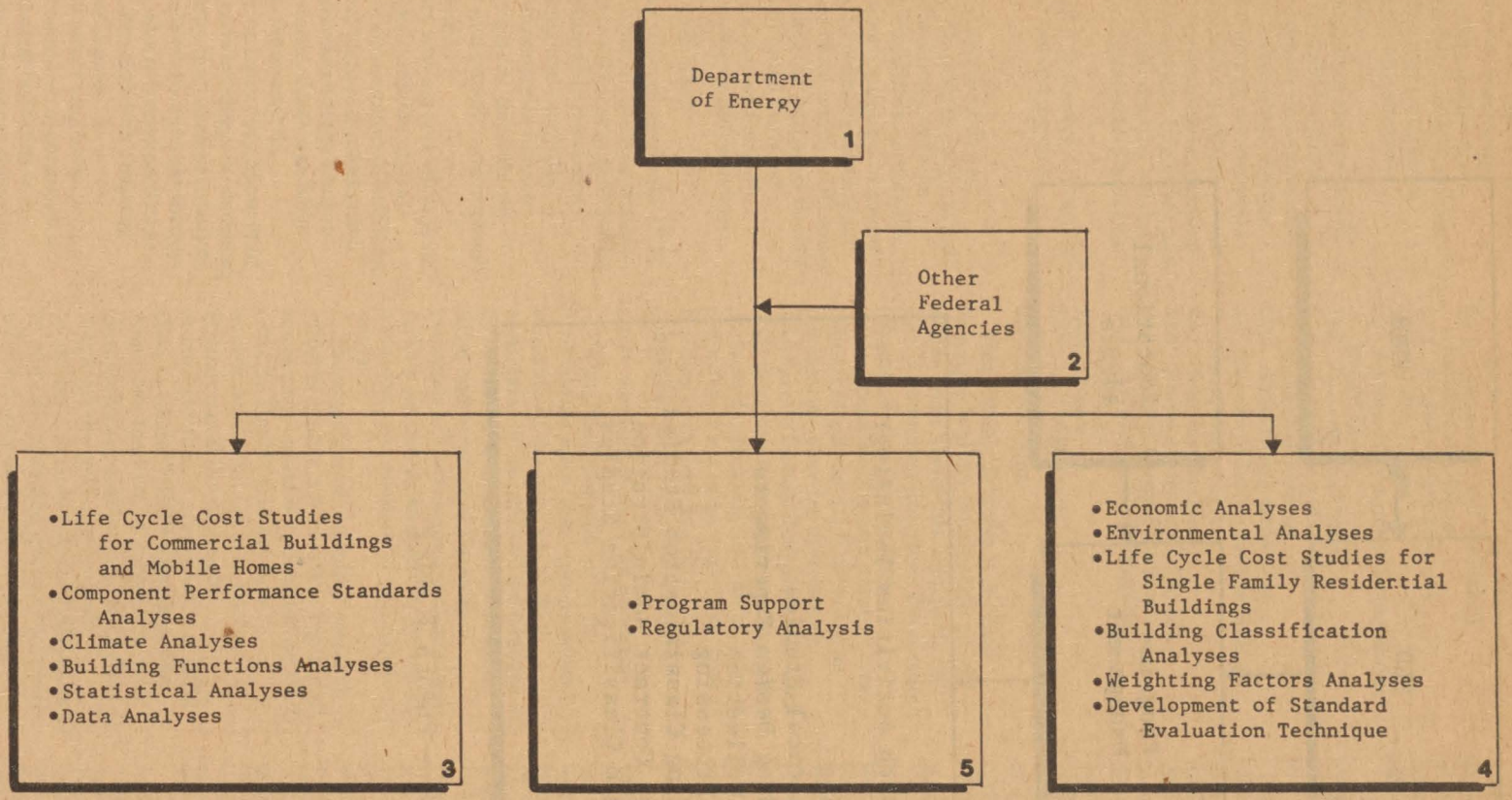


FIGURE 2-1: ORGANIZATION - PHASES 1 AND 2

FIGURE 2-2: CURRENT ORGANIZATION



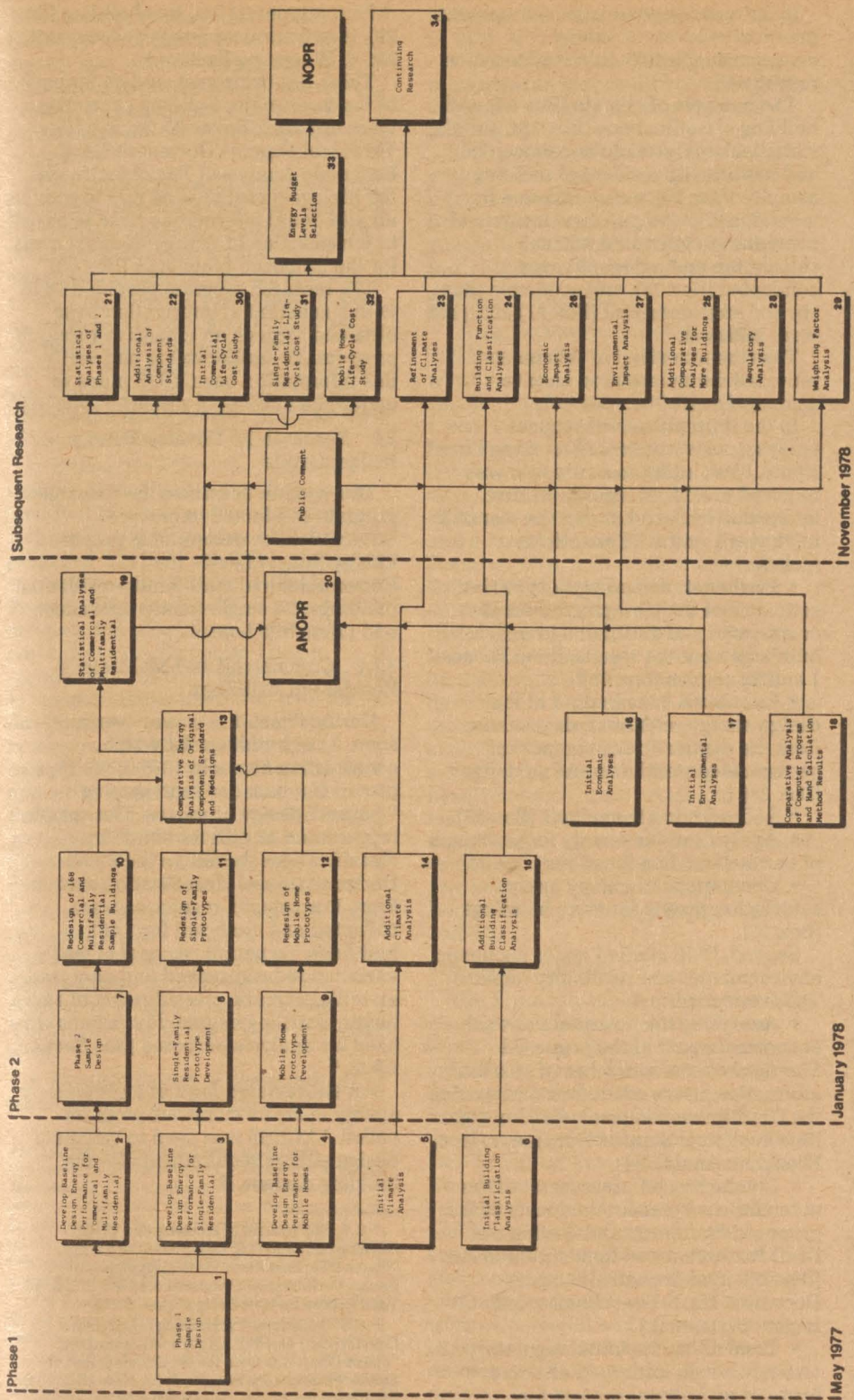


FIGURE 2-3: THE RESEARCH PROGRAM

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To provide a baseline of current building design practice, Phase 1 consisted of surveying and analyzing samples of commercial (Box 1), multifamily residential (Box 2), and single-family residential buildings (Box 3), and mobile homes (Box 4) for which construction began before the end of 1976. Such buildings represented the first generation of buildings designed after the 1973 oil embargo. Therefore, DOE concluded that their designs reflected greater concern for energy conservation in comparison with buildings designed prior to 1973. Phase 1 also included the first climate analysis (Box 5) and building classification analysis (Box 6) of the research program.

Phase 2 consisted of more detailed energy analyses of a sub-sample of the Phase 1 buildings (Box 7), or of prototype buildings (Boxes 8 and 9) derived from the Phase 1 sample. Redesign efforts were conducted for each major building category (commercial and multifamily residential, single-family residential and mobile home), and estimates of design energy requirements [9] were developed by building type (Box 13):

1. As originally designed for construction in 1975–1976.

2. As modified to conform to the minimum component performance requirements of existing energy standards and guidelines.

3. As redesigned to achieve maximum practicable levels of energy conservation in 1978 (referred to as the redesigns).

The analysis of climate (Box 14) and building classifications (Box 15), and the statistical analysis of the commercial and multifamily residential building samples (Box 19) were continued in more detail, a comparative analysis of computer program and manual calculation method results was conducted (Box 18), and economic (Box 16) and environmental (Box 17) analyses were initiated.

The research effort at this point provided the information base to support the ANOPR (Box 20).

In the third phase, subsequent analyses were conducted on three broad fronts. First, additional research was required to address energy related issues that surfaced during the research in Phases 1 and 2. These efforts included:

- Further statistical work to derive estimates of the total population of commercial and multifamily residential buildings from the results of the Phases 1 and 2 samples (Box 21).
- Continued examination of the design energy requirements resulting from the application of component performance standards and guidelines (Box 22).
- Refined climate analysis (Box 23).
- Analysis of the energy requirements of various building functions (Box 24).
- Comparison of energy analysis calculation results for more buildings (Box 25).

Second, DOE studied major economic, environmental and regulatory impacts. These included:

- Analyzing the potential national economic impact of the proposed Standards under a number of possible alternative future conditions and writing the Draft Economic Analysis (Box 26). (See Technical Support Document No. 8, Economic Analysis.)
- Conducting an assessment of the potential environmental impacts of the proposed Standards and writing the Draft Environmental Impact Statement (Box 27). (See Technical Support Document No. 7, Draft Environmental Impact Statement.)
- Conducting the initial regulatory analysis which examined alternative forms of and alternatives to the proposed rule, and writing the Draft Regulatory Analysis (Box 28). (See Technial Support Document No. 6, Draft Regulatory Analysis.)
- Developing and applying weighting factors to derive proposed Energy Budget Levels that take into account the value to the Nation of providing different types of fuel to a building (Box 29). (See Technical Support Document No. 4, Weighting Factors.)

Third, life-cycle cost studies for each of the three major building categories were initiated (Boxes 30, 31, 32). (See Technical Support Document No. 8, Economic Analysis.) The objective of the life-cycle cost studies was to provide an additional information base to assist in the selection of Energy Budget Levels for the proposed Standards (Box 33).

The research program provided DOE with a substantial information base obtained through an extensive research program. To further refine and verify this information base, DOE plans to undertake additional research (Box 34).

2.2 Research To Develop Energy Budget Levels

This section describes the research program conducted to provide information for determining proposed Energy Budget Levels for: (1) Commercial and multifamily residential buildings, (2) single-family residences, and (3) mobile homes.

2.2.1 Commercial and Multifamily Residential Buildings

During Phase 1, a survey was made of some 3,200 buildings for which construction began in 1975–1976. This provided a baseline representing "current" design practices. The sample represented 12 different building classifications, based on the F. W. Dodge structural classification system.[10] From this sample, responses were collected and analyzed for 1,661 buildings. To permit regional climate variation to be surveyed and analyzed, an initial climatic classification of seven heating/cooling degree-day regions was used for analysis purposes (See Section 2.4.5).[11]

An abbreviated form of a proprietary energy analysis computer program called AXCESS was used to calculate design energy requirements for the building designs.[12]

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[9] The design energy analyses in Phases 1 and 2 weighted each fuel used in terms of building site values. Design energy estimates at the site boundary are referred to throughout as design energy requirements, to distinguish them from Design Energy Budget and Design Energy Consumption estimates, which include weighting factors that reflect the value to the Nation of providing different kinds of fuel to a building site. This is discussed in Section 2.4.1 of this preamble.

The design energy requirements for commercial and multifamily residential buildings include energy for heating, cooling, ventilation, exhaust fans, artificial lighting, domestic hot water, and elevators and escalators. For single-family buildings, the design energy requirements include energy for heating, cooling and domestic hot water.

Other potential energy consuming systems or devices associated with the activities within a building are not necessary for maintaining comfort conditions for human occupancy, nor for maintaining conditions for the nonrefrigerated storage of products (in the case of warehouses). This type of energy use is referred to as "process" use and is not included in the design energy requirements of a building design. Examples of process energy requirements would be those for computer operations, commercial kitchen equipment, or laundries. DOE is considering research to develop a better understanding of the relationship between process energy use and the components of the design energy requirements. For single-family residences, contributions from major appliances were estimated as internal loads in the life-cycle cost analysis. However, the average requirement to operate such appliances was not included in the analysis.

[10] U.S. Department of Housing and Urban Development and U.S. Department of Energy, "Phase One/Base Data for the Development of Energy Performance Standards for New Buildings, Task Report: Sample Design" (Jan. 1978).

[11] U.S. Department of Housing and Urban Development and U.S. Department of Energy, "Phase One/Base Data for the Development of Energy Performance Standards for New Buildings, Task Report: Climate classification" (Jan. 1978).

[12] U.S.D. Department of Housing and Urban Development and U.S. Department of Energy, "Phase One/Base Data for the Development of Energy Performance Standards for New Buildings, Task Report: Data Analysis" (Jan. 1978); also, "AXCESS," (Alternate Choice Comparison for Energy System Selection) a proprietary computer program owned by the Edison Electric Institute (EEI). S&H Information Systems, Inc., has developed

Footnotes continued on next page

In Phase 2, a subsample of 168 buildings from the 1,661 in the Phase 1 survey was selected, using random techniques to assure a respresentative sample.[13] The building classification system was refined to include 16 categories.[14]

HUD contracted with architects and engineers responsible for the designs of the original buildings to redesign their buildings to use less energy. HUD developed guidelines for the redesign effort, and provided assistance to the redesign teams from knowledgeable consultants and through written technical materials.[14] The design teams were instructed to keep construction costs in the same general range as the original buildings.

In a separate effort, the original designs of the Phase 2 buildings were modified to meet two building energy standards (the November 1977 draft proposed ASHRAE 90–75R and the April 1978 draft version of the HUD Minimum Property Standards).[14] This was done to estimate the effect these standards would have on the design energy requirements of the building sample and to compare these standards with the design energy requirements of the redesigns. The HUD standard, a component performance standard, was applied to multifamily residential buildings; the component performance sections of ASHRAE 90–75R were applied to all other commercial buildings in the Phase 2 sample.[14]

Once all the redesign data had been collected, a more detailed version of AXCESS was used to estimate the design energy requirements of the original, redesigned, and modified buildings.[14] The major results of Phase 2 were:

- The calculation of design energy requirements for a sample of 168 buildings for which construction began in 1975–1976.
- The calculation of design energy requirements that could be achieved by using more energy conserving design techniques.
- The calculation of design energy requirements that could be achieved by using the minimum component performance requirements of the two standards, ASHRAE 90–75R and the HUD Minimum Property Standards.

Statistical Analysis

Using the Phases 1 and 2 sample building results, a statistical analysis was conducted which related the smaller Phase 2 sample to the larger Phase 1 sample. Design energy requirement calculations for each building classification were then developed for the entire population of buildings represented by the Phases 1 and 2 samples (see Technical Support Document No. 2, Statistical Analysis). Estimated energy requirements were derived for both the original and redesigned buildings. These estimates were adjusted using a procedure based on the results of the climate analysis described in Section 2.4.5. DOE used the estimates for each building classification in 78 SMSA's and cities in selecting the proposed Energy Budget Levels for each commercial and multifamily residential building classification presented in the proposed standards. (See Section 3.2 of this preamble and Technical Support Document No. 3, Energy Budget Levels Selection.)

Economic Analysis

The Economic Analysis examined the economic consequences of different levels of Design Energy Consumption achievable by the Phase 2 redesigns to determine whether the strategies contained in those redesigns were economically desirable and achievable (see Technical Support Document No. 8, Economic Analysis). "Net present values" [15] were calculated for each building classification and were analyzed to determine whether, on a discounted basis, future energy savings due to the redesigns would exceed increased capital and operating costs. DOE has estimated that the Phase 2 redesigned buildings had an average construction cost increase in the range of 3–5% from the original buildings.

Net present values were calculated from the perspective of the building owner, the occupant, and the Nation as a whole. Because the average net present value for each redesign building classification was positive, the redesigns were determined to be cost effective and economically achievable.

Analysis of Component Performance Standards

A study was conducted to measure the potential improvements in design energy requirements which the original buildings in the Phase 2 sample might have achieved had they been designed to meet exactly the minimum component performance requirements of ASHRAE 90–75R. During the Phase 2 analysis, the inability of the computer program used to model some important requirements, such as "deadband" thermostat control,[16] plus limitations in the manner in which the analysis was to be made, as well as difficulties encountered in interpreting ASHRAE 90–75R, resulted in an inconclusive analysis by the end of Phase 2.[17]

Therefore, in the subsequent research, refinements were made to the methodology, and the computer program was enhanced to include modeling capabilities required for a more complete analysis of ASHRAE 90–75R. In addition, a thorough review has been conducted of the interpretations made of key sections of that standard.

DOE also intends to continue its analysis of issues associated with implementing the Standards for commercial and multifamily residential buildings. One important area of this work concerns the manner in which the existing HUD Minimum Property Standards for multifamily residential buildings, and standards based on ASHRAE 90–75, can be made equivalent to DOE's proposed Standards.[18]

Preliminary results of this analysis are discussed in Section 3.2.9 of this preamble.

2.2.2. Single-Family Residential Buildings

The sequence of research tasks performed to support DOE's determination of the proposed Energy Budget Levels for single-family residential buildings is illustrated in

Footnotes continued from last page

two versions of this program, which were used in the research. One version uses a small number of data points and uses one day per month as its basis for calculation. The second version contains additional facilities over the EEI version. These two versions are referred to in the balance of this document as AXCESS.

DOE has inspected the available documentation for the program. The documentation examined includes the AXCESS Energy Analysis Reference Manual and AIA Research Corporation, "Basis of Engineering Logic in the S&H Information Systems AXCESS Program" (May 1979). Also see footnote 14.

[13] Brown Associates, Inc., "The Sample Design for Phase Two of the Development of Energy Performance Standards for New Buildings" (March 1978).

[14] U.S. Department of Housing and Urban Development and U.S. Department of Energy, "Phase Two Report for the Development of Energy Performance Standards for New Buildings, Task Report: Commercial and Multi-Family Residential Buildings" (Jan. 1979).

[15] "Net present value" as used herein refers to the discounted value of the projected energy savings in new buildings less the investment and operating costs necessary to achieve those reductions in energy use.

[16] "Deadband" thermostat control means a control system for heating and cooling which allows minimum heating and cooling within a specified indoor temperature range (e.g., 68°F to 78°F). The controls attempt to maintain conditions by providing heating or cooling only when the indoor temperature is outside of the specified range.

[17] See footnote 14.

[18] AIA Research Corporation Memorandum, "Preliminary Results of Potential Improvements to ASHRAE 90–75R to Determine Possible Equivalence to the Mean of the Phase 2 Redesign Buildings" (Aug. 1979).

Figure 2–4. Phase 1 started with an analysis of an existing National Association of Home Builders Research Foundation (NAHB/RF) survey of over 120,000 houses constructed in 1975 and 1976 (Box 1).[19] This large sample encompassed all major varieties of single-family and multifamily low-rise residential construction throughout the country.

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[19] U.S. Department of Housing and Urban Development and U.S. Department of Energy, "Phase One/Base Data for the Development of Energy Performance Standards for New Buildings, Task Report: Residential Data Collection and Analysis" (Jan. 1978).

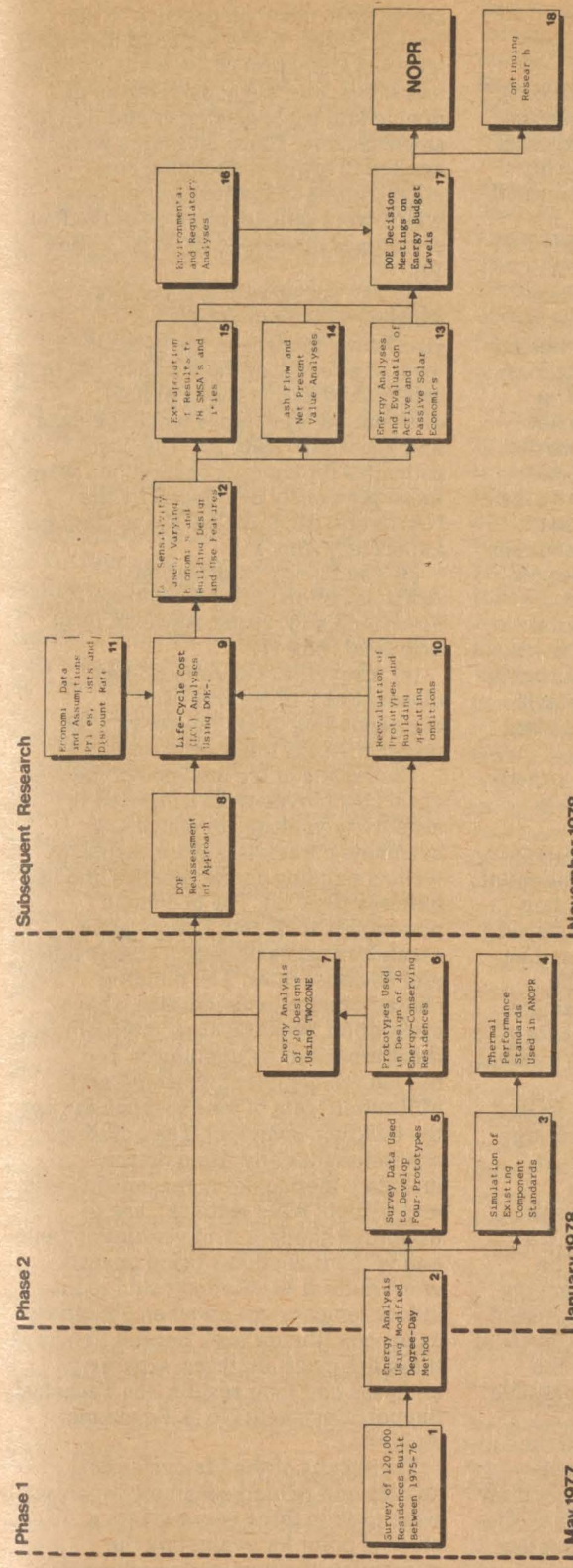

FIGURE 2-4: OVERVIEW OF SINGLE-FAMILY RESIDENTIAL RESEARCH PROGRAM

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A calculation method based on the "degree-day" procedure was used to estimate the energy use for space heating and cooling in the sample buildings (Box 2).[20] Phase 1 produced a data base consisting of building characteristics and estimated energy use for space conditioning for the 120,000-dwelling survey.

In Phase 2 (Boxes 2 through 7), this data base was used to calculate the design energy requirements of the building designs modified for compliance with existing component standards, and to develop more energy efficient residential building designs.

The data base was first used to calculate the design energy requirements of single-family residences [21] designed to meet two component performance energy standards (Box 3): [22] the draft proposed HUD Minimum Property Standards for One- and Two-Family Dwellings (April 1978 version), which specifies thermal transmission requirements for building components, and NAHB's Thermal Performance Guidelines,[23] a cost/benefit approach for calculating levels of thermal protection. The NAHB Thermal Performance Guidelines formed the basis for the residental energy standards approach suggested in the Advance Notice of Proposed Rulemaking (Box 4).

Four prototype designs were prepared from the analysis of the Phase 1 survey data (Box 5). Twenty design teams were selected, based on their experience in designing residences for energy conservation. They were asked to develop "new" residential designs using the prototypes as starting points (Box 6). The designs were intended to result in the maximum possible reduction in design energy requirements, using available energy conservation and passive solar design strategies and technologies.[23] The energy calculation method used to analyze both the prototypes and the 20 "new" designs was a modified version of the TWOZONE computer program (Box 7).[24]

At the end of Phase 2, an evaluation by DOE of the single-family residential research led to a decision to develop and apply a methodology that departed significantly from that used for commercial and multifamily residential buildings (Box 8). The subsequent research developed a life-cycle cost analysis as the basis for the proposed single-family residential Energy Budget Levels. The reasons for departing from the Phase 2 approach were: (1) The energy-conserving designs were not applicable to the mass housing market in the country; and (2) the economic analysis of the four prototypes and the energy conserving designs was not adequate as a basis for a proposed rule. The reasons for the use of a life-cycle cost methodology (Box 8) for the analysis of single-family residential design energy requirements were:

- The life-cycle analyses permitted the use of well-defined economic criteria that have the potential of maximizing the net economic benefits to homeowners and to the Nation, as well as achieving maximum practicable energy conservation.
- Life-cycle cost analyses of energy conservation in single-family residential buildings was facilitated by the data available on the four prototypes based on the Phases 1 and 2 research and by the relative ease of separating the design energy requirements for single-family residences into requirements of the building envelope and of the internal equipment.

The energy analysis program, DOE–2, was used to analyze the design energy requirements of the four prototypes, theoretically placed in ten cities representing a wide range of climatic conditions. The analysis produced a series of life-cycle cost curves. The curves showed the total cost of energy and conservation, valued at the present, plotted against various possible levels of Design Energy Consumption for the building. These curves made it possible to identify the design energy requirements that would result if the minimum total cost to the consumer could be extracted (Box 9). The point on the curve representing the minimum life-cycle cost to the consumer is hereafter referred to as the "nominal" case.

The key assumptions used in deriving the nominal case were as follows:

(1) The only energy conservation measures considered were those currently in common practice in the United States. These included increased levels of insulation in the walls, ceilings, and floors, and the consideration of double and triple glazing in addition to single glazing. These measures were applied in order of declining cost-effectiveness to the four prototypes, which were refined versions of the four prototypes developed in Phase 2 (Box 10).

(2) The conservation measures considered did not require any significant changes in the behavior or level of amenity of the occupant(s). DOE established assumptions of how different building types would be used and operated[25] (Box 10). The cost estimates for energy conservation were those previously developed by the NAHB and used by Oak Ridge National Laboratory (Box 11).

(3) The Energy Information Administration Series B Midterm Price Forecast (44 FR 25369, April 30, 1979) was used (Box 11).

(4) A real (i.e., constant dollar) discount rate of 3% was used, corresponding to an interest rate 3% higher than the inflation rate (Box 11).

The results of the analysis of the life-cycle cost curves were subjected to sensitivity analyses in which key economic parameters were varied, as well as building characteristics and use patterns (Box 12). The economic parameters included: Energy price escalators, costs of energy conservation, and discount rates. The building characteristics included: size, shape, orientation, window area, internal loads (heat produced by appliances and related residential equipment), and infiltration (rate of air exchange through the building envelope). The building characteristics and use patterns included: thermostat management (with and without night setback), use of insulating shutters, and ventilation (with and without windows being opened, when natural ventilation could reduce indoor temperature about as effectively as air-conditioner use). For full details of these life-cycle analyses, sensitivity analyses and their results, see Technical Support Document No. 8, Economic Analysis.

The results of the life-cycle cost studies and related sensitivity analyses were used in three ways: (1) As a starting point for evaluating the economics of active and passive solar heating options, to provide a basis for comparing solar costs to conservation costs in identical single-family residential buildings and climates (Box

[20] The degree-day method consists of calculating heat flows through each component of a building in contact with the outside. The method assumes that the daily energy consumption of a building is proportional to the temperature difference between the mean daily outdoor temperature and a base temperature that represents the point at which no energy is needed for heating and cooling the house. Thus, the method accounts for only daily mean temperatures and does not take into account any interaction between building components (e.g., ceiling and exterior walls).

[21] Multifamily low-rise buildings were examined in Phase 2 and in subsequent research as part of the commercial and multifamily residential analysis efforts.

[22] U.S. Department of Housing and Urban Development and U.S. Department of Energy, "Phase Two Report for the Development of Energy Performance Standards for New Buildings, Task Report: Single Family Dwelliings" (Jan. 1979).

[23] National Association of Home Builders, "Thermal Performance Guidelines for One and Two Family Dwellings" (1977).

[24] Lawrence Berkeley Laboratory, "TWOZONE User's Manual," LBL Report No. 6840 (March 1978).

[25] Technical Support Document No. 5, Standard Building Operating Conditions.

13); (2) as the basis for evaluating the cash flow and net present economic costs and benefits of alternative levels of design energy requirements (Box 14); and (3) as the basis for performing regression analyses of design energy requirements against heating and cooling degree-days so that the results could be applied to 78 SMSA's and cities (Box 15) (see Technical Support Document No. 10, Climate Analysis).

The results of the research program on single-family residential buildings, along with the results of the environmental and regulatory analyses (Box 16), formed the basis for DOE's decisions on the levels of the proposed single-family residential Energy Budget Levels (Box 17). The results of the life-cycle cost studies and related information (Boxes 10, 11, 12, and 13) were particularly important elements in DOE's decisions. Of the four prototypes examined in the analysis, three (single-story, split-level, and two-story) produced very similar results. Therefore, results were used for only two prototypes (attached and detached) in the development of the proposed Energy Budget Levels for single-family residences. Section 3.0 of this preamble and Technical Support Document No. 3, Energy Budget Levels Selection, describe the process followed in selecting the levels of the proposed Energy Budget Levels.

DOE is considering the following subjects for the continuing research effort in support of the final rule for single-family residential buildings (Box 18):

- Expansion of the list of 10 SMSA's and cities to 32 SMSA's and cities for life-cycle cost analyses.
- Continued analysis of the economics and performance of heat pumps.
- Study of additional prototypes, possibly including single-family residences attached on one side only and residences with heated basements.
- Analysis of new, innovative energy conservation concepts, such as the heat recuperator.
- Studies of the life-cycle cost of heating and cooling equipment, and how it interacts with different conservation measures for the building envelope.
- Further analysis of domestic hot water usage data.
- Continued analysis of renewable energy systems, including additional passive solar options and wood burning stoves.
- Reevaluation of life-cycle cost curves using marginal energy prices and updated conservation costs.

A discussion of some of the issues involved in this research is found in Section 2.3.3. DOE is planning continued analysis of issues associated with implementing the Standards for single-family residential buildings. One issue concerns the HUD Minimum Property Standards. A revision of the HUD Minimum Property Standards to achieve equivalency with the Standards is required by Section 252 of the National Energy Conservation Policy Act (Pub. L. 95–619). This subject is addressed in a preliminary report prepared for DOE.[26] The subject is also considered in the discussion of single-family residential design energy requirements found in Section 3.3 of this preamble.

2.2.3 Mobile Homes

DOE has not included mobile homes in the proposed rule at this time. The research that is necessary and appropriate to propose a mobile home energy performance standard has not been completed. DOE is working with HUD to complete that research. The following discussion presents past research efforts and the thrust of expected future studies.

The research to date has been conducted in three phases. Phase 1 consisted of surveying a sample of mobile homes that represented over 160,000 units. The sample was analyzed, using the same calculation method that was used in Phase 1 for single-family residences, to arrive at a baseline of energy requirements for space heating and cooling of mobile homes (see discussion in Section 2.2.2).[27]

In Phase 2, mobile home prototypes were developed (two single-wide and two double-wide units), based upon the Phase 1 data. Then, the prototypes were used to develope new mobile home designs that approached the maximum technically feasible reductions in design energy requirements. The resulting energy savings of the new designs were calculated using a proprietary computerized calculation method.[28]

The energy analysis indicated that all four original prototypes met the energy requirements of the HUD Mobile Home Construction and Safety Standards and that significant energy savings were possible with the maximum technically feasible designs.[29]

The term "maximum technically feasible design" (MTFD) was defined to mean the design resulting in a mobile home that required the least possible energy to heat and cool, yet:

- Required no change in owner lifestyle.
- Could be mass produced.
- Met reasonable requirements for life and safety.
- Could be transported over highways within existing regulations.
- Was sized to fit prevailing mobile home park space limitations.

The Phase 2 analysis for mobile homes was, like the analysis for other building classifications, primarily an energy analysis. A detailed analysis was conducted of changes in construction costs from the prototypes to the following two sets of maximum technically feasible designs: (1) Factory installed conservation options only, or (2) factory plus site installed conservation options.[30] However, no economic analysis was conducted on the change in first cost to the mobile home owner compared with the changes in the monthly costs of mortgage and fuel combined.

DOE considers a careful cost-benefit analysis to be especially important for a mobile home standard. These dwellings are at the low end of the cost spectrum for housing. In many cases, mobile homes provide the only affordable option for new homes for many citizens. Therefore, any new regulation in energy conservation should not interfere with the ability of potential mobile home owners to:

- Finance the down payment for a mobile home (a potential consequence of a major increase in first cost of manufacturing).
- Pay for the combined monthly mortgage costs and monthly fuel costs (fuel costs would decrease relatively, while mortgage costs might increase).

Therefore, during the third phase of the research, DOE conducted an initial life-cycle cost analysis on the most prevalent single-wide prototype. The analysis used the existing energy data developed from Phase 2 and developed additional cost data for each energy conservation option considered.[31]

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[26] Lawrence Berkeley Laboratory, "Residential Energy Performance Standards: Comparison of HUD's Minimum Property Standard and DOE's Proposed Standard," draft report (Report No. LBL–9817) (October 1979).

[27] See footnote 19.

[28] The T. R. Arnold & Associates (TRAA) computer program is based on the HUD Mobile Home Construction and Safety Standards, Subpart F, with guidance from ASHRAE manuals and the manual, "Mobile Home Heating and Cooling Load Calculations for Determining Compliance with the Energy Conservation Criteria of the Standard for Mobile Homes," 501 BM, 1976, published by the National Fire Protection Association (NFPA). TRAA derived thermal transfer coefficients from ASHRAE and NFPA 501 BM using hand calculations.

[29] T. R. Arnold Associates, "Development of Building Energy Performance Standards for Mobile Homes" (June 1978).

[30] Steven Winters Associates, Inc., "Cost Analysis of Mobile Homes" (November 1978).

[31] U.S. Department of Housing and Urban Development and the U.S. Department of Energy, "Phase 2 Report for Development of Building Energy Performance Standards: Task Report/Mobile Homes" (June 1979).

The results of this life-cycle cost analysis indicated that additional cost-beneficial energy conservation strategies existed which would result in reductions in both energy use and life-cycle costs. However, the results were limited for the following reasons:

- The energy calculation method did not permit an accurate analysis of certain conservation options.
- The procedure for deriving energy results for such options was not fully documented in the Phase 2 reserach.
- The energy savings for some conservation strategies could not be disaggregated in order of cost-effectiveness.
- An analysis of enough different sequences of cost analysis strategies was not done to identify a life-cycle minimum range.

For these reasons, DOE determined that the research to date was not sufficient for proposing a standard for mobile homes. To be responsive to the economic requirements of potential mobile home owners, a full and detailed cost-benefit analysis should be completed. This is currently planned and will provide a sound economic basis for the selection in the future of appropriate levels of Standards for mobile homes.

2.3 Additional Reserach Affecting Energy Budget Levels

The discussions in Sections 2.1 and 2.2 address the research program formulated to assist DOE in selecting the proposed Energy Budget Levels. As noted, the commercial and multifamily residential buildings analysis relied heavily on a detailed statistical analysis of the designs and redesigns of a number of building types in different climate regions. The analysis of single-family residential buildings used the results of a major survey to develop prototypes, which were then analyzed on a life-cycle cost basis. The impacts of the proposed standards for single-family residential, commercial and multifamily residential buildings were assessed using economic modeling techniques which projected energy demand and direct and indirect economic costs and benefits of alternative levels of proposed Energy Budget Levels. Environmental and regulatory analyses also provided relevant information.

This section of the preamble extends this discussion to three additional issues, each of which will require substantial research before the results can be incorporated into the Standards. The issues are: (1) The health effects of possible degradation in indoor air quality that can result from reducing air infiltration rates in single-family residential buildings and ventilation rates in commercial and multifamily residential buildings; (2) the potential for a life-cycle cost analysis of commercial and multifamily residential buildings, to identify new cost-effective means of significantly reducing their design energy requirements; and (3) a number of issues affecting single-family residential design energy requirements, including the potential contribution of new and innovative conservation measures.

The first issue requires research in three areas: (1) Measurement of air infiltration rates; (2) analysis of the relationship between building design, building construction, air infiltration rates, and concentrations of indoor air pollutants; and (3) health and other effects of indoor air pollutants.

DOE believes that the proposed Standards have been formulated in a manner that does not adversely affect indoor air quality, as discussed in the next Section.

The second and third issues require both continuing research efforts and commercial experience with new approaches to energy conservation.

DOE is supporting work in all of these areas. To the extent that new data are available prior to the final rulemaking, DOE will consider that data in selecting the final Energy Budget Levels. However, DOE anticipates that the ongoing research in these areas will be of particular use in future updates of the Standards.

2.3.1 Environmental Issues

In setting the proposed Standards, DOE was specifically concerned about the issue of indoor air quality.[32] DOE recognized the potential for conflict between energy conservation objectives, which would reduce infiltration and ventilation rates in buildings, and the adverse impacts of indoor air pollutants on the public health and welfare, which can be mitigated by increasing the infiltration and ventilation rates of buildings. Because of uncertainity in (1) data on and measurement of air infiltration rates in buildings, (2) the relationship between infiltration and ventilation rates of buildings and the concentrations of indoor air pollutants, and (3) the health effects of different levels of indoor air pollutants, DOE has taken a cautions approach in dealing with this issue.

DOE's basic approach has been to design the Standards so that no change is likely to occur in the levels of indoor air pollutants of buildings constructed after the Standards are implemented. The manner of achieving this objective is discussed separately below for (1) commercial and multifamily residential buildings, and (2) single-family residential buildings.

The Design Energy Consumption of a commercial or multi-family residential building is evaluated using the ventilation rates required by local health codes. DOE anticipates no change in local health codes as a result of the Standards. Therefore, the Standards are not expected to either reduce ventilation rates for commercial and multi-family residential buildings or diminish indoor air quality in these buildings.

In developing the proposed Energy Budget Levels for single-family residential buildings, DOE used a value of 0.6 air changes per hour on an average winter day, which was used to calculate infiltration rates for all such buildings.[33] The same value is included in the Standard Evaluation Technique (discussed in Section 4.0 of this preamble) for evaluating the Design Energy Consumption of a single-family residential building. No credit or penalty is currently given for the design of a building with a lower or higher infiltration rate. Because the Standards do not give credit for designs that reflect low rates of infiltration, they are expected to have no effect on the indoor air quality of single-family residential buildings.

DOE is presently developing approaches to evaluate the effects of different measures to reduce infiltration in single-family residential building designs (e.g., the use of continuous polyethylene vapor barriers, weather stripping on windows, and caulked sills). These measures could reduce the average air infiltration rate to 0.1 air change per hour in a mild climate and 0.2 air change per hour in a colder climate. If such measures had been considered and included in the Standard Evaluation Technique, then the Standards would impact indoor air quality by giving credit to a design with low air infiltration rates.

DOE welcomes public comment on this issue, specifically with regard to: (1) The desirability of the present approach, in which no credit is given for reductions in the rate of air infiltration and no adverse impact on indoor air quality is expected, and (2) the feasibility and advisability of

[32] This subject is addressed in Technical Support Document No. 7, Draft Environmental Impact Statement and in Technical Support Document No. 3, Energy Budget Levels Selection.

[33] The treatment of air infiltration rates in the evaluation technique for single-family residential buildings is discussed in Technical Support Document No. 1, The Standard Evaluation Technique.

developing an approach that evaluates and gives credit for reductions in air infiltration in single-family residential buildings.

2.3.2 Life-Cycle Cost Analyses of Commercial Buildings

The Phases 1 and 2 research effort on commercial buildings was based primarily on (1) a statistical analysis of a large sample of buildings for which construction began in 1975–1976, and (2) the simulation of the design energy requirements of the energy conserving redesigns of a selected subsample of those buildings. DOE has extended this research to include a preliminary analysis of the life-cycle costs of three commercial office buildings (selected from the Phase 2 sample for their typical characteristics) in which many different energy conserving measures are integrated into the designs of the buildings. The general approach to the life-cycle cost analysis of commercial buildings is similar to that performed on single-family residential buildings. However, because many conservation measures for commercial buildings are an integral part of the building design and equipment configuration, the life-cycle cost approach is more complex than for single-family residential buildings.[34]

The results of the preliminary life-cycle cost analysis of commercial office buildings indicated a potential for significant reductions in Design Energy Budgets below those derived from the redesign studies.[35] Two design strategies appeared especially promising: (1) the introduction of a "deadband" thermostatic control system, and (2) automatic control systems for incorporating daylighting into building design.[36]

The life-cycle cost analysis of energy-conserving designs of commercial buildings appears to be promising. DOE intends to continue this analysis using commercial building prototypes yet to be developed. The anticipated results will provide information about the conservation investment and the value of energy savings of specific energy conservation and renewable energy design strategies. If this research shows that more stringent conservation measures are technically, economically, and commercially viable, DOE may amend the Standards and decrease the Energy Budget Levels for such building classifications.

DOE invites public comment on these matters, particularly: (1) The desirability and feasibility of applying a life-cycle cost approach to commercial buildings, and (2) the description and evaluation (in terms of successes and failures) of innovative energy conservation strategies for commercial buildings.

2.3.3 Issues Affecting the Energy Budget Levels for Single-Family Residential Buildings

The continuing research activities for single-family residences are discussed at the end of Section 2.2.2. The purpose of this section is to elaborate on selected research issues that can affect selection of the Energy Budget Levels. The issues addressed are: (1) Domestic hot water usage data, (2) the practicability and availability of new and innovative energy conservation measures for single-family residential buildings, (3) renewable energy resources, (4) masonry construction, and (5) extensions to the life-cycle costing methodology for energy conserving measures used in single-family residences. When applicable, the discussion includes comments received in response to the Advance Notice of Proposed Rulemaking, ANOPR, and an explanation of DOE's ongoing research effort.

Domestic Hot Water Usage

The proposed Energy Budget Levels for single-family residences contain three energy components: Space heating, space cooling, and domestic hot water heating. The proposed Energy Budget Levels for space heating and cooling vary to reflect regional changes in climate conditions; they also apply to each square foot of gross area of the residence, regardless of the size of the residence. (See Technical Support Document No. 8 Economic Analysis)

On the other hand, the proposed Energy Budget Levels (a separate level for each of the different nonrenewable fuels) for domestic hot water heating are fixed quantities for all regions of the country; also, they are based on an average number of occupants per residence and do not vary with the size of the residence.

The proposed Energy Budget Levels for domestic hot water heating have been included for single-family residences because:

- The contribution of domestic hot water to the Design Energy Consumption is large, on the order of 50% in a moderate climate (the percentage is smaller in colder climates and larger in warmer climates).
- The approach provides additional encouragement for the use of solar domestic hot water heaters, as discussed below.

(See Section 3.3 of this preamble and Appendix I of the proposed rule for a further description of the inclusion of domestic hot water in single-family residential Design Energy Budgets.)

There are two issues pertinent to domestic hot water usage that DOE intends to address in continuing research:

- Improvement of the estimation techniques to establish the average level of domestic hot water usage.
- Application of life-cycle costing techniques to evaluate economic tradeoffs between increases in the efficiency of domestic hot water heaters and energy conservation measures in the building envelope.

DOE is interested in information regarding the degree to which the inclusion of domestic hot water in the Design Energy Budget will encourage the use of solar domestic hot water heaters.

Public comments on these and other issues relative to domestic hot water heating will be useful to DOE in developing the final rule.

New and Innovative Energy Conservation Options

As described in Section 2.2.2, in evaluating and selecting the proposed Energy Budget Levels for single-family residences, DOE considered only those conservation measures that are in common practice. DOE is particularly interested in the availability, performance and costs of the following measures, which could be used in single-family residences:

- 2 x 6 studs (as a means of increasing the thickness of insulation of exterior walls) or two rows of 2 x 4 studs.
- Triple glazing, achieved through the use of either storm windows with double glazing or windows with three panes of glass.
- Ceiling insulation with thermal resistance of greater than R–38.
- Measures to reduce air infiltration and ways to reduce indoor air pollution with low infiltration levels.
- Different approaches to passive solar energy design strategies.
- Any other innovative techniques that might significantly reduce energy requirements in single-family residential buildings, especially those techniques that might have wide applicability in various parts of the Nation.

[34] Federal Energy Management and Planning Programs: Proposed Methodology and Procedures for Life Cycle Cost Analysis of Federal Buildings, 44 FR 2536 (April 30, 1979).

[35] AIA Research Corporation, "Life Cycle Cost Study of Commercial Buildings" (draft) (Oct. 1979).

[36] Daylighting involves the use of photocell controls to automatically reduce artificial lighting when sufficient light is available from natural light sources. These controls are generally combined with building design strategies that provide access to appropriate levels and quality of light where needed.

Information submitted to DOE will be considered in developing the final rule, as well as in evaluating the possibilities and research priorities for updating the Standards.

Renewable Energy Sources: Effects On Energy Budget Levels

The treatment of renewable energy sources for use in buildings has played a major role in the development of the proposed Standards. To date, this has occurred through an analysis of the economic viability of active and passive solar space heating systems and through the decision to include domestic hot water heating as a part of the proposed Energy Budget Levels, which would permit the designer greater flexibility in selecting conservation measures if active solar domestic hot water heating is incorporated into the design. DOE also intends to encourage solar energy options by describing and explaining their use in a Manual of Recommended Practice.[37] Furthermore, as energy prices increase and the cost of renewable energy systems decline, the Standards are expected to be updated to reflect the inclusion of renewable energy systems in the package of options contributing to the life-cycle costs used to establish the Energy Budget Levels.

Masonry Construction

DOE has analyzed the thermal characteristics of masonry walls for the purpose of deciding if a single-family residential prototype with masonry walls should have an Energy Budget Level different from the other prototypes.

This study, as well as analyses completed for HUD, has shown that residences with exterior masonry walls use only slightly less energy than residences with frame walls.[38] Since no significant differences were found, DOE proposes to give masonry construction the same Energy Budget Levels as frame residences. Residences with exterior masonry walls can meet the Design Energy Budgets either by using available, cost-effective insulation strategies or by reducing energy losses through other components (e.g., windows, ceilings, floors).[39]

DOE is unaware of data or other documentation to support a special approach for masonry construction. If such information is submitted to DOE, it will be considered in the development of the final rule.

Continuing analysis of masonry construction will focus on: (1) Reviewing methodologies and results of energy simulations of masonry buildings, and (2) analyzing different configurations of insulation for masonry walls.

Extensions to Single-Family Residential Life-Cycle Costing Methodology

There are at least two main issues of the single-family residential life-cycle cost analysis that affect the Energy Budget Levels: (1) Extension of the approach to include efficiency improvements in building heating and cooling equipment, as well as energy conservation measures for the shell of the building, and (2) refinement of the economic parameters used in the analysis.

DOE presently intends to extend the single-family residential life-cycle cost analysis to include certain residential equipment efficiencies. Included will be an analysis of the cost-effectiveness of improving the efficiency of furnaces, air-conditioners, heat pumps and domestic hot water heaters. DOE will then be able to compare investments in more efficient equipment with investments in conservation options for the design of the building shell.

The economic parameters used in the life-cycle cost analysis may change in the following ways, depending on the availability of reliable information: (1) The fuel price projections may be changed to use prices based on replacement energy costs (e.g., costs of producing and delivering an additional quantity of energy), and (2) the costs of the energy conservation options will be based on the best information available at the time of the final rule.

Comments on these and other possible changes to the life-cycle cost approach are requested.

2.4 Research Affecting the Format of the Energy Budget Levels

The research program described thus far was performed primarily to assist DOE in determining the appropriate Energy Budget Levels. This has included building surveys, building design experiments, the analysis of prototypical buildings, and environmental and economic analyses.

The research program described below was necessary to establish a format to be used in formulating the proposed Energy Budget Levels.

The research examined a number of areas:

- Weighting factors for different fuel types, to reflect the relative value to the Nation of conserving different fuels.
- Appropriate incentives for the use of renewable energy resources, through the application of the Design Energy Budget to a building design.
- Building design classifications, to reflect the varying energy requirements of buildings designed to fulfill different purposes.
- Standard Building Operating Conditions, to provide consistent conditions under which the Design Energy Budgets of different building designs are evaluated.
- A climate selection procedure to reflect the impact of climatic variations on the energy requirements of building designs.
- A unit of measurement for the Design Energy Budgets.

These factors are discussed in the following sections. (Also, see Technical Support Document No. 3, Energy Budget Levels Selection.)

The approach taken in the following sections includes, as appropriate, an explanation of the issue, a summary of comments received on that issue in response to the ANOPR, the status of DOE's research and analysis of the issue, and the reasons for any decisions that have been made for this proposed rule. The commentary on the responses to the ANOPR is emphasized in several sections because of the interest that the respondents showed in that particular issue.

2.4.1 Weighting Factors

Summary

DOE considered three alternatives for expressing the proposed Energy Budget Levels in terms of weights for each type of nonrenewable fuel used (natural gas, oil and electricity):

- The use of Energy Budget Levels expressed in terms of the energy content of the fuel delivered to the building site, with all weights set equal to one (equivalent to viewing design energy from the perspective of the building boundary).
- The use of Resource Utilization Factors (RUF's) and Resource Impact Factors (RIF's) to reflect, respectively, the energy consumption to the Nation of providing energy to a building site, starting at the energy source, and the social impacts of using different fuel types.
- Weighting factors based on the relative "value" of the different fuels to

[37] "Manual of Recommended Practice" is a document which gives examples of building designs which meet or exceed the requirements of the Standards and explains why such designs are appropriate for particular environmental conditions, building classifications and building uses.

[38] A summary of analysis results to date is contained in Technical Support Document No. 8, Economic Analysis.

[39] The proposed rule does specify that interior masonry and any other construction technique that may provide passive solar gains to the house be given appropriate credit through the use of the Standard Evaluation Technique (discussed in Section 4.0 of the Preamble).

the Nation, expressed in terms of (1) fuel prices, and (2) explicit national policy determinations of non-market values associated with specific fuel types.

For this proposed rule, the use of the first two alternatives has been rejected by DOE in favor of weighting factors based on DOE's assessment of the value of different fuel types to the Nation. This section discusses the past approaches considered, explains the reasons for DOE's decision on weighting factors, and discusses the effects that the use of weighting factors is likely to have.

Approach Originally Suggested in the ANOPR

In the ANOPR, DOE suggested Design Energy Budgets that reflected energy consumed from the source (e.g., coal mine, oil well, gas well) to the building site, instead of energy consumed at the site, using multipliers called Resource Utilization Factors and Resource Impact Factors. RUF's are multipliers of building boundary energy that convert the quantity of energy consumed at the building site to an equivalent amount of energy from its source; i.e., to account for not only the Btu's of energy used within the building but also the energy consumed in refining, converting, and transporting raw energy into delivered energy at the building site.

Resource Impact Factors are multipliers of building boundary energy to reflect differing social values to the Nation of using different types of fuel.

In the ANOPR, DOE expressed the suggested Design Energy Budgets in terms of RUF's. All RIF's were set equal to one, pending the outcome of research to develop an analytical basis for deriving them. Thus, the ANOPR presented a framework for expressing the Design Energy Budgets that could account for all losses of energy from the source as converted into useful energy for space conditioning and other uses in buildings. The ANOPR suggested the use of RUF's and RIF's based on national averages.

Difficulties With the Approach Taken in the ANOPR

Sixty-three comments addressed the issue of RIF's/RUF's. Three views generally were taken: (1) Comments favoring the use of RUF's; (2) comments opposing the use of RUF's, or suggesting that the RUF's be set equal to one for all fuels (i.e., expressing the Design Energy Budgets as the sum of the energy content of the fuels delivered to the building site); or (3) comments urging consideration of RIF's, along with RUF's.

Most of the proponents of RUF's indicated that their use was simple enough for practical application, that they are typical engineering solutions to typical engineering problems. These comments went on to suggest various refinements to the Design Energy Budgets as outlined in the ANOPR. Three comments advocated the use of local or regional, as opposed to national, RUF's. Three other comments observed that RUF's should be based on actual records and projections prepared by the local utility serving the building in question.

Opponents of RUF's and RIF's contended that it was the intent of Congress to limit the scope of the Standards to site-based energy only. Seven comments specifically observed that the national average RUF's suggested in the ANOPR would encourage the continued use of natural gas and oil, contrary to the Administration's policies and national interests. Another commented that RUF's did not account for utility cogeneration possibilities. One comment criticized RUF's for not considering all energy related factors. Finally, many opponents of RUF's suggested that their use penalized all types of electrical use.

The third group of comments addressed the use of RIF's in conjunction with RUF's. They suggested that using RUF's alone would create a distortion and that the use of RIF's and RUF's together would account for differences in social considerations involved in the use of different fuels. Several comments suggested ways in which RIF's might be determined: (1) Through use of a fuel reserve index; (2) through calculation of pounds of atmospheric pollutants produced per unit of energy converted; and (3) through consideration of externalities (i.e., adverse impacts not accounted for in the pricing system). Six comments further observed that a full complement of RIF's/RUF's should be developed for all types of fuels and energy resources, even to the point of differentiation among grades of coal and petroleum distillates.

Three commentators suggested not using RUF's without RIF's. One comment suggested that RIF's were a good approach but were impractical at this time.

DOE's Decisions on Weighting Factors

Consideration of the public comments, along with the results of DOE's research program, led to renewed consideration of alternatives to RIF's and RUF's.

As noted, one alternative was to express the Design Energy Budgets in terms of Btu's of energy used at the building boundary; that is, using weights equal to one for all forms of energy. Design Energy Budgets expressed in terms of energy use at the building boundary are simple to comprehend since they are expressed in terms of metered energy into the building, a concept with which designers and builders are familiar. This approach, however, ignores energy losses in the conversion of an energy resource into a useful energy form (e.g., synthetic fuels and electricity, whose inefficiencies are concentrated in that part of the fuel cycle upstream of the building boundary).

DOE decided to reject both the use of RUF's and RIF's and the use of weights that would effectively value all forms of energy equally at the building line.

DOE concluded that both approaches would be inadequate because of their inability to reflect the relative value to the Nation of conserving different nonrenewable fuels. Both would weigh the consumption of fuels, but neither would take adequate account of social or policy considerations. Thus, the scarcity value of fuel would be ignored, as would the true cost to the Nation of consuming certain fuels. Also, such weights would be unable to reflect such important concerns as the national security cost inherent in becoming more dependent on imported fuels.

DOE recognizes the potential of a combined RUF/RIF approach to overcome the inadequacies mentioned above. However, DOE has reservations about the combined RUF/RIF approach because of its complexity and its difficulty in making explicit the relative importance of the various factors affecting the selection and presentation of a Design Energy Budget.

Consequently, DOE has developed an approach using weighting factors that explicitly account for the cost of fuels and the value to the Nation of conserving different fuels. The use of the proposed weighting factors can help create an environment in which building designers are encouraged to make design tradeoffs and fuel choices that reflect how the Nation values various forms of energy.

The general approach starts with the market prices of the various fuels, where a portion of their relative values is reflected. An important issue is whether to derive the factors using average prices or replacement costs. (Average prices of energy are based on the existing mix of old and new energy sources; replacement costs are the costs of new energy sources such as a new powerplant.) DOE believes that replacement costs are the most appropriate indicator of the cost to the Nation of producing new sources of energy for new buildings, and that replacement costs are preferable for the

development of weighting factors. However, since acceptable estimates of such costs were not available in time for this proposed rule, average price forecasts were used to derive the proposed weighting factors.

Another issue is whether to include a premium for oil and gas, to recognize in the same way as the Powerplant and Industrial Fuel Use Act of 1977 (FUA) (Pub. L. 95–620) that saving a barrel of oil is worth more to the Nation than its price reflects. Consistent with FUA, DOE has decided to add a premium of $1.29 per million Btu to the oil and gas prices to derive the weighting factors. (See Technical Support Document No. 4, Weighting Factors.)

A final issue concerns the aggregation of fuel mix across geographic regions and building types. For purposes of this proposed rule, DOE prescribed one set of weighting factors for all commercial and multifamily residential building types and another set of weighting factors for all single-family residential buildings. The weighting factors were national averages and were the same for all geographic regions. Insufficient regional data was available to develop regional weighting factors. For commercial and multifamily residential buildings, the weighting factors were applied by using an average mix of fuels for the buildings, which varied from region to region of the country. The regional fuel mix averages used reflect the generally larger percentage of electrical energy used in the southern areas of the country. Should the ongoing research identify serious inequities in this approach, appropriate modifications will be considered for the final rule.

Until the ongoing research related to weighting factors and replacement costs is complete, weighting factors based on average prices are being used. These estimates are calculated from relative national average prices for oil and electricity projected for 1985 using the mid-term forecast published in the April 30, 1977, Federal Register.[40] These estimates are chosen to be consistent with the forecast used in the economic analysis (see Technical Support Document No. 8, Economic Analysis).

Technical Support Document No. 4, Weighting Factors, describes the research and derivation of the weighting factors proposed by DOE. The following proposed weighting factors are used:

	Natural gas	Oil	Electricity
Single-family residential	1	1.22	2.79
Commercial and multi-family residential	1	1.20	3.08

The Effect of Using the Proposed Weighting Factors

The weighting factors are used as a way of expressing the Design Energy Budget of a building design. Application of the weighting factors is straightforward. The designer first calculates the energy requirements by fuel type. The energy requirement for each fuel type, expressed in MBtu/sq. ft./yr, is then multiplied by the appropriate weighting factor for the fuel type. These weighting figures are then summed over all fuels to arrive at the Design Energy Consumption of the building. The value of the Design Energy Consumption must be less than or equal to the Design Energy Budget (determined in accordance with Appendix I of the proposed rule) for the building design to be in compliance with the Standards.

Table 2–1 illustrates Energy Budget Levels for commercial and multifamily residential buildings for eight cities in the Nation.[41] These Energy Budget Levels are expressed in terms of weighted MBtu/sq. ft./ yr, using the values of the weighting factors presented in Section 2.4.1. The Standard Evaluation Technique (Section 4.0) specifies that the weighting factors used to establish the Design Energy Budget must also be used in calculating the Design Energy Consumption.

Many designers are accustomed to thinking about energy use in terms of the energy required at the building boundary. Because the Energy Budget Levels in Table 2–1 are calculated using weighting factors, the values may not be familiar. For this reason, three sets of illustrative Energy Budget Levels are presented in Table 2–2: the first set is in units of MBtu/sq. ft./yr of energy at the building or site, the second set, in bold print, is in MBtu/sq. ft./yr of energy using weighting factors, and the third set is in MBtu/sq. ft./yr of energy at the source (i.e., RUF-weighted).

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[40] Technical Support Document No. 3, Energy Budget Levels Selection, contains tables showing values that might have been selected for the Energy Budget Levels if it has been decided to express the Energy Budget Levels at the building boundary or in terms of RUF's and RIF's.

[41] The Energy Budget Levels in the proposed Standards are presented in Appendix I, for commercial, multifamily residential and single-family residential buildings in 78 SMSA's and cities.

TABLE 2-1: ILLUSTRATIVE ENERGY BUDGET LEVELS FOR COMMERCIAL BUILDINGS FOR EIGHT CITIES (in MBtu/sq. ft./yr)

State	SMSA	Clinic	Community Center	Gymnasium	Hospital	Hotel/Motel	Multifamily High-Rise	Multifamily Low-Rise	Nursing Home	Office, Large	Office, Small	School, Elementary	School, Secondary	Shopping Center	Store	Theater/Auditorium	Warehouse
Minnesota	Minneapolis	142	109	144	335	180	140	110	175	123	117	122	138	198	155	157	93
Missouri	St Louis	133	110	136	353	175	128	112	163	119	109	105	128	192	150	149	72
District of Columbia	Washington	127	107	129	353	169	120	109	164	115	104	96	121	185	144	142	63
Florida	Miami	152	142	161	406	203	133	147	201	140	125	103	141	219	179	178	41
Texas	Dallas	131	116	136	358	175	119	119	171	120	107	94	124	190	152	150	50
California	San Diego	114	103	117	364	158	104	106	153	107	92	75	107	172	134	128	40
Oregon	Portland	119	98	120	353	161	116	99	154	108	97	91	115	176	135	131	66
Massachusetts	Boston	125	101	126	338	165	121	102	159	111	102	99	121	181	140	139	72

TABLE 2-2: ILLUSTRATIVE COMPARISON OF WEIGHTED COMMERCIAL ENERGY BUDGET LEVELS WITH SITE- AND SOURCE-BASED ENERGY BUDGET LEVELS (in MBtu/sq. ft./yr)

State	SMSA	Clinic	Community Center	Gymnasium	Hospital	Hotel/Motel	Multifamily High-Rise	Multifamily Low-Rise	Nursing Home	Office Large	Office Small	School Elementary	School Secondary	Shopping Center	Store	Theater/Auditorium	Warehouse
Minnesota	Minneapolis	58 142 *156*	45 109 *120*	59 144 *158*	140 335 *370*	74 180 *199*	58 140 *154*	45 110 *122*	72 175 *193*	51 123 *135*	48 117 *129*	50 122 *134*	57 138 *152*	82 198 *218*	64 155 *171*	65 157 *173*	38 93 *103*
Missouri	St Louis	52 133 *146*	43 110 *121*	53 136 *149*	140 353 *388*	68 175 *192*	50 128 *140*	44 112 *123*	66 163 *179*	47 119 *131*	43 109 *120*	41 105 *115*	50 128 *141*	75 192 *210*	59 150 *165*	58 149 *164*	28 72 *79*
District of Columbia	Washington	50 127 *139*	42 107 *117*	51 129 *142*	140 353 *388*	66 169 *186*	47 120 *132*	43 109 *120*	64 164 *180*	45 115 *126*	41 104 *114*	37 96 *105*	47 121 *133*	72 185 *203*	56 144 *159*	56 142 *156*	24 63 *69*
Florida	Miami	52 152 *168*	48 142 *157*	55 161 *177*	140 406 *447*	69 203 *224*	45 133 *147*	50 147 *162*	68 201 *222*	48 140 *155*	43 125 *138*	35 103 *113*	48 141 *156*	74 219 *241*	61 179 *197*	60 178 *196*	14 41 *45*
Texas	Dallas	51 131 *145*	45 116 *128*	52 136 *150*	140 358 *395*	67 175 *193*	46 119 *132*	46 119 *132*	66 171 *189*	46 120 *132*	41 107 *119*	36 94 *103*	48 124 *136*	73 190 *209*	58 152 *168*	40 150 *166*	19 50 *55*
California	San Diego	43 114 *126*	39 103 *114*	44 117 *129*	140 364 *403*	60 158 *175*	39 104 *115*	40 106 *117*	58 153 *169*	41 107 *119*	35 92 *102*	28 75 *83*	41 107 *119*	65 172 *190*	51 134 *149*	49 128 *142*	15 40 *44*
Oregon	Portland	47 119 *131*	38 98 *107*	47 120 *131*	140 353 *388*	63 161 *177*	45 116 *127*	39 99 *108*	60 154 *169*	42 108 *119*	38 97 *106*	35 91 *100*	45 115 *126*	69 176 *194*	53 135 *148*	51 131 *144*	26 66 *73*
Massachusetts	Boston	51 125 *137*	41 101 *111*	52 126 *139*	140 338 *371*	67 165 *181*	50 121 *133*	42 102 *112*	65 159 *174*	45 111 *122*	42 102 *112*	41 99 *109*	49 121 *133*	74 181 *198*	57 140 *154*	57 139 *152*	30 72 *79*

58 Building line design energy

142 Weighted Energy Budget Level

156 RUF-Weighted design energy requirement

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The implication of using weighting factors was clarified by examining the effects of the chosen weighting factors on the capability of a building design to meet Standards expressed, for example, in terms of RUF's or in terms of site weighted units. The Phase 2 commercial and multifamily residential redesign buildings were reviewed to determine which ones would meet the Standards (set at about the same level of stringency) expressed in terms of various weighting schemes. The results of that examination revealed that most of the basically well designed buildings that would be in compliance with a Design Energy Budget where all weights were equal to 1.0 (i.e., site-based) would also be in compliance with a Design Energy Budget where the weighting factors were derived by DOE as noted above, and with RUF's as well.

Even though the weighting factors are not likely to significantly affect a building design that is in compliance with the proposed Standards, they will be important in influencing a designer to save one or another type of fuel when faced with that option during the design process. As discussed in Technical Support Document No. 4, Weighting Factors, the use of weighting factors encourages designers to conserve energy in a cost-effective manner (or in a manner consistent with the value to the Nation of saving different nonrenewable fuels). Thus, if a designer must reduce the energy requirements of a building design by a few MBtu's/sq. ft./yr to achieve compliance with the Standards, he is more likely to reduce gas if site-based weighting factors are used and more likely to reduce electricity if the value-based weighing factors given in this proposed rule are used (all other things being equal).

In short, the use of DOE's proposed weighting factors will not significantly affect the overall energy savings expected to be achieved by the Standards. The same overall (source) energy savings could be achieved using Design Energy Budgets expressed in terms of any weighting factors; the selection of the Energy Budget Levels is separate from the selection of the weighting factors. However, the choice of weighting factors will influence the mix of fuel types saved.

Request for Public Comment

Public comment is sought on the approach taken to establish weighting factors for the different fuels. There are four issues where public comment would be especially useful to DOE:

- The use of average prices instead of replacement costs in setting weighting factors.
- The use of national, regional, state, or local prices in setting weighting factors.
- The appropriateness of the choice of applying DOE's price premium for gas and oil in setting weighting factors.
- The overall utility of the weighting factor approach as presently proposed by DOE.

For additional details on the derivation and use of weighting factors, see Technical Support Document No. 4, Weighting Factors.

2.4.2 Renewable Sources of Energy

This section addresses the issue of how the proposed rule may increase the use of nondepletable sources of energy.

Nondepletable energy technologies include active and passive solar systems, certain systems for generating electricity, and systems using biomass for fuel. Such systems may provide energy for space heating and domestic hot water, space cooling, and natural lighting.

In this section, five renewable energy systems are discussed: active solar space heating; passive solar space heating; active solar domestic hot water heating; natural lighting; and wood burning stoves. Other renewable energy systems for which there are ongoing research, design and development activities, include: photovoltaics; wind energy conversion; biomass conversion; and active or passive solar cooling. Such systems were not considered for this proposed rule.

A part of DOE's research program in support of the Standards has been an ongoing analysis of the role of solar energy systems as a source of heat for use in buildings. At the present time, the main types of economically competitive renewable energy systems that can supply a building with heat for space conditioning and domestic hot water are: active solar energy systems, passive solar features in the designs of buildings, and wood burning stoves. DOE commissioned research and analysis to assess the effects of the proposed Standards on the use of active and passive solar energy systems in building designs. Work on wood burning stoves in conjunction with the Standards is just beginning. The results of the solar studies are found in Technical Support Document No. 9, Passive and Active Solar Heating Analysis, and in Appendix A of Technical Suppport Document No. 8, Economic Analysis. Although these studies are ongoing and have not arrived at final results, DOE is able to indicate in a general way the main thrust of the impact of its proposed rule on the use of renewable resources in buildings.

Research Results

A number of general conclusions about the potential role of solar energy systems in buildings can be derived from the analysis reported in Technical Support Document No. 9, Active and Passive Solar Heating Analysis, and from a wide arange of other analyses underway in DOE's research, development and commercialization program for active and passive solar heating and cooling of buildings. The conclusions are:

- Passive and active solar energy systems do provide a viable option for achieving the Design Energy Budgets of single-family residential buildings.
- For specific buildings using different fuel types in various climates, there is a mix of conventional conservation techniques passive solar, and active solar systems that will maximize the economic and energy goals of the space conditioning system.
- Even when passive and active solar energy systems achieve an economic advantage over competing space heating systems (in terms of life-cycle cost to the homeowner), the incentive for builders to incorporate solar systems may be lacking. This is especially likely where the solar systems involve greater first costs than other ways of supplying heat or reducing demand for space heating. While significant energy savings can be realized from the use of active and passive solar energy systems, the rate at which builders incorporate solar design options will depend on a wide range of economic, institutional and legal factors.
- As part of commercial building life-cycle cost analyses in support of the Standards, DOE has begun to evaluate the use of passive solar energy design in commercial office buildings. This passive solar evaluation has focused on the use of natural lighting to reduce the energy required for artificial lighting. Artificial lighting can account for 40% to 60% of the design energy requirements of thermally efficient office buildings. No firm results are available from this study.[42]

DOE's Decisions

In the following ways, DOE took cognizance of its research findings on renewable energy systems and of the Congressional mandate to foster the use of renewable energy resources in the proposed Standards:

[42] AIA Research Corporation, "Life Cycle Cost Study of Commercial Buildings" (draft) (October 1979).

• Energy supplied by solar energy systems is not included in the calculation of the Design Energy Consumption of a building. Effectively, building designs receive a credit for the energy requirements supplied by solar energy systems. That is, a building design may use as little or as much solar energy as the design allows. Thus, this energy is available to reduce the requirements for nonrenewable fuels, making it easier to achieve the Design Energy Budget of the building design with conventional conservation measures.

• In the ANOPR, domestic hot water heating was not included in the design energy requirements for a single-family residence. For the proposed rule, domestic hot water heating is included in the Design Energy Budget of a single-family residence, in part because its inclusion is likely to encourage the use of active solar domestic hot water heating. Under the proposed Standards, the benefit to the home owner or occupant of installing an active solar domestic hot water heater is that it becomes easier to achieve the Design Energy Budget. This is because that part of the domestic hot water heating requirement met by the active solar system is not included in the Design Energy Consumption. In short, the inclusion of domestic hot water in the Design Energy Budget provides a significant incentive for the use of active solar domestic hot water systems over and above already existing incentives.

The issue of encouraging the use of passive solar designs is a more difficult one. The research findings for single-family residents show that such designs are already economically competitive with electric heating in many areas of the Nation, and in some cases with natural gas heating. However, they have not yet achieved widespread acceptance by the design community or the building industry.

DOE believes that the most significant way to encourage building designers to use passive solar design techniques is through an education program informing them of benefits of such techniques and of methods for using them in building designs. The research and publications done in conjunction with the Standards can play a major role in this education process by demonstrating the many opportunities that designers have to use passive solar techniques to meet the Standards.

DOE intends to accomplish this task by widely publicizing its research findings and by assisting the States in implementing the Standards in a manner that effectively informs the building community how passive solar approaches may be used to meet the Standards and, in many cases, reduce costs to the building occupant at the same time. DOE intends to support the development of a Manual of Recommended Practice that will aid building designers and building code officials in understanding a variety of ways in which building designers can comply with the Standards. This Manual of Recommended Practice will include illustrations of passive and active solar designs that can be combined with appropriate conventional conservation measures to produce building designs to meet the Standards.

An additional way in which the Standards may encourage the use of passive solar concepts stems from the selection of the life-cycle cost minimum points as the basis of the Energy Budget Levels for single-family residential buildings. Because these Energy Budget Levels require designers to increase their use of energy conservation beyond common practice, the proposed Standards would encourage the building community to seek new ways of conserving energy that are more cost effective than traditional measures. In this environment in which energy conservation is a requirement, the innovative designer who realizes the potential benefits of passive solar design may have an opportunity to achieve a competitive advantage over designs using traditional techniques only. As noted, the Manual of Recommended Practice will strive to make these opportunities clear to the design community.

Ongoing Research

DOE is continuing its research efforts to gather as much information as possible on ways that solar and other renewable energy systems can meet common economic and energy goals in meeting the Standards. The research effort is also directed at increasing the capability of the Standard Evaluation Technique to analyze renewable energy systems (see Technical Support Document No. 8, Economic Analysis). This research effort is integrated with DOE's ongoing research, development, and commercialization programs for renewable energy systems. This effort includes:

• Development of an element of the Standard Evaluation Technique that treats renewable energy systems not presently included (e.g., wood burning stoves).

• Refinement of the elements of the Standard Evaluation Technique that treat active and passive solar energy systems.

• Continuation of the analysis of passive solar designs for commercial buildings.

• Continued support of analyses for the Manual of Recommended Practice, including evaluation of performance and cost tradeoffs among passive solar designs, active solar systems, and conventional and innovative energy conservation measures in buildings.

• Development of a longer term strategy for updating the Standards in a manner responsive to advances in the state of the art of renewable energy systems.

Request for Public Comment

DOE invites comments on additional ways in which the promulgation of the Standards can serve to encourage the use of renewable sources of energy. In particular, DOE requests public comment on the performance, costs, and availability of innovative methods for reducing the energy consumption of buildings, including innovative ways of using renewable energy resources for this purpose. DOE also requests suggestions on the most effective methods for informing the design and building communities of the opportunities to use passive and active solar and other renewable energy systems to meet the Standards.

2.4.3 Building Design Classifications

Purpose and Scope of the Research

It is necessary to determine clearly and precisely which building designs are subject to which Energy Budget Levels. Some designs present no difficulties (a single-purpose small office building, or a nursing home); others do (a large multifunctional office building containing significant amounts of retail and restaurant space). During Phases 1 and 2, initial building classification systems were developed and surveys were conducted of the energy-related design criteria found in various codes and standards.[43] Also, DOE analyzed the range of functional areas contained in the Phase 2 data base to determine representative distributions for each building classification.[44] The definitions contained in the proposed rule are based on this research.

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[43] U.S. Department of Housing and Urban Development and U.S. Department of Energy, "Phase One/Base Data for the Development of Energy Performance Standards for New Buildings, Task Report: Building Classification" (Jan. 1978), and The Ehrenkrantz Group, "Final Report on the Survey of Codes, Regulations and Standards" (Mar. 1978) and "Draft Survey of Codes, Regulations and Standards" (Apr. 1978).

[44] Brookhaven National Laboratories, "The Mix of Functional Areas Within Phase Two Building" (May 1979).

Definition of Issues

The two principal issues involved were:

- Defining building classifications in a manner that would provide clear, unambiguous guidance to users of the Standards.
- Providing a practical mechanism for treating building designs that clearly do not fit within any single classification.

Public Comment on ANOPR

There were two areas of comment to the ANOPR dealing with the issue of building classifications: (1) Comments urging expansion of the number of classifications; and (2) comments encouraging an alternative method of classifying buildings by "functions."

Ten comments concerned the classifications of commercial buildings. The grocery industry objected to inclusion of supermarkets with other mercantile buildings. The industry claimed supermarkets have unique additional energy demands for food preservation. Representatives of retail shopping centers also recommended a separate classification, observing that unique display lighting needs necessitated additional electrical hookups that must be included in the building design to allow for more flexible use of store areas.

Representatives from the industrial sector indicated that the "industrial building" classification encompassed too broad a range of buildings. Hotel and motel industry comments observed that the "hotel and motel" classification contained buildings of vastly different character and purpose. School, college and university groups questioned the wisdom of expecting, say, a chemistry laboratory or swimming pool to have the same Design Energy Budget as a classroom or office building. Finally, two comments suggested that no Design Energy Budgets be set for unusual or infrequently built buildings.

A number of comments criticized the classification scheme for ignoring the fact that many buildings service a variety of functional areas. For example, an office building may contain retail, assembly, restaurant and clinic uses. The comments advocated an application of the building block approach. The representatives of hotels and motels, retail shopping centers and owners of multipurpose buildings were the strongest proponents of this approach.

Work Performed

DOE examined commercial and multifamily residential building designs contained in the Phase 2 research sample and did the following:

1. Identified all functional areas that had been classified in the original Phase 2 research.
2. Assigned areas within each building design in the sample to the approopriate functional classifications.
3. Determined averages and standard deviations for different building functional areas within each building classification.
4. Grouped functions found to have relatively low standard deviations into a single "related purposes" functional classification unique to each building classification, based on consideration of averages and allowances for standard deviations.

DOE also analyzed the results of the single-family residential building sample to establish prototype designs for such buildings. Four prototypes were selected: single-story, two-story and split-level detached, and two-story attached. These four prototypes, described in Technical Support Documents No. 8, Economic Analysis, were analyzed for: (1) Thermal performance, and (2) cost-effectiveness of energy conservation measures.

Alternatives Considered and the Alternative Chosen for the NOPR

Two basic classification alternatives for commercial and multifamily residential buildings were considered: (1) Classifications and definitions based on whole-building functions; or (2) classifications and definitions based on individual functions contained within buildings. The proposed rule in Appendix I provides that, where a building design meets the requirements of a building classification, the Energy Budget Level becomes the Design Energy Budget. For a multiuse commercial building, a functional approach is used. The Design Energy Budget is based upon the relative areas of the functions present in the building design. This approach is used only if Energy Budget Levels can be assigned to at least 50% of the gross area of the building design. If Energy Budget Levels cannot be assigned to 50% of the gross area, the building is not subject to the Standards. DOE seeks comments on whether the Design Energy Budget should instead be applied only to those areas of the building design to which Energy Budget Levels have been assigned.

For single-family residential buildings, the classification procedure is simpler because there is less difficulty differentiating between attached and detached houses. From the research conducted, no significant differences were observed in the design energy requirements for three different prototype designs (one-story, two-story and split-level detached) as reported in Technical Support Document No. 8, Economic Analysis. As a result, DOE has included only two prototypes in the proposed rule: Attached and detached. Research is continuing in order to assess the design energy requirements of additional prototypes: residences with heated basements and residences attached on only one side.

Specific Impact on Proposed Rule

Based on the research, DOE developed the classifications and definitions contained in proposed § 435.04, as well as the exceptions procedure for multifunction buildings, contained in Appendix I.

Ongoing Research

Because the Phases 1 and 2 data were not sufficient to resolve all issues for a building block approach, further research is planned. The analysis will also provide DOE with an improved understanding of the effects of the interaction of building functions on Design Energy Consumption.

Request for Public Comment

DOE is interested in public response to its proposed classification scheme for commercial, multifamily residential and single-family residential buildings. DOE requests comments and data indicating (1) the fraction of building types that fit into different functions, and (2) the degree to which alternative classification schemes can facilitate the implementation of the Standards.

2.4.4 Standard Building Operating Conditions

Definition of the Issues

For each building classification, certain standard building operating conditions are provided to assure that the same conditions of use and occupancy will be used to evaluate the Design Energy Consumption. These standard conditions describe: Hours of operation; indoor temperatures to be maintained; human occupancy densities; and usage profiles for artificial lighting, domestic hot water, elevators, escalators and other energy consuming equipment. These conditions affect Design Energy Consumption to varying degrees, depending on the building type, location, design characteristics, and energy using equipment.

In the development of the proposed Standards, these operating conditions were used in the AXCESS program for commercial and multifamily residential

buildings, and the DOE–2 program for single-family residences. Many of these conditions were assumed or were developed to represent typical values and then used in the research, to introduce consistency in building use for buildings of the same type.[45]

They are also required in the Standard Evaluation Technique used to determine Design Energy Consumption, where they are referred to as Standard Building Operating Conditions.

Public Comments on ANOPR

Many comments concerning operating conditions were received in response to the ANOPR. Several colleges and universities observed that the suggested Standard Building Operating Conditions were not adequate for colleges which have variable occupancy throughout the day, as well as evening programs. They commented that, as a result, college and university energy requirements differ significantly from primary and secondary educational institutions.

In addition, comments relating to the grocery industry proposed that special provisions be made to account for their unique operating conditions. Unlike other retail stores, grocery stores cannot switch off energy consuming equipment (e.g., refrigerators) when the store closes its business day.

The shopping center industry also commented that their operating conditions were distinctive and were not correctly described in the ANOPR. Finally, one isolated comment observed that the "intensity" of use of a building, i.e., the location of people in the building, as well as what those people are doing, is a key consideration. This comment cautioned that too much reliance on a daily occupancy profile, at the expense of the expected intensity of use, could result in a Design Energy Budget having a poor relationship to the actual energy use of the building.

DOE's Proposed Approach

DOE's approach to identifying a method of using Standard Building Operating Conditions with the Standard Evaluation Technique addresses the public comments made in response to the ANOPR and was developed after examining the following three alternatives:

- No standardization, where designers may use any conditions they choose.
- Boundary conditions, which standardize conditions within a fixed range.
- Exact specification, where conditions are set as fixed parameters.

DOE chose to require the exact specification of Standard Building Operating Conditions because the nature and intensity of energy use may vary widely over the useful life of a building.

However, because the Standards are design standards, the Standard Building Operating Conditions are applied to the design. This provides consistency in evaluating building performance, even though two similar buildings in actual operation may be used very differently, with resulting differences in energy use.

To assess a building's Design Energy Consumption fairly, DOE chose to use the operating conditions resulting from the Phases 1 and 2 analyses. The proposed Standard Building Operating Conditions for commerical and multifamily residential buildings (see Technical Support Document No. 5, Standard Building Operating Conditions) thus reflect the averages of designers' estimates of reasonable operating conditions for buildings and for major uses within the buildings. For single-family residential buildings, the conditions reflect the typical conditions indicative of assumed currrent use practices (see Technical Support Document No. 8, Economic Analysis).

The Standard Building Operating Conditions have been developed in sufficient detail to reflect variations in the mix of uses within a given building type. This level of detail permits variations in occupancy density and hours of use in different parts of a building with different functions; for example, a secondary school containing classrooms, offices, a cafeteria and a gymansium. Also, since process energy requirements are not included in the proposed rule, special operating conditions are not necessary for process equipment which must remain on even when a building is unoccupied.

In developing the Standard Building Operating Conditions, DOE determined that they should be based on average current practice, to make the conditions used for design evaluation consistent with anticipated typical building design energy calculations. Further, DOE determined that, insofar as possible, the Standard Building Operating Conditions should not depend on user-oriented devices such as manually operated, movable insulation on windows. The use of such user-operated devices and the energy reductions that are dependent on them cannot be anticipated with sufficient certainty at the building design stage to permit their incorporation into the Standard Building Operating Conditions for the proposed Standards. As empirical data becomes available, DOE may amend the Standards to give credit for the use of such energy conserving design features.

Request for Public Comment

DOE invites public comment on the proposed Standard Building Operating Conditions, especially in regard to their use in conjunction with the Standard Evaluation Technique.

2.4.5 Climate

The Act calls for the Standards to reflect the impact of climate variation (Section 304(b)). Design Energy Budget and Design Energy Consumption will vary from location to location to reflect such climate variations. The purpose of this section of the preamble is to describe the research activities which enabled the climatic variations to be included in the structure of the proposed Standards.

Initial Climate Research, Phases 1 and 2

To determine appropriate relationships between climate variation and building design energy requirements, the relative effects of the elements of climate had to be correlated to design energy requirements data. Such a correlation was not sufficiently developed prior to Phase 1. The initial climate classification system was developed for research purposes only, for regional climate stratification for the selection of building samples, and for data analysis and presentation.

For Phase 1, an initial system of eight regions was developed, based on combinations of heating degree-days (65 °F base) and cooling degree-hours (85 °F base). This system was refined to a seven-region system using heating and cooling degree-days (65 °F base) (see Technical Support Document No. 10, Climate Classification Analysis). This seven-region system was used for analysis purposes throughout Phases 1 and 2.

The initial climate research in Phase 1 examined other existing climate classification systems for their applicability. In Phase 2, an analysis was begun to correlate the impact of climate variables on the design energy requirements results of the Phase 1 base data. However, the results of this analysis were not sufficiently developed by the end of Phase 2 to refine the relationship between climate and building design energy requirements

[45] See Technical Support Document No. 8, Economic Analysis, for their use in single-family residential analysis; Technical Support Document No. 1, The Standard Evaluation Technique, for their use in commercial and multifamily residential buildings; Technical Support Document No. 5, Standard Building Operating Conditions; and footnotes 12 and 14, for a more complete explanation.

beyond the seven-region system used for data analysis.

The ANOPR

The ANOPR suggested the use of the seven climate zones for commercial and multifamily residential buildings. It also suggested three zones for mobile homes because a different methodology was used from that in commercial and multifamily residential buildings. No zones were specified for single-family residences because a procedure using the NAHB Thermal Performance Guidelines was suggested.

Public Response to the ANOPR

Twenty-three comments suggested improvements to the climate analysis and approach presented in the ANOPR.

Eleven comments criticized the use of only seven climatic zones, because the fluctuations in local temperature within each zone create divergent energy requirements. Some comments urged the use of more localized weather zones. Others suggested that degree-days at each specific building site be used in place of climate zones. One comment urged that zones be established for each location for which hourly readings in 5° ranges are available. Seventeen comments indicated a need to adjust climate for factors other than heating and cooling degree-days. These comments advocated consideration of additional climate factors, including relative humidity, wind conditions, and solar radiation. Other comments also urged consideration of specific variables, such as dewpoint, micropressure differences, shade, earth radiation penetration, site orientation, topography, groundwater location, wet bulb temperature, and cloud cover effects.

DOE's Response and Decisions

As explained in Technical Support Document No. 10, Climate Classification Analysis, DOE's approach to climate takes account of these comments. The proposed Energy Budget Levels are displayed for 78 SMSA's and cities. A procedure is outlined whereby any location in the United States can be related, either by proximity or by similarity in weather characteristics, to one or more of these 78 SMSA's and cities. Thus, the proposed approach to climate variations effectively divides the Nation into 78 noncontiguous climate locations and provides Energy Budget Levels for each of these locations. The proposed approach includes a procedure for selecting one of the 78 locations for those cases were a building site is not located within one of the SMSA's or cities listed.

The approach described above resulted from three separate activities commissioned by DOE.

Two independent studies of climate impacts of commercial and multifamily residential buildings were undertaken. Both studies used the Phase 1 descriptions of the commercial and multifamily residential buildings. The studies used statistical techniques, including regression analyses, to develop the relationships between a number of weather variables and the design energy requirements for the sample buildings. The results had been produced in Phase 1, using the short form of the AXCESS computer program and hourly weather data for a representative day for each month of the year.

The first study used classical statistical analyses applied to average energy use figures for each building type by SMSA or city. Atypical or extreme values were deleted from the sample in this analysis because it was felt that such extremes reflected architectural characteristics not germane to the climate analysis. The results of this analysis showed a good correlation, by building type, of energy use as a function of heating and cooling degree-days.

The second study performed a statistical analysis on the entire Phase 1 sample, disaggregated only by SMSA or city, without regard to building type. The results of this study also showed good correlation between energy use of the aggregated Phase 1 building sample and heating and cooling degree-days.

However, both studies were in agreement that there was a need to change the traditional temperature base from which heating and cooling degree-days were calculated.

Also, both analyses examined other weather variables, including solar radiation and humidity. However, these variables did not explain the regional variations in design energy requirements as well as heating and cooling degree-days, nor did they substantially add to the results provided by the heating and cooling degree-day analyses. DOE therefore decided to use degree-day based variables in setting Energy Budget Levels for commercial and multifamily residential buildings.

Both studies further concluded that additional climate analysis using the Phase 1 data would be unproductive due to the city-to-city and building-to-building variability in the data base.

In addition to the proposed climate approach using 78 SMSA's and cities, the first study and additional statistical work in progress have produced results which potentially permit the presentation of climate variation relative to Energy Budget Levels in a more general format. This format is a matrix relating different levels of heating degree-days and cooling degree-days to Energy Budget Levels. Such a format has the potential for: (1) Permitting a Design Energy Budget to be determined directly for any location for which appropriate weather data is available from which to determine heating and cooling degree-days; and (2) applying climate data other than Test Reference Year (TRY) data for determining Design Energy Budgets and Design Energy Consumption.

For single-family residences, a third study was conducted. This study was based on a previous analysis of climate impacts on residential design energy requirements,[46] and on the climate analyses for commercial and multifamily residential buildings. The study examined the impact of climate on the single-family residential prototypes theoretically placed in 10 cities using computer simulation.

This data was used with the residential life-cycle cost analysis to determine the proposed single-family residential Energy Budget Levels for the 78 SMSA's and cities. The results of this study also determined that heating and cooling degree-days, at the same degree-day temperature bases developed from the climate analyses for commercial and multifamily residential buildings, were reasonable for reflecting the location-to-location variation in design energy requirements due to climate.

As part of its ongoing efforts to verify and improve upon the existing research, DOE is considering the development of a representative set of prototypical commercial and multifamily residential building designs to be analyzed for energy and lifecycle costs in differing climates. For single-family residential buildings, DOE is considering further climate research to examine the effects of hour-by-hour climate changes and other climate factors on a set of building prototypes.

Request for Public Comment

Doe is interested in public comment in the following areas:

- The effect of local climatology on building design energy requirements.
- The use of available climate data and its format.

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[46] "Geographical Variation in the Heating and Cooling Requirements of a Typical Single-Family House, Using Both Test Reference Year (TRY) and Long-Term Weather Data, and Correlation of These Requirements to Degree Days," U.S. Department of Commerce (June 1977).

• Identrification and quantification of regional building construction and design practices.

• Identification of alternative climate analysis approaches for the evaluations techniques.

2.4.6 Unit of Measure for Design Energy Budgets

An important element of the proposed Standards is the unit of measure for displaying the Design Energy Budgets. The major question is whether MBtu/sq. ft./yr, as proposed in the ANOPR, is the appropriate unit for the Design Energy Budgets.

Public Comment on the ANOPR

The majority of comments received raised no objection to the use of MBtu/sq. ft./yr, but requested further definition and clarification of the reasons for this unit of measure.

Ten comments made suggestions for improving the format of the Design Energy Budgets. Three comments indicated that MBtu/sq. ft./yr required a better definition. Other comments suggested alternative units of measure, such as MBtu/cubic ft./yr (to eliminate the variable of building height) and MBtu/gross conditioned sq. ft./yr. Some thought the unit of measure should be tailored to the building's use; for example, MBtu/bed/yr for hospitals with in-patient care. Still another comment advocated that the unit of measure be tied into an "energy price index."

A second group of comments suggested alternative approaches to the Design Energy Budget. One comment was to use component level budgets. Some comments encouraged the breakdown of the Design Energy Budget into component parts, identifying the precise budgets for HVAC, electricity, domestic hot water, etc. The rationale presented was that a designer needed more specific guidelines.

The last category of comments on the unit of measure indicated that MBtu/sq. ft./yr was impractical or should not be used because there were too many variables which were not adequately considered (i.e., design, tenant mix, function, location, and climate).

DOE's Response and Decisions

DOE is proposing the use of MBtu/sq. ft./yr. This unit of measure and its application are precisely defined in the proposed rule. DOE's analysis subsequent to the ANOPR indicates that, while other parameters may be appropriate for certain building types, the proposed unit of measure provides consistent results for all building types. Possibly, Btu/cubic ft./yr would produce consistent results for certain buildings like warehouses. However, DOE has no evidence that such a change would produce better results. Similarly, the use of units of measure tailored to a specific building type (Btu/bed/yr for hospitals introduces considerable, possibly burdensome, complexity.

The use of MBtu/gross conditioned sq. ft./yr would also introduce additional complexity. For example, this format would make it difficult to account for the lighting energy requirements for nonconditioned spaces.

The specification of separate component Design Energy Budgets may provide more specific guidelines for designers, but may eliminate the use of effective or innovative energy conserving design concepts where tradeoff between components can be used to an advantage. For example, suppose such component Design Energy Budgets existed and a particular building design just met the budgets for both heating, ventilating and air-conditioning (HVAC) and lighting. Suppose also that the designer had a potential design strategy that would save an additional 5 MBtu/sq. ft./yr for lighting but, because of the decreased heat available from the lighting system, would increase the net energy for the HVAC by 1 MBtu/sq. ft./yr. That design strategy would reduce energy for the total building design by 4 MBtu/sq. ft./yr, but the HVAC budget would be exceeded. The increased specificity of the component budget would have restricted the application of an effective overall energy conservation strategy that would trade off increased efficiency in one building system (lighting) for a smaller decreased efficiency in another system (HVAC).

DOE agrees with the comments that the inclusion of energy for domestic hot water in the Design Energy Budget for single-family residences is appropriate because domestic hot water often represents a major energy requirement. Moreover, because of uncertainty in the data on domestic hot water use, DOE will continue its research activities to improve its estimates of domestic hot water contributions to the Design Energy Consumption.

DOE's analysis indicates that domestic hot water use is relatively constant with respect to single-family building size. As such, DOE proposes that the domestic hot water factor of the Design Energy Budget for single-family residences be based on MBtu/yr per single-family unit. This approach encourages the use of solar and other innovative domestic hot water systems as an alternative, with a tradeoff of less stringent thermal integrity in the shell of the building. DOE is particularly interested in comments on this attribute of the proposed rule.

3.0 Selection of the Proposed Energy Budget Levels

3.1 Introduction

DOE considered and evaluated relevant technical and economic information and expert opinion available to it in selecting the proposed Energy Budget Levels (see Technical Support Document No. 3, Energy Budget Levels Selection). DOE determined that the Energy Budget Levels selected should accelerate the use of energy conserving and renewable resource technologies to the maximum extent practicable beyond the level of existing practice and should establish levels of performance achievable by designers through the use of commercially available technology.

DOE analyzed the effects of alternative Energy Budget Levels as a means of focusing its procedure for their selection. These alternative levels were set using the results of the sensitivity analysis of the most critical assumptions, such as fuel prices, stringency of existing energy codes and capital costs (see Technical Support Document No. 8, Economic Analysis). In this manner, the range of possible Energy Budget Levels established a zone of confidence for unanticipated changes in such key assumptions.

DOE's selection of the proposed Energy Budget Levels was not a result of any one analysis, but an informed judgment based on all available information.

An important source of information for the commercial and multifamily residential buildings was the data and information assembled in Phases 1 and 2, including the Phase 2 redesign data (see Section 2.0). This information was supplemented by the analysis of the costs and benefits to the Nation of possible alternative Energy Budget Levels. Added to these considerations were technical, policy, practicability and environmental concerns. DOE also considered the professional judgment of Federal building energy experts who were requested to comment on the alternative design energy requirement levels considered by DOE in selecting the proposed Energy Budget Levels.

For the proposed single-family residential Energy Budget Levels, an important information source was the life-cycle cost analysis conducted for four prototype designs theoretically placed in ten cities representative of varying climate conditions around the country. Additional information was

considered, including the availability of certain conservation technologies, possible detrimental health effects, and a wide range of technical and policy considerations.

The following sections describe the most important information considered in the selection of the proposed Energy Budget Levels for commercial, multifamily residential and single-family residential buildings. Additional information can be found in Technical Support Document No. 3, Energy Budget Levels Selection.

3.2 Commercial and Multifamily Residential Buildings

As noted, DOE considered a number of sources of information in its selection of the proposed Energy Budget Levels for commercial and multifamily residential buildings. A major resource was the analysis of the information assembled in the Phases 1 and 2 research effort. The major factors explicitly considered in DOE's determination of the proposed Energy Budget Levels for commercial and multifamily residential buildings are discussed in sequence in Sections 3.2.1 through 3.2.7 below. These factors are: (1) Expert judgment of Federal officials who administer the design of Federal buildings; (2) economic impacts of alternative possible Energy Budget Levels; (3) practicability of designing buildings to achieve the proposed Energy Budget Levels; (4) level of confidence in the statistical sample of buildings analyzed; (5) technical considerations relating to the accuracy of estimating the energy use of specific building types; (6) health and safety impacts of alternative Energy Budget Levels; and (7) mechanisms available to the Federal Government to encourage strict levels in particular building types.

To provide a framework for evaluating different possible levels of design energy requirements for different types of commercial and multifamily residential buildings, DOE has considered three levels of stringency based on the fraction of redesigns that could achieve a specified level of design energy requirement (see Section 2.0). The three levels of stringency are defined as follows:

- R_{30} means that 30% of all building redesigns for that building type achieved that level of design energy requirement or lower. This level is termed "strict."
- R_{50} means that 50% of the redesigns for that building type achieved that level of design energy requirement or lower. This level is termed "nominal."
- R_{70} means that 70% of the redesigns of that building type achieved that level of design energy requirement or lower. This level is termed "lenient."

For example, the design energy requirement estimates for a large office building in Kansas City, and SMSA selected as representative of a mid-range of climate conditions, were:

R_{30}: 46 MBtu/sq. ft./yr
R_{50}: 49 MBty/sq. ft./yr
R_{70}: 51 MBtu/sq. ft./yr

The proposed Energy Budget Levels were derived by applying weighting factors to these design energy requirements, as discussed in Section 2.4.1. DOE's considerations in the Energy Budget Levels selection process for commercial and multifamily residential buildings are discussed in the following paragraphs.

3.2.1. Expert Judgement

An independent review of R_{50} was conducted by building energy experts from HUD, the Corps of Engineers the National Aeronautics and Space Administration, the National Bureau of Standards, the Department of Defense, the Veterans Administration, and the Department of Health, Education and Welfare. The individuals involved were Federal officials experienced in the administration of the design of energy conserving Federal buildings. They were asked if, based on their experience, they could expect buildings to be designed which could meet the R_{50} level of design energy requirement, or more stringent levels. Their consensus was that the R_{50} levels of design energy requirements could be met, but they felt that these were very strict. Also, there was concern about possible undesirable increases in first cost and design time.

3.2.2 National Economic and Energy Impacts

The net present value to the Nation and the energy savings were estimated for three different levels of design energy requirements: lenient, nominal and strict. An extensive set of analyses was performed to evaluate the degree to which estimated economic impacts depended on the assumptions of energy costs and escalation rates, conservation costs, and other key variables (see Technical Support Document No. 3, Economic Analysis). The results indicated that, for almost all sensitivity cases considered, the net present value to the Nation of the proposed Energy Budget Levels was greatest for the strict case and lowest for the lenient case. Thus, national economic benefits are greatest for the more strict levels.

3.2.3. Practicability

This consideration included qualitative assessments by DOE of the practicability of designers being able to achieve energy conservation levels significantly more stringent than current practice. DOE has identified many instances where it appeared that designers would experience difficulty in reaching the strict range of design energy requirements, in spite of the apparent national cost-effectiveness of such levels. DOE believes that a major constraint in the designs of more energy-efficient commercial and multifamily residential buildings is not technology or costs but the unfamiliarity of design professionals with energy-efficient design strategies and available technology. DOE believes that this aspect of practicability is a strong deterrent against very strict Energy Budget Levels, at this time.

DOE has carefully evaluated the preliminary results of a life-cycle cost study of large office buildings.[47] This study suggests that there are designs that are economically beneficial at design energy requirement levels more stringent than those achieved by most of the redesigns in Phase 2. Again, however, the unfamiliarity of the design community with energy-efficient design strategies that would produce designs that would meet these stringent levels is an important consideration against setting levels that are too strict.

3.2.4 Confidence in the Samples Selected

Confidence in the sample was evaluated qualitatively in terms of three factors for each building type: Sample size, variability, and regionality problems. For example, for two building types, hospitals and multifamily low-rise residences, there was less confidence in the represenativeness of the sample than for other building types.

3.2.5 Technical Considerations

These included qualitative assessments of: (1) Process loads (the difficulty of separating process energy from other energy uses in calculating design energy requirement), and (2) evaluation technique capabilities for calculating design energy requirements for each building type. For example, the amount of process energy used for restaurant kitchens is generally much greater than the energy used for space conditioning in those buildings. DOE is considering research to develop an approach for studing the interactions

[47] AIA Research Corporation, "Life Cycle Cost Study of Commercial Buildings" (draft) (October 1979).

between process energy requirements and design energy requirements for space heating and cooling, lighting, ventilation, domestic hot water and elevators and escalators, all of which support human occupancy.

The proposed rule also contains no proposed Energy Budget Levels for two building classifications, restaurants and industrial buildings, because of the difficulties of separating process energy from other energy uses. DOE is considering further research to identify the non-process energy related design energy requirements of different types of restaurants and industrial buildings.

3.2.6 Health and Safety Considerations

The major health and safety issue of the proposed Standards identified in the Draft Environmental Impact Statement (Technical Support Document No. 7), is the potential impact of reduced rates of ventilation or air infiltration on indoor air quality. As discussed in Section 2.3.1, all of the proposed Energy Budget Levels can be achieved without any change in ventilation or air infiltration of commercial or multifamily residential buildings. Furthermore, the Standard Evaluation Technique (Section 4.0) is formulated so that it gives no credit for ventilation or air infiltration levels below current practice and the local requirements that are meant to protect the public health and safety.

Thus, under the proposed rule, the indoor air quality is not expected to change, regardless of whether the Energy Budget Levels are set at lenient, nominal, or strict rates.

3.2.7 Influence of Federal Government on Building Design

This included the potential of the Federal Government to influence construction practice for projects that receive substantial Federal funding, such as schools and hospitals. This potential could be developed by providing technical assistance to the designers of such buildings or by requiring energy efficient designs as a condition of Federal funding. This factor did not have a major role at this time because the mechanisms for exerting this influence have not yet been established and because of the particular concern about interior air quality in the two building types that would be affected, schools and hospitals.

3.2.8 Overall Assessment

Based upon the combined qualitative assessment of all of the above considerations for each building type, the following proposed Energy Budget Levels were selected.

- Large and small office buildings: R_{30}.
- Hospitals and multifamily low-rise residential buildings: R_{70}.
- All other commercial and multifamily residential buildings: R_{50}.

3.2.9 Component Performance Standards: Comparisons and Potential Equivalency

As noted in Section 2.2, impacts on design energy requirements of the proposed component performance standard ASHRAE 90–75R (November 1977) and the draft version (April 1978) of the HUD Minimum Property Standards were analyzed using the Phase 2 commercial and multifamily residential sample buildings. Applying the minimum requirements of the HUD standards to the multifamily residential buildings resulted in average design energy reductions in the range of 7% to 11% from 1975–1976 practice. The design energy reductions produced by the proposed Energy Budget Levels from 1975–1976 for these buildings types in more than two times as much as the reduction projected from the HUD standards.

The preliminary results of the analysis of the ASHRAE 90–75R component performance standard are available at this time for the Phase 2 small office building sample only. These results indicate that the minimum requirements of ASHRAE 90–75R, for those small office buildings, produce a design energy reduction from 1975–1976 practice of about one-half of the design energy reduction level of the small office building redesigns.

In addition, DOE has initiated preliminary analyses toward determining potential "equivalency" between a standard based on ASHRAE 90–75R and the proposed Energy Budget Levels. Changes were made to each relevant section of the ASHRAE standard to increase its stringency. Then, energy calculations were made which reflected the impacts of the more stringent measures. Those energy calculations were made for the Phase 2 sample of small office buildings and warehouses. The preliminary results of the more stringent component requirements based on ASHARE 90–75R produced average design energy requirement levels within 2 percent of the redesign levels for each of the two building types.[48] The changes made to increase stringency are currently being evaluated by DOE for technical feasiability and practicability.

[48] AIA Research Corporation Memorandum, "Preliminary Results of Potential Improvements to ASHRAE 90–75R to Determine Possible Equivalence to the Mean of the Phase 2 Redesign Buildings" (August 1979).

Also, DOE is initiating a more extensive program to develop measures of equivalency based on prototypical building designs.

3.3 Single-Family Residences

For single-family residences, DOE sought to select Energy Budget Levels that could be achieved using available conservation measures, would result in housing design changes that would be financially beneficial to the owner, would produce significant aggregate energy savings to the Nation, and would result in greater conservation than present energy standards or current practice.

The analysis conducted in support of DOE's selection of the proposed Energy Budget Levels first involved identifying currently used energy conservation measures and evaluating the cost and design energy requirements of using different combinations of these measures at different locations in the country. Ten cities were selected to represent a broad range of climates. For each city, four single-family residential prototypes were evaluated using different combinations of conservation measures and different fuel sources (gas, oil, and electricity). For each combination of conservation measures and fuel type, the analysis determined: (a) The life-cycle cost (i.e., the sum of (1) the future fuel costs discounted to the present, and (2) the investment in energy conservation measures above current practice), and (b) the design energy requirement for each prototype house.[49] This procedure made it possible to identify the combination of energy conservation measures that produced a minimum in the life-cycle cost. The procedure made it possible to identify the combination of energy conservation measures that produced a minimum in the life-cycle cost. The procedure also made possible the evaluation of the increase in life-cycle cost due to all other combinations of conservation measures for each of the fuel types.

DOE has decided to set the proposed single-family residential Energy Budget Levels at the minimum in life-cycle costs, as determined by the procedure outlined above. The basis and reasoning for this decision are discussed below.

[49] Life-cycle cost curves were generated by simulating the change in design energy requirements resulting from the addition of a series of energy conservation measures. The conservation measures were added in order of declining cost-effectiveness. Conservation measures included wall insulation (up to R–25), ceiling insulation (up to R–38), increased number of glazings on windows (up to three), and floor insulation (if a house had a crawl space.) Details are contained in Chapter 4 and Appendix A of Technical Support Document No. 8, Economic Analysis.

First, it is useful to recognize that there is considerable uncertainty regarding the precise identification of the life-cycle cost minimum. This uncertainty derives from a lack of complete information about local and regional variations in such factors as climate, energy prices, energy conservation costs, and "performance" of different energy conservation measures under a range of conditions and in houses that differ from the prototype designs used in the analysis. Therefore, the minimum life-cycle cost is more a range than a single point on the life-cycle cost curve.

The range is further broadened in some climates because several conservation measures near the minimum have approximately equal life-cycle costs. There is a regional pattern to the breadth of the minimum range on the life-cycle cost curve. In the colder climates, the life-cycle cost curve ends before a true minimum is reached and only unconventional conservation measures can further reduce energy use. In the warmest regions, for natural gas heated homes, additional conservation measures can be achieved at little additional cost. However, DOE is concerned that setting more stringent Energy Budget Levels than those at the life-cycle cost minima might have adverse impacts on the building industry, particularly in cold and moderate climate areas, during a transition period while the industry is adapting to the new Standards.

A number of analyses were undertaken to determine the effects upon life-cycle costs and energy requirements due to changes in the assumptions characterizing the prototype designs, conversation costs, energy prices and price escalation factors, and other variables of the analysis. Reports of these analyses are contained in Technical Support Document No. 8, Economic Analysis.

As a further step in establishing the practicability of the minimum life-cycle cost level, DOE conducted specific analyses to determine whether alternative conservation measures, not used to establish the life-cycle cost levels, could be used to meet the minimum level. In addition, DOE identified specific localities where there was some question as to whether the conservation measure used to establish the minimum point could be utilized. In these cases, DOE conducted analyses that indicated that alternative conservation measures could be utilized, in lieu of the questionable measure, to meet the minimum levels.[50]

Once DOE was satisfied that the minimum life-cycle cost level was reasonable and achievable, DOE then analyzed a number of important issues to determine whether alternative design energy requirement levels, more or less restrictive than those based on the life-cycle cost minima, would be preferable for the proposed rule.

DOE evaluated four alternative levels in reaching its decision:

1. The minimum point on the life-cycle cost (LCC) curve (called the LCC minimum).
2. 10 percent tighter than the LCC minimum.
3. 20 percent tighter than the LCC minimum.
4. 25 percent to 30 percent looser than the LCC minimum (equivalent to the HUD Minimum Property Standards).

Each of these four alternatives was evaluated with respect to: (1) Energy savings to the Nation, (2) economic impacts on individuals and the Nation, (3) practicability of designing buildings to meet the levels indicated, (4) first-cost (i.e., increased initial investment) impacts, (5) environmental impacts, and (6) degree to which the levels would be likely to encourage the use of renewable energy systems. The results of the investigation of these factors are summarized below and are discussed in greater detail in Technical Support Document No. 3, Energy Budget Levels Selection.

3.3.1 Energy Savings

The cumulative energy savings during the time period 1980 to 2020 resulting from the four alternative levels have been estimated using the Oak Ridge National Laboratory Residential Energy Demand Model (see Technical Support Document No. 8, Economic Analysis). The estimated savings were:

- More than 11 quadrillion Btu's (quads) for alternative 1, the LCC minimum.
- About 14 quads for alternative 2.
- About 16.5 quads for alternative 3.
- About 4.5 quads for alternative 4.

DOE also investigated the energy savings associated with the first alternative under the assumption that the Energy Budget Levels were made stricter by future updating, justified by higher energy prices (in accord with DOE's estimates of increasing real prices of energy). The cumulative energy savings associated with the minimum LCC level was about 15 quads, 4 quads greater than that without updating. Thus, the energy savings for all of the alternatives are underestimated if the Energy Budget Levels are made more strict through periodic updating.

3.3.2 Economic Impacts

The first three alternatives (minimum LCC, minimum LCC minus 10%, and minimum LCC minus 20%) were shown to have approximately equal and favorable economic impacts. Alternative 4 had considerably reduced economic benefits to the homeowner/occupant and to the Nation. (The estimated net benefit of alternative 4 was less than one-third that of the other alternatives, as shown in Technical Support Document No. 3, Energy Budget Levels Selection.)

3.3.3 Practicability of Proposed Energy Budget Levels

DOE's analysis raises concern that the two alternatives that are stricter than the minimum life-cycle cost are:

1. Not easily achievable in some cases because of the lack of information available to house designers, or the inadequate commercial availability of materials or components needed to meet the more stringent levels (e.g., lack of information about passive design options; difficulty in obtaining windows with triple glazing).

2. May be achievable for some, but not all, sites in many areas, because of limitations in the way that a building can be oriented, or due to unavailability of unobstructed access to sunlight.

DOE believes that the minimum in life-cycle cost levels (alternative 1) or more lenient levels (alternative 4) can be achieved using available technology.

3.3.4 First Costs

The increase in the first cost of alternative 1 (the minimum LCC) is estimated to be between $750 and $1500 in moderate and colder climates for an average new house of 1500 square feet (Technical Support Documents No. 8 and No. 3). Alternative 2 is estimated to require an increase of about 30% in first costs over that of alternative 1 if the designer is familiar with cost-effective ways of achieving a lower Design Energy Consumption. However, because of uncertainty in the availability of information and components, this increase in first cost could be considerably more, or somewhat less, than the estimated amount. Alternative 3 is estimated to have an initial investment approximately twice that of alternative 1.[51] Alternative 4 is

[50] See Technical Support Document No. 8, Economic Analysis, Appendices A and I, for details.

[51] As noted in Technical Support Documents No. 3 and No. 8, the initial investment required to achieve budget levels tighter than the LCC minimum is expected to decline over time as new energy conservation technology for residential buildings achieves commercial acceptance.

estimated to have 30% lower first costs than alternative 1.

As a result of the above analysis, DOE is concerned that Energy Budget Levels tighter than the minimum LCC levels could create an increase in building first costs that might intensify the present slowdown in the residential construction market.

3.3.5 Environmental Impacts

As noted in Section 2.3.1, the major area of potential environmental impact associated with the Energy Budget Levels is indoor air quality. The proposed Standards are designed so that no credit is given at this time for reducing air infiltration rates. As a result, all four alternatives are expected to have the same (i.e., negligible) impacts on indoor air quality.[52]

Because the more stringent alternatives result in greater reductions in the net air pollution caused by energy production, transmission, and use,[53] the strictest alternative (3) is expected to have the most favorable total impact on the physical environment. The most lenient alternative (4) has the least favorable impact on the physical environment, because it results in significantly smaller energy savings than the other three alternatives.

3.3.6 Renewable Energy Systems

DOE wishes to encourage innovative building designs which make use of solar and other renewable energy sources, as well as new methods of energy conservation. Setting the Energy Budget Levels at the LCC minimum (alternative 1) encourages the development and implementation of new design approaches. It requires the use of energy conservation measures that are more stringent than those used by most builders today. Alternatives 2 and 3, because they require even greater use of innovative measures to reduce energy use, could serve to further encourage the use of renewable energy systems in building designs. Alternative 4, the most lenient level, is anticipated to have little effect on encouraging the use of renewable energy systems in buildings.

Other aspects of the proposed Standards may be as important as the levels of the Energy Budget Levels in encouraging the use of renewable energy systems. One example is the effort to disseminate information that illustrates how systems, such as active and passive solar energy systems, can be used in designs to facilitate achieving compliance with the proposed Standards in different regions of the country. This and related issues are discussed in Section 2.4.2.

3.3.7 DOE's Decision on Energy Budget Levels

DOE considered the results of the analyses, as reflected in the summary discussion above, and decided to set the Energy Budget Levels for single-family residences at the minimum life-cycle cost levels. The reasons against selecting the stricter levels of alternatives 2 and 3 were (1) DOE's assessment of the difficulty of achieving those levels at the present time, and (2) the higher first costs associated with those stricter levels. The reasons against the more lenient level of alternative 4 were that it would result in (1) considerably lower energy conservation than the other alternatives, (2) less favorable economic and environmental impacts, and (3) virtually no encouragement of the use of renewable energy systems.

As noted previously, the LCC minimum points are generally reflective of the levels of an average residential building designed to maximize the economic benefits to the building owner/occupant. Because of uncertainty and variations in energy prices, conservation costs, building designs and climates, individual buildings will exhibit a range of minimum life-cycle cost points that are expected to center about the point chosen by DOE. Furthermore, as energy prices rise and as the costs of new energy conservation measures fall, more stringent Energy Budget Levels may be appropriate. For these reasons, DOE anticipates updating the Standards.

To assess the nature of the proposed single-family residential Energy Budget Levels, DOE compared them with already existing standards, i.e., the HUD Minimum Property Standards (MPS).[54] The Economic Analysis (Technical Support Document No. 8) also compares the two standards and shows that the proposed single-family residential Energy Budget Levels are more stringent than the HUD Minimum Property Standards, are more desirable economically than the HUD Minimum Property Standards and can be achieved using current building practices.

Table 3–1 illustrates several sets of options for meeting the proposed single-family residential Energy Budget Levels for three locations. These are some of the ways the Energy Budget Levels reported in Appendix I to the proposed rule can be achieved.

Table 3-1.—*Illustrative Ways of Meeting the Proposed Energy Budget Levels for Single-Family Residences In Three Locations*

Gas heated homes	
Location	Sets of options
Chicago, IL.....	1. Average window area and distribution [a]; triple glazing [b]; R-38 ceiling and R-19 wall insulation
	2. Windows redistributed so that south facing window area increased by 75%, and east, west, and north facing window area decreased by 25%; double glazing; R-38 ceiling and R-19 wall insulation
	3. Active solar domestic water heating system [d]; double glazing; R-38 ceiling and R-11 wall insulation
Atlanta, GA	1. Average window area and distribution [a]; double glazing; R-38 ceiling, R-19 wall, and R-11 floor [c] insulation
	2. Windows redistributed so that south facing window are increased by 75%, and east, west, and north facing window area decreased by 25%; double glazing; R-30 ceiling and R-11 wall and R-11 floor insulation
	3. Active solar domestic water heating system [d]; double glazing; R-19 ceiling, R-11 wall and R-7 floor insulation
Houston, TX	1. Average window area and distribution [a]; double glazing; R-30 ceiling and R-11 wall insulation
	2. Active solar domestic water heating [d]; R-19 ceiling and R-11 wall insulation
	3. Other alternatives, such as passive solar design and redistribution of windows, not evaluated for Houston
Chicago, IL.....	1. Average window area and distribution [a]; triple glazing [b]; R-38 ceiling and R-25 wall insulation; heating supplied by a heat pump
	2. Windows redistributed so that south facing window area increased by 36%, and east, west, and north facing window area decreased by 12%; triple glazing; R-38 ceiling and R-19 wall insulation; heating supplied by heat pump
	3. Active solar domestic water heating system [d]; double glazing; R-38 ceiling and R-25 wall insulation; heating supplied by electric resistance
Atlanta, GA	1. Average window area and distribution [a]; triple glazing [b]; R-38 ceiling, R-19 wall, and R-11 floor [c] insulation; heating supplied by heat pump
	2. Windows redistributed so that south facing window area increased by 80%, and east, west, and north facing window area decreased by 27%; double glazing; R-38 ceiling, R-19 wall and R-11 floor [c]; insulation; heating supplied by heat pump
	3. Active solar domestic water heating system [d]; double glazing; R-30 ceiling, R-19 wall, and R-11 floor [c]; insulation; heating supplied by electric resistance
Houston, TX	1. Average window area and distribution [a]; triple glazing [b]; R-38 ceiling and R-19 wall insulation; heating supplied by heat pump
	2. Active solar domestic water heating [d]; R-19 ceiling and R-11 wall insulation

[52] DOE anticipates that improvements in (1) the measurement of air infiltration rates, (2) the knowledge of relationships between building design, construction, and air infiltration rates, and (3) technologies (such as heat recuperators) that may permit low levels of infiltration without adverse impacts on air quality, may in the future make it possible for DOE to give credit for reductions in air infiltration rates.

[53] Technical Support Document No. 7, Draft Environmental Impact Statement.

[54] Lawrence Berkeley Laboratory, "Residential Energy Performance Standards: Comparison of HUD's Minimum Property Standards and DOE's Proposed Standards," LBL–9817 (October, 1979). This report compares key features of the two standards, summarizes the assumptions used in developing them, and shows how the HUD/MPS could be modified to be consistent with DOE's proposed Standards.

Table 3-1.—*Illustrative Ways of Meeting the Proposed Energy Budget Levels for Single-Family Residences In Three Locations*—Continued

Gas heated homes	
Location	Sets of options
Houston, TX	3. Other alternatives, such as passive solar design and redistribution of windows, not evaluated for Houston

[a] The average window area is 15% of total floor area. The windows are distributed equally among the exterior walls.
[b] Double glazing plus storm windows can substitute for triple glazing with little change in the Design Energy Consumption of the house.
[c] Floor insulation is noted in Atlanta, Georgia and all other areas where crawl space basements are used.
[d] The active solar domestic water system is assumed to supply 60% of the domestic hot water in a 1500 square foot house for the purpose of this illustration.

4.0 Building Design Evaluation Techniques

4.1 Introduction

The proposed rule provides two approaches for determining compliance with the Standards:

(1) A performance approach: Calculating the Design Energy Consumption of a building design for comparison with the Design Energy Budget applicable to that building design. For this approach, proposed § 435.03 requires the use of an evaluation technique to calculate the Design Energy Consumption. The evaluation technique may be either the Standard Evaluation Technique, which is included specifically in the proposed Standards and is described below, or an alternate evaluation technique, approved in accordance with proposed § 435.06.

(2) An equivalent approach: Complying with the requirements of a model code or Manual of Recommended Practice which has been determined to be "equivalent" to the Standards. The evaluation technique discussed here applies to the performance approach.

DOE has examined the issues surrounding the process by which the Design Energy Consumption of a building design may be determined. The process combines a number of diverse specializations, including computer science, climatology, engineering and architecture. It is also a process about which there is considerable diversity of professional opinion regarding which approach is best suited for use as part of these Standards.

DOE is proposing to establish the Standard Evaluation Technique to provide a method for calculating the Design Energy Consumption of a building design. The calculation method in the Standard Evaluation Technique was chosen from among many energy calculation methods currently in use.

The selection process is explained in Technical Support Document No. 1, The Standard Evaluation Technique. That document describes in detail the criteria and selection process used in establishing the Standard Evaluation Technique, as well as related technical and economic issues.

In addition, the document provides considerable detail regarding the Standard Evaluation Technique calculation methods and their capabilities, limitations, accuracy, ease and cost of use, and future development.

The discussion in this section of the preamble describes how the Standard Evaluation Technique relates to the proposed Standards and also outlines the procedure for developing alternate evaluation techniques.

4.2 Elements of Building Design Evaluation Techniques

Energy calculation methods are used for a variety of tasks in the building design process and in the examination of the energy consumption of existing buildings. Although energy calculation methods have been available for a number of years, there has been a notable proliferation in both the number of available methods and their use since the oil embargo of 1973–1974.

The traditionsl use for energy calculation methods is as a design tool to evaluate the energy efficiency of building design alternatives. This includes such analyses as:

- Comparing alternative HVAC systems to select the one best suited for the building.
- Comparing various wall compositions to assess energy savings at different constuction costs.
- Determining the energy savings due to "retrofit" energy conservation methods.
- Sizing solar energy collection systems.

Because of the role of evaluation techniques in these Standards, DOE believes it is important to distinguish between energy calculation methods, which are widely used in the building design process, and the Standard Evaluation Technique in this proposed rule. The Standard Evaluation Technique may be viewed as an energy calculation method to which certain fixed parameters and instructions have been added. Further, the application of the proposed Standard Evaluation Technique is more limited in scope, as it is used to determine, in a controlled manner, a building's Design Energy Consumption.

Designing buildings under a performance approach will mean choosing among various tradeoffs available to the designer, a task well suited for easy-to-use and cost-effective energy calculation methods. DOE feels strongly that the evaluation techniques can play an important part in the building design process and wishes to encourage their use in that process.

The Standard Evaluation Technique for the proposed Standards is composed of three major elements:

- An energy calculation method consisting of a set of mathematical equations which approximate the actual operation of a building based on its design.[55]
- Fixed parameters, used as data for the calculation method, which establish a consistent basis for comparing the Design Energy Consumption of a building design to its Design Energy Budget. This set of fixed parameters includes:

—Weather data.
—Standard Building Operating Conditions.
—Certain fixed data as specified by DOE.

- Procedures (i.e., instructions) for the combined use of both the calculation method and the fixed parameters, which result in the calculation of Design Energy Consumption for a building design.

These same three basic elements will also be present in any approved alternate evaluation technique.

An evaluation technique must provide a consistent framework in which building designs can be evaluated. There are certain factors, such as building operating conditions which, if varied by the designer, could significantly affect the Design Energy Consumption of a building design. If such factors are held constant from one

[55] Tables 1, 2 and 3 in Appendix IV of Technical Support Document No. 1, The Standard Evaluation Technique, identify all subroutines of the Standard Evaluation Technique programs that utilize algorithm or calculation values that were developed by private individuals or organizations with recognized expertise in the particular area. Since these algorithms and calculation values are not commercial standards as contemplated by Section 32 of the Federal Energy Administration Act of 1974 (15 U.S.C. 761 *et seq.*), determinations pursuant to Section 32(a) are not deemed necessary. Nevertheless, DOE considers it important that the public be provided with information concerning the source of algorithms and calculation values used in the Standard Evaluation Technique. Furthermore, as would be provided to the public were Section 32 applicable, DOE has determined that none of the algorithms or calculation values listed in Tables 1, 2 and 3 of Appendix IV was developed in accordance with the criteria set forth in Section 32(b) concerning public participation in the development process. It should be noted, though, that DOE experts have independently evaluated each subroutine item listed in the referenced tables, without regard to source, and determined that each represents the best available algorithms or calculation values.

building design to another, the calculation of Design Energy Consumption can be done on a fair and equitable basis.

When energy calculation methods are used in their traditional roles, as previously discussed, a consistent framework for comparison purposes is often used. It is common practice, for example, when comparing the energy requirements of alternative HVAC systems, to hold all other building data constant from one comparison to another. This is done so that the energy related aspects of the HVAC system under study can be evaluated. Energy calculations of this type would be of little value if the weather data or building occupancy patterns were allowed to vary from one comparison to another.

This same approach has been adopted by DOE in the Standard Evaluation Technique, which is structured to provide a consistent framework in which the energy related aspects of a building design can be isolated and evaluated.

4.3 Definition of the Standard Evaluation Technique for the Proposed Rule

DOE considers it essential that the Standard Evaluation Technique be readily available, precisely defined and in the public domain. The proposed Standard Evaluation Technique meets these requirements and consists of the following:

- The Standard Evaluation Technique calculation methods: three public domain computer programs, DOE–2, TRNSYS and DEROB, and their supporting documentation and user's manuals.
- The Standard Evaluation Technique fixed parameters: weather data, Standard Building Operating Conditions, and certain fixed data as specified by DOE.
- The Standard Evaluation Technique procedures (instructions): A detailed set of instructions for using the Standard Evaluation Technique calculation methods and fixed parameters. The instructions include:

—Selection of the appropriate public domain computer program to use with a specific building design.

—Selection of the appropriate weather data and Standard Building Operating Conditions.

—Use of the public domain calculation methods selected, including the requirements for data associated with the building design.

—Application of weighting factors to the building design energy requirements by fuel type (gas, oil and electricity) to determine the Design Energy Consumption of the design.

4.3.1 The Standard Evaluation Technique Calculation Methods

The current state of the art in building energy calculation methods is not sufficiently developed to support a single computer program for the energy analysis of all building classifications; heating, ventilation and air-conditioning systems; lighting; domestic hot water heating systems; and nonrenewable energy sources. The reasons for this are discussed in detail in Technical Support Document No. 1, The Standard Evaluation Technique, and briefly in Section 4.5 of the preamble. Therefore, DOE is providing the three computer programs indicated as the calculation methods for the Standard Evaluation Technique.

Their applications for this proposed rule are indicated in the matrix which follows. This matrix indicates that, for purposes of evaluating Design Energy Consumption, DOE is proposing three categories of building types and generic HVAC system configurations:

- Single-family residential.
- Commercial, with unitary HVAC systems.
- Commercial, with central HVAC systems.

Building category	Conventional systems	Passive solar	Hybrid solar	Active solar
Single-family residential	DOE–2	DEROB	(1)	DOE–2/TRNSYS
Commercial unitary	(1)	(1)	(1)	(1)
Commercial Central	DOE–2	(1)	(1)	DOE–2/TRNSYS

[1] Not presently available. Planned for the final rule. (Section 4.5.2)

Within the single-family residential category are included both attached and detached residences, as defined in proposed § 435.04. All other building classifications defined in the proposed rule are considered "commercial" for purposes of using the Standard Evaluation Technique. Unitary systems are defined as packaged HVAC equipment such as window air-conditioners, through-the-wall conditioners, and rooftop units. The equipment is distinguished from central plant components in that multifunctional components have been prepackaged on an assembly line. Central systems are defined as systems characterized by a central plant (chillers, boilers, furnaces, etc.) servicing several conditioned areas via a distribution system. The distribution system can be all air (variable volume, dual-duct, etc.), air-water (two-pipe, induction, dual-duct, etc.), or all water (fan-coil units with wall apertures, etc.).

Also, the matrix divides building energy systems into two categories:

- Designs which are considered conventional and use nonrenewable energy.
- Designs which include energy systems that utilize solar energy.

At the present time, the Standard Evaluation Technique does not treat any other renewable energy resource. Definitions of active, passive and hybrid solar energy systems are found in Technical Support Document No. 1, The Standard Evaluation Technique.

The following paragraphs briefly describe each of the Standard Evaluation Technique computer programs and their capabilities. A more extensive description is found in Technical Support Document No. 1.

DOE–2

This computer program is used to calculate the design energy requirements of non-solar single-family residential buildings and commercial buildings with central HVAC systems. It is also used to calculate building loads for processing by the TRNSYS program in calculating the design energy requirements in single-family residential buildings and central HVAC system commercial buildings which utilize active solar energy systems.

Given information on the building's intended location, construction, operation, ventilating and air-conditioning equipment, DOE–2 calculates the estimated hour-by-hour energy requirements of a building. It has three main calculation sections, as used in this proposed rule: LOADS, SYSTEMS, PLANT. The LOADS section calculates the hourly heating and cooling load for each thermal zone within the building. SYSTEMS simulates the operation of the HVAC distribution system. PLANT simulates the operation of primary energy conversion equipment, such as boilers and chillers.

TRNSYS

This computer program is used to calculate the contribution of an active solar energy system toward a building's heating, cooling and domestic hot water heating fuel requirements. It is used in conjunction with the DOE–2 program and is applicable to single-family residential and commercial buildings. TRNSYS was developed primarily to analyze the behavior of active solar heating and cooling systems. TRNSYS has the ability to simulate the interconnection of a wide range of possible component designs, controls, and system configurations for active solar energy systems.

DEROB

This computer program is used to calculate the design energy requirements of single-family residential building designs which incorporate passive solar energy systems.

DEROB is structured to allow a sophisticated analysis of most of the currently recognized passive solar design features. DEROB is the only public domain energy analysis program available which has the capability to adequately analyze complicated building geometries which incorporate passive solar energy design features such as direct gain or Trombe walls.

The three computer programs, their supporting documentation and user's manuals describe the Standard Evaluation Technique calculation method. The sources of these computer programs and their documentation are given in Table 1 in the proposed rule. DOE anticipates that the private sector will respond to the need for ready access to the Standard Evaluation Technique by making available the Standard Evaluation Technique calculation method, criteria and procedures on a time sharing basis through a number of computer service bureaus.

4.3.2 The Standard Evaluation Technique Fixed Parameters

In developing the fixed parameters, DOE had three objectives:

(1) Minimize the impact of the fixed parameters on building design flexibility.

(2) Achieve an acceptable degree of replicability among users of the Standard Evaluation Technique.

(3) Adhere, to the extent possible, to (a) the methodology used in the process by which Energy Budget Levels were developed for this proposed rule, and (b) the values typical of actual building operating conditions.

Climate Data

The climate data for the proposed rule is the National Oceanic and Atmospheric Administration (NOAA) Test Reference Year (TRY) data for 78 SMSA's and cities. The TRY data provide information on weather conditions, including temperature, humidity, cloud cover as an index of solar radiation, and wind on an hourly basis for the 8,760 hours of a year. The TRY data are recorded climate data for a year, selected to represent the climate for a location.

The Standard Building Operating Conditions

The length of time of use and the intensity of use of a building during the course of a year will affect its annual energy use. During the design of a building, the future use of a building cannot be precisely predicted. However, reasonable estimates of typical use can be made. As part of the Standard Evaluation Technique, these estimates of typical use have been made standard for each building design classification and, where appropriate, for each major function within a building design classification. They have been designated Standard Building Operating Conditions, and provide a consistent basis for calculating Design Energy Consumption for building designs reflecting similar uses.

Standard Building Operating Conditions are to be used with the Standard Evaluation Technique for the following:

(1) Occupancy
(2) Artificial lighting
(3) Domestic hot water
(4) Elevators and escalators (vertical transportation)
(5) Toilet exhaust
(6) General exhaust
(7) Indoor temperature conditions

Certain Fixed Data Values

Because the results of energy calculation methods can be greatly affected by certain values involving assumptions and approximations by the user, DOE has elected to fix certain data values to provide greater consistency in the calculations. For example, national holidays, daylight savings time and a January 1 to December 31 calculation period have been specified as part of these fixed data input variables. For additional details, see Technical Support Document No. 1, The Standard Evaluation Technique.

4.3.3 The Standard Evaluation Technique Procedures

The procedures in the Standard Evaluation Technique for calculating the Design Energy Consumption of a building are outlined below. Complete details are provided in Technical Support Document No. 1, The Standard Evaluation Technique.

Step 1: Select the Appropriate Standard Evaluation Technique Computer Program for a Particular Building

The Standard Evaluation Technique provides a procedure so a user can determine which computer program is appropriate to use for an HVAC system and building type combination as shown in the matrix in Section 4.3.1.

Step 2: Select the Appropriate Weather Data

Proposed Appendix II sets out the procedure for choosing appropriate weather data which includes the following basic steps:

(1) If the site of the building design is within the boundaries of one of the 78 SMSA's or cities listed in Appendix II of the proposed rule, use the TRY weather data for that SMSA or city.

(2) If not, then: (a) Select the SMSA or city with weather data most closely approximating the weather local to the site, based on criteria given in Appendix II of the proposed rule. If this selection criteria cannot be met, then

(b) Select the closest SMSA or city within 5 degrees latitude of the site.

(3) If the building design requires local weather data to develop the energy conservation strategies of the design and no TRY weather data is available to approximate local conditions, an exceptions procedure will be provided.

Step 3: Identify the Applicable Standard Building Operating Conditions

Once the building design classification has been determined from the definitions in § 435.04 of the proposed rule, refer to Technical Support Document No. 1, The Standard Evaluation Technique, to select the applicable Standard Building Operating Conditions.

Step 4: Use the Calculation Method

Select the appropriate computer program from instructions in Technical Support Document No. 1, The Standard Evaluation Technique. Develop data from the building design, use the Standard data and calculate the building's design energy requirements.

Step 5: Apply the Weighting Factors to Derive Design Energy Consumption

This last step is applied to the building's design energy requirements as calculated, to take into account the weighting factors discussed in Section 2.4.1 of the preamble to this proposed

rule (see instructions in Technique Support Document No. 1, The Standard Evaluation Technique, Appendix V). The result is the Design Energy Consumption of the building, which can then be compared to its Design Energy Budget which, as noted previously, also incorporates these weighting factors.

The above calculation methods, fixed parameters and procedures define the Standard Evaluation Technique for this proposed rule.

4.4 Alternate Evaluation Techniques

Proposed § 435.03 permits the use of an approved alternate evaluation technique to calculate a building's Design Energy Consumption. DOE encourages the development and application of energy calculation methods, whether proprietary or in the public domain. DOE believes it to be in the public interest that additional computer and "manual" energy calculation methodologies be established as alternate evaluation techniques on a national basis.

DOE feels that the development of manual calculation methods is important because they will provide alternative procedures which are less costly and time consuming for calculating residential and small commercial building Design Energy Consumptions.

4.4.1 Proposed Procedure for Approval of Alternate Evaluation Techniques

There is little practical experience in establishing a testing methodology for determining equivalency between energy calculation methods. To date, only the State of California has established a certification procedure for computer energy calculation methods, and it has less than two years of regulatory and administrative experience with this process.

Proposed § 435.06 prescribes a procedure under which a request may be made to DOE for approval of an alternate energy calculation computer program or a manual energy calculation technique.

DOE intends to provide the applicant with standard data for several buildings, including drawings and specifications and other information as necessary. DOE feels that the input, and any assumptions that were made when completing the input, will be consistent with the Standard Evaluation Technique for all candidate methodologies considered.

The applicant would then perform the calculations using the candidate methodology. Changes to the input would not be allowed without DOE's permission. Using the results, the applicant would complete standard forms to be provided by DOE, which would then be returned to DOE together with copies of the applicant's data, specifications, the candidate methodology's normal results for these designs, and commentary on any variance from the standard data above. Approval will be granted by DOE if the results of the methodology are within an established range of the Standard Evaluation Technique acceptable to DOE.

DOE may also provide limited and qualified approval of an alternate evaluation technique. Such limitations and qualifications could include specific building types, geographic regions, and HVAC systems to which its application is restricted. Subsequent application of the approved alternate to the calculation of Design Energy Consumption would also include the use of the appropriate criteria and procedures established by DOE for all evaluation techniques. Should the candidate program methodology be disapproved, the applicant will be informed of the reasons.

Any changes in an approved alternate evaluation technique would be required to be reported to DOE. A decision will be made by DOE whether the changes would affect DOE approval of the alternate evaluation technique. Periodic checks of procedures or of results for reproducibility may be requested by DOE. A current list of approved alternate evaluation techniques along with any limits in their applicability will be published as Appendix III of the proposed rule. It is also anticipated that periodic updates of this listing will be published in the **Federal Register.**

4.5 Technical Issues

4.5.1 General Limits of Energy Calculation Methods

Energy calculation methods are sets of mathematical equations approximating the energy requirements and processes of a building, its components and systems, in response to both its use and to weather conditions. These methods are used during the design of a building to estimate its expected level of energy use. Since the calculation methods contain assumptions and approximations of the weather conditions, the projected building use, and the building's systems and components, it is difficult to predict exactly the building's actual performance. Results can be expected to be within ±15% of a building's actual energy consumption. With respect to HVAC systems, there are many important components and subsystems which affect energy consumption and that are imperfectly understood. However, the equations representing these are reasonably accurate. (See Technical Support Document No. 1, The Standard Evaluation Technique.)

In other areas, such as passive solar cooling, natural illumination and building infiltration, little quantitative information is known about all the factors affecting these processes.

4.5.2 Limits of the Standard Evaluation Technique Computer Programs

In addition to the generic limitations of computer programs, there are certain limitations specifically associated with each of the three Standard Evaluation Technique computer programs (see Technical Support Document No. 1, The Standard Evaluation Technique). At this time, DOE does not feel that a public domain methodology is available that can adequately evaluate the following categories of building types and HVAC systems:

- Single-family residential hybrid solar energy systems.
- All commercial unitary systems.
- Central-system commercial buildings which utilize passive or hybrid solar energy systems.

Because of these limitations, discussed more fully in Technical Support Document No. 1, DOE recognizes the need for evaluation technique exceptions as part of the administrative review procedures for the Standards. In those circumstances where the Standard Evaluation Technique cannot adequately analyze a building design or certain of its components, DOE is considering the establishment of a review process to determine whether Design Energy Consumption is less than or equal to the Design Energy Budget.[56] However, in the time period between this proposed rule and the final rule, DOE efforts will be aimed at developing a more comprehensive Standard Evaluation Technique than is currently available. The following matrix indicates how the Standard Evaluation Technique capabilities are planned to be expanded.

[56] Technical Support Document No. 1, The Standard Evaluation Technique, identifies different systems and technologies which the Standard Evaluation Technique is unable to treat at this time.

Building category	Coventional systems	Passive solar	Hybrid solar	Active solar
Single-Family Residential	DOE-2	DEROB	DEROB/TRNSYS	DOE-2/TRNSYS.
Commercial, Unitary	DOE-2	DOE-2	DOE-2/TRNSYS	DOE-2/TRNSYS.
Commercial, Central	DOE-2	DOE-2	DOE/2/TRNSYS	DOE-2/TRNSYS.

As depicted, the Standard Evaluation Technique capabilities will be expanded to encompass the currently expected building type and generic HVAC system categories for the final rule. Further, DOE is planning to develop a single computer program which will be applicable in all categories. This program, to be designated "DOE–n," is in the very early planning stages and requires considerable research and development work.

4.6 Public Comment

4.6.1 Comments on the ANOPR

Seventeen comments received by DOE after publication of the ANOPR addressed the issue of evaluation techniques. These comments related primarily to three different recommendations: (1) Specify one evaluation technique; (2) permit optional evaluation techniques; and (3) provide no evaluation technique.

The first group of comments (which were the majority received regarding this issue) encouraged the use of one evaluation technique that can be readily and accurately applied by both design professionals and building code officials to compute Design Energy Consumption. It was suggested that computer programs that would satisfy this prerequisite included DOE–1 (one comment), BLAST (two comments), ESP–1 (one comment), and AXCESS (one comment).[57]

The second group of commenters stressed that the evaluation techniques provided should be broad enough to permit the use of any recognized calculation procedure, and urged that both manual and computer based forms of calculation be made available. These comments maintained that design professionals should be permitted to select the methodology most appropriate to their needs. One comment urged that a reference list, covering manual and computer assisted techniques, be included in the rule.

The third group of comments questioned the ability to use available computer programs to estimate accurately actual building performance. Because the computation process can be quite complex, these comments were concerned with the lack of skilled technicians to prepare the design parameters of a building design for the computer programs. These comments urged that evaluation techniques such as DOE–1 not be included in the proposed rule, or, if included, be an optional evaluation technique.

4.6.2 DOE's Response

DOE shares the basic concerns raised by commenters to the ANOPR and has taken those comments into consideration in determining which approach to take for the evaluation technique. As proposed, a Standard Evaluation Technique is provided which meets DOE's criteria for the role which an evaluation technique must play in the performance approach under these Standards. Additionally, an approval process for alternate evaluation techniques is proposed which allows limited and qualified approval for both computer based and manual energy calculation methods. Therefore, DOE foresees that a wide variety of energy calculation methods will be developed to determine a building's Design Energy Consumption that will yield results consistent with the Standard Evaluation Technique.

4.7 General Issues

DOE's objectives in the development of the evaluation technique concept in general, and the Standard Evaluation Technique in particular, have been:

(1) Accuracy: To select an energy calculation method that is representative of the current state of the art for such methods.

(2) Replicability: To assure an acceptable degree of consistency of results among evaluation technique users through the use of certain fixed data parameters and building operating conditions.

(3) No undue burden: To minimize undue economic, time or training burdens on designers using evaluation techniques for compliance with the Standards, and to facilitate the use of evaluation techniques at the appropriate level of detail and cost which accommodates the designs of both large, complex buildings, and small, uncomplicated ones.

(4) Innovation: To permit and encourage the use and evaluation of innovative energy conserving design strategies.

Considering the complexity of developing and using evaluation techniques and the limits to the current state of the art of calculation methods, these objectives are difficult to attain at once. Further, the four objectives may tend not to support one another. For example, the evaluation technique utilizes the fixed parameters and procedures so that an aceptable degree of replicability of results can be obtained. However, the use of Standard Building Operating Conditions may not encourage innovation because it may restrict the application of energy conserving design strategies that rely on reasonable temperature swings in response to external climate conditions. This is an especially sensitive issue with respect to passive solar buildings. The use of fixed parameters may also cause undue burdens for building designers in that a duplication of effort will result when energy calculations are performed using both the hours of operation actually expected for the building design and those required by the Standards.

DOE is aware of the potential for certain inequities to arise from conditions similar to the examples given above. Currently, DOE is seeking ways to attain all of its objectives with the evaluation technique and not stifle innovation or cause undue burdens to building designers. The solution may well lie with the development and approval of alternate evaluation techniques.

DOE's ongoing research program is geared to enhancing the capabilities of the Standard Evaluation Technique computer programs to model additional innovative and traditional systems. Efforts are also underway to make the Standard Evaluation Technique significantly easier to use. In addition, DOE is actively supporting the development of simplified energy calculation methods, in the public domain, which will use programmable calculators or microcomputers (see Technical Support Document No. 1, The Standard Evaluation Technique). DOE also encourages the development and approval of simple, easy-to-use proprietary evaluation techniques.

DOE recognizes the need for an exceptions procedure for innovative building designs which cannot be evaluated by approved evaluation techniques. Further, DOE is concerned that such an exceptions procedure not cause costly time delays that could act as a deterrent to the use of innovative techniques in complying with the Standards.

[57] DOE–1 is an earlier version of DOE–2. BLAST is an energy program developed by the Corps of Engineers Research Laboratories and is in the public domain. ESP–1 is a proprietary program of Automated Procedures for Engineering Consultants (APEC).

DOE feels that the four objectives of accuracy, replicability, no undue burden and encouraging innovation also apply to the development of the proposed procedure for approving alternate evaluation techniques.

Issues related to the approval process include:

- Development of abbreviated formats for weather data, fixed parameters, operating conditions and procedures appropriate for simpler calculation methods.
- Development of procedures for approving evaluation techniques which include capabilities not present in the Standard Evaluation Technique.
- Development of straightforward updating procedures to approve enhancements and refinements to approved evaluation techniques.

DOE is especially concerned that the approval process not result in undue cost and time burdens on smaller oganizations with special evaluation techniques.

4.8 Relationship to Actual Consumption

DOE anticipates that many questions will arise concerning the consequences of not complying with the proposed Standards once they are in effect. For example, DOE officials have been asked: What will happen if a particular building's actual energy consumption, after its construction and "break-in" period, exceeds its Design Energy Budget? The intent of these Standards is to regulate only the designs of new buildings. The operation of buildings is not within the scope of the Standards as proposed.

Also, evaluation techniques may provide a reasonable projection of expected building energy use under standard conditions, but it is not a precise prediction of actual use because:

- Approximations and assumptions are used by all energy calculations methods (see Section 4.5.2 and Technical Support Document No. 1, The Standard Evaluation Technique).
- Historical weather data from a previous reference year is used, which will vary from the weather for each year that the building is in actual operation.
- The Standard Building Operating Conditions used to provide a consistent comparison of Design Energy Consumption among buildings with the same uses may be different from the actual use of a particular building over a year's time.
- The Design Energy Consumption calculation excludes energy for certain process uses, such as computer operations, kitchen equipment and laundries; however, the actual energy used by the building would include these energy uses.

4.9 Request for Public Comment

Because of the significance of the evaluation technique concept, DOE is especially interested in receiving public comment on issues related to the Standard Evaluation Technique and the approval process for alternate evaluation techniques.

5.0 Implementation

5.1 Introduction

This discussion of the implementation of the Standards is included to offer the public as complete a picture as possible of the operation of the program as it is presently conceived. This is done to facilitate comment on the proposed Standards, in addition to providing a basis for comment on issues specifically related to the development of implementation regulations. A proposed rule on implementation will be published at a later date.

Comments received from the Advance Notice of Proposed Rulemaking published by HUD in November 1978, revealed a concern by State and local officials that sanctions might be imposed before they have sufficient time or resources to come into compliance with the Standards. For this reason, several implementation alternatives are being considered to address any burden placed on State and local code officials by implementation of the proposed rule.

The Act authorized HUD to develop and promulgate energy performance standards for new buildings and to undertake the implementation of such standards. The Department of Energy Organization Act, enacted in August 1977, transferred from HUD to DOE the responsibility and authority to develop and promulgate the Standards. HUD currently has statutory responsibility for issuing implementation regulations.

Both HUD and DOE recognize that the development of implementation regulations, prescribing how compliance with the Standards is to be achieved, is closely linked to the development of the Standards themselves. Therefore, on March 21, 1979, a Memorandum of Understanding (MOU) was executed by HUD and DOE, pursuant to which DOE agreed to prepare analyses of implementation issues and to undertake development of administrative procedures in connection with implementation.

This section of the preamble is based upon the analyses and implementation issues development performed by DOE in discharging its responsibilities under that MOU.

5.2 Statutory Requirements

Section 305(a) of the Act provides that "no Federal financial assistance shall be made available for the construction of any new commercial or residential building in any area of any State" unless certain actions are taken by State and local governments to avoid imposition of the sanction. "Federal financial assistance" is defined in Section 303(7) as:

(A) Any form of loan, grant, guarantee, insurance payment, rebate, subsidy, or any other form of direct or indirect Federal assistance (other than general or special revenue sharing or formula grants made to States) approved by any Federal officer or agency; or

(B) Any loan made or purchased by any bank, savings and loan association, or similar institution subject to regulation by the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Comptroller of the Currency, the Federal Home Loan Bank Board, the Federal Savings and Loan Insurance Corporation, or the National Credit Union Administration.

Section 305(c) of the Act requires that each House of Congess must approve the need for the sanction before it comes into effect.

Under Section 305(a)(1) of the Act, a State may avoid imposition of the sanction by certifying that:

(A) The unit of general purpose local government which has jurisdiction over such area has adopted and is implementing a building code, or other construction control mechanism, which meets or exceeds the requirements of such final performance standards, or

(B) Such State has adopted and is implementing, on a statewide basis or with respect to such area, a building code or other laws or regulations which provide for the effective application of such final performance standards.

The Secretary is authorized by Section 305(a) to review and investigate the accuracy of, and to periodically update, such certifications. After providing notice to a State, and opportunity for a hearing, the Secretary may disapprove or require the withdrawal of a State certification.

As an alternative to Section 305(a)(1), Section 305(a)(2) of the Act permits the sanction to be avoided where new buildings are determined to be in compliance with the final energy performance Standards pursuant to an alternate approval process. "Approval process" is defined in Section 305(b)(3) to mean:

A mechanism or procedure for the construction and approval of an application

to construct a new building and which involves (A) determining whether such proposed building would be in compliance with the final performance standards for new buildings promulgated under section 304, and (B) administration by the level and agency of government specified by the Secretary pursuant to paragraph (4).

Section 305(b)(4) prescribes the unit of government which shall administer the approval process, in descending order of priority as follows: (1) The agency which grants building permits on behalf of the local governments with jurisdiction over the area in which new construction is proposed; (2) if such agency is not willing and able to administer the approval process, then the process shall be administered by any other agency of the local government with authority to administer the process which is willing and able to do so; and (3) if neither of such agencies is willing and able to administer the approval process, any agency of the State with authority to administer the approval process may do so. Under Section 305(b)(2), the Federal Government is given overall responsibility for an effective alternate approval process.

Section 305(a)(3) authorizes the Department to grant exemption from the enforcement of the sanction, at the request of a State, for areas where construction of new buildings is not of a magnitude to warrant the costs of the measures set forth in Sections 305(a) (1) and (2). Such an exemption may be rescinded where the Department finds that the level of new construction has increased sufficiently to warrant the costs of the alternate measures.

Other statutory provisions include Section 307 which authorizes the Department to make grants to States and local governments to assist them in meeting the cost of administering State certification procedures or an alternate approval process. Under Section 308, the Department is authorized to provide, directly or indirectly by contract or other methods, technical assistance to States and local governments to aid them in meeting the requirements of the Act. No funds have been appropriated pursuant to Sections 307 and 308.

Section 252 of the National Energy Conservation Policy Act (NECPA) (Pub. L. 95–619) requires that, when the performance Standards under this program are made effective, the Minimum Property Standards (MPS) of the Federal Housing Administration and the Farmers Home Administration shall be revised to meet those Standards. Even if Congress does not approve the use of the sanction, this provision means that, after the effective date, any new construction subject to MPS (all subsidized and Federally insured housing programs) must comply with the performance Standards. Section 306 of the Act requires that the head of each Federal agency responsible for the construction of any Federal building shall adopt procedures necessary to assure that any such construction meets or exceeds the performance Standards. Section 546 of NECPA further provides that energy performance targets are to be established for construction of Federal buildings which are consistent with the performance Standard levels set pursuant to the Act. These latter provisions are effective whether or not Congress approves the sanction provisions of the Act.

5.3 Considerations in Developing an Implementation Program

To be effective, the implementation of the Standards must be developed within the existing system for the regulation of building construction. Regulation of building construction has traditionally been a local prerogative exercised through local building codes. It has only been within the past decade that States have begun to assert their authority to control construction through the use of statewide mandatory building codes. In almost all cases, though, enforcement of the code has been left to the locality.

Standards used in building code regulations have traditionally been written in specification (as opposed to performance) terms.

Another important feature of the regulatory system is the need for technical assistance for building code officials if they are to adopt and implement the Standards. The concept of energy-related construction requirements is relatively new to many local building officials. Since local building officials often are not architects or engineers trained in building performance concepts, technical assistance will be needed if the long-term objective of performance based regulations is to be achieved.

Another characteristic of the code environment which may affect the design of any Federal regulatory program is the typically small size of code enforcement staffs and the multiplicity of their regulatory responsibilities (e.g., plumbing, electrical, elevator, etc.). In addition, local code enforcement offices may have limited fiscal resources to implement the program.

5.4 Implementation Approach

This discussion is intended to give the public a perspective on at least one approach to the implementation of the proposed Standards. This proposed rule does not include a proposed implementation rule. As mentioned earlier, a proposed regulation addressing implementation is expected to be issued in the near future.

The following sections discuss a preliminary approach to three implementation alternatives: State Certification, Alternate Approval Process and Exemptions.

5.5 State Certification

The Act makes it clear that the States, not the Federal Government, have the authority to certify whether a building code meets or exceeds the Standards. The Federal authority rests in the language in the Act which says this State certification authority is to be exercised in accordance with regulations promulgated by the Secretary, currently the Secretary of HUD.

DOE has considered what the form and substance of these regulations should be to achieve an effective Standards program.

An effective program would require that approved building codes meet certain minimum criteria. To insure this, the regulations should require that a State certify a building code only after it meets these criteria.

The minimum criteria might be:

(1) That the code is equivalent to or exceeds the requirements of the Standards, and

(2) That the building code jurisdiction has an adequate implementation program.

The regulations could require a finding by the State that these criteria have been met prior to the certification of a building code. The Secretary could require that a copy of this finding be sent to the Federal Government. This would facilitate the monitoring of the State certification program.

Section 305(a)(3) of the Act supports this type of monitoring program with the following language:

> The Secretary shall review and conduct such investigations as are deemed necessary to determine the accuracy of such certifications and shall provide for the periodic updating thereof. The Secretary may reject, disapprove, or require the withdrawal of any such certification after notice to such State and an opportunity for a hearing.

At first glance, the State certification of building codes would appear to pose special problems for a statewide code. A State is placed in the position of certifying its own code.

This problem may be more apparent than real. A State can be expected to take great care to certify a statewide code only if it is equivalent to or exceeds the requirements of the

Standards, because to do otherwise would jeopardize the financing of new building construction in the State.

The regulations should be adequate if the State certification of a statewide code is monitored in the same manner as a local code. The State would be required to make a finding that the statewide code meets the same criteria required of local codes and to provide a copy of this finding to the Secretary. The Federal Government could then review the State's finding to insure that it meets the criteria.

The determination of the equivalency of a building code to the Standards is a major requirement that probably is beyond the analytical capabilities of most States. DOE recognizes that it will have to provide technical assistance to the States to help them meet this requirement.

To be equivalent, a building code would have to satisfy one of the following requirements:

(1) The code must be identical to one of the model codes, model equivalent codes or standards, or manuals of recommended practice approved by DOE and listed in Appendix IV of the Standards, or

(2) The code must provide that a building design meets or exceeds the requirements of the Standards.

To simplify the State task of certifying codes, DOE intends to prequalify, to the extent feasible, standards and codes for inclusion in Appendix IV prior to the effective date of the Standards. Local jurisdiction and States would then be able to adapt or model their codes after one of these equivalent approaches.

DOE is considering making available a methodology for evaluation of a code, with an accompanying administrative manual to States choosing to certify codes. This methodology would provide objective criteria by which codes could be measured against the Standards, thereby facilitating States making equivalency determinations.

Where a State does not have the technical or financial capacity to make equivalency determinations, it could submit the codes of local governments to the Secretary for an "advisory opinion." This would be an informal method of determining whether a code was equivalent to the Standards before the locality has expended funds for adoption and enforcement procedures.

DOE has considered how this regulatory approach could fit into a workable Standards program. To accomplish this, it is important that lending institutions and the other Federal agencies responsible for applying the sanction have current and reliable information on where building codes have been certified.

The regulation could require monthly reports from the States on the building codes they have certified, along with the State findings supporting the certification of these codes, as discussed above. The Secretary could then publish a list of certified codes every month in the **Federal Register.**

The lists of certified codes could then be referred to by lending institutions and other Federal regulatory agencies responsible for imposing the sanction. Once the name of the State or local code jurisdiction was published in the **Federal Register,** and so long as the certification remained valid, no sanction would be imposed against applicants for Federal financial assistance who had designed their buildings to a certified code in those jurisdictions.

DOE has also considered additional ways in which the Federal Government may assist the States and local governments in their administration of the Standards program. The existing State Energy Conservation Program could be used as a mechanism for providing this assistance. This program was initiated by the Energy Policy and Conservation Act (EPCA) of 1975, 42 U.S.C. 6321 *et seq.*

The EPCA program provides grants to States that undertake energy conservation programs which must include certain mandatory provisions, including the adoption and implementation of building lighting and thermal efficiency standards.

Through this program, the States have made rapid progress toward regulations that require more energy efficient new building construction. As indicated in Technical Support Document No. 6, Draft Regulatory Analysis, 34 States have enacted codes that cover all or a portion of their new private construction and an additional 10 States require that code provisions be met in new State construction. An average of $50,225 per year was spent by the 50 States in FY–1978 in adopting and implementing EPCA building standards.

The Administration is supporting the proposed Energy Management Partnership Act of 1979 which is now before Congress. This act would enlarge the capacity of the States to implement the Standards program. The act would increase the Federal funding for State programs, including building code programs, and require additional coordination between State and local governments.

The regulations implementing the Standards could be incorporated into these existing programs and proposed new legislative authorities. This would help insure coordination between the implementation of the Standards and other State energy conservation activities.

In addition to the basic requirements that must be met before a code is certified, DOE has identified other possible features that could be required in order to achieve the goals of the Standards program.

The first is that designs for buildings in excess of 50,000 gross square feet would have to be evaluated and certified by a qualified design professional using an approved evaluation technique. It is expected that projects of this size are best analyzed in this way due to the complexity of the relationship of different components and the opportunity to employ performance type energy conserving design concepts. Because these designs customarily require the services of architects or engineers, the requirement should not constitute an undue added burden.

The second requirement would be that each State or local building code contain a procedure whereby an applicant could qualify the design of a building using a performance approach. This requirement would not preclude a State from certifying building codes that use a prescriptive or component approach, but it would ensure an opportunity for a designer to evaluate a whole-building design using a performance path. When the Energy Budget Levels are provided in advance, design costs using the performance path may be less costly than the current practices required by many codes.[58] Training and exposure to performance based design would permit and encourage the opportunity for the increased use of whole-building performance standards.

The third requirement is that a State certified code make certain that a building permit, or an occupancy permit, is not issued for a building where a building design does not satisfy the energy section of the code. The energy section must have the same enforcement standing as other sections of the code, such as health and safety.

The fourth requirement is the need for periodic inspections of the building as it is being constructed, to assure that it is being constructed in conformance with the approved designs.

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[58] Many codes applicable to commercial buildings are based upon the ASHRAE 90–75 Standard. This standard requires that, before the performance approach for designing a building can be utilized, the building must be designed using the component approach. This step is necessary to determine applicable budget numbers. When the budgets for particular buildings are provided in advance, as they are in the Standards, a designer need not go through the component design procedures, thereby reducing design costs.

For various reasons, a code may not cover all building types specified in the Standards. Some types may be regulated by separate codes. For example, a State may have a specific code for the construction of schools or hospitals. As part of the certification of a code, the State would have to identify which building types are not covered by the certification and how the Design Energy Consumptions of those building types are regulated.

Sanctions could still be imposed where a particular building design is not covered by a certified local code, unless there is a different certified code covering that particular building type. An example illustrating this problem would be where a local code does not cover schools or hospitals. In this case, the proposed building would either have to be designed in conformance with a certified State energy code for schools and hospitals, or qualify under an alternate approval process as discussed below or, the designs would otherwise have to be determined to meet or exceed the requirements of the Standards.

An important issue in the development of State certification procedures concerns amendments to certified building codes for which determinations of equivalency have been issued. States would be required to notify the Secretary of any amendment to a certified code, if such amendment may affect the energy performance of building designs.

When the Standards requirements themselves are revised, an issue arises as to the need to reexamine codes to determine their continued equivalency. In this case, the Secretary would notify States of any amendments required of certified codes due to revision of the Standards. However, the certified codes would remain in effect during a specified period allowed for adoption of the required amendments. An alternative approach would be to require the resubmission of the State plans with new certifications whenever the Standards requirements are revised.

5.4.2 Alternate Approval Process

A second path for complying with the Standards and thereby avoiding the imposition of the sanction would be to satisfy the alternate approval process requirements of the Act.

The term "approval process," as used in Section 305(b)(3) of the Act, means "a mechanism and procedure for the consideration and approval of an application to construct a new building and which involves (A) determining whether such proposed building [is] in compliance with the . . . standards . . ."

The approval process is a means of determining the compliance of a building design with the Standards in the absence of a certified State or local code. The expectation is that, at least for the period immediately following the effective date of the Standards, the approval process may be used by local governments more frequently than the certified code path.

There are several reasons for this:

(1) Some time may be required to bring a local code into equivalence with the Standards.

(2) There may not be adequate implementation of a code to obtain a certification.

(3) Some local code enforcement offices may not have the technical capacity to implement a certified code, even though code provisions meet or exceed the energy requirements of the Standards.

(4) Some communities currently have not energy or building codes operating in their jurisdictions.

The alternate approval process as presently conceived would require two steps to approve an application to construct a new building:

(1) A determination that the building desing meets or exceeds the requirements of the Standards.

(2) A declaration by an appropriate level of local or State government that the requirements of the Standards have been met.

The determination could be made by a local code enforcement agency or a private design professional. Many local code enforcement agencies in the country will have the internal capacity to review designs and make these design equivalency determinations. DOE is considering making available a number of evaluation and design aids to facilitate and assist local enforcement agencies in making these determinations. These aids will include a list of prequalified codes against which designs can be compared, manual calculation methods, manuals of recommended practice, and other model codes and standards in formats with which code officials are familiar, in addition to more sophisticated computer evaluation techniques described in other sections of this preamble.

A local code enforcement department which issues a building permit after making a compliance determination could be regarded as administering an approval process. An appropriate official would have to make a declaration to the permit applicant that the building design complies with the Standards. This declaration by an appropriate official with authority to issue building permits could fulfill the administrative requirements of the approval process.

Even with these tools, many local governments may not want to evaluate building designs. Therefore, the approval process would permit qualified design professionals to certify that a building design satisfies the energy requirements of the Standards. This certification could also meet the determination step of the alternate approval process.

The design professional may be a licensed architect or engineer, code official, or member of any related professional group. Since the approved methods of showing equivalency in Appendix IV of the proposed rule will vary, the required skills of the design professional will likewise vary. The more sophisticated design analysis will require a more highly trained professional. Therefore, it is anticipated that, for each equivalent method included in Appendix IV, there will be an accompanying listing of requirements that, if satisfied, would qualify a design professional.

The certification by a qualified design professional would require a determination by the professional that the Design Energy Consumption of a building design does not exceed the applicable Design Energy Budget for that building type. The qualified design professional could follow the Standard Evaluation Technique or any procedure given in Appendix III.

In addition to the determination that the building design meets the requirements of the Standards, the alternate approval process would also require a declaration by a local or State agency that the requirements of the Standards have been met. Section 305(b)(4) of the Act defines and prioritizes different administering agencies. It gives a priority ranking for administration, starting with an agency that grants building permits on behalf of the unit of local government, then to another local agency, and ending with a State agency. The authority would go to the highest priority agency willing and able to administer the approval process.

The administering agency would be required to include specific findings in its declaration that the administrative requirements of the Standards have been met. These might include:

(1) The administering agency has authority to administer the approval process.

(2) It has received a copy of the building design and a copy of the certification issued by the qualified design professional for that building design.

(3) The person applying for the declaration has provided a written assurance to the agency that construction of the building will conform to the submitted design and that, should substantial modifications occur during construction, a recertification based upon the final design will be submitted.

This approach would not necessarily involve the administering agency in the actual "determination" of the building design, but it would be the focal point where the approval process could be administered.

To avoid the sanction, an applicant for construction funds would present this declaration to a lending institution or other appropriate Federal regulatory agency to show compliance with the Standards.

5.6 Exemption

It is anticipated that most State and local jurisdictions will be able to avoid imposition of the sanction in a cost-effective manner through the adoption and implementation of State-certified building energy codes or the use of the alternate approval process. However, Congress recognized there may be areas of the Nation where the volume of building construction is so low and building regulatory mechanisms so undeveloped that the approval process, or adoption and implementation of State-certified codes, would be disproportionately costly in relation to the benefits expected to be obtained. Section 305(a) of the Act provides for the grant of an exemption to such areas.

A request for exemption would include data from which a cost-benefit analysis could be performed. The State would estimate the cost of administering an approval process based upon the anticipated levels of construction in that area. Those costs would be subtracted from a dollar estimate of the benefits in energy savings that would be achieved over the same period had buildings been designed in accordance with the Standards. If the balance is negative (i.e., costs exceed benefits), an exemption would be granted.

Further, no exemption would be granted to an area within a State which is located within a code enforcement jurisdiction. The existence of an agency to regulate building inspection in those areas indicates that the level of construction in such areas is sufficiently high to justify the cost of regulation.

The exemption, or an extension of an exemption, could be effective for a specified period. This limitation would provide assurance of a periodic review and assessment of the exemptions granted. Further, the Secretary is authorized to rescind a grant of exemption whenever he finds that the level of building construction has increased or other circumstances have changed, so that implementation is feasible and the costs of implementing the Standards are warranted (Section 305(a) of the Act).

5.7 Impact on Financing New Construction

Assuming the imposition of sanctions, the Act would affect those who provide Federal financial assistance, including lenders, by prohibiting the use of funds for construction of buildings whose designs are not in compliance with the Standards.

The goal would be to define, as unambiguously as possible, when a construction loan or commitment would be subject to the sanction.

The Federal Government could publish periodically in the **Federal Register** the current list of exempt jurisdictions and jurisdictions with certified codes. The lender would then need to determine whether the jurisdiction within which the building is to be constructed is on either list. If it is, no further requirements would be attached to the financing to comply with the Standards. If the jurisdiction is not on either list, the lender would have to obtain the declaration by the agency administering the alternate approval process discussed above to qualify for financing.

The analysis and development of the implementation issues in this section of the preamble are presented by DOE as a possible approach for achieving compliance with the Standards. To repeat, the intention of this section is only to provide the public with a perspective on how the Standards might be implemented. Specific implementation rules will be proposed at a later date.

6.0 Other Matters

6.1 Environmental Review

As required by Section 7(c)(2), 15 U.S.C. 766(c)(2) of the Federal Energy Administration Act of 1974 (15 U.S.C. 761 *et seq.*), a copy of this proposed rule was submitted to the Administrator of the Environmental Protection Agency for comments on the impact of this proposed rule on the quality of the environment. The Administrator to date has expressed no comment.

A Draft Environmental Impact Statement (DEIS) was prepared in accordance with the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*). The DEIS has been designated Technical Support Document No. 7 and is available to the public for comment as noted at the beginning of this preamble. This document also discusses indoor air quality.

6.2 Regulatory Analysis

DOE has determined that this proposed rule is significant and is likely to have a major impact. Accordingly, a Draft Regulatory Analysis and a Draft Urban Impact Analysis have been prepared in addition to the environmental analysis discussed in Section 6.1.

A summary of the Regulatory Analysis which is published below, and supporting documentation, consists of (1) an extensive statement of the problem addressed by the regulation, and the mandate for government action; (2) a description and analysis of the reasonable and feasible policy alternatives to meeting that mandate, including the legislative authority, institutional and other impacts of the standards; and (3) a comparative analysis of the impacts of the alternatives, quantified when possible.

The discussion in (3) also contains an analysis of the effects of the alternatives on: The objectives of national energy policy or energy statutes; the economic well-being of the Nation as a whole, individual industries, levels of government, geographic regions, and demographic groups; compliance and other requirements; competition; other relevant costs and benefits; and the fairness of the distribution of the costs and benefits.

The Draft Regulatory Analysis Summary, published in this section, contains a discussion of:

- Problem and Mandate for Government Action
- Policy Objectives
- Projected Economic Effects of the Proposed Standards
- Major Alternatives Considered
- The Proposed Approach, and the Reasons for Choosing the Preferred Alternative

The Urban Impact Analysis examines the possible impacts of a proposed program on cities and communities in terms of employment and labor category demand.

The Draft Regulatory Analysis and Draft Urban Impact Analysis are contained in Technical Support Document No. 6, which will be available for public comment as noted at the beginning of this preamble.

This action is in accordance with Executive Order 12044, "Improving Government Regulations," May 1, 1978, 43 FR 18634; DOE Order 2030, "Procedures for the Development and Analysis of Regulations, Standards, and

Guidelines," January 3, 1979, 44 FR 37779; and OMB Circular A–116, "Agency Preparation of Urban and Community Impact Analyses," August 16, 1978, 43 FR 37779.

6.2.1 Problem and Mandate for Government Action

As a basis for the Energy Conservation and Production Act (the Act), Pub. L. 94–385, Congress found that "* * * large amounts of * * * energy are consumed unnecessarily each year in [new] residential and commercial buildings because such buildings lack adequate energy conservation features." (Section 302(a)). To reduce this energy waste, the Act mandated the development and implementation of performance standards for these buildings (Section 302(b)).

One of the major reasons for both Congressional and DOE action is the recognition that over one-third of all energy consumed in the United States is used for space conditioning, lighting and domestic hot water in buildings. This is about the same amount of energy that is imported by the Nation. However, at least 40% of the energy consumed by buildings is wasted because of inefficient building design and equipment.

6.2.2 Policy Objectives

The Act calls for the promulgation of performance standards to achieve in buildings the maximum practicable increases in energy conservation and in the use of renewable resources. Performance standards, as defined by the Act, specify energy consumption goals for buildings without specifying the methods, materials or processes to be used in achieving those goals. The Act also directs that the Standards take account of climatic variations across the Nation, and that they be adequately analyzed in terms of energy efficiency, stimulation of use of nondepletable sources of energy, institutional resources, habitability, economic cost and benefit and impact upon affected groups.

As discussed in detail in Section 2.4.2 of the preamble, the Standards as proposed are projected to promote the use of renewable energy sources, particularly solar energy for heating, cooling and domestic hot water. This would further the Solar Heating and Cooling Demonstration Act of 1974 (Pub. L. 93–409, 43 U.S.C. 5501 *et seq.*) and the Solar Energy Research, Development and Demonstration Act (Pub. L. 93–473, 42 U.S.C. 5551 *et seq.*), whose goals, in part, are to encourage the use of solar energy and other renewable energy resources in buildings.

6.2.3 Projected Economic Effects of the Proposed Standards

DOE finds that the proposed Standards will require new buildings to reduce their design energy requirements by 17% to 52% from 1975–1976 levels, depending on the building type. Energy savings from the Standards are projected to be 0.22 quads annually (0.1 million barrels per day of oil equivalent, MBDOE) by 1985, and 0.46 quads annually (0.2 MBDOE) by 1990. This is in addition to the energy saved by other building energy efficiency improvement programs. The cumulative energy saved between 1980 and 2020 is projected to be 29 quads.[59]

Employment is projected to increase through additional investment in building conservation. It is expected that, cumulatively, 48,000 additional jobs will be created in 1980, 86,000 in 1985, and 70,000 in 1990. The short-term impact on inflation is near zero. Over the long term, the Standards will decrease the rate of inflation by reducing the impact that increased energy prices have on building owners.

Urban impacts were investigated for selected SMSA's in terms of changes in population growth, construction and employment. Employment was analyzed in terms of utilities, services and the construction industry. Employment in the utilities sector was projected to decrease, while that in services and construction was projected to increase in the SMSA's studied.

6.2.4 Major Alternatives Considered were:

- No Federal action to implement the Standards.
- Implementation of less stingent Standards.
- Implementaion of more stringent Standards.

The alternative of not implementing the Standards assumes that all improvements in building energy efficiency would come from existing standards such as the HUD Minimum Property Standards or ASHRAE 90–75, from a reaction to rising energy prices, or from independent State and local government action. For comparison, the proposed Standards are projected to use 29 quads less energy than this alternative would between 1980 and 2020. The value of energy saved by implementing the Standards, less increased building construction costs and increased implementation costs, is expected to have a net present value of $6 billion (evaluated in constant 1978 dollars, using a 10% real discount rate).

Using less stringent Energy Budget Levels, 10.5 quads of energy would be saved between 1980 and 2020 and the national net present value is $3 billion (1978 dollars). For the more stringent alternative, cumulative energy savings would be 55 quads, with a national net present value of $3 billion (1978 dollars).[60]

It should be mentioned that more stringent Energy Budget Levels for commercial and multifamily residential buildings, coupled with the proposed Energy Budget Levels for single-family residential buildings, taken together as a single alternative, is projected to conserve 44 quads of energy and have a national net present value of $7.3 billion. However, DOE determined that the more stringent commercial and multifamily residential Energy Budget Levels exceeded the limits of current knowledge of most designers and would therefore be difficult to achieve in practice.

Other alternatives considered different types of standards, including:

- Use of component, rather than whole building, performance standards.
- Performance standards based on actual, rather than design, energy consumption.
- Energy prices set at levels which would result in savings equal to those of the Standards.
- Information and education programs only.

The use of component, rather than whole building, energy performance standards could possibly entail lower implementation and enforcement costs because many States have already legislated such an approach. However, the performance approach permits the designer to analyze the building as a total system and choose the most cost-effective techniques available to produce an energy efficient building. Furthermore, the use of innovative design techniques is stimulated through the use of the whole building, rather than the component, approach.

[59] The figures presented are based on the proposed Energy Budget Levels and are for net present values and energy savings which include only those building classifications contained in the proposed rule. Restaurants, industrial buildings and mobile homes are excluded. Key assumptions in the analysis are: (1) no updates of the Standards, and (2) the base case (no Federal action) has increasing levels of energy conservation in response to rising energy prices and the commercialization of new energy conservation technology (corresponding to 40% penetration of the HUD Minimum Property Standards for One- and Two-Family Dwellings, by 1980, held constant thereafter, and 62% penetration of ASHRAE 90–75 by 1980).

[60] The net present value for the stringent alternative declines compared to that of the proposed Standards, in spite of the greater energy savings. This decline occurs because the added cost of the conservation measures exceeds the value of the additional fuel savings.

Performance standards based on actual, rather than design, energy consumption would require a completely different enforcement approach. Enforcement officials would need to determine, directly or by inference, actual energy consumption for individual buildings. This alternative could have the greatest impact on the manner in which building occupants use energy. It would also tend to promote the use of renewable resources in much the same way as the proposed Standards. However, enforcement would be more difficult since local officials would have to contend with the varying ways in which different occupants utilize buildings.

Setting energy prices so as to produce energy savings equal to those of the proposed Standards is possible, but it could place a significant burden on owners of older, less energy-efficient buildings and on low-income citizens who are least able to bear the increase in cost.

The information and education alternative would require that the public exert the demand for energy efficiency in new buildings. It would also require the education of design professionals in the use of energy efficient design techniques. A program to inform and educate consumers and design professionals on the energy and cost consequences of different materials and building design strategies would have to be on a national scale and a long-term basis. It is considered unlikely that a public education program alone could achieve the same energy savings as the proposed Standards.

Comments are invited on the alternatives considered, and on any others which the public feels should be analyzed in the final Regulatory Analysis.

6.2.5 The Proposed Approach

Under the proposed approach, the Design Energy Consumption of a building is determined from its design, an assumed set of operating conditions and pertinent climate factors.

The proposed Standards specify Energy Budget Levels interms of building design classification, heating fuel type (single-family residences only) and climate conditions. A building design is in compliance with the Standards if its Design Energy Consumption does not exceed the Design Energy Budget specified for its design classification and climate conditions.

The Energy Budget Levels in the proposed Standards are technologically achievable, would conserve substantial amounts of energy compared to current building designs, and would achieve a net economic benefit both to the Nation and the building owner.

7.0 Opportunities for Public Comment

7.1 Written Comment Procedures

Interested persons are invited to participate in this rulemaking by submitting data, views, and comments to Joanne Bakos, Office of Conservation and Solar Energy, Department of Energy, Docket Number CAS–RM–79–112, Mail Station 2221C, 20 Massachusetts Avenue, N.W., Washington, D.C. 20585.

Comments should be identified on the outside of the envelope, and on the documents themselves, with the designation, "Energy Performance Standards for New Buildings, Docket Number CAS–RM–79–112." Fifteen copies should be submitted. All comments received on or before February 26, 1980, and all other relevant information will be considered by DOE before final action on this rule.

Any person submitting information which that person believes to be confidential and which may be exempt by law from public disclosure should submit one complete copy, as well as fifteen copies from which the information claimed to be confidential has been deleted. DOE shall make a determination on any such claim. This procedure is set forth in 10 CFR 1004.11 (44 FR 1908, January 8, 1979).

7.2 Public Hearings

DOE will hold five public hearings on this proposed rule and the Technical Support Documents, including the Draft Environmental Impact Statement. The hearings will be held at 9:30 a.m., local time, on the dates and at the locations given in the table at the beginning of the preamble.

Any person interested in this proposed rule or any person who is a representative of a group that has an interest in this proposed rule may make a written request to speak at the hearings. All such requests must be received by the date indicated for each hearing in the table at the beginning of the preamble. Requests should be sent to Joanne Bakos at the address given above. A request may be hand-delivered between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. Requests should be marked the same as for written comments, with the additional notation, "Request to Speak."

The person making the request should briefly describe that person's interest and, if appropriate, state why that person is a proper representative of a group. The person should also give a concise summary of the proposed oral presentation and should provide a phone number where the person may be reached. Each person selected to be heard will be notified by DOE by the date indicated for each hearing. Those persons selected to be heard must bring fifteen copies of their statements to the hearing. If any person cannot provide fifteen copies, alternate arrangements can be made in advance of the hearing. This should be done in the letter requesting to speak, or by contacting Joanne Bakos at 202–376–1651.

7.3 Conduct of the Hearings

DOE reserves the right to select the persons to speak at the hearings, to schedule their presentations, and to establish the procedures governing the conduct of the hearings. The length of time for each presentation will be limited, based on the number of persons requesting to speak.

A DOE official will preside at each hearing. These will not be judicial or evidentiary type hearings. Questions may be asked of speakers only by those conducting the hearing, and there will be no cross-examination of persons presenting statements. Any decision by DOE on the subject matter of a hearing will be based on all the information available to DOE. At the conclusion of all initial oral statements, each person who has spoken will be given the opportunity to make a rebuttal statement, if desired. The rebuttal statements will be given in the order in which the initial statements were made and will be subject to time limitations.

Any interested person may submit questions to be asked of any speaker. DOE will determine whether the question is relevant and whether the available time permits it to be presented. The questions should be received at the following addresses by the last working day prior to the hearing: Washington, D.C., hearing: Joanne Bakos, Office of Conservation and Solar Energy, Mail Station 2221C, 20 Massachusetts Avenue, N.W., Washington, D.C. 20585 (202–376–1651); Kansas City, MO, hearing: Suzanne Mathews, Department of Energy, 324 East 11th St., Kansas City, MO 64106 (816–758–5533); Boston, MA, hearing: Kathy Healy, DOE Region 1, 150 Causeway St., Boston, MA 02114 (617–223–5257); Atlanta, GA, hearing: Dan McAlister, DOE Region 4, 1655 Peachtree St., N.E., Atlanta, GA 30309 (404–881–2696); Los Angeles, CA, hearing: Terry Osborne, Department of Energy, 111 Pine St., San Francisco, CA 94111 (415–556–4953).

Any speaker who wishes to ask a question may submit the question in

writing to the presiding officer. The presiding officer will determine whether time permits the question to be asked.

Any further procedures needed for the conduct of each hearing will be announced by the presiding officer.

A transcript of each hearing will be made and will be retained by DOE. The transcript will be available for inspection between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays, at the offices listed in the beginning of the preamble. Any person wishing to do so may purchase a copy of a transcript from the reporter.

If DOE must cancel a hearing, DOE will make every effort to publish an advance notice of such cancellation in the **Federal Register.** Notice of cancellation will also be given to all persons scheduled to speak at the hearing. Hearing dates after the first scheduled day may be cancelled in the event no public testimony has been scheduled in advance.

8.0 A Guide to the Proposed Rule

8.1 Introduction

The proposed rule sets forth the requirement that the Design Energy Consumption of the design of a new building shall not exceed its Design Energy Budget. It discusses the criteria and evaluation methods to be used to determine both the Design Energy Budget and the Design Energy Consumption for a building design.

The Design Energy Budgets are expressed in thousands of Btu's per square foot of gross area per year. They vary by building design classification and climate, and they include different weighting factors for different fuels.

8.2 Application of the Proposed Standards to a Typical Building Design Process

This section describes how the proposed Standards might be applied to a typical building design process. The discussion is only for illustration purposes, since the design process varies with building type, as well as local or regional design and construction practices, and since the mechanisms for implementation are not yet available.

The first step would be to select the compliance path desired. Two general compliance paths are described in the proposed rule:

- A performance path, involving determining the Design Energy Consumption for a building design.
- An equivalent path, using an approved building code.

The performance path is the one described most fully in the proposed rule. The equivalent path assumes the existence of an approved component performance code or other procedure that DOE has determined would result in building designs whose Design Energy Consumptions would be "equivalent" to those that would result from the performance path.

If the equivalent path is taken, the building would be designed to comply with the applicable code. Ths submittal documents for building code approval would contain required documentation to substantiate compliance with the code. Such equivalent codes have not yet been identified or developed, nor have the detailed steps to be followed been developed (see Section 5.0 for implementation discussion).

8.3 The Performance Path

The basic steps in a typical performance path are described below. Applicable sections of the proposed rule and other sections of the preamble are referenced throughout the discussion.

Figure 8–1 shows the basic steps in the typical process. The numbered boxes illustrate the nature of the proposed Standards and how they would be expected to work. The numbers are for reference only and do not necessarily indicate sequence.

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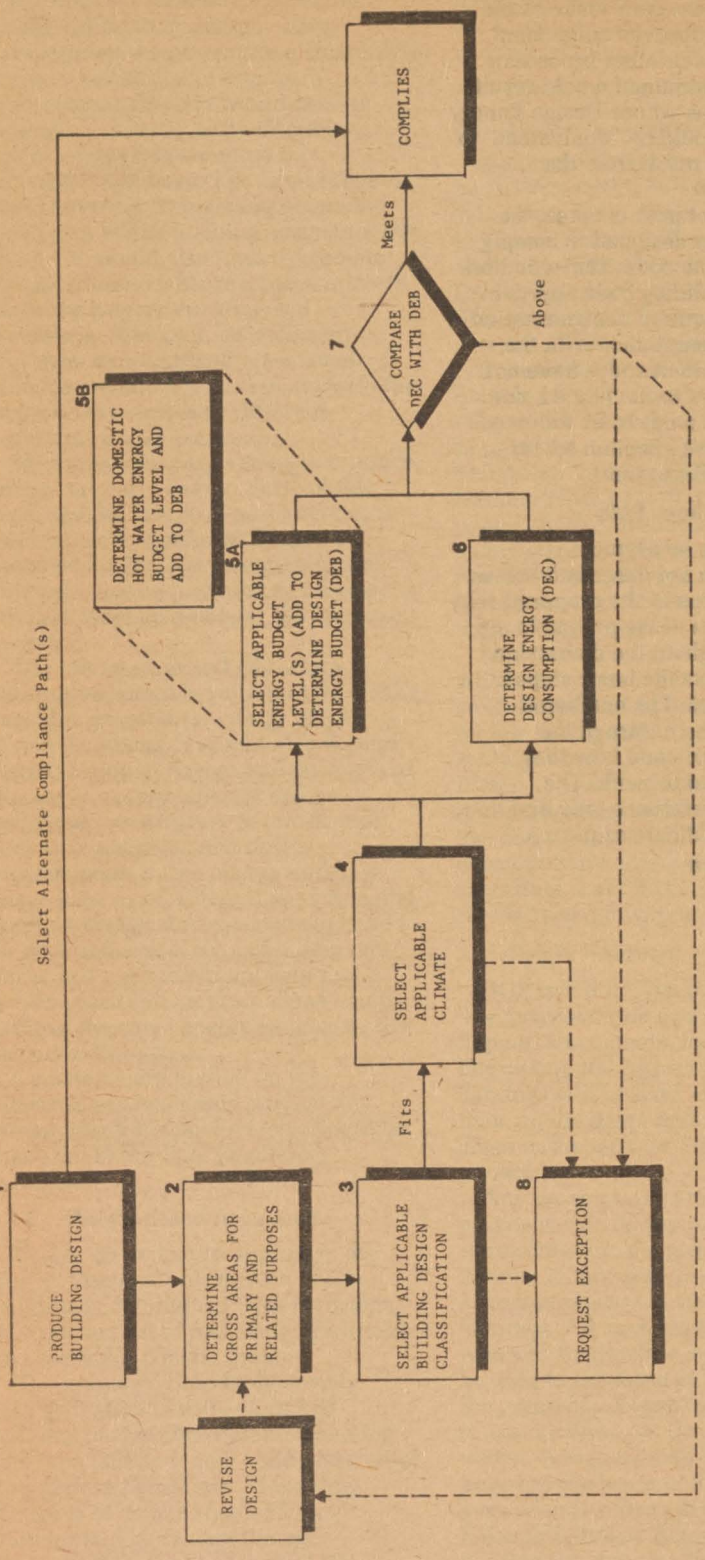

FIGURE 8-1: APPLICATION OF PROPOSED STANDARDS TO TYPICAL BUILDING DESIGN PROCESS

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• Produce building design (Box 1).

This is the set of detailed plans and specifications which describe the building, its systems and components and their interconnections.

• Determine gross area for primary and related purposes (Box 2).

Use the definition of gross area in proposed § 435.02. Then, for a commercial or multifamily residential building design, compute the total area devoted to the primary building function(s) and related purposes (see proposed § 435.04 for definitions of the "primary function(s) and related purposes"). For a single-family residential building, determine the gross area of the residence.

• Select applicable building design classification based on the gross area determination (Box 3).

Compare the total gross area computed above to the building design and function classifications in proposed § 435.04. If the percentage of total gross area for primary and related purposes is greater than or equal to that contained in one of the classifications, proceed to the selection of applicable climate conditions. If the total is less, follow the procedure for multifunctional buildings, contained in Appendix I of the proposed rule. For single-family residential buildings, simply determine the appropriate classification (attached or detached) from the definitions in proposed § 435.04. For a building design that does not fit any of the building design classifications or the definition of a multifunctional building, an exceptions procedure will be provided (Box 8).

• Select applicable climate for the selected building design classification (Box 4).

If the building site lies within one of the 78 SMSA's or cities listed in the table in Appendix II of the proposed rule, then the climate conditions for that location shall apply. If the location is not listed in that table, follow the procedures prescribed in Appendix II to choose one of the 78 SMSA's or cities whose climate conditions most closely approximate the climate conditions in the locale of the building site.

If there is no SMSA or city meeting the above criteria, and if it can be demonstrated that the building design is strongly dependent upon local climatology for successful operation, an exceptions procedure will be provided (Box 8).

• Determine applicable Design Energy Budget (Box 5A).

The tables in Appendix I of the proposed rule provide the proposed Energy Budget Levels for building design (or function) classifications. Tables I–1 and I–2 are for single-family residential building designs and Table I–3 is for commercial and multifamily residential building designs.

For single-function commercial and multifamily residential buildings, consult Table I–3 for the appropriate design classification and SMSA or city and read off the Design Energy Budget for the building design.

For multifunctional commercial and multifamily residential buildings, use Table I–3 in the same manner as above, but use the information obtained from the table as Energy Budget Levels for the functions in the building and then calculate a weighted average to determine the Design Energy Budget for the building design.

For single-family residential building designs, first consult Table I–1 to determine the space conditioning porition of the Design Energy Budget (in MBtu/sq.ft./yr.). Then, consult Table I–2 (Box 5B) to obtain the domestic hot water portion of the Design Energy Budget (in MBtu/yr./residence). Convert this number to MBtu/sq. ft./yr by dividing it by the gross area of the residence. Finally, add this to the first number to arrive at the Design Energy Budget for the building design.

The above procedure indicates that the Design Energy Budget is determined after the building design is accomplished. This is in accord with the typical building code compliance process. Also, the precise gross area of the building design is not available to determine the building design classification until the building design has been produced.

However, it seems likely that a prudent designer, builder or owner would want to know the general Design Energy Budget target from the outset of the design process. This could still be accomplished using the above procedures, but it would be based on the general area information usually available from the program of design requirements for the building (e.g., "a 1600 sq. ft. house," or "a 100,000 sq. ft. office building with 90,000 sq. ft. of office and related spaces and a 10,000 sq. ft. computer center").

The preliminary estimate of the Design Energy Budget would then be used throughout the design process as an energy target, much as a cost budget is used throughout the design process as a cost target. It would be refined for the compliance process described here, once the building design is completed.

Many key design decisions which have major impacts on energy requirements occur early in the design process (location on the site, basic shape, structure and materials, initial criteria and selection of heating, cooling, ventilating and lighting systems). A preliminary Design Energy Budget can be used as a guide for such design decisions.

• Determine Design Energy Consumption (Box 6).

Use the Standard Evaluation Technique or an approved alternate evaluation technique [61] to determine the Design Energy Consumption of the Building design.

The Evaluation technique is the key element in using the performance path to determine if a building design is in compliance with the Standards. The Standard Evaluation Technique is the one provided in the proposed rule and is the one against which other evaluation techniques will be compared to see if they can be approved as alternates.

Alternate evaluation techniques may be either computer based techniques or techniques based on hand calculation methods. In either case, appropriate criteria and procedures for their use would be included. Proposed § 435.06 contains a procedure for requesting approval of an evaluation technique as an alternate for use with the Standards.

Use of the Standard Evaluation Technique requires that certain specific data be used: The climate data selected in Box 4; building design data; Standard Building Operating Conditions, which are provided by DOE for each building design classification and are included in Technical Support Document No. 1, The Standard Evaluation Technique; and weighting factors expressed by fuel type.

The weighting factors were developed by DOE (see Section 2.4.1) and used as a way of expressing the proposed Energy Budget Levels. They must therefore be used in arriving at the Design Energy Consumption of a building design. This is done by: (1) Determining the design energy requirements of the building design (in MBtu/sq. ft./yr), by fuel type; (2) multiplying each of the fuel-related design energy requirements by the applicable weighting factor; and then (3) adding all of the weighted figures to arrive at the Design Energy Consumption for the building design. The design energy requirements of the building design are determined using the calculation methods and associated instructions in the Standard Evaluation Technique.

The use of a renewable energy resource will result in a "credit" toward meeting the design goal, as that energy

[61] See Section 4.0 of the preamble for a brief description of the Standard Evaluation Technique, and Technical Support Document No. 1, The Standard Evaluation Technique, for a complete description and a full discussion of related issues.

is not counted in determining the Design Energy Consumption.

• Compare Design Energy Consumption with Design Energy Budget (Box 7)

If the Design Energy Consumption calculated in the previous step does not exceed the Design Energy Budget, then the building design is in compliance with the Standards, the process is complete, and the appropriate documentation for building code approval can be submitted.

Where a building's Design Energy Consumption exceeds its Design Energy Budget, the building design would have to be modified in order for it to be in compliance with the Standards.

For those building designs which have special health and fire safety requirements or considerations, or which have systems or components that cannot be evaluated in a reasonable manner by the Standard Evaluation Technique, exceptions procedures will be provided (Box 8).[62]

8.4 Designing Buildings for Compliance With the Proposed Standards

This section describes how building designs might change from current practice in complying with the proposed Standards.

Buildings use energy for building functions and human occupancy. Such uses include lighting, domestic hot water, and vertical transportation. In addition, when the building design is not able to temper climate extremes, energy is used for heating, cooling, and ventilating systems to maintain comfort and health conditions. Therefore, the first objective would be to design the building to minimize the demand for the use of such systems. A second objective would be to use the most energy efficient and cost-effective systems appropriate for the building and the climate.

The proposed Standards would accelerate existing trends toward:

• Less demand for energy using systems.

• Buildings which are more sensitive to climate and site energy conservation opportunities, and are designed to minimize negative site and climate factors. (Buildings will work more in harmony with the surrounding climate and site, to make use of heat gain, heat loss, available light, and outside air in the comfort range. This might include such techniques as passive solar design strategies, cost-effective levels of insulation, and double or triple glazing.)

• More efficient heating, cooling, ventilating and lighting systems.

• More sophisticated controls, both manual and computerized, for more efficient building systems operation.

• Greater use of active solar and other advanced domestic hot water systems, especially in residential buildings.

A performance standard provides significant flexibility and opportunity for tradeoffs among the subsystems and components of a building design in order to meet an overall energy goal. An owner's requirements for a building design could be achieved with a number of different design possibilities. Consider as an example three new single-family residences that might be designed for the same block in the suburb of a midwest city. The houses could all be designed to comply with the proposed Standards; however, they could all be different:

• The first house could rely on traditional energy conservation strategies and emphasize insulation, triple glazing, and efficient heating and cooling systems. Windows would be placed equally on all four sides of the house.

• The second house could include passive solar heating and cooling techniques (primarily, the relocation of windows to the south wall, along with appropriately located building mass and shading devices), in addition to traditional energy conservation measures such as added insulation and double glazing.

• The third house could emphasize the addition of an active solar domestic hot water system, plus some traditional conservation measures, such as added insulation and double glazing.

All three houses could be generally similar in style, they could all meet the same budget, but they would each use a different approach.[63] The design of commercial and multifamily residential buildings also generally involves many options for design solutions which meet the requirements of the Standards.[64] Thus, the standards would allow energy objectives and design flexibility to be combined.

(Energy Conservation Standards for New Buildings Act of 1976, as amended, (42 U.S.C. 6831–6840), enacted as Title III of the Energy Conservation and Production Act; and Department of Energy Organization Act, (42 U.S.C. 7101 *et seq.*))

In consideration of the foregoing, Chapter II of Title 10, Code of Federal Regulations, is amended by establishing Part 435 as set forth below.

Issued in Washington, D.C., this 14th day of November 1979

Maxine Savitz,

Acting Assistant Secretary, Conservation and Solar Energy.

Chapter II of Title 10, Code of Federal Regulations, is amended by establishing a new Part 435 as follows:

PART 435—ENERGY PERFORMANCE STANDARDS FOR NEW BUILDINGS

Subpart A—Performance Standards

Sec.

435.01 Purpose and scope.
435.02 Definitions.
435.03 Requirements for the performance standards.
435.04 Building design and function classification.
435.05 Selection of applicable climate.
435.06 Procedure for establishing alternate evaluation techniques.

Subpart B—Implementation [Reserved]

Subpart C—Administrative Review [Reserved]

Appendix I: Energy Budget Level Tables.
Appendix II: Climate Tables.
Appendix III: Approved Alternate Evaluation Techniques [Reserved].
Appendix IV: Model Codes and Standards [Reserved].

Authority: Energy Conservation Standards for New Buildings Act of 1976, as amended, (42 U.S.C. 6831–6840), enacted as Title III of the Energy Conservation and Production Act; Department of Energy Organization Act (42 U.S.C. 7101 *et seq*).

Subpart A—Performance Standards

§ 435.01 Purpose and scope.

This part establishes energy performance standards for new residential and commercial buildings. It also establishes the requirements for implementation of the standards. The purpose of the energy performance standards is to achieve the maximum practicable improvements in energy efficiency in new buildings. The standards will be implemented to:

(a) Redirect Federal policies and practices to assure that reasonable energy conservation features will be incorporated into the designs of new commercial and residential buildings receiving Federal financial assistance;

(b) Achieve in the designs of new commercial and residential buildings the maximum practicable improvements in energy efficiency and increases in the use of nondepletable sources of energy; and

(c) Encourage States and local governments to adopt and enforce such standards through their existing building codes and other construction control mechanisms, or to apply them through a special approval process.

[62] For a summary list of anticipated exceptions leading to administrative review procedures, see Section 1.4.7 of the preamble.

[63] For further discussion of some possible design alternatives for single-family residences, see Section 3.3.7 of the preamble and Table 3–1.

[64] See footnote 35.

§ 435.02 Definitions.

For purposes of this part: (a) "British thermal unit" means the amount of heat required to raise the temperature of 1 pound of water by 1 degree Fahrenheit at or near 39.2 degrees Fahrenheit at an atomospheric pressure of 14.73 pounds per square inch absolute.

(b) "Btu" means British thermal unit.

(c) "Building code" means a legal instrument which is in effect in a State or unit of general purpose local government, the provisions of which must be adhered to if a building is to be considered in conformance with the law and suitable for occupancy and use.

(d) "Building design" means the architectural and engineering drawings and specifications used for the construction of a new building.

(e) "Commercial building" means a new building other than a residential building, including any building developed for industrial or public purposes.

(f) "Design Energy Budget" means the maximum allowable Design Energy Consumption, expressed as MBtu/sq. ft./yr, for a building design for a new building, without specification of the methods, materials or processes to be employed in the design.

(g) "Design Energy Consumption" means the calculated annual energy consumption, expressed as MBtu/sq. ft./yr, for the gross area of a building design, calculated using the Standard Evaluation Technique specified by DOE, or an approved alternate evaluation technique.

(h) "DOE" means the U.S. Department of Energy.

(i) "Energy Budget Level" means a value, expressed in MBtu/sq. ft./yr, for a building classification for a specific climate and location developed in the tables contained in Appendix I.

(j) "Federal agency" means any department, agency, corporation, or other entity or instrumentality of the Executive Branch of the Federal Government, including the United States Postal Service, the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation.

(k) "Federal building" means any building to be constructed by, or for the use of, any Federal agency which is not legally subject to State or local building codes or similar requirements.

(l) "Function" means a designated type of activity for an area identified as part of a building design.

(m) "Gross area" means the sum of all floor areas, except unheated basements in single-family residences or parking areas, measured in square feet, enclosed in a building design, measured from the exterior face of exterior walls at the floor line, disregarding protrusions beyond the nominal plane of the wall, or from the centerline of common walls separating buildings.

(n) "MBtu" means thousands of British thermal units.

(o) "MBtu/sq. ft./yr" means MBtu per square foot of gross area per year.

(p) "New building" means any structure (1) which includes or will include a heating or cooling system, as defined in 10 CFR 450.41, or both, or a domestic hot water heating system, and (2) for which the construction commences after the final rule becomes effective, with the exception that mobile homes, industrial buildings and restaurants are excluded from this definition.

(q) "Residential building" means a new building which is designed to be constructed and developed for residential occupancy.

(r) "Standard Metropolitan Statistical Area" means an area defined by the Department of Commerce in its publication, "SMSA, 1975," Division of Standards and Policy, ed. 1975, with revisions.

(s) "Standard Evaluation Technique" means the criteria, procedures and energy calculation methods used for determining the Design Energy Consumption of a new building design, and consists of Appendix V of the DOE Technical Support Document, "The Standard Evaluation Technique," Administrative Record Number 9561.00 (November 1979), and the energy analysis programs shown in Table 1.

§ 435.03 Requirements for the performance standards.

(a) The Design Energy Consumption of the building design of a new building shall not exceed its Design Energy Budget.

(b) The Design Energy Budget shall be determined by: (1) Classifying the building design in accordance with § 435.04;

TABLE 1.—SOURCES OF THE STANDARD EVALUATION TECHNIQUE COMPUTER PROGRAMS

I. DOE-2.0 available from: National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22150.

Item and Order No.

1. DOE-2 Magnetic Tapes, Program, Sample Runs, Weather Data (Sold only as a set)—P-B-292250
2. DOE-2 Manual Set

Volume 1: Users Guide—P-B-292251
Building Design Language Summary—P-B-292251-1

Sample Run Book

Volume 2: Reference Manual—P-B-292251-2
Volume 3: Program Manual (Sold only as a set)—P-B-292251-3

II. TRNSYS-10.1 available from: TRNSYS Coordinator, University of Wisconsin-Madison, Solar Energy Laboratory, 1500 Johnson Drive, Madison, WI 53706, Phone: 608-263-1586.

1. User's Manual Standards Addendum to User's Manual TRNSYS on Magnetic Tape
2. User's Manual Standards Addendum to User's Manual TRNSYS on Card Deck

III. DEROB-3.0 available from: Solar Energy Research Institute, ATTN: Mr. M. Connelly, 1536 Cole Boulevard, Golden, CO 80401.

1. Volume 1. User's Manual
2. Volume 2. Explanatory Notes of Theory
3. Standards Addendum
4. DEROB-3.0 Magnetic Tape

(2) Selecting the appropriate climate data for the location of the new building in accordance with §435.05; and

(3) Determining the MBtu/sq. ft./yr permitted for the building design from the Energy Budget Level tables and instructions contained in Appendix I.

(c) The Design Energy Consumption shall be calculated in accordance with: (1) The Standard Evaluation Technique, or (2) an approved alternate evaluation technique as provided in Appendix III.

(d) For purposes of this subpart, a building design which meets the requirements of a model code or standard listed in Appendix IV shall be deemed to have a Design Energy Consumption which does not exceed its Design Energy Budget.

§ 435.04 Building design and function classifications.

(a) A building design shall be classified as one of the following:

(1) "Clinic," a building design in which at least 90 percent of the gross area is primarily for use in outpatient medical, surgical or psychiatric diagnosis and treatment and related purposes, without provisions for overnight accommodations and associated care. Related purposes in this classification include office spaces, storage areas, public waiting rooms, toilet rooms, corridors, stairwells, laboratory spaces, equipment spaces, shafts and lobbies.

(2) "Community center," a building design in which at least 98 percent of the gross area is primarily for use in public non-athletic recreational activities, meetings, lectures, conferences, exhibitions, games, and related purposes. Related purposes in this classification include office spaces, storage areas, public waiting rooms, toilet rooms, corridors, stairwells, equipment spaces, shafts and lobbies.

(3) "Gymnasium," a building design in which at least 97 percent of the gross area is primarily for use in physical education activities, recreational athletic activities and athletic entertainment events and related

purposes. Related purposes in this classification include indoor tennis courts, handball courts, racquetball courts, running tracks, squash courts, shower and locker areas, offices, public waiting rooms, corridors, stairwells, toilet areas, storage rooms and spaces, equipment spaces, shafts, lobbies and seating areas.

(4) "Hospital," a building design in which at least 80 percent of the gross area is primarily for use in rendering outpatient and inpatient medical, surgical or psychiatric diagnosis and treatment and related purposes, with provisions for overnight accommodations and associated care. Related purposes in this classification include office spaces, classrooms, public waiting rooms, toilet rooms, corridors, stairwells, storage areas, kitchens and food services spaces, meeting and consultation rooms, equipment areas, laundry areas, supply areas, laboratory spaces, lobbies and shafts.

(5) "Hotel/motel," a building design in which at least 80 percent of the gross area is primarily for rental, on a transient basis, of separate rooms or sets of rooms as sleeping accommodations, and related purposes. Related purposes in this classification include office spaces, meeting rooms and conference rooms, storage rooms and spaces, public waiting rooms, corridors, stairwells, lobbies, equipment areas and shafts.

(6) "Industrial building," a building design in which at least 50 percent of the gross area is primarily for carrying out one of the industrial activities referred to in the 20 two-digit categories listed in the Standard Industrial Classification System as contained in the Standard Industrial Classification Manual, United States Executive Office of the President, Office of Management and Budget, 1972.

(7) "Mobile home," a structure transportable in one or more sections, which measures at least eight body feet in width and 32 body feet in length, erected on a permanent chassis with or without a permanent foundation and designed to be used as a dwelling unit when connected to the required utilities and includes plumbing, heating, air-conditioning and electrical systems contained therein. This classification does not include structures which are self-movable.

(8) "Nursing home," a building design in which at least 83 percent of the gross area is primarily for the lodging, boarding and medical or health care, on a 24-hour basis, of persons who, because of physical or mental incapacity, may be unable to provide for their own safety or personal needs, and related purposes. Related purposes in this classification include office areas, meeting rooms, consultation rooms, storage areas, stairwells, shafts, lobbies, corridors, public toilet rooms, equipment rooms and supply areas.

(9) "Office, large," a building design for other than a store or shopping center with a gross area of 50,000 square feet or more, in which at least 86 percent of the gross area is primarily for the transaction of business or the rendering of professional services, and related purposes. Related purposes in this classification include storage areas, public toilet rooms, stairwells, lobbies, shafts, supply areas, equipment rooms, meeting and consultation rooms.

(10) "Office, small," a building design for other than a store or shopping center with a gross area of less than 50,000 square feet, for which at least 87 percent of the gross area is primarily for the transaction of business or the rendering of professional services, and related purposes. Related purposes in this classification include storage areas, public toilet rooms, stairwells, lobbies, shafts, supply areas, equipment rooms, meeting and consultation rooms.

(11) "Restaurant," a building design in which 93 percent of the gross area is primarily for the preparation, sale and consumption, on or off the premises, of food and drink, and related purposes. Related purposes in this classification include equipment areas, offices, lobbies, waiting rooms, refrigeration areas, stairwells, shafts, supply areas, kitchens and heating areas.

(12) "Residential, multifamily high-rise," a residential building design, five or more stories in height which is not single-family attached as defined in paragraph (a)(14) of this section and in which at least 90 percent of the gross area is primarily to provide complete and independent living units, and related purposes. Related purposes in this classification include stairwells, shafts, public toilet rooms, lobbies, corridors, equipment areas, storage areas and laundry rooms.

(13) "Residential, multifamily low-rise," a residential buiding design, four or fewer stories in height, which is not single-family attached as defined in paragraph (a)(14) of this section and in which at least 92 percent of the gross area is primarily to provide complete and independent living units, and related purposes. Related purposes in this classification include stairwells, shafts, public toilet rooms, lobbies, corridors, equipment areas, storage areas and laundry rooms.

(14) "Residential, single-family attached," a building design that provides a complete and independent living unit for a single family and in which the unit is structurally connected, without a hallway or corridor, in the horizontal dimension only to not less than one other unit.

(15) "Residential, single-family detached," a building design that provides a complete and independent living facility for a single family and is not structurally connected in any dimension to any other unit.

(16) "School, elementary," a building design in which at least 84 percent of the gross area is primarily for academic or vocational instruction, learning or care for up to and including the eighth grade, and related purposes. Related purposes in this classification include offices, libraries, classrooms, storage areas, toilet rooms, waiting rooms, auditoriums, gymnasiums, equipment areas, stairwells, lobbies, shafts and supply areas.

(17) "School, secondary," a building design in which at least 84 percent of the gross area is primarily for academic or vocational instruction, learning or care for any grade above the eighth grade, and related purposes. If a school building includes grades above and below the eighth grade, it will be considered a secondary school. Related purposes in this classification include offices, libraries, classrooms, storage areas, toilet rooms, waiting rooms, auditoriums, gymnasiums, equipment rooms, stairwells, lobbies, shafts and supply areas.

(18) "Shopping center," a building design, other than a store or office, serving more than one tenant, in which at least 78 percent of the gross area is designed for the display and sale of merchandise, the transaction of business or the rendering of professional services, and related purposes. Related purposes in this classification include common public circulation areas that may or may not be covered, stock and storage areas, public toilet rooms, stairwells, lobbies, shafts, supply areas, equipment rooms, meeting and consultation rooms.

(19) "Store," a building design in which at least 98 percent of the gross area is designed primarily for the display and sale of merchandise, the transaction of business or the rendering of professional services, and related purposes, but not including a common public circulation area. Related purposes in this classification include stock and storage rooms, stairwells, lobbies, shafts, supply areas, public toilet rooms, equipment rooms, meeting and consultation rooms.

(20) "Theater/auditorium," a building design in which at least 87 percent of the gross area is designed primarily for the showing of plays, operas, motion pictures, concerts and other similar

forms of entertainment, and related purposes. Related purposes in this classification include storage areas, public toilet rooms, stairwells, lobbies, shafts, supply areas, equipment rooms, meeting and consultation rooms.

(21) "Warehouse," a building design in which at least 97 percent of the gross area is designed primarily for the climate controlled storage or sheltering of goods, merchandise, products, foodstuffs or vehicles, and related purposes. Related purposes in this classification include office areas, toilet rooms, equipment areas, lobbies, waiting rooms, stairwells and shafts.

(22) If the building design of a new building does not meet the terms of a definition contained in paragraphs (a)(1) through (21) of this section, it shall be classified as "OTHER."

(b) For a building design for a multifunctional new building, the functions shall be classified in accordance with § 435.04(a).

§ 435.05 Selection of applicable climate.

(a) If the new building is to be located within an SMSA or city listed in Appendix I, the climate data of that SMSA or city shall be selected.

(b) If the new building is not to be located within an SMSA or city listed in Appendix I, the climate data which most closely approximates the climate of the SMSA or city in which the new building will be located shall be selected. This selection shall be made in accordance with the instructions and tables given in Appendix II, Climate Tables.

§ 435.06 Procedure for establishing alternate evaluation techniques.

(a) A person may submit a written application to DOE on an application form to be provided by DOE, requesting approval of a procedure as an alternate evaluation technique.

(b) After DOE receives an application and any additional information requested, DOE shall determine whether the procedure submitted is acceptable as an alternate evaluation technique.

(c) If DOE determines that the procedure is likely to produce results equivalent to the Standard Evaluation Technique, DOE shall approve the procedure, with such limitations or qualifications as DOE shall find appropriate, and shall give public notice of its inclusion in Appendix III by publication in the **Federal Register.**

Subpart B—Implementation [Reserved]

Subpart C—Administrative Review [Reserved]

Appendix I: Energy Budget Level Tables.

1. *General.* To use these tables, the user must determine the appropriate building design classification under § 435.04. If the building design is classified as residential, single-family attached or detached, under § 435.04(a)(14) or (15), the Residential Energy Budget Level tables (Tables I–1 and I–2) shall be used. For any other classification, the commercial and multifamily residential Energy Budget Level table (Table I–3) shall be used. In using either set of tables, the user must also select the appropriate climate conditions under § 435.05.

2. *Use of the single-family residential Energy Budget Level tables.* If the building design is classified under the provisions of § 435.04(a)(14) or (15), add two Energy Budget Levels to determine the Design Energy Budget: (1) The Energy Budget Level for heating and cooling the structure, and (2) the Energy Budget Level for heating domestic hot water. The following steps shall be used:

(1) From Table I–1, select the appropriate space heating Energy Budget Level for the building type for the SMSA or city selected under § 435.05 and the fuel type determined in 1 above. If a renewable resource is used exclusively (i.e., there is no nonrenewable energy supplemental system), select any fuel type.

(2) Use the climate conditions determined under § 435.05 and the fuel type selected in (1) to select the appropriate Energy Budget Level for heating and cooling from Table I–1.

(3) Calculate the gross area of the building design.

(4) Identify whether gas, oil, or electricity is the fuel that will be used to provide the energy for heating domestic hot water. If a renewable resource is used exclusively (i.e., there is no nonrenewable energy supplemental system), select one of the aforementioned fuel types.

(5) From Table I–2, select the approrpriate domestic hot water factor for the fuel type selected in (4).

(6) Divide the domestic hot water factor from (5) by the gross area of the building design from (3).

(7) Add the results of (2) and (6). This sum is the Design Energy Budget.

3. *Use of commercial and multifamily residential Energy Budget Level tables*—(a) *Single-function buildings.* If the building design for a new building is classified under the provision of § 435.04(a)(1) through (21) other than (14) and (15), use the Energy Budget Level provided in Table I–3.

(b) *Multifunction buildings.* If the building design is classified "OTHER" under § 435.04(a)(22), calculate the Design Energy Budget for that building design in the following manner:

(1) Calculate the gross area of the building design.

(2) Identify the building function classifications contained in § 435.04(a).

(3) Determine the square feet of gross area for each of the function classifications identified in (2), including related purposes such as lounges, hallways, entrances and lobbies associated with the function. Include as part of another function the area of any function for which the square feet of gross area is less than 15 percent of the gross area but not in excess of 1,000 square feet.

(4) For each of the function classifications determined in (2), select from Table I–3 the Energy Budget Level appropriate for the location of the new building.

(5) Sum the square feet of gross area for each function for which there is an Energy Budget Level in Table I–3. If this sum is less than 50 percent of the gross area, the building design has no Design Energy Budget and is excepted.

(6) For each function for which there is an Energy Budget Level, multiply the level selected in (4) by the square feet of gross area for that function, from (3).

(7) Sum the products calculated in (6) and divide the resultant sum by the resultant area calculated in (5).

(8) The result of (7) is the Design Energy Budget for a multifunctional building design.

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Table I-1: HEATING AND COOLING ENERGY BUDGET LEVELS FOR SINGLE-FAMILY RESIDENTIAL BUILDING DESIGNS (in MBtu/ sq. ft./ yr)

State	SMSA	Single-Family Detached			Single-Family Attached		
		Gas	Oil	Electric	Gas	Oil	Electric
Alabama	Birmingham	27.1	29.8	26.7	20.6	22.5	30.4
	Mobile	26.0	26.7	26.7	21.5	22.1	20.5
Arizona	Phoenix	29.2	30.2	30.1	24.0	24.8	23.3
California	Bakersfield	25.0	26.8	24.6	19.6	20.9	18.5
	Fresno	24.4	26.7	23.6	18.6	20.2	17.5
	Los Angeles	14.1	14.8	12.7	11.4	11.9	9.2
	Oakland	13.8	16.0	10.9	9.6	11.1	7.3
	Sacramento	22.3	25.0	21.0	16.6	18.4	15.4
	San Diego	15.2	15.5	14.4	12.7	13.0	10.7
	San Francisco	14.2	16.7	11.3	9.7	11.4	7.6
Colorado	Denver	33.7	40.3	38.4	24.6	29.5	29.2
Connecticut	Bridgeport	33.3	39.3	36.8	24.4	28.8	27.9
	Hartford	37.1	44.2	43.5	27.4	32.8	33.5
D. C.	Washington	31.2	35.7	32.4	23.1	26.3	24.3
Florida	Jacksonville	26.9	27.6	27.9	22.3	22.9	21.4
	Miami	34.3	34.4	37.1	29.0	29.1	29.1

Note: Cooling is assumed to be provided by electricity in all cases.

Table I-1: HEATING AND COOLING ENERGY BUDGET LEVELS FOR SINGLE-FAMILY RESIDENTIAL BUILDING DESIGNS (in MBtu/ sq. ft./ yr) (CONT'D)

State	SMSA	Single-Family Detached			Single-Family Atfached		
		Gas	Oil	Electric	Gas	Oil	Electric
Florida	Tampa	28.6	28.7	30.9	24.5	24.7	24.0
Georgia	Atlanta	26.3	29.1	25.7	19.8	21.8	19.2
Idaho	Boise City	35.1	41.7	40.0	25.8	30.7	30.6
Illinois	Chicago	39.1	46.5	46.6	29.2	34.8	36.0
	Glenview	40.0	47.4	47.6	30.0	35.6	36.8
Indiana	Indianapolis	39.0	46.1	45.6	29.2	34.4	35.1
Kansas	Dodge City	28.3	32.9	32.8	37.9	44.1	42.8
Kentucky	Louisville	32.9	38.1	35.2	24.3	28.0	26.6
Louisiana	Baton Rouge	26.3	27.1	27.0	21.7	22.3	20.7
	Lake Charles	28.0	29.3	28.5	22.6	23.6	21.7
	New Orleans	27.9	29.3	28.3	22.4	23.5	21.5
Maine	Portland	44.6	54.3	46.8	34.6	42.2	46.6
Massachusetts	Boston	36.3	43.2	42.1	26.9	32.0	32.2
Michigan	Detroit	40.8	48.7	49.8	30.7	36.7	38.6
Minnesota	Minneapolis	56.9	68.3	80.2	45.4	54.6	64.0
Mississippi	Jackson	28.8	31.0	28.9	22.5	24.1	21.8
Missouri	Columbia	36.8	42.8	41.0	27.4	31.8	31.3
	Kansas City	37.5	43.3	41.5	28.0	32.3	31.7

Note: Cooling is assumed to be provided by electricity in all cases.

Table I-1: HEATING AND COOLING ENERGY BUDGET LEVELS FOR SINGLE-FAMILY RESIDENTIAL BUILDING DESIGNS (in MBtu/ sq. ft./ yr) (CONT'D)

State	SMSA	Single-Family Detached			Single-Family Attached		
		Gas	Oil	Electric	Gas	Oil	Electric
Missouri	St Louis	38.0	44.2	42.7	28.4	32.9	32.7
Montana	Great Falls	45.1	54.7	59.6	34.6	42.1	46.9
Nebraska	Omaha	41.6	49.2	50.0	31.4	37.1	38.7
Nevada	Las Vegas	30.7	32.8	31.3	24.3	25.8	23.8
New Jersey	Newark	33.7	39.2	36.5	24.9	28.8	27.7
New Mexico	Albuquerque	31.6	63.4	33.1	23.3	36.4	24.9
New York	Albany	44.9	54.1	58.2	34.3	41.5	45.6
	Binghamton	48.2	58.3	65.2	37.4	45.4	51.5
	Buffalo	41.3	49.8	51.9	31.1	37.7	40.4
	New York	31.0	36.0	32.7	22.7	26.3	24.6
No. Carolina	Raleigh	28.5	32.3	28.7	21.2	23.8	21.4
North Dakota	Bismarck	63.0	76.4	95.6	51.8	62.9	77.2
Ohio	Akron	39.6	47.4	48.0	29.7	35.5	37.1
	Cincinnati	34.8	40.6	38.2	25.8	29.9	29.0
	Cleveland	41.3	49.4	50.9	31.1	37.3	39.5
	Columbus	39.8	47.2	47.4	29.8	35.4	36.6

Note: Cooling is assumed to be provided by electricity in all cases.

Table I-1: HEATING AND COOLING ENERGY BUDGET LEVELS FOR SINGLE-FAMILY RESIDENTIAL BUILDING DESIGNS (in MBtu/ sq. ft./ yr) (CONT'D)

State	SMSA	Single-Family Detached			Single-Family Attached		
		Gas	Oil	Electric	Gas	Oil	Electric
Oklahoma	Oklahoma City	33.0	37.2	34.3	24.7	37.0	25.9
	Tulsa	31.2	35.0	31.9	23.4	26.1	24.0
Oregon	Medford	25.8	30.5	26.0	18.3	21.7	19.2
	Portland	25.3	30.5	26.0	17.8	21.4	19.2
Pennsylvania	Allentown	35.0	41.5	39.8	25.8	30.6	30.3
	Philadelphia	35.7	41.8	39.8	26.5	30.9	30.3
	Pittsburgh	36.7	43.6	42.4	27.2	32.3	32.5
So. Carolina	Charleston	26.3	28.3	26.1	20.6	22.0	19.6
Tennessee	Memphis	29.7	32.9	29.9	22.5	24.8	22.4
	Nashville	29.1	32.8	29.3	21.7	24.3	21.9
Texas	Amarillo	30.7	35.3	31.8	22.7	25.9	23.9
	Brownsville	31.6	31.8	34.5	27.1	27.3	26.9
	Dallas	31.7	33.9	32.5	25.1	26.6	24.7
	El Paso	27.8	30.3	27.6	21.3	23.1	20.7
	Fort Worth	29.0	31.1	29.2	22.8	24.2	22.1
	Houston	28.5	29.7	29.2	23.1	24.0	22.3
	Lubbock	29.4	33.1	22.2	22.0	24.6	22.9

Note: Cooling is assumed to be provided by electricity in all cases.

Table I-1: HEATING AND COOLING ENERGY BUDGET LEVELS FOR SINGLE-FAMILY RESIDENTIAL BUILDING DESIGNS (in MBtu/ sq. ft./ yr) (CONT'D)

State	SMSA	Single-Family Detached			Single-Family Attached		
		Gas	Oil	Electric	Gas	Oil	Electric
Texas	San Antonio	29.5	31.1	30.1	23.6	24.8	22.9
Utah	Salt Lake City	40.6	48.2	48.7	30.5	36.2	37.6
Vermont	Burlington	49.1	59.6	67.5	38.3	46.7	53.5
Virginia	Norfolk	27.0	30.3	26.7	20.1	22.4	19.8
	Richmond	33.1	38.2	35.3	24.5	28.1	26.7
Washington	Seattle	25.6	31.3	26.5	18.6	22.7	19.6
	Spokane	38.3	46.5	47.6	28.5	34.8	36.9
West Virginia	Charleston	33.1	38.5	35.7	24.3	28.3	27.0
Wisconsin	Madison	45.4	54.8	59.6	34.8	42.2	46.8
	Milwaukee	45.3	54.8	59.4	34.8	42.1	46.7
Wyoming	Cheyenne	41.1	49.9	52.5	31.0	37.8	41.0

Note: Cooling is assumed to be provided by electricity in all cases

Table I-2: DOMESTIC HOT WATER ENERGY BUDGET LEVELS FOR SINGLE-FAMILY RESIDENTIAL BUILDING DESIGNS (in MBtu/ yr./ unit)

Gas	Oil	Electric
29,500	42,500	54,600

Note: Divide by gross area of the new building and add the result to appropriate heating and cooling Energy Budget Level from Table I-1.

Table I-3: ENERGY BUDGET LEVELS FOR COMMERCIAL AND MULTIFAMILY RESIDENTIAL BUILDING DESIGNS (in MBtu/sq. ft./yr)

State	SMSA	Clinic	Community Center	Gymnasium	Hospital	Hotel/Motel	Multifamily High Rise	Multifamily Low Rise	Nursing Home	Office Large	Office Small	School Elementary	School Secondary	Shopping Center	Store	Theater/Auditorium	Warehouse
Alabama	Birmingham	123	107	127	353	166	114	110	161	113	101	89	117	181	142	139	53
	Mobile	142	129	147	406	192	127	132	187	131	116	96	133	207	166	162	47
Arizona	Phoenix	146	133	152	406	196	131	136	192	134	119	100	137	212	171	168	49
California	Bakersfield	123	109	127	358	167	113	112	162	113	100	86	116	181	143	140	48
	Fresno	120	105	123	353	163	112	198	158	111	98	85	114	178	139	136	50
	Los Angeles	112	101	115	364	157	103	103	151	106	91	74	106	171	132	126	42
	Oakland	108	93	108	353	150	102	94	143	101	87	75	103	164	125	119	50
	Sacramento	118	102	120	353	160	110	104	154	108	96	84	112	175	136	132	52
	San Diego	114	103	117	364	158	104	106	153	107	92	75	107	172	134	128	40
	San Francisco	108	92	109	353	150	103	94	143	101	87	76	103	165	125	119	51
Colorado	Denver	122	98	123	338	162	119	100	156	109	100	97	118	178	137	135	71
Connecticut	Bridgeport	128	105	130	353	170	123	106	156	115	105	100	123	186	144	142	71
	Hartford	125	101	127	338	165	122	102	159	112	103	100	121	181	140	139	74
D. C.	Washington	127	107	129	353	169	120	109	164	115	104	96	121	185	144	142	63
Florida	Jacksonville	143	130	149	406	193	128	134	189	132	117	97	134	209	167	164	47
	Miami	152	142	161	406	203	133	147	201	140	125	103	141	219	179	178	41

Note: Figures include design energy requirements for heating, cooling, domestic hot water, fans, exhaust fans, heating and cooling auxiliaries, elevators, escalators and lighting.

Note: Space is reserved in this table for restaurants and industrial buildings.

Table I-3: ENERGY BUDGET LEVELS FOR COMMERCIAL AND MULTIFAMILY RESIDENTIAL BUILDING DESIGNS (in MBtu/sq. ft./yr) (CONT'D)

State	SMSA	Clinic	Community Center	Gymnasium	Hospital	Hotel/Motel	Multifamily High Rise	Multifamily Low Rise	Nursing Home	Office Large	Office Small	School Elementary	School Secondary	Shopping Center	Store	Theater/Auditorium	Warehouse
Florida	Tampa	145	135	152	406	196	129	139	193	135	119	98	136	212	171	168	43
Georgia	Atlanta	122	106	125	353	165	114	108	160	112	100	88	116	180	141	138	53
Idaho	Boise City	124	100	125	338	163	120	101	158	111	101	98	120	179	139	137	71
Illinois	Chicago	127	102	129	338	167	124	103	161	113	104	103	123	183	142	141	75
	Glenview	129	103	130	338	168	125	105	163	114	105	103	124	184	143	143	75
Indiana	Indianapolis	128	103	130	338	168	124	105	162	114	105	102	123	184	143	142	73
Kansas	Dodge City	133	109	135	353	175	128	111	162	119	109	105	128	191	150	149	72
Kentucky	Louisville	128	107	131	353	170	122	109	165	116	105	98	123	186	145	143	66
Louisiana	Baton Rouge	142	129	147	406	192	123	132	188	131	116	97	133	208	166	163	48
	Lake Charles	144	130	149	406	194	130	133	189	133	118	100	135	210	168	165	51
	New Orleans	144	129	149	406	194	130	133	189	132	118	100	135	210	168	164	52
Maine	Portland	130	100	131	335	169	129	101	162	114	107	109	127	186	143	143	86
Massachusetts	Boston	125	101	126	338	165	121	102	159	111	102	99	121	181	140	139	72
Michigan	Detroit	129	103	130	338	168	126	104	163	114	106	105	125	185	143	143	77
Minnesota	Minneapolis	142	109	144	335	180	140	110	175	123	117	122	138	198	155	157	93
Mississippi	Jackson	127	113	131	358	171	117	115	167	117	104	90	120	186	147	145	50
Missouri	Columbia	132	109	134	353	174	126	111	161	118	108	103	127	190	149	148	71
	Kansas City	133	110	136	353	175	127	112	162	119	109	104	128	191	150	149	70

Note: Figures include design energy requirements for heating cooling domestic hot water fans exhaust fans heating and cooling auxiliaries elevators escalators and lighting

Note: Space is reserved in this table for restaurants and industrial buildings

Table I-3: ENERGY BUDGET LEVELS FOR COMMERCIAL AND MULTIFAMILY RESIDENTIAL BUILDING DESIGNS (in MBtu/sq. ft./yr) (CONT'D)

State	SMSA	Clinic	Community Center	Gymnasium	Hospital	Hotel/Motel	Multifamily High-Rise	Multifamily Low-Rise	Nursing Home	Office, Large	Office, Small	School, Elementary	School, Secondary	Shopping Center	Store	Theater/Auditorium	Warehouse
Missouri	St. Louis	133	110	136	353	175	128	112	163	119	109	105	128	192	150	149	72
Montana	Great Falls	131	102	132	335	170	129	102	163	115	107	110	127	186	144	144	85
Nebraska	Omaha	130	105	132	338	170	126	106	164	115	107	105	126	186	145	145	76
Nevada	Las Vegas	130	115	135	358	174	118	113	170	119	106	92	122	188	150	148	49
New Jersey	Newark	129	107	131	353	171	123	108	165	116	105	99	124	187	146	144	68
New Mexico	Albuquerque	127	107	129	353	169	121	108	164	115	104	96	122	185	144	142	64
New York	Albany	131	102	132	335	170	129	103	164	115	108	109	127	187	145	145	83
	Binghamton	133	103	135	335	172	132	104	166	117	110	113	130	189	147	147	88
	Buffalo	129	101	130	338	168	127	102	162	114	106	106	125	185	143	142	80
	New York	126	105	128	353	168	120	107	162	114	103	96	121	184	143	141	66
No. Carolina	Raleigh	124	106	127	353	167	117	108	161	113	101	92	119	182	142	139	59
North Dakota	Bismarck	146	110	147	335	184	146	111	179	125	121	129	143	203	158	161	102
Ohio	Akron	128	102	129	338	167	125	103	161	113	105	104	124	183	142	141	77
	Cincinnati	130	107	132	353	172	124	109	166	117	106	101	125	188	147	145	70
	Cleveland	129	103	131	338	169	126	104	163	114	106	105	125	185	144	143	78
	Columbus	128	103	130	338	168	125	104	162	114	105	103	124	184	143	142	75

Note: Figures include design energy requirements for heating, cooling, domestic hot water, fans, exhaust fans, heating and cooling auxiliaries, elevators, escalators and lighting.

Note: Space is reserved in this table for restaurants and industrial buildings.

Table I-3: ENERGY BUDGET LEVELS FOR COMMERCIAL AND MULTIFAMILY RESIDENTIAL BUILDING DESIGNS (in MBtu/sq. ft./yr) (CONT'D)

State	SMSA	Clinic	Community Center	Gymnasium	Hospital	Hotel/Motel	Multifamily High Rise	Multifamily Low Rise	Nursing Home	Office Large	Office Small	School Elementary	School Secondary	Shopping Center	Store	Theater/Auditorium	Warehouse
Oklahoma	Oklahoma City	129	110	132	353	172	121	112	167	117	106	97	123	187	147	146	61
	Tulsa	127	109	130	353	170	119	111	165	116	104	95	121	185	146	144	59
Oregon	Medford	120	99	121	353	162	116	101	155	109	98	91	116	177	136	133	64
	Portland	119	98	120	353	161	116	99	154	108	97	91	115	176	135	131	66
Pennsylvania	Allentown	129	105	131	353	171	125	106	158	116	106	102	125	187	145	144	74
	Philadelphia	131	107	133	353	173	126	109	160	117	107	102	126	189	147	146	71
	Pittsburgh	126	101	127	338	165	122	103	159	112	103	100	121	181	141	139	72
So. Carolina	Charleston	124	110	128	358	168	114	113	163	114	102	88	118	183	144	141	49
Tennessee	Memphis	126	109	129	353	169	117	111	164	115	103	92	120	184	145	142	56
	Nashville	125	107	128	353	168	117	109	162	114	102	92	119	183	143	141	58
Texas	Amarillo	126	106	129	353	168	120	108	163	114	103	95	121	184	144	141	63
	Brownsville	150	139	157	406	200	132	143	198	138	123	101	139	216	176	174	43
	Dallas	131	116	136	358	175	119	119	171	120	107	94	124	190	152	150	50
	El Paso	126	110	129	358	169	116	113	164	115	103	90	119	184	145	142	52
	Fort Worth	128	113	132	358	171	117	116	167	117	104	90	120	186	148	145	50
	Houston	145	130	150	406	195	130	134	190	133	118	100	136	211	169	166	51
	Lubbock	126	107	128	353	168	118	110	163	114	103	93	120	183	144	141	58

Note: Figures include design energy requirements for heating, cooling, domestic hot water, fans, exhaust fans, heating and cooling auxiliaries, elevators, escalators and lighting.

Note: Space is reserved in this table for restaurants and industrial buildings.

Table I-3: ENERGY BUDGET LEVELS FOR COMMERCIAL AND MULTIFAMILY RESIDENTIAL BUILDING DESIGNS (in MBtu/sq. ft./yr) (CONT'D)

State	SMSA	Clinic	Community Center	Gymnasium	Hospital	Hotel/Motel	Multifamily High-Rise	Multifamily Low-Rise	Nursing Home	Office, Large	Office, Small	School, Elementary	School, Secondary	Shopping Center	Store	Theater/Auditorium	Warehouse
Texas	San Antonio	146	131	151	406	196	132	134	191	134	119	102	137	212	170	167	53
Utah	Salt Lake City	129	104	131	338	169	125	105	163	114	106	104	125	185	144	143	76
Vermont	Burlington	134	103	135	335	173	133	104	167	117	110	114	131	190	147	148	89
Virginia	Norfolk	123	105	125	353	165	115	108	160	112	100	90	117	180	141	138	56
	Richmond	129	107	131	353	171	122	109	165	116	105	98	123	186	146	144	66
Washington	Seattle	119	96	119	353	160	116	97	153	107	96	91	115	176	134	130	69
	Spokane	126	99	126	338	165	124	100	158	111	103	103	122	181	139	138	79
West Virginia	Charleston	128	106	130	353	170	123	108	164	115	105	99	123	186	145	143	68
Wisconsin	Madison	131	102	132	335	170	130	103	164	115	108	110	128	187	145	145	84
	Milwaukee	131	102	132	335	170	129	103	164	115	108	110	128	187	145	145	84
Wyoming	Cheyenne	128	100	129	338	167	127	101	161	113	105	106	125	184	142	141	82

Note: Figures include design energy requirements for heating, cooling, domestic hot water, fans, exhaust fans, heating and cooling auxiliaries, elevators, escalators and lighting.

Note: Space is reserved in this table for restaurants and industrial buildings.

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Appendix II: Climate Tables

1. *Purpose of this Appendix.* The purpose of this Appendix is twofold. First, it identifies the SMSA's and cities for which Energy Budget Levels have been established.

Second, this Appendix provides instructions and data for relating the location of the building design to one of the listed SMSA's or cities. Using the climate data identified this way, the Energy Budget Level can be selected and the Design Energy Consumption calculated.

2. *Contents of Table II–1.* Table II–1, which shall be used for all building designs for new buildings, has seven columns: Three identify the location and boundaries of each SMSA or city, and the remaining four are National Oceanic and Atmospheric Administration (NOAA) climatic data for each SMSA or city.

- Column 1: State. This is the principal State in which the SMSA or city is located. In some cases, an SMSA crosses State boundaries.
- Column 2: City. This is the principal name by which the SMSA or city is identified by the Department of Commerce.
- Column 3: Counties. This further identifies the area contained within the SMSA or city. Generally, these are whole counties, parishes or city limits. In some cases, only part of a county is included, in which case the Department of Commerce publication, "SMSA, 1975" shall be consulted for a precise boundary.
- Column 4: HDD (Base 60° F). This is the average annual heating degree-days calculated for a base of 60° F.
- Column 5: CDD (Base 50° F). This is the average annual cooling degree-days calculated for a base of 50° F.
- Column 6: Percent Possible Sunshine. This is the mean probable annual sunshine available, expressed as a percent.
- Column 7: Mean Dewpoint Temperature. This is the mean annual dewpoint temperature, expressed in °F.

3. *Instructions.* (a) If the building site is located within the boundaries of one of the SMSA's or cities listed in Table II–1, use that SMSA or city for the Energy Budget Level selection and use the associated climate data for the Design Energy Consumption calculation.

(b) If the building site is not located in one of the SMSA's or cities listed in Table II–1, use the following procedure to select the appropriate climate data that best fits the new building's intended location.

Step 1: Obtain from Publications, National Climatic Center, Federal Building, Asheville, NC 28801, the current "NOAA Local Climatological Data (LCD) Annual Summary with Comparative Data" for the LCD station closest to the new building's intended site, as well as the documents, "Degree Days to Selected Bases for First Order Tape Stations," and "Climate Atlas of the United States."

Step 2: Obtain the following from the documents listed in Step 1: (a) Total average annual heating degree-days, base 60° F; (b) total annual average cooling degree-days, base 50° F; (c) mean annual percent of possible sunshine, for those locations where available, and (d) mean annual dewpoint temperature, °F.

Step 3: Examine the data given in Table II–1 to select one or more SMSA's or cities for which the corresponding data does not vary from the data obtained in Step 2 by more than ±15 percent each for HDD, CDD, and, for locations where available, the mean annual percent possible sunshine.

Step 4: If there is only one SMSA or city which meets the criteria in Step 3, use that SMSA or city to select the Energy Budget Level and the climate data for that SMSA or city for the calculation of the Design Energy Consumption. If there is no SMSA or city which meets the criteria in Step 3, use the SMSA or city which is closest, as measured in air miles, and within 5 degrees latitude of the new building's intended site. If there is more than one SMSA or city meeting the criteria, proceed to Step 5.

Step 5: If there are two or more SMSA's or cities meeting the criteria in Step 3, select one SMSA or city in which the average annual dewpoint temperature is within ±15 percent of the data obtained in Step 2. If none of the SMSA's or cities which meet the criteria in Step 3 also meet the criteria for average annual dewpoint temperature in this Step, then select that SMSA or city from those meeting the criteria in Step 3 for which the average annual dewpoint temperature is closest to that obtained in Step 2. Use that SMSA or city to select the Energy Budget Level, and use the climate data associated with that SMSA or city to calculate the Design Energy Consumption for the building design.

Table II–1.—*SMSA and City Locations*

[NOAA climatic summary]

State	City	Counties	HDD (base 60°F)	CDD (base 50°F)	Percent possible sunshine	Mean dewpoint temperature °F annual
1	2	3	4	5	6	7
Alabama	Birmingham	Jefferson, St. Clair, Shelby, and Walker	1995	5403	59	51
Alabama	Mobile	Baldwin and Mobile	1062	6698	59	60
Arizona	Phoenix	Maricopa	899	7596	85	41
California	Bakersfield	Kern	1367	5835	78	45
California	Fresno	Fresno	1724	4986	78	45
California	Los Angeles	Los Angeles	522	5442	73	50
California	Oakland	Napa and Solano	1570	2963	66	47
California	Sacramento	Placer, Sacramento, and Yolo	1837	4286	77	46
California	San Diego	San Diego	648	4746	68	51
California	San Francisco	Alemeda, Contra Costa, Marin, San Francisco, and San Mateo.	1668	2832	66	47
Colorado	Denver	Adams, Arapahoe, Boulder, Douglas, Gilpin, and Jefferson.	4246	2993	67	28
Connecticut	Bridgeport	Fairfield and New Haven	4264	3064	60	42
Connecticut	Hartford	*Hartford, *Litchfield, *Middlesex, *New London, and *Tolland.	5085	2715	56	40
District of Columbia	Washington	District of Columbia, Charles (MD), Montgomery (MD), Prince Georges (MD), Alexandria City (VA), Fairfax City (VA), Falls Church City (VA), Arlington (VA), Fairfax (VA), Loudoun (VA) and Prince William (VA).	3182	4237	58	44
Florida	Jacksonville	Baker, Clay, Duval, Nassau and St Johns	788	6938	62	58
Florida	Miami	Dade	54	9308	67	66
Florida	Tampa	Hillsborough, Pasco, and Pi	364	8172	68	63

Table II-1.—*SMSA and City Locations*—Continued

[NOAA climatic summary]

State	City	Counties	HDD (base 60°F)	CDD (base 50°F)	Percent possible sunshine	Mean dewpoint temperature °F annual
1	2	3	4	5	6	7
Georgia	Atlanta	Butts, Cherokee, Clayton, Cobb, De Kalb, Douglas, Fayette, Forsythe, Fulton, Gwinett, Henry, Newton, Paulding, Rockdale, and Walton.	2189	4880	60	50
Idaho	Boise City	Ada	4533	2793	66	33
Illinois	Chicago	Cook, Du Page, Kane, McHenry, Will, and Lake	4952	3272	59	39
Illinois	Glenview	City limits	5245	2863	59	39
Indiana	Indianapolis	Boone, Hamilton, Hancock, Hendricks, Johnson, Marion, Morgaty, and Shelby.	4430	3441	59	42
Kansas	Dodge City	City limits	3963	4025	71	39
Kentucky	Louisville	Bullitt, Jefferson, Oldham, Clark (IN), and Floyd (IN)	3584	4005	59	45
Louisiana	Baton Rouge	Ascension Parrish, East Baton-Rouge, Livingston, West Baton, and Rouge.	1036	6685	59	60
Louisiana	Lake Charles	Calcasieu Parrish	908	5965	59	59
Louisiana	New Orleans	Jefferson, Orleans, St. Bernard, and St. Tammany	893	6956	59	60
Massachusetts	Boston	*Essex, *Middlesex, *Norfolk, *Plymouth, and Suffolk.	4383	2920	57	39
Maine	Portland	*Cumberland and *York	6035	1890	58	37
Michigan	Detroit	Lapeer, Livingston, Macomb, Oakland, St. Clair, and Wayne.	5167	2823	53	39
Minnesota	Minneapolis	Anoko, Carver, Chicago, Dakota, Hennepin, Ramsey, Scott, Washington, Wright, and St. Croix (WI).	6842	2575	56	34
Mississippi	Jackson	Hinds and Rankin	1548	6086	59	54
Missouri	Columbia	Boone	3997	3919	61	43
Missiouri	Kansas	Cass, Clay, Jackson, Platte, Ray, Johnson (KS), and Wyandotte (KS).	4089	4085	65	43
Missouri	St. Louis	Franklin, Jefferson, St. Charles, St. Louis, Clinton (IL), Madison (IL), Monroe (IL), and St. Clair (IL).	3701	4232	61	44
Montana	Great Falls	Cascade	6248	2132	64	28
Nebraska	Omaha	Douglas, Sarpy, and Pottawattamie, (IA)	4907	3637	62	40
Nevada	Las Vegas	Clark	1770	6443	82	28
New Jersey	Newark	Essex, Morris, Somerset, and Union	3911	3533	59	42
New Mexico	Albuquerque	Bernalilbo and Sandoval	3234	4053	76	30
New York	Albany	Albany, Montgomery, Rensselaer, Saratoga, and Schenectady.	5596	2619	53	38
New York	Binghamton	Broome, Tioga, and Susquehanna (PA)	5908	2231	44	37
New York	Buffalo	Erie and Niagara	5591	2388	53	39
New York	New York	Bronx, Kings, New York, Putnam, Queens, Richmond, Rockland, Westchester, and Bergen (NJ).	3739	3653	59	42
North Carolina	Releigh	Durham, Orange, and Wake	2542	4482	61	48
North Dakota	Bismarck	City limits	7656	2248	59	30
Ohio	Akron	Portage and Summit	4971	2820	50	41
Ohio	Cincinnati	Clermont, Hamilton, Warren, Boone (KY), Campbell (KY), Kenton (KY), and Dearborn (IN).	3763	3864	57	43
Ohio	Cleveland	Cuyahoga, Geauga, Lake, and Medina	4901	2807	50	41
Ohio	Columbus	Delaware, Fairfield, Franklin, Madison, and Pickaway	4513	3183	55	42
Oklahoma	Oklahoma City	Canadian, Cleveland, McCain, Oklahoma, and Pottawatomie.	2760	4980	68	47
Oklahoma	Tulsa	Creek, Mayes, Osage, Rogers, Tulsa, and Wagoner	2750	5052	62	47
Oregon	Medford	City limits	3614	2685	58	40
Oregon	Portland	Clackamas, Multnomah, Washington, and Clark (WA)	3385	2309	48	44
Pennsylvania	Allentown	Carbon, Lehigh, Northampton, and Warren (NJ)	4618	3053	57	43
Pennsylvania	Philadelphia	Bucks, Chester, Delaware, Montgomery, Philadelphia, Burlington (NJ), Camden (NJ), and Cloucester (NJ).	3753	3679	57	43
Pennsylvania	Pittsburgh	Allegheny, Beaver, Washington, and Westmoreland	4694	2914	51	40
South Carolina	Charleston	Berkeley, Charleston, and Dorchester	1230	6334	66	55
Tennessee	Memphis	Shelby, Tipton, Crittenden (AR), and DeSota (MS)	2352	5339	64	50
Tennessee	Nashville	Cheatham, Davidson, Dickson, Robertson, Sumner, Williamson, and Wilson.	2758	4812	59	49
Texas	Amarillo	Potter and Randall	3156	4274	76	38
Texas	Brownsville	Cameron	336	8753	61	65
Texas	Dallas	Collin, Dallas, Denton, Ellis, Kaufman, Parker, and Rockwell.	1554	6467	68	52
Texas	Fort Worth	Hood, Johnson, Tarrant, and Wise	1616	6239	68	51
Texas	El Paso	El Paso	1833	5548	80	35
Texas	Houston	Brazoria, Fort Bend, Harris, Liberty, Montgomery, and Waller.	6864	7150	56	60
Texas	Lubbock	Lubbock	2603	4745	75	41
Texas	San Antonio	Bexar, Comal, and Guadalupe	956	7146	62	55
Utah	Salt Lake City	Davis, Salt Lake, Tooele, and Weber	4733	3094	69	32
Vermont	Burlington	City limit	6488	2180	46	36
Virginia	Norfolk	Chesapeake, Norfolk, Portsmouth, Suffolk, Virginia Beach, and Currituck (NC).	2516	4530	62	49
Virginia	Richmond	Charles City, Chesterfield, Goochland, Hanover, Henrico, and Powhatan.	2916	4276	61	47
Washington	Seattle	King and Snohmish	3657	1832	45	43
Washington	Spokane	Spokane	5420	2120	58	34
West Virginia	Charleston	Kanawha and Putnam	3500	3750	48	44
Wisconsin	Madison	Dane	6373	2361	56	37
Wisconsin	Milwaukee	Milwaukee, Ozaukee, Washington, and Waukesha	6080	2342	57	38
Wyoming	Cheyenne	City limits	5825	2003	66	27

*Part of a county.

Appendix III.—Approved Alternate Evaluation Techniques [Reserved]

Appendix IV.—Model Codes and Standards [Reserved]

[FR Doc. 79-36215 Filed 11-20-79; 1:10 pm]

BILLING CODE 6450-01-M

federal register

Wednesday
November 28, 1979

Part III

Nuclear Regulatory Commission

Physical Protection Upgrade Rule

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 70, 73, and 150

Physical Protection Upgrade Rule

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: In July 1977, the Commission published for public comment proposed amendments to its regulations for strengthened physical protection for strategic special nuclear material, certain fuel cycle facilities, transportation and other activities involving significant quantities of strategic special nuclear material. Extensive comments were received and a revision of the proposed amendments was published in August 1978 requesting public comment on the changes made.

In response to public comments, some additional changes have been made to the proposed amendments. The Nuclear Regulatory Commission now is publishing these revised amendments in final form.

The NRC has issued for public comment guidance documentation to assist the licensee in the development of safeguards physical protection and transportation protection plans and the implementation of such plans required by the amendments. The effective date of the revised requirements has been set to permit public comment on the guidance and its issuance in final form at the time the requirements become effective.

EFFECTIVE DATE: March 25, 1980.

Note.— The Nuclear Regulatory Commission has submitted this rule to the Comptroller General for review of its reporting requirement under the Federal Reports Act, as amended, 44 U.S.C. 3512. The date on which the reporting requirement of the rule becomes effective, unless advised to the contrary, includes a 45-day period which that statute allows for Comptroller General review (44 U.S.C. 3512(c)(2)).

FOR FURTHER INFORMATION CONTACT: Mr. L. J. Evans, Jr., Chief, Regulatory Improvements Branch, Division of Safeguards, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, 301–427–4181, or Dr. W. B. Brown, Acting Chief, Safeguards Standards Branch, Division of Siting, Health And Safeguards Standards, Office of Standards Development, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, 301–443–5907.

SUPPLEMENTARY INFORMATION: On July 5, 1977, the Nuclear Regulatory Commission published in the **Federal Register** (42 FR 34310) proposed amendments to 10 CFR Part 73 of its regulations. Interested persons were invited to submit written comments and suggestions in connection with the proposed amendments within 45 days after publication in the **Federal Register**. The comment period was subsequently extended thirty days. Upon consideration of the comments received on the proposed amendments published on July 5, 1977 and upon consideration of other factors involved, the Nuclear Regulatory Commission published revised proposed amendments on August 9, 1978 in the **Federal Register** (43 FR 35321) to obtain further public comment on the changes that had been made to the proposed amendments.

Significant differences from the original proposed amendments published for comment on July 5, 1977 were: (1) The definition of the conspiracy threat was changed to a conspiracy between individuals in any position who may have access to and detailed knowledge of the facilities and activities referred to in § 73.20(a) or items that could facilitate theft of special nuclear material or both; (2) export/import requirements were revised to reflect the jurisdictional aspects of the regulation; (3) the phrase "* * * but not necessarily limited to * * *" was deleted from the general performance requirements and capability requirements; (4) the package search requirements were changed so that packages carried into a protected area by persons having access authorization need only be searched when that person is chosen for random search. The package search requirement also was changed to require only random search of packages delivered into a protected area; (5) the Contingency and Response plan requirements for in-transit protection were revised to add more detailed response requirements consistent with the fixed site requirements; (6) the requirement for three armed escorts on cargo aircraft and for sea shipments was changed to two, (7) the requirement for Pu and U–233 containers resistant to small arms fire was deleted; (8) the export/import security plan approval requirement was changed to apply to all shipments and was clarified as to timing; (9) the requirement for alarm stations to be considered vital areas was changed; (10) the use of vault type rooms for storage of strategic special nuclear material directly useable in a nuclear explosive device was prohibited and the definition of vault changed to better reflect the purpose of vaults; (11) the word "immediately" was deleted from the requirement that armed response personnel be immediately available; (12) definitions were added for deceit, stealth, and force, and other changes in wording and language were made throughout the rule to clarify the intent and be more specific in the meaning of the requirements; (13) obsolete sections to be deleted when the effective rule is published were noted; and (14) planning and implementation times were changed.

After review of the latest round of comments, the following substantive changes have been made: (1) Non-power reactors are not required to meet the provisions of the upgrade rule. As an interim measure, non-power reactors must meet the provisions of § 73.67 (a), (b), (c), (d), (requirements for protection of material of low and moderate strategic significance), and in some cases of the provisions of a revised § 73.60 (for those non-power reactor facilities possessing formula quantities of special nuclear material not meeting the 100 rem self-protection exemption); (2) the definition of vault has been further revised and required vault attributes have been added to § 73.46(c)(5)(i); (3) the number of armed escorts required for transfer, rail and road transportation of domestic shipments of SSNM has been reduced from nine to seven individuals; (4) the requirement for "penetration resistant" tamper-indicating containers for storage of certain SSNM has been changed to tamper-indicating containers; (5) the requirement for a third closed circuit television monitor of vaults has been changed; (6) a definition has been added for "undergoing processing;" (7) planning and implementation times have been changed; (8) the design basis threat relating to theft of strategic special nuclear material has been modified and moved to § 73.1(a); (9) the design basis threat statement relating to radiological sabotage (present § 73.55) has been modified and moved to § 73.1(a); and (10) the "high assurance phrase" contained in § 73.20(a) of the proposed rule and in present § 73.55(a) has been modified to state that the physical protection system will have as its objective to provide high assurance. In addition, changes in wording and language have been made throughout the rule for clarification, and conforming changes in references to and by existing sections have been made.

The following discussion pertains to items (1) through (9) above.

(1) Application of the requirements of these amendments to non-power reactors possessing formula quantities

of special nuclear material which cannot meet the 100 rem self-protection exemption has been deferred pending completion of a separate on-going review of total safeguards requirements adequacy at such facilities. In the interim, such licensees will be subject to the provisions of § 73.67 (a), (b), (c), and (d), and revised § 73.60. This is an interim solution only, and it is the intent of the Commission to bring non-power reactors under an improved safeguards system in the near future.

(2) Commenters noted that the definition of vault, while attempting to specify a delay capability tied to the response time of LLEA, failed to account for the significance of other aspects of the security system, such as intrusion detection and communication, in determining that response time. Additionally, the use of LLEA response time as the criterion for measuring vault delay time was criticized as being impractical and ignoring the protection afforded by response of the armed onsite security force. Accordingly, the definition has been changed and an additional discussion of required vault attributes has been added to § 73.46.

(3) In determining a specific number of armed escorts for domestic transfers, rail, and road shipments, the basic principles were that force size be large enough to engage a small group of attackers and delay theft and that this force would always be composed of two distinct separated groups, so that no single act which interrupted communications of one group would totally destroy the ability to communicate to the movement control center. The Commission, in reviewing the differences in performance that could be expected from different group sizes, determined that seven armed individuals could provide the necessary protection while lessening labor expense. The rule has been changed accordingly.

(4) Comments questioned whether a "penetration resistant" tamper-indicating container was adequately defined, available, or even necessary. As the meaning of penetration resistant was not clear, availability of containers was not certain, and the need for such containers was not defined, the rule was changed to delete the terms "penetration resistant."

(5) Commenters stated that requiring a third continuously manned location to monitor closed circuit television was equivalent to requiring a third alarm station. The intent of this provision was to add a third factor to protect against collusion between the two alarm station operators. After review, the Commission has determined that this factor could be provided without the specific requirements of a third CCTV monitor. The rule has been changed accordingly.

(6) Commenters expressed confusion as to when protection requirements were required while SSNM is undergoing processing. A definition has been added to § 73.2 to define undergoing processing and to clarify the distinction between such processing and storage for application of protection requirements.

(7) The implementation schedule has been simplified. There is now one schedule required for planning and implementing a revised security program, rather than separate schedules for the external threat plan and internal conspiracy plan as previously proposed. The prior two schedule approach was to permit time for development of guidance for protection against the internal conspiracy. This guidance has now been developed so that a schedule delay is not necessary.

(8) Based upon review of the design basis threat, the previous threat description stated as a general performance requirement in § 73.20(a) has been modified to reflect a reference to the malevolent act of concern (theft or diversion) rather than a reference to the type of facility to be protected and has been moved to § 73.1. Appropriate reference changes have been made accordingly.

(9) The existing design basis threat stated in § 73.55(a) for nuclear power reactors has also been modified as in (7) above to be referenced to the radiological sabotage threat rather than to the facility to be protected and has been moved to § 73.1. Appropriate reference changes have been made accordingly.

(10) The Commission has modified the statement of general performance requirements. Paragraph 73.20(a) of the proposed rule required the physical protection system to prevent theft of strategic special nuclear material and to protect against radiological sabotage with high assurance. This paragraph has been modified to state that the physical protection system will have as its objective to provide high assurance that covered activities are not inimical to the common defense and security and do not constitute an unreasonable risk to public health and safety.

The Commission is also making a conforming modification to 10 CFR 73.55(a) to state an objective of high assurance in the performance of security systems to protect against radiological sabotage at nuclear power reactors identical to the general performance objective in 10 CFR 73.20(a). This is a change from the present 10 CFR 73.55(a) which currently calls for high assurance in performance as a requirement of physical security systems. It is important to note that this change will not affect the Commission's judgments of what system requirements are necessary to assure provision of adequate safeguards against radiological sabotage, theft or diversion. "High assurance," as used in 10 CFR 73.55(a), is deemed to be comparable to the degree of assurance contemplated by the Commission in its safety review for protection against severe postulated accidents having potential consequences similar to the potential consequences from reactor sabotage. It should be appreciated that the standard "reasonable assurance," commonly used in safety evaluations, is applied to a broad category of safety concerns ranging from the mitigation of minor anticipated operational occurrences to protection against severe postulated accidents. Thus, the degree of assurance necessary to provide "reasonable assurance" varies with the gravity of the safety concern.

In adopting these amendments, the Commission decided that the requirements should not be made effective until guidance had been published assisting licensees in conforming to performance-oriented physical protection requirements for affected facilities and activities. Allowance for consideration of public comments on this guidance has been built into the time period specifying the effective date of the amendments. Prior to the publication of these amendments, two guidance documents have been published for public comment. These are: (1) "Fixed Site Physical Protection Upgrade Rule Guidance Compendium, Volumes I and II" and (2) Regulatory Guide 5. (SG904–4), "Standard Format and Content, Physical Protection of Strategic Special Nuclear Material In Transit."

In addition, revisions to Regulatory Guides 5.7, "Exit/Entry Control to Protected Areas, Vital Areas, and Material Access Areas," 5.14, "The Use of Observation (Visual Surveillance) Techniques in Material Access Areas," 5.44, "Perimeter Alarm Systems," and 5.57, "Shipping and Receiving Control of Special Nuclear Material," have been made. These documents also have been published for comment.

Copies of these new and revised guidance documents have been sent to persons who have expressed an interest in this matter. Comments have been received so that final guidance can be published by the time the rule becomes effective on March 25, 1980. Copies of

these documents also will be placed in the Commission's Public Document Room at 1717 H Street, NW., Washington, D.C.

The Commission believes that a significant number of comments for which no changes to the amendments were made will be satisfactorily addressed by this guidance documentation to be published concurrently with the effective date of these amendments.

In addition to the comments that resulted in changes in the proposed amendments, the threat and general performance requirements were again questioned. The Commission believes it is worth restating the purpose and intent of the threat characterization and its relationship to the general performance requirements.

The purpose of the threat defined in the proposed amendments is to define the general character of the domestic safeguards challenge. It is intended to provide a design basis for physical protection systems; therefore, additional adversary attributes are not necessary to serve this purpose. Physical protection systems, when designed to the level specified in the general performance sections of the rule and in accordance with the reference system specified in the rule and other design guidance to be provided, will be responsive to a general range of threats characterized by that stated in the amendments.

With respect to specific numbers of adversaries, the numbers are not as significant as are the capabilities and resources of the adversary. For example, the threat from a disorganized mob of fifty or so people is much different from that of only a few well-organized, well-trained people.

Given that the described threat is a design basis for a physical protection system, additional design criteria are given in the form of required system capabilities. These capabilities are further supported by a reference safeguards system (§ 73.46) which provides guidance concerning those safeguards measures which will generally be included in a physical protection system that achieves the required performance capabilities.

The Commission has determined under Council of Environmental Quality guidelines and the criteria in 10 CFR Part 51 that an environmental impact statement for the amendments to 10 CFR Part 73 is not required. Concurrently with publication of the notice of proposed rulemaking of July 5, 1977 (42 FR 34310), the Commission made available in its Public Document Room at 1717 H Street NW., Washington, D.C., an "Environmental Impact Appraisal of Amendments to 10 CFR Part 73" to support a Negative Declaration. This document is appropriate for the revised amendments as well.

Pursuant to the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and sections 552 and 553 of title 5 of the United States Code, notice is hereby given that the following amendments to Title 10, Chapter I, Code of Federal Regulations, Parts 70, 73, and 150, are published as a document subject to codification.

PART 70—DOMESTIC LICENSE OF SPECIAL NUCLEAR MATERIAL

§ 70.20a [Amended]

1. Section 70.20a(a) is amended to replace references ". . . §§ 73.30 through 73.36. . . ." with reference to §§ 73.20, 73.25, 73.26, and 73.27.

2. Section 70.20a(d) is amended to replace references ". . . §§ 73.30 through 73.36. . . ." with reference to §§ 73.20, 73.25, 73.26, and 73.27.

§ 70.22 [Amended]

3. Section 70.22(g) is amended to replace references ". . . §§ 73.30 through 73.36, 73.47 (a) and (e), 73.47(g). . . ." with reference to §§ 73.20, 73.25, 73.26, 73.27, 73.67 (a) and (e), 73.67(g).

4. Section 70.22(h) is amended to add references to §§ 73.20, 73.45, and 73.46.

5. Section 70.22(k) is amended to change the reference to § 73.47 (d), (e), (f) and (g) to reference § 73.67 (d), (e), (f) and (g).

§ 70.32 [Amended]

6. Section 70.32(d) is amended to replace the reference to paragraph 73.30(e) with reference to § 73.20(c).

7. Section 70.32(e) is amended to replace the reference to paragraph (f) with reference to § 73.20(c).

8. Section 70.32(f) is deleted.

PART 73—PHYSICAL PROTECTION OF PLANTS AND MATERIALS

9. The table of contents for Part 73 is revised to read as follows:

General Provisions

Sec.

73.1 Purpose and scope.
73.2 Definitions.
73.3 Interpretations.
73.4 Communications.
73.5 Specific exemptions.
73.6 Exemptions for certain quantities and kinds of special nuclear material.
73.20 General performance requirements.
73.24 Prohibitions.

Physical Protection of Special Nuclear Material in Transit

Sec.

73.25 Performance capabilities for physical protection of strategic special nuclear material in transit.
73.26 Transportation physical protection systems, subsystems, components, and procedures.
73.27 Notification requirements.
73.37 Requirements for physical protection of irradiated reactor fuel in transit.

Physical Protection Requirements at Fixed Sites

73.40 Physical protection: General requirements at fixed sites.
73.45 Performance capabilities for fixed site physical protection.
73.46 Fixed site physical protection systems, subsystems, components and procedures.
73.50 Requirements for physical protection of licensed activities.
73.55 Requirements for physical protection of licensed activities in nuclear power reactors against radiological sabotage.
73.60 Additional requirements for the physical protection of special nuclear material at non-power reactors.

Physical Protection of Special Nuclear Material of Moderate and Low Strategic Significance

73.67 Licensee fixed site and in-transit requirements for the physical protection of special nuclear material of moderate and low strategic significance.

Records and Reports

73.70 Records.
73.71 Reports of unaccounted for shipments, suspected theft, unlawful diversion, or radiological sabotage.
73.72 Requirement for advance notice of shipment of special nuclear material.

Enforcement

73.80 Violations.

Appendices

Appendix A—United States Nuclear Regulatory Commission Inspection and Enforcement Regional Offices
Appendix B—General Criteria for Security Personnel
Appendix C—Licensee Safeguards Contingency Plans
Appendix D—Physical Protection of Irradiated Reactor Fuel in Transit, Training Program Subject Schedule

Authority: Secs. 53, 161b, 161i, 161o, Pub. L. 83-703, 68 Stat. 930, 948-50, as amended Pub. L. 85-507, 72 Stat. 327, Pub. L. 93-377, 88 Stat. 475 (42 U.S.C. 2073, 2201); sec. 201, Pub. L. 93-438, 88 Stat. 1242, 1243, as amended Pub. L. 94-79, 89 Stat. 413 (42 U.S.C. 5841).

10. Section 73.1(a) of 10 CFR Part 73 is revised to read as follows:

§ 73.1 Purpose and scope.

(a) *Purpose.* This part prescribes requirements for the establishment and maintenance of a physical protection system which will have capabilities for the protection of special nuclear material at fixed sites and in transit and

of plants in which special nuclear material is used. The following design basis threats, where referenced in ensuing sections of this part, shall be used to design safeguards systems to protect against acts of radiological sabotage and to prevent the theft of special nuclear material:

(1) *Radiological Sabotage.* (i) A determined violent external assault, attack by stealth, or deceptive actions, of several persons with the following attributes, assistance and equipment: (A) Well-trained (including military training and skills) and dedicated individuals, (B) inside assistance which may include a knowledgeable individual who attempts to participate in a passive role (e.g., provide information), an active role (e.g., facilitate entrance and exit, disable alarms and communications, participate in violent attack), or both, (C) suitable weapons, up to and including hand-held automatic weapons, equipped with silencers and having effective long range accuracy, (D) hand-carried equipment, including incapacitating agents and explosives for use as tools of entry or for otherwise destroying reactor, facility, transporter, or container integrity or features of the safeguards system, and

(ii) An internal threat of an insider, including an employee (in any position).

(2) *Theft or Diversion of Formula Quantities of Strategic Special Nuclear Material.* (i) A determined external assault, attack by stealth, or deceptive actions, by a small group with the following attributes, assistance and equipment: (A) Well-trained (including military training and skills) and dedicated individuals, (B) inside assistance which may include a knowledgeable individual who attempts to participate in a passive role (e.g., provide information), an active role (e.g., facilitate entrance and exit, disable alarms and communications, participate in violent attack), or both, (C) suitable weapons, up to and including hand-held automatic weapons, equipped with silencers and having effective long range accuracy, (D) hand-carried equipment, including incapacitating agents and explosives for use as tools of entry or for otherwise destroying reactor, facility, transporter or container integrity or features of the safeguards system, and (E) the ability to operate as two or more teams,

(ii) An individual, including an employee (in any position), and

(iii) A conspiracy between individuals in any position who may have: (A) Access to and detailed knowledge of nuclear power plants or the facilities referred to in § 73.20(a), or (B) items that could facilitate theft of special nuclear material (e.g., small tools, substitute material, false documents, etc.), or both.

11. Sections 73.2 (c), (f), (h), (k), (n), and (p) of 10 CFR Part 73 are revised to read as follows:

§ 73.2 Definitions.

As used in this part:

* * * * *

(c) "Guard" means a uniformed individual armed with a firearm whose primary duty is the protection of special nuclear material against theft, the protection of a plant against radiological sabotage, or both.

* * * * *

(f) "Physical barrier" means

(1) Fences constructed of No. 11 American wire gauge, or heavier wire fabric, topped by three strands or more of barbed wire or similar material on brackets angled outward between 30° and 45° from the vertical, with an overall height of not less than eight feet, including the barbed topping;

(2) Building walls, ceilings and floors constructed of stone, brick, cinder block, concrete, steel or comparable materials (openings in which are secured by grates, doors, or covers of construction and fastening of sufficient strength such that the integrity of the wall is not lessened by any opening), or walls of similar construction, not part of a building, provided with a barbed topping described in paragraph (f)(1) of this section of a height of not less than 8 feet; or

(3) Any other physical obstruction constructed in a manner and of materials suitable for the purpose for which the obstruction is intended.

* * * * *

(h) "Vital area" means any area which contains vital equipment.

* * * * *

(k) "Isolation zone" means any area adjacent to a physical barrier, clear of all objects which could conceal or shield an individual.

* * * * *

(n) "Vault" means a windowless enclosure with walls, floor, roof and door(s) designed and constructed to delay penetration from forced entry.

* * * * *

(p) "Radiological sabotage" means any deliberate act directed against a plant or transport in which an activity licensed pursuant to the regulations in this chapter is conducted, or against a component of such a plant or transport which could directly or indirectly endanger the public health and safety by exposure to radiation.

* * * * *

(q) "DOE" means the Department of Energy or its duly authorized representatives.

* * * * *

12. Section 73.2 of 10 CFR Part 73 is amended to add paragraphs (cc) thru (ii).

§ 73.2 Definitions.

As used in this part:

* * * * *

(cc) "Transport" means any land, sea, or air conveyance or modules for these conveyances such as rail cars or standardized cargo containers.

(dd) "Incendiary device" means any self-contained device intended to create an intense fire that can damage normally flame-resistant or retardant materials.

(ee) "Movement control center" means an operations center which is remote from transport activity and which maintains periodic position information on the movement of strategic special nuclear material, receives reports of attempted attacks or thefts, provides a means for reporting these and other problems to appropriate agencies and can request and coordinate appropriate aid.

(ff) "Force" means violent methods used by an adversary to attempt to steal strategic special nuclear material or to sabotage a nuclear facility or violent methods used by response personnel to protect against such adversary actions.

(gg) "Stealth" means methods used to attempt to gain unauthorized access, introduce unauthorized materials, or remove strategic special nuclear material, where the fact of such attempt is concealed or an attempt is made to conceal it.

(hh) "Deceit" means methods used to attempt to gain unauthorized access, introduce unauthorized materials, or remove strategic special nuclear materials, where the attempt involves falsification to present the appearance of authorized access.

(ii) "Undergoing processing" means performing active operations on material such as chemical transformation, physical transformation, or transit between such operations, to be differentiated from storage or packaging for shipment.

13. The undesignated first paragraph of § 73.6 is revised to read as follows:

§ 73.6 Exemptions of certain quantities and kinds of special nuclear material.

A licensee is exempt from the requirements of §§ 73.20, 73.25, 73.26, 73.27, 73.45, 73.46, 73.70 and 73.72 with

respect to the following special nuclear material:

* * * * *

14. Section 73.6 is amended to add paragraphs (d) and (e) and an unnumbered final paragraph to read as follows:

§ 73.6 Exemptions of certain quantities and kinds of special nuclear material.

* * * * *

(d) Special nuclear material that is being transported by the United States Department of Energy transport system.

(e) Special nuclear material at non-power reactors.

Licensees subject to § 73.60 are not exempted from §§ 73.70 and 73.72, and licensees subject to § 73.67(e) are not exempted from § 73.72 of this part.

§§ 73.30–73.36 [Deleted]

15. Sections 73.30 through 73.36 are deleted.

§ 73.37 [Amended]

16. Section 73.37(a) is amended to replace references ". . . §§ 73.30 through 73.36. . . ." with reference to §§ 73.20, 73.25, 73.26, and 73.27.

§ 73.40 [Amended]

17. Section 73.40(a) is revised to read as follows:

§ 73.40 Physical protection: General requirements at fixed sites.

(a) Each licensee shall provide physical protection against radiological sabotage and against theft of special nuclear material at the fixed sites where licensed activities are conducted. Physical security systems shall be established and maintained by the licensee in accordance with security plans approved by the Nuclear Regulatory Commission.

* * * * *

§ 73.40 [Amended]

18. The first sentence of § 73.40(b) is revised to read as follows:

* * * * *

(b) Each licensee subject to the requirements of §§ 73.20, 73.45, 73.46, 73.50, 73.55, or § 73.60 shall prepare a safeguards contingency plan in accordance with the criteria set forth in Appendix C to this part.

19. New §§ 73.20, 73.24, 73.25, 73.26, 73.27, 73.45 and 73.46 are added to read as follows:

§ 73.20 General performance objective and requirements.

(a) In addition to any other requirements of this part, each licensee who is authorized to operate a fuel reprocessing plant pursuant to Part 50 of this chapter; possesses or uses formula quantities of strategic special nuclear material at any site or contiguous sites subject to control by the licensee; is authorized to transport or deliver to a carrier for transportation pursuant to Part 70 of this chapter formula quantities of strategic special nuclear material; takes delivery of formula quantities of strategic special nuclear material free on board (f.o.b.) the point at which it is delivered to a carrier for transportation; or imports or exports formula quantities of strategic special nuclear material, shall establish and maintain or make arrangements for a physical protection system which will have as its objective to provide high assurance that activities involving special nuclear material are not inimical to the common defense and security, and do not constitute an unreasonable risk to the public health and safety. The physical protection system shall be designed to protect against the design basis threats of theft or diversion of strategic special nuclear material and radiological sabotage as stated in § 73.1(a).

(b) To achieve the general performance objective of paragraph (a) of this section a licensee shall establish and maintain, or arrange for, a physical protection system that:

(1) Provides the performance capabilities described in § 73.25 for in-transit protection or in § 73.45 for fixed site protection unless otherwise authorized by the Commission;

(2) Is designed with sufficient redundancy and diversity to assure maintenance of the capabilities described in §§ 73.25, 73.45; and

(3) Includes a testing and maintenance program to assure control over all activities and devices affecting the effectiveness, reliability, and availability of the physical protection system, including a demonstration that any defects of such activities and devices will be promptly detected and corrected for the total period of time they are required as a part of the physical protection system.

(c) Each licensee subject to the requirements of paragraphs (a) and (b) of this section shall:

(1) Within 150 days after the effective date of these amendments, submit a revised fixed site safeguards physical protection plan and, if appropriate, a revised safeguards transportation protection plan describing how the licensee will comply with the requirements of paragraph (a) of this section; and

(2) Within 360 days after the effective date of these amendments or 90 days after the plan submitted pursuant to paragraph (c)(1) of this section is approved, whichever is later, implement the approved plan except for activities specifically identified by the licensee which involve new construction, significant physical modification of existing structures or major equipment installation, for which 540 days after the effective date of these amendments or 180 days after the plan(s) is approved, whichever is later, will be allowed.

§ 73.24 Prohibitions.

(a) Except as specifically approved by the Nuclear Regulatory Commission, no shipment of special nuclear material shall be made in passenger aircraft in excess of (1) 20 grams or 20 curies, whichever is less, of plutonium or uranium-233, or (2) 350 grams of uranium-235 (contained in uranium enriched to 20 percent or more in the U-235 isotope).

(b) Unless otherwise approved by the Nuclear Regulatory Commission, no licensee may make shipments of special nuclear material in which individual shipments are less than a formula quantity, but the total quantity in shipments in transit at the same time could equal or exceed a formula quantity, unless either of the following conditions are met:

(1) The licensee shall confirm and log the arrival at the final destination of each individual shipment, and schedule shipments to assure that the total quantity for two or more shipments in transit at the same time does not equal or exceed the formula quantity, or

(2) Physical protection in accordance with the requirements of §§ 73.20, 73.25, and 73.26 is provided by the licensee for such shipments as appropriate so that the total quantity of special nuclear material in the remaining shipments not so protected, and in transit at the same time, does not equal or exceed a formula quantity.

§ 73.25 Performance capabilities for physical protection of strategic special nuclear material in transit.

(a) To meet the general performance objective and requirements of § 73.20 an in-transit physical protection system shall include the performance capabilities described in paragraphs (b) through (d) of this section unless otherwise authorized by the Commission.

(b) Restrict access to and activity in the vicinity of transports and strategic special nuclear material. To achieve this capability the physical protection system shall:

(1) Minimize the vulnerability of the strategic special nuclear material by using the following subfunctions and procedures:

(i) Preplanning itineraries for the movement of strategic special nuclear material;

(ii) Periodically updating knowledge of route conditions for the movement of strategic special nuclear material;

(iii) Maintaining knowledge of the status and position of the strategic special nuclear material en route; and

(iv) Determining and communicating alternative itineraries en route as conditions warrant.

(2) Detect and delay any unauthorized attempt to gain access or introduce unauthorized materials by stealth or force into the vicinity of transports and strategic special nuclear material using the following subsystems and subfunctions:

(i) Controlled access areas to isolate strategic special nuclear material and transports to assure that unauthorized persons shall not have direct access to, and unauthorized materials shall not be introduced into the vicinity of, the transports and strategic special nuclear material, and

(ii) Access detection subsystems and procedures to detect, assess and communicate any unauthorized penetration (or such attempts) of a controlled access area by persons, vehicles or materials so that the response will satisfy the general performance objective and requirements of § 73.20(a).

(3) Detect attempts to gain unauthorized access or introduce unauthorized materials into the vicinity of transports by deceit using the following subsystems and subfunctions:

(i) Access authorization controls and procedures to provide current authorization schedules and access criteria for persons, materials and vehicles; and

(ii) Access controls and procedures to verify the identity of persons, materials and vehicles, to assess such identity against current authorization schedules and access criteria before permitting access, and to initiate response measures to deny unauthorized entries.

(c) Prevent or delay unauthorized entry or introduction of unauthorized materials into, and unauthorized removal of, strategic special nuclear material from transports. To achieve this capability the physical protection system shall:

(1) Detect attempts to gain unauthorized entry or introduce unauthorized materials into transports by deceit using the following subsystems and subfunctions:

(i) Access authorization controls and procedures to provide current authorization schedules and entry criteria for access into transports for both persons and materials; and

(ii) Entry controls and procedures to verify the identity of persons and materials and to permit transport entry only to those persons and materials specified by the current authorization schedules and entry criteria.

(2) Detect attempts to gain unauthorized entry or introduce unauthorized material into transports by stealth or force using the following subsystems and subfunctions:

(i) Transport features to delay access to strategic special nuclear material sufficient to permit the detection and response systems to function so as to satisfy the general performance objective and requirements of § 73.20(a);

(ii) Inspection and detection subsystems and procedures to detect unauthorized tampering with transports and cargo containers; and

(iii) Surveillance subsystems and procedures to detect, assess and communicate any unauthorized presence of persons or materials and any unauthorized attempt to penetrate the transport so that the response will satisfy the general performance objective and requirements of § 73.20(a).

(3) Prevent unauthorized removal of strategic special nuclear material from transports by deceit using the following subsystems and subfunctions:

(i) Authorization controls and procedures to provide current schedules for authorized removal of strategic special nuclear material which specify the persons authorized to remove and receive the material, the authorized times for such removal and receipt and authorized places for such removal and receipt.

(ii) Removal controls and procedures to establish activities for transferring cargo in emergency situations; and

(iii) Removal controls and procedures to permit removal of strategic special nuclear material only after verification of the identity of persons removing or receiving the strategic special nuclear material, and after verification of the identity and integrity of the strategic special nuclear material being removed from transports.

(4) Detect attempts to remove strategic special nuclear material from transports by stealth or force using the following subsystems and subfunctions:

(i) Transport features to delay unauthorized strategic special nuclear material removal attempts sufficient to assist detection and permit a response to satisfy the general performance objective and requirements of § 73.20(a); and

(ii) Detection subsystems and procedures to detect, assess and communicate any attempts at unauthorized removal of strategic special nuclear material so that response to the attempt can be such as to satisfy the general performance objective and requirements of § 73.20(a).

(d) Respond to safeguards contingencies and emergencies to assure that the two capabilities in paragraphs (b) and (c) of this section are achieved, and to engage and impede adversary forces until local law enforcement forces arrive. To achieve this capability, the physical protection system shall:

(1) Respond rapidly and effectively to safeguards contingencies and emergencies using the following subsystems and subfunctions:

(i) A security organization composed of trained and qualifed personnel, including armed escorts, one of whom is designated as escort commander, with procedures for command and control, to execute response functions.

(ii) Assessment procedures to assess the nature and extent of security related incidents.

(iii) A predetermined plan to respond to safeguards contingency events.

(iv) Equipment and procedures to enable responses to security related incidents sufficiently rapid and effective to achieve the predetermined objective of each action.

(v) Equipment, vehicle design features, and procedures to protect security organization personnel, including those at the movement control center, in their performance of assessment and response related functions.

(2) Transmit detection, assessment and other response related information using the following subsystems and subfunctions:

(i) Communications equipment and procedures to rapidly and accurately transmit security information among armed escorts.

(ii) Equipment and procedures for two-way communications between the escort commander and the movement control center to rapidly and accurately transmit assessment information and requests for assistance by local law enforcement forces, and to coordinate such assistance.

(iii) Communications equipment and procedures for the armed escorts and the movement control center personnel to notify local law enforcement forces of the need for assistance.

(3) Establish liaisons with local law enforcement authorities to arrange for assistance en route.

(4) Assure that a single adversary action cannot destroy the capability of armed escorts to notify the local law enforcement forces of the need for assistance.

§ 73.26 Transportation physical protection systems, subsystems, components, and procedures.

(a) A transportation physical protection system established pursuant to the general performance objectives and requirements of § 73.20 and performance capability requirements of § 73.25 shall include, but are not necessarily limited to, the measures specified in paragraphs (b) through (l) of this section. The Commission may require, depending on the individual transportation conditions or circumstances, alternate or additional measures deemed necessary to meet the general performance objectives and requirements of §73.20. The Commission also may authorize protection measures other than those required by this section if, in its opinion, the overall level of performance meets the general performance objectives and requirements of § 73.20 and the performance capability requirements of § 73.25.

(b) Planning and Scheduling.

(1) Shipments shall be scheduled to avoid regular patterns and preplanned to avoid areas of natural disaster or civil disorders, such as strikes or riots. Such shipments shall be planned in order to avoid storage times in excess of 24 hours and to assure that deliveries occur at a time when the receiver at the final delivery point is present to accept the shipment.

(2) Arrangements shall be made with law enforcement authorities along the route of shipments for their response to an emergency or a call for assistance.

(3) Security arrangements for each shipment shall be approved by the Nuclear Regulatory Commission prior to the time for the seven-day notice required by § 73.72. Information to be supplied to the Commission in addition to the general security plan information is as follows:

(i) Shipper, consignee, carriers, transfer points, modes of shipment,

(ii) Point where escorts will relinquish responsibility or will accept responsibility for the shipment,

(iii) Arrangements made for transfer of shipment security, and

(iv) Security arrangements at point where escorts accept responsibility for an import shipment.

(4) Hand-to-hand receipts shall be completed at origin and destination and at all points enroute where there is a transfer of custody.

(c) Export/Import Shipments.

(1) A licensee who imports a formula quantity of strategic special nuclear material shall make arrangements to assure that the material will be protected in transit as follows:

(i) An individual designated by the licensee or his agent, or as specified by a contract of carriage, shall confirm the container count and examine locks and/or seals for evidence of tampering, at the first place in the United States at which the shipment is discharged from the arriving carrier.

(ii) The shipment shall be protected at all times within the geographical limits of the United States as provided in this section and §§ 73.25 and 73.27.

(2) A licensee who exports a formula quantity of strategic special nuclear material shall comply with the requirements of this section and §§ 73.25 and 73.27, as applicable, up to the first point where the shipment is taken off the transport outside the United States.

(d) Security Organization.

(1) The licensee or his agent shall establish a transportation security organization, including armed escorts, armed response personnel or guards, and a movement control center manned and equipped to monitor and control shipments, to communicate with local law enforcement authorities, and to respond to safeguards contingencies.

(2) At least one full time member of the security organization who has the authority to direct the physical protection activities of the security organization shall be on duty at the movement control center during the course of any shipment.

(3) The licensee or his agent shall establish, maintain, and follow a management system to provide for the development, revision, implementation, and enforcement of transportation physical protection procedures. The system shall include:

(i) Written security procedures which document the structure of the transportation security organization and which detail the duties of drivers and escorts and other individuals responsible for security; and

(ii) Provision for written approval of such procedures and any revisions thereto by the individual with overall responsibility for the security function.

(4) Neither the licensee or his agent shall permit an individual to act as an escort or other security organization member unless such individual has been trained, equipped, and qualified to perform each assigned security job duty in accordance with Appendix B, of this part, "General Criteria for Security Personnel." Upon the request of an authorized representative of the Commission the licensee or his agent shall demonstrate the ability of the physical security personnel to carry out their assigned duties and responsibilities. Armed escorts shall requalify in accordance with Appendix B of this part at least every 12 months. Such requalification shall be documented.

(5) Armed escort and armed response force personnel armament shall include handguns, shotguns, and semiautomatic rifles, as described in Appendix B to this part.

(e) Contingency and Response Plans and Procedures.

(1) The licensee or his agent shall establish, maintain, and follow a safeguards contingency plan for dealing with threats, thefts, and radiological sabotage related to strategic special nuclear material in transit subject to the provisions of this section. Such safeguards contingency plan shall be in accordance with the criteria in Appendix C to this part, "Licensee Safeguards Contingency Plan."

(2) Upon detection of abnormal presence or activity of persons or vehicles attempting to penetrate a moving convoy or persons attempting to gain access to a parked cargo vehicle or upon evidence or indication of penetration of the cargo vehicle the armed escorts or other armed response personnel shall:

(i) Determine whether or not a threat exists;

(ii) Assess the extent of the threat, if any;

(iii) Take immediate concurrent measures to neutralize the threat by:

(A) Making the necessary tactical moves to prevent or impede acts of radiological sabotage or theft of strategic special nuclear material, and

(B) Informing local law enforcement agencies of the threat and requesting assistance.

(3) The licensee or his agent shall instruct every armed escort and all armed response personnel to prevent or impede acts of radiological sabotage or theft of strategic special material by using sufficient force to counter the force directed at him including the use of deadly force when armed escorts or armed response personnel have a reasonable belief that it is necessary in self-defense or in the defense of others.

(f) Transfer and Storage of Strategic Special Nuclear Material for Domestic Shipments.

(1) Strategic special nuclear material shall be placed in a protected area at transfer points if transfer is not immediate from one transport to another. Where a protected area is not available a controlled access area shall be established for the shipment. The transport may serve as a controlled access area.

(2) All transfers shall be protected by at least seven armed escorts or other armed personnel—one of whom shall

serve as commander. At least five of the armed personnel (including the commander) shall be available to protect the shipment and at least three of the five shall keep the strategic special nuclear material under continuous surveillance while it is at the transfer point. The two remaining armed personnel shall take up positions at a remote monitoring location. The remote location may be a radio-equipped vehicle or a nearby place, apart from the shipment area, so that a single act cannot remove the capability of the personnel protecting the shipment for calling for assistance. Each of the seven armed escorts or other armed personnel shall be capable of maintaining communication with each other. The commander shall have the capability to communicate with the personnel at the remote location and with local law enforcement agencies for emergency assistance. In addition, the armed escort personnel at the remote location shall have the capability to communicate with the law enforcement agencies and with the shipment movement control center. The commander shall call the remote location at least every 30 minutes to report the status of the shipment. If the calls are not received within the prescribed time, the personnel in the remote location shall request assistance from the law enforcement authorities, notify the shipment movement control center and initiate the appropriate contingency plans. Armed escorts or other armed personnel shall observe the opening of the cargo compartment of the incoming transport and ensure that the shipment is complete by checking locks and seals. A shipment loaded onto or transferred to another transport shall be checked to assure complete loading or transfer. Continuous visual surveillance of the cargo compartment shall be maintained up to the time the transport departs from the terminal. The escorts shall observe the transport until it has departed and shall notify the licensee or his agent of the latest status immediately thereafter.

(g) Access Control Subsystems and Procedures.

(1) A numbered picture badge identification procedure shall be used to identify all individuals who will have custody of a shipment. The identification procedure shall require that the individual who has possession of the strategic special nuclear material shall have, in advance, identification picture badges of all individuals who are to assume custody for the shipment. The shipment shall be released only when the individual who has possession of strategic special nuclear material has assured positive identification of all of the persons assuming custody for the shipment by comparing the copies of the identification badges that have been received in advance to the identification badges carried by the individuals who will assume custody of the shipment.

(2) Access to protected areas, controlled access areas, transports, escort vehicles, aircraft, rail cars, and containers where strategic special nuclear material is located shall be limited to individuals who have been properly identified and have been authorized access to these areas.

(3) Strategic special nuclear material shall be shipped in containers that are protected by tamper-indicating seals. The containers also shall be locked if they are not in another locked container or transport. The outermost container or transport also shall be protected by tamper-indicating seals.

(h) Test and Maintenance Programs. The licensee or his agent shall establish, maintain and follow a test and maintenance program for communications equipment and other physical protection related devices and equipment used pursuant to this section which shall include the following:

(1) Tests and inspections shall be conducted during the installation, and construction of physical protection related subsystems and components to assure that they comply with their respective design criteria and performance specifications.

(2) Preoperational tests and inspections shall be conducted for physical protection related subsystems and components to demonstrate their effectiveness, availability, and reliability with respect to their respective design criteria and performance specifications.

(3) Operational tests and inspections shall be conducted for physical protection related subsystems and components to assure their maintenance in an operable and effective condition.

(4) Preventive maintenance programs shall be established for physical protection related subsystems and components to assure their continued maintenance in an operable and effective condition.

(5) All physical protection related subsystems and components shall be maintained in operable condition. Corrective action procedures and compensatory measures shall be developed and employed to assure that the effectiveness of the physical protection system is not reduced by any single failure or other contingencies affecting the operation of the physical protection related equipment or structures.

(6) The transportation security program shall be reviewed at least every 12 months or prior to each use, whichever is greater, by individuals independent of both security management and security supervision. Such a review shall include a review and audit of security procedures and practices, evaluation of the effectiveness of the physical protection system, an audit of the physical protection system testing and maintenance program, and an audit of commitments established for response by local law enforcement authorities. The results of the review and the audit along with recommendations for improvements shall be documented, reported to the responsible organization management, and kept available for inspection for a period of five years.

(i) Shipment by road.

(1) A detailed route plan shall be prepared which shows the routes to be taken, the refueling and rest stops, and the call-in times to the movement control center. All shipments shall be made on primary highways with minimum use of secondary roads. All shipments shall be made without intermediate stops except for refueling, rest or emergency stops.

(2) Cargo compartments of the trucks or trailers shall be locked and protected by tamper-indicating seals.

(3) The shipment shall be protected by one of the following methods:

(i) A specially designed cargo vehicle truck or trailer that reduces the vulnerability to theft. Design features of the truck or trailer shall permit immobilization of the truck or of the cargo-carrying portion of the vehicle and shall provide a deterrent to physical penetration of the cargo compartment. Two separate escort vehicles shall accompany the cargo vehicle. There shall be a total of seven armed escorts with at least two in the cargo vehicle. Escorts may also operate the cargo and escort vehicles.

(ii) An armored car cargo vehicle. Three separate escort vehicles shall accompany such a cargo vehicle. There shall be a total of seven armed escorts, with at least two in the cargo vehicle. Escorts may also operate the cargo and escort vehicles.

(4) All escort vehicles shall be bullet-resisting.

(5) Procedures shall be established to assure that no unauthorized persons or materials are on the cargo vehicle before strategic special nuclear material is loaded, or on the escort vehicles, immediately before the trip begins.

(6) Cargo and escort vehicles shall maintain continuous intraconvoy two-way communication. In addition at least

two of the vehicles shall be equipped with radio telephones having the capability of communicating with the movement control center. A redundant means of communication shall also be available. Calls to the movement control center shall be made at least every half hour to convey the status and position of the shipment. In the event no call is received in accordance with these requirements, the licensee or his agent shall immediately notify the law enforcement authorities and the appropriate Nuclear Regulatory Commission Inspection and Enforcement Regional Office listed in Appendix A of this part and initiate the appropriate contingency plan.

(7) At refueling, rest, or emergency stops at least seven armed escorts or other armed personnel shall be available to protect the shipment and at least three armed escorts or other armed personnel shall maintain continuous visual surveillance of the cargo compartment.

(8) Transfers to and from other modes of transportation shall be in accordance with paragraph (f) of this section.

(j) Shipment by Air.

(1) All shipments on commercial cargo aircraft shall be accompanied by two armed escorts who shall be able to converse in a common language with the captain of the aircraft.

(2) Transfers of these shipments shall be minimized and shall be conducted in accordance with paragraph (f) of this section. Such shipments shall be scheduled so that the strategic special nuclear material is loaded last and unloaded first.

(3) At scheduled stops, at least seven armed escorts or other armed personnel shall be available to protect the shipment and at least three armed escorts or other armed personnel shall maintain continuous visual surveillance of the cargo compartment.

(4) Export shipments shall be accompanied by two armed escorts from the last terminal in the United States until the shipment is unloaded at a foreign terminal and primary responsibility for physical protection is assumed by agents of the consignee. While on foreign soil, the escorts may surrender their weapons to legally constituted local authorities. After leaving the last terminal in the United States the shipment shall be scheduled with no intermediate stops.

(5) Import shipments shall be accompanied by two armed escorts at all times within the geographical limits of the United States. These escorts shall provide physical protection for the shipment until relieved by verified agents of the U.S. consignee.

(6) Procedures shall be established to assure that no unauthorized persons or material are on the aircraft before strategic special nuclear material is loaded on board.

(7) Arrangements shall be made at all domestic airports to assure that the seven required armed escorts or other armed personnel are available and that the required security measures will be taken upon landing.

(8) Arrangements shall be made at the foreign terminal at which the shipment is to be unloaded to assure that security measures will be taken on arrival.

(k) Shipment by Rail.

(1) A shipment by rail shall be escorted by seven armed escorts in the shipment car or an escort car next to the shipment car of the train. At least three escorts shall keep the shipment car under continuous visual surveillance. Escorts shall detrain at stops when practicable and time permits to maintain the shipment cars under continuous visual surveillance and to check car or container locks and seals.

(2) Procedures shall be established to assure that no unauthorized persons or materials are on the shipment or escort car before strategic special nuclear material is loaded on board.

(3) Only containers weighing 5,000 lbs or more shall be shipped on open rail cars.

(4) A voice communication capability between the escorts and the movement control center shall be maintained. A redundant means of continuous communication also shall be available. Calls to the movement control center shall be made at least every half hour to convey the status and position of the shipment. In the event no call is received in accordance with these requirements, the licensee or his agent shall immediately notify the law enforcement authorities and the appropriate Nuclear Regulatory Commission Regional Office listed in Appendix A of this part and initiate their contingency plan.

(5) Transfer to and from other modes of transportation shall be in accordance with paragraph (f) of this section.

(l) Shipment by Sea.

(1) Shipments shall be made only on container-ships. The strategic special nuclear material container(s) shall be loaded into exclusive use cargo containers conforming to American National Standards Institute (ANSI) MH5.1 or International Standards Organization (ISO) 1496. Locks and seals shall be inspected by the escorts whenever access is possible.

(2) All shipments shall be accompanied by two armed escorts who shall be able to converse in a common language with the captain of the ship.

(3) Minimum domestic ports of call shall be scheduled and there shall be no scheduled transfer to other vessels after the shipment leaves the last port in the United States. Transfer to and from other modes of transportation shall be in accordance with paragraph (f) of this section.

(4) At all ports of call the escorts shall ensure that the shipment is not removed. At least two armed escorts or other armed personnel shall maintain continuous visual surveillance of the cargo area where the container is stored up to the time the ship departs.

(5) Export shipments shall be accompanied by two armed escorts from the last port in the United States until the shipment is unloaded at a foreign terminal and prime responsibility for physical protection is assumed by agents of the consignee. While on foreign soil, the escorts may surrender their weapons to legally constituted local authorities.

(6) Import shipments shall be accompanied by two armed escorts at all times within the geographical limits of the United States. These escorts shall provide physical protection for the shipment until relieved by verified agents of the U.S. consignee.

(7) Ship-to-shore communications shall be available, and a ship-to-shore contact shall be made every six hours to relay position information, and the status of the shipment.

(8) Arrangements shall be made at the foreign terminals at which the shipment is to be unloaded to assure that security measures will be taken upon arrival.

§ 73.27 Notification requirements.

(a)(1) A licensee who delivers formula quantities of strategic special nuclear material to a carrier for transport shall immediately notify the consignee by telephone, telegraph, or teletype, of the time of departure of the shipment, and shall notify or confirm with the consignee the method of transportation, including the names of carriers, and the estimated time of arrival of the shipment at its destination. (2) In the case of a shipment (f.o.b.) the point where it is delivered to a carrier for transport, a licensee shall, before the shipment is delivered to the carrier, obtain written certification from the licensee who is to take delivery of the shipment at the f.o.b. point that the physical protection arrangements required by §§ 73.25 and 73.26 for licensed shipments have been made. When a contractor exempt from the requirements for a Commission license is the consignee of a shipment, the licensee shall, before the shipment is

delivered to the carrier, obtain written certification from the contractor who is to take delivery of the shipment at the f.o.b. point that the physical protection arrangements required by the United States Department of Energy Order Nos. 5632.1 or 5632.2, as appropriate, have been made. (3) A licensee who delivers formula quantities of strategic special nuclear material to a carrier for transport or releases such special nuclear material f.o.b. at the point where it is delivered to a carrier for transport shall also make arrangements with the consignee to be notified immediately by telephone and telegraph, teletype, or cable, of the arrival of the shipment at its destination or of any such shipment that is lost or unaccounted for after the estimated time of arrival at its destination.

(b) Each licensee who receives a shipment of formula quantities of strategic special nuclear material shall immediately notify by telephone and telegraph or teletype, the person who delivered the material to a carrier for transport and the Director of the appropriate Nuclear Regulatory Commission Inspection and Enforcement Regional Office listed in Appendix A of the arrival of the shipment at its destination. When a United States Department of Energy license-exempt contractor is the consignee, the licensee who is the consignor shall notify by telephone and telegraph, or teletype, the Director of the appropriate Nuclear Regulatory Commission Inspection and Enforcement Regional Office listed in Appendix A of the arrival of the shipment at its destination immediately upon being notified of the receipt of the shipment by the license-exempt contractor as arranged pursuant to paragraph (a)(3) of this section. In the event such a shipment fails to arrive at its destination at the estimated time, or in the case of an export shipment, the licensee who exported the shipment, shall immediately notify by telephone and telegraph or teletype, the Director of the appropriate Nuclear Regulatory Commission Inspection and Enforcement Regional Office listed in Appendix A of this part, and the licensee or other person who delivered the material to a carrier for transport. The licensee who made the physical protection arrangements shall also immediately notify by telephone and telegraph, or teletype, the Director of the appropriate Nuclear Regulatory Commission Inspection and Enforcement Regional Office listed in Appendix A of the action being taken to trace the shipment.

(c) Each licensee who makes arrangements for physical protection of a shipment of formula quantities of strategic special nuclear material as required by §§ 73.25 and 73.26 shall immediately conduct a trace investigation of any shipment that is lost or unaccounted for after the estimated arrival time and file a report with the Commission as specified in § 73.71.

§ 73.45 Performance Capabilities for Fixed Site Physical Protection Systems.

(a) To meet the general performance requirements of § 73.20 a fixed site physical protection system shall include the performance capabilities described in paragraphs (b) through (g) of this section unless otherwise authorized by the Commission.

(b) Prevent unauthorized access of persons, vehicles and materials into material access areas and vital areas. To achieve this capability the physical protection system shall:

(1) Detect attempts to gain unauthorized access or introduce unauthorized material across material access or vital area boundaries by stealth or force using the following subsystems and subfunctions:

(i) Barriers to channel persons and material to material access and vital area entry control points and to delay any unauthorized penetration attempts by persons or materials sufficient to assist detection and permit a response that will prevent the penetration; and

(ii) Access detection subsystems and procedures to detect, assess and communicate any unauthorized penetration attempts by persons or materials at the time of the attempt so that the response can prevent the unauthorized access or penetration.

(2) Detect attempts to gain unauthorized access or introduce unauthorized materials into material access areas or vital areas by deceit using the following subsystems and subfunctions:

(i) Access authorization controls and procedures to provide current authorization schedules and entry criteria for both persons and materials; and

(ii) Entry controls and procedures to verify the identity of persons and materials and assess such identity against current authorization schedules and entry criteria before permitting entry and to initiate response measures to deny unauthorized entries.

(c) Permit only authorized activities and conditions within protected areas, material access areas, and vital areas. To achieve this capability the physical protection system shall:

(1) Detect unauthorized activities or conditions within protected areas, material access areas and vital areas using the following subsystems and subfunctions:

(i) Controls and procedures that establish current schedules of authorized activities and conditions in defined areas;

(ii) Boundaries to define areas within which the authorized activities and conditions are permitted; and

(iii) Detection and surveillance subsystems and procedures to discover and assess unauthorized activities and conditions and communicate them so that response can be such as to stop the activity or correct the conditions to satisfy the general performance objective and requirements of § 73.20(a).

(d) Permit only authorized placement and movement of strategic special nuclear material within material access areas. To achieve this capability the physical protection system shall:

(1) Detect unauthorized placement and movement of strategic special nuclear material within the material access area using the following subsystems and subfunctions:

(i) Controls and procedures to delineate authorized placement and control for strategic special nuclear material;

(ii) Controls and procedures to establish current authorized placement and movement of all strategic special nuclear material within material access areas;

(iii) Controls and procedures to maintain knowledge of the identity, quantity, placement, and movement of all strategic special nuclear material within material access areas; and

(iv) Detection and monitoring subsystems and procedures to discover and assess unauthorized placement and movement of strategic special nuclear material and communicate them so that response can be such as to return the strategic special nuclear material to authorized placement or control.

(e) Permit removal of only authorized and confirmed forms and amounts of strategic special nuclear material from material access areas. To achieve this capability the physical protection system shall:

(1) Detect attempts at unauthorized removal of strategic special nuclear material from material access areas by stealth or force using the following subsystems and subfunctions:

(i) Barriers to channel persons and materials exiting a material access area to exit control points and to delay any unauthorized strategic special nuclear material removal attempts sufficient to assist detection and assessment and

permit a response that will prevent the removal; and satisfy the general performance objective and requirements of § 73.20(a); and

(ii) Detection subsystems and procedures to detect, assess and communicate any attempts at unauthorized removal of strategic special nuclear material so that response to the attempt can be such as to prevent the removal and satisfy the general performance objective and requirements of § 73.20(a).

(2) Confirm the identity and quantity of strategic special nuclear material presented for removal from a material access area and detect attempts at unauthorized removal of strategic special nuclear material from material access areas by deceit using the following subsystems and subfunctions:

(i) Authorization controls and procedures to provide current schedules for authorized removal of strategic special nuclear material which specify the authorized properties and quantities of material to be removed, the persons authorized to remove the material, and the authorized time schedule;

(ii) Removal controls and procedures to identify and confirm the properties and quantities of material being removed and verify the identity of the persons making the removal and time of removal and assess these against the current authorized removal schedule before permitting removal; and

(iii) Communications subsystems and procedures to provide for notification of an attempted unauthorized or unconfirmed removal so that response can be such as to prevent the removal and satisfy the general performance objective and requirements of § 73.20(a).

(f) Provide for authorized access and assure detection of and response to unauthorized penetrations of the protected area to satisfy the general performance objective and requirements of § 73.20(a). To achieve this capability the physical protection system shall:

(1) Detect attempts to gain unauthorized access or introduce unauthorized persons, vehicles, or materials into the protected area by stealth or force using the following subsystems and subfunctions:

(i) Barriers to channel persons, vehicles, and materials to protected area entry control points; and to delay any unauthorized penetration attempts or the introduction of unauthorized vehicles or materials sufficient to assist detection and assessment and permit a response that will prevent the penetration or prevent such penetration and satisfy the general performance objective and requirements of § 73.20(a); and

(ii) Access detection subsystems and procedures to detect, assess and communicate any unauthorized access or penetrations or such attempts by persons, vehicles, or materials at the time of the act or the attempt so that the response can be such as to prevent the unauthorized access or penetration, and satisfy the general performance objective and requirements of § 73.20(a).

(2) Detect attempts to gain unauthorized access or introduce unauthorized persons, vehicles, or materials into the protected area by deceit using the following subsystems and subfunctions:

(i) Access authorization controls and procedures to provide current authorization schedules and entry criteria for persons, vehicles, and materials; and

(ii) Entry controls and procedures to verify the identity of persons, materials and vehicles and assess such identity against current authorization schedules before permitting entry and to initiate response measures to deny unauthorized access.

(g) Response. Each physical protection program shall provide a response capability to assure that the five capabilities described in paragraphs (b) through (f) of this section are achieved and that adversary forces will be engaged and impeded until offsite assistance forces arrive. To achieve this capability a licensee shall:

(1) Establish a security organization to:

(i) Provide trained and qualified personnel to carry out assigned duties and responsibilities; and

(ii) Provide for routine security operations and planned and predetermined response to emergencies and safeguards contingencies.

(2) Establish a predetermined plan to respond to safeguards contingency events.

(3) Provide equipment for the security organization and facility design features to:

(i) Provide for rapid assessment of safeguards contingencies;

(ii) Provide for response by assigned security organization personnel which is sufficiently rapid and effective to achieve the predetermined objective of the response; and

(iii) Provide protection for the assessment and response personnel so that they can complete their assigned duties.

(4) Provide communications networks to:

(i) Transmit rapid and accurate security information among onsite forces for routine security operation, assessment of a contingency, and response to a contingency; and

(ii) Transmit rapid and accurate detection and assessment information to offsite assistance forces.

(5) Assure that a single adversary action cannot destroy the capability of the security organization to notify offsite response forces of the need for assistance.

§ 73.46 Fixed Site Physical Protection Systems, Subsystems, Components, and Procedures.

(a) A licensee physical protection system established pursuant to the general performance objective and requirements of § 73.20(a) and the performance capability requirements of § 73.45 shall include, but are not necessarily limited to, the measures specified in paragraphs (b) through (h) of this section. The Commission may require, depending on individual facility and site conditions, alternate or additional measures deemed necessary to meet the general performance objective and requirements of § 73.20. The Commission also may authorize protection measures other than those required by this section if, in its opinion, the overall level of performance meets the general performance objective and requirements of § 73.20 and the performance capability requirements of § 73.45.

(b) Security Organization.

(1) The licensee shall establish a security organization, including guards. If a contract guard force is utilized for site security, the licensee's written agreement with the contractor will clearly show that (i) the licensee is responsible to the Commission for maintaining safeguards in accordance with Commission regulations and the licensee's security plan, (ii) the NRC may inspect, copy, and take away copies of all reports and documents required to be kept by Commission regulations, orders, or applicable license conditions whether such reports and documents are kept by the licensee or the contractor, (iii) the requirement, in § 73.46(b)(4) of this section that the licensee demonstrate the ability of physical security personnel to perform their assigned duties and responsibilities, include demonstration of the ability of the contractor's physical security personnel to perform their assigned duties and responsibilities in carrying out the provisions of the Security Plan and these regulations, and (iv) the contractor will not assign any personnel to the site who have not first been made aware of these responsibilities.

(2) The licensee shall have onsite at all times at least one full time member of the security organization with authority to direct the physical protection activities of the security organization.

(3) The licensee shall have a management system to provide for the development, revision, implementation, and enforcement of security procedures. The system shall include:

(i) Written security procedures which document the structure of the security organization and which detail the duties of guards, watchmen and other individuals responsible for security; and

(ii) Provision for written approval of such procedures and any revisions thereto by the individual with overall responsibility for the security function.

(4) The licensee shall not permit an individual to act as a guard, watchman, armed response person, or other member of the security organization unless such individual has been trained, equipped, and qualified to perform each assigned security job duty in accordance with Appendix B of this part "General Criteria for Security Personnel." Upon the request of an authorized representative of the Commission the licensee shall demonstrate the ability of the physical security personnel, whether licensee or contractor employees, to carry out their assigned duties and responsibilities. Each guard, watchman, armed response person, or other member of the security organization, whether a licensee or contractor employee, shall requalify in accordance with Appendix B of this part at least every 12 months. Such requalification shall be documented.

(5) Within any given period of time, a member of the security organization may not be assigned to, or have direct operational control over, more than one of the redundant elements of a physical protection subsystem if such assignment or control could result in the loss of effectiveness of the subsystem.

(6) Guard and armed response force armament maintained on site shall include handguns, shotguns, and semiautomatic rifles, as described in Appendix B to this part.

(c) Physical Barrier Subsystems

(1) Vital equipment shall be located only within a vital area and strategic special nuclear material shall be stored or processed only in a material access area. Both vital areas and material access areas shall be located within a protected area so that access to vital equipment and to strategic special nuclear material requires passage through at least two physical barriers. More than one vital area or material access area may be located within a single protected area.

(2) The physical barriers at the perimeter of the protected area shall be separated from any other barrier designated as a physical barrier for a vital area or material access area within the protected area.

(3) Isolation zones shall be maintained in outdoor areas adjacent to the physical barrier at the perimeter of the protected area and shall be large enough to permit observation of the activities of people on either side of that barrier in the event of its penetration. If parking facilities are provided for employees or visitors, they shall be located outside the isolation zone and exterior to the protected area.

(4) Isolation zones and all exterior areas within the protected area shall be provided with illumination sufficient for the monitoring and observation requirements of paragraphs (c)(3), (e)(8), (h)(4) and (h)(6) of this section, but not less than 0.2 footcandle measured horizontally at ground level.

(5) Strategic special nuclear material, other than alloys, fuel elements or fuel assemblies, shall:

(i) Be stored in a vault when not undergoing processing if the material can be used directly in the manufacture of a nuclear explosive device. Vaults used to protect such material shall be capable of preventing entry to stored SSNM by a single action in a forced entry attempt, except as such single action would both destroy the barrier and render contained SSNM incapable of being removed, and shall provide sufficient delay to prevent removal of stored SSNM prior to arrival of response personnel capable of neutralizing the design basis threat stated in § 73.1.

(ii) Be stored in tamper-indicating containers;

(iii) Be processed only in material access areas constructed with barriers that provide significant delay to penetration; and

(iv) be kept in locked compartments or locked process equipment while undergoing processing except when personally attended.

(6) Enriched uranium scrap (enriched to 20% or greater) in the form of small pieces, cuttings, chips, solutions or in other forms which result from a manufacturing process, contained in 30 gallon or larger containers with a uranium-235 content of less than 0.25 grams per liter, may be stored within a locked and separately fenced area within a larger protected area provided that the storage area fence is no closer than 25 feet to the perimeter of the protected area. The storage area when unoccupied shall be protected by a guard or watchman who shall patrol at intervals not exceeding 4 hours, or by intrusion alarms.

(d) Access Control Subsystems and Procedures

(1) A numbered picture badge identification subsystem shall be used for all individuals who are authorized access to protected areas without escort. An individual not employed by the licensee but who requires frequent and extended access to protected, material access, or vital areas may be authorized access to such areas without escort provided that he receives a picture badge upon entrance into the protected area and returns the badge upon exit from the protected area, and that the badge indicates, (i) Non-employee—no escort required; (ii) areas to which access is authorized and (iii) the period for which access has been authorized. Badges shall be displayed by all individuals while inside the protected areas.

(2) Unescorted access to vital areas, material access areas and controlled access areas shall be limited to individuals who are authorized access to the material and equipment in such areas, and who require such access to perform their duties. Access to material access areas shall include at least two individuals. Authorization for such individuals shall be indicated by the issuance of specially coded numbered badges indicating vital areas, material access areas, and controlled access areas to which access is authorized. No activities other than those which require access to strategic special nuclear material or to equipment used in the processing, use, or storage of strategic special nuclear material, or necessary maintenance, shall be permitted within a material access area.

(3) The licensee shall establish and follow procedures that will permit access control personnel to identify those vehicles that are authorized and those materials that are not authorized entry to protected, material access, and vital areas.

(4) The licensee shall control all points of personnel and vehicle access into a protected area. Identification and search of all individuals for firearms, explosives, and incendiary devices, shall be made and authorization shall be checked at such points. United States Department of Energy couriers engaged in the transport of special nuclear material need not be searched. Licensee employees having an NRC or United States Department of Energy access authorzation shall be searched at least on a random basis. The individual responsible for the last access control function (controlling admission to the protected area) shall be isolated within

a structure, with bullet-resisting walls, doors, ceiling, floor, and windows.

(5) At the point of personnel and vehicle access into a protected area, all hand-carried packages shall be searched for firearms, explosives, and incendiary devices except those packages carried by persons having an NRC or DOE access authorization which shall be searched on a random basis when the person carrying them is selected for search.

(6) All packages and material for delivery into the protected area shall be checked for proper identification and authorization and searched on a random based for firearms, explosives, and incendiary devices prior to admittance into the protected area, except those Commission approved delivery and inspection activities specifically designated by the licensee to be carried out within material access, vital, or protected areas for reasons of safety, security or operational necessity.

(7) All vehicles, except United States Department of Energy vehicles engaged in transporting special nuclear material and emergency vehicles under emergency conditions, shall be searched for firearms, explosives, and incendiary devices prior to entry into the protected area. Vehicle areas to be searched shall include the cab, engine compartment, undercarriage, and cargo area.

(8) All vehicles, except designated licensee vehicles, requiring entry into the protected area shall be escorted by a member of the security organization while within the protected area, and to the extent practicable shall be off-loaded in an area that is not adjacent to a vital area. Designated licensee vehicles shall be limited in their use to onsite plant functions and shall remain in the protected area except for operational, maintenance, security and emergency purposes. The licensee shall exercise positive control over all such designated vehicles to assure that they are used only by authorized persons and for authorized purposes.

(9) The licensee shall control all points of personnel and vehicle access to material access areas, vital areas and controlled access areas. Identification of personnel and vehicles shall be made and authorization checked at such points. Prior to entry into a material access area, packages shall be searched for firearms, explosives, and incendiary devices. All vehicles, materials and packages, including trash, wastes, tools and equipment exiting from a material access area shall be searched for concealed strategic special nuclear material by a team of at least two individuals who are not authorized access to that material access area. Each individual exiting a material access area shall undergo at least two separate searches for concealed strategic special nuclear material. For individuals exiting an area that contains only alloyed or encapsulated strategic special nuclear material, the second search may be conducted in a random manner.

(10) Before exiting from a material access area, containers of contaminated wastes shall be drum scanned and tamper sealed by at least two individuals, working and recording as a team, who do not have access to material processing and storage areas.

(11) Strategic special nuclear material being prepared for shipment offsite, including product, samples and scrap, shall be packed and placed in sealed containers in the presence of at least two individuals working as a team who shall verify and certify the content of each shipping container through the witnessing of gross weight measurements and nondestructive assay, and through the inspection of tamper seal integrity and associated seal records.

(12) Areas used for preparing strategic special nuclear material for shipment and areas used for packaging and screening trash and wastes shall be controlled access areas and shall be separated from processing and storage areas.

(13) Individuals not permitted by the licensee to enter protected areas without escort shall be escorted by a watchman, or other individual designated by the licensee, while in a protected area and shall be badged to indicate that an escort is required. In addition, the individual shall be required to register his name, date, time, purpose of visit and employment affiliation, citizenship, and name of the individual to be visited.

(14) All keys, locks, combinations and related equipment used to control access to protected, material access, vital, and controlled access areas shall be controlled to reduce the probability of compromise. Whenever there is evidence that a key, lock, combination, or related equipment may have been compromised it shall be changed. Upon termination of employment of any employee, keys, locks, combinations, and related equipment to which that employee had access, shall be changed.

(e) Detection, Surveillance and Alarm Subsystems and Procedures

(1) The licensee shall provide an intrusion alarm susbsystem with a capability to detect penetration through the isolation zone and to permit response action.

(2) All emergency exits in each protected, material access, and vital area shall be locked to prevent entry from the outside and alarmed to provide local visible and audible alarm annunciation.

(3) All unoccupied vital areas and material access areas shall be locked and protected by an intrusion alarm subsystem which will alarm upon the entry of a person anywhere into the area, upon exit from the area, and upon movement of an individual within the area, except that for process material access areas only the location of the strategic special nuclear material within the area is required to be so alarmed. Vaults and process areas that contain strategic special nuclear material that has not been alloyed or encapsulated shall also be under the surveillance of closed circuit television that is monitored in both alarm stations. Additionally, means shall be employed which require that an individual other than an alarm station operator be present at or have knowledge of access to such unoccupied vaults or process areas.

(4) All manned access control points in the protected area barrier, all security patrols and guard stations within the protected area, and both alarm stations shall be provided with duress alarms.

(5) All alarms required pursuant to this section shall annunciate in a continuously manned central alarm station located within the protected area and in at least one other independent continuously manned onsite station not necessarily within the protected area, so that a single act cannot remove the capability of calling for assistance or responding to an alarm. The alarm stations shall be controlled access areas and their walls, doors, ceiling, floor, and windows shall be bullet-resisting. The central alarm station shall be located within a building so that the interior of the central alarm station is not visible from the perimeter of the protected area. This station may not contain any operational activities that would interfere with the execution of the alarm response function.

(6) All alarms required by this section shall remain operable from independent power sources in the event of the loss of normal power. Switchover to standby power shall be automatic and shall not cause false alarms on annunciator modules.

(7) All alarm devices including transmission lines to annunciators shall be tamper indicating and self-checking e.g., an automatic indication shall be provided when a failure of the alarm system or a component occurs, when there is an attempt to compromise the system, or when the system is on standby power. The annunciation of an

alarm at the alarm stations shall indicate the type of alarm (e.g., intrusion alarm, emergency exit alarm, etc.) and location. The status of all alarms and alarm zones shall be indicated in the alarm stations.

(8) All exterior areas within the protected area shall be monitored or periodically checked to detect the presence of unauthorized persons, vehicles, materials, or unauthorized activities.

(9) Methods to observe individuals within material access areas to assure that strategic special nuclear material is not moved to unauthorized locations or in an unauthorized manner shall be provided and used on a continuing basis.

(f) Communication Subsystems

(1) Each guard, watchman, or armed response individual on duty shall be capable of maintaining continuous communication with an individual in each continuously manned alarm station required by paragraph (e)(5) of this section, who shall be capable of calling for assistance from other guards, watchmen, and armed response personnel and from law enforcement authorities.

(2) Each alarm station required by paragraph (e)(5) of this section shall have both conventional telephone service and radio or microwave transmitted two-way voice communication, either directly or through an intermediary, for the capability of communication with the law enforcement authorities.

(3) Non-portable communications equipment controlled by the licensee and required by this section shall remain operable from independent power sources in the event of the loss of normal power.

(g) Test and Maintenance Programs

The licensee shall have a test and maintenance program for intrusion alarms, emergency exit alarms, communications equipment, physical barriers, and other physical protection related devices and equipment used pursuant to this section that shall provide for the following:

(1) Tests and inspections during the installation and construction of physical protection related subsystems and components to assure that they comply with their respective design criteria and performance specifications.

(2) Preoperational tests and inspections of physical protection related subsystems and components to demonstrate their effectiveness and availability with respect to their respective design criteria and performance specifications.

(3) Operational tests and inspections of physical protection related subsystems and components to assure their maintenance in an operable and effective condition, including:

(i) Testing of each intrusion alarm at the beginning and end of any period that it is used. If the period of continuous use is longer than seven days, the intrusion alarm shall also be tested at least once every seven days.

(ii) Testing of communications equipment required for communications onsite, including duress alarms, for performance not less frequently than once at the beginning of each security personnel work shift. Communications equipment required for communications offsite shall be tested for performance not less than once a day.

(4) Preventive maintenance programs shall be established for physical protection related subsystems and components to assure their continued maintenance in an operable and effective condition.

(5) All physical protection related subsystems and components shall be maintained in operable condition. The licensee shall develop and employ corrective action procedures and compensatory measures to assure that the effectiveness of the physical protection system is not reduced by failure or other contingencies affecting the operation of the security related equipment or structures. Repairs and maintenance shall be performed by at least two individuals working as a team who have been trained in the operation and performance of the equipment. The security organization shall be notified before and after service is performed and shall conduct performance verification tests after the service has been completed.

(6) The security program shall be reviewed at least every 12 months by individuals independent of both security management and security supervision. The review shall include a review and audit of security procedures and practices, evaluation of the effectiveness of the physical protection system, and audit of the physical protection system testing and maintenance program, and an audit of commitments established for response by local law enforcement authorities. The results of the review, audit, and evaluation along with recommendations, corrections and improvements, if any, shall be documented, reported to the licensee's plant management, and to corporate management at least one level higher than that having responsibility for the day to day plant operations. The reports shall be kept available at the plant for inspection for a period of five years.

(h) Contingency and Response Plans and Procedures

(1) The licensee shall have a safeguards contingency plan for dealing with threats, thefts, and radiological sabotage related to the strategic special nuclear material and nuclear facilities subject to the provisions of this section. Safeguards contingency plans shall be in accordance with the criteria in Appendix C to this part, "Licensee Safeguards Contingency Plans." Contingency plans shall include, but not be limited to, the response requirements in paragraphs (h)(2) through (h)(5) of this section.

(2) The licensee shall establish and document response arrangements that have been made with local law enforcement authorities.

(3) A minimum of five (5) guards shall be available at the facility to fulfill assessment and response requirements. In addition a force of guards or armed response personnel also shall be available to provide assistance as necessary. The size and availability of the additional force shall be determined on the basis of site-specific considerations that could affect the ability of the total onsite response force to engage and impede the adversary force until offsite assistance arrives. The reason for determining the total number and availability of onsite armed response personnel shall be included in the physical protection plans submitted to the Commission for approval.

(4) Upon detection of abnormal presence or activity of persons or vehicles within an isolation zone, a protected area, a material access area, or a vital area, or upon evidence or indication of intrusion into a protected area, a material access area, or a vital area, the licensee security organization shall:

(i) Determine whether or not a threat exists,

(ii) Assess the extent of the threat, if any,

(iii) Take immediate concurrent measures to neutralize the threat by:

(A) Requiring responding guards or other armed response personnel to interpose themselves between vital areas and material access areas and any adversary attempting entry for purposes of radiological sabotage or theft of strategic special nuclear material and to intercept any person exiting with special nuclear material, and

(B) Informing local law enforcement agencies of the threat and requesting assistance.

(5) The licensee shall instruct every guard and all armed response personnel to prevent or impede acts of radiological sabotage or theft of strategic special

nuclear material by using force sufficient to counter the force directed at him including the use of deadly force when the guard or other armed response person has a reasonable belief that it is necessary in self-defense or in the defense of others.

(6) To facilitate initial response to detection of penetration of the protected area and assessment of the existence of a threat, a capability of observing the isolation zones and the physical barrier at the perimeter of the protected area shall be provided, preferably by means of closed circuit television or by other suitable means which limit exposure of responding personnel to possible attack.

(7) Alarms occurring within unoccupied vaults and unoccupied material access areas containing unalloyed or unencapsulated strategic special nuclear material shall be assessed by at least two security personnel using closed circuit television (CCTV) or other remote means.

(8) Alarms occurring within unoccupied material access areas that contain only alloyed or encapsulated strategic special nuclear material shall be assessed as in paragraph (h)(7) of this section or by at least two security personnel who shall undergo a search before exiting the material access area.

§ 73.47 [Renumbered as § 73.67]

20. Section 73.47 is renumbered to become § 73.67.

21. The undesignated first paragraph of § 73.50 is revised to read as follows:

§ 73.50 Requirements for physical protection of licensed activities.

Each licensee who possesses, uses, or stores formula quantities of strategic special nuclear material which is not readily separable from other radioactive material and which has a total external radiation dose rate in excess of 100 rems per hour at a distance of 3 feet from any accessible surface without intervening shielding other than at a nuclear reactor facility licensed pursuant to Part 50 of this chapter shall comply with the following:

* * * * *

§ 73.50 [Amended]

22. Section 73.50(c)(1) is amended to change the reference to "an NRC or ERDA personnel security clearance" to reference to "an NRC or United States Department of Energy access authorization."

23. Section 73.55(a) is revised to read as follows:

§ 73.55 Requirements for physical protection of licensed activities in nuclear power reactors against radiological sabotage.

* * * * *

(a) General Performance Objective and Requirements

The licensee shall establish and maintain an onsite physical protection system and security organization which will have as its objective to provide high assurance that activities involving special nuclear material are not inimical to the common defense and security, and do not constitute an unreasonable risk to the public health and safety. The physical protection system shall be designed to protect against the design basis threat of radiological sabotage as stated in § 73.1(a). To achieve this general performance objective, the onsite physical protection system and security organization shall include, but not necessarily be limited to, the capabilities to meet the specific requirements contained in paragraphs (b) through (h) of this section. The Commission may authorize an applicant or licensee to provide measures for protection against radiological sabotage other than those required by this section if the applicant or licensee demonstrates that the measures have the same high assurance objective as specified in this paragraph and that the overall level of system performance provides protection against radiological sabotage equivalent to that which would be provided by paragraphs (b)–(h) of this section and meets the general performance requirements of this section. Specifically, in the special cases of licensed operating reactors with adjacent reactor powerplants under construction, the licensee shall provide and maintain a level of physical protection of the operating reactor against radiological sabotage equivalent to the requirements of this section.

24. Section 73.55(b) is revised to read as follows:

§ 73.55 Requirements for physical protection of licensed activities in nuclear power reactors against radiological sabotage.

* * * * *

(b) Physical Security Organization.

(1) The licensee shall establish a security organization, including guards, to protect his facility against radiological sabotage. If a contract guard force is utilized for site security, the licensee's written agreement with the contractor will clearly show that (i) the licensee is responsible to the Commission for maintaining safeguards in accordance with Commission regulations and the licensee's security plan, (ii) the NRC may inspect, copy, and take away copies of all reports and documents required to be kept by Commission regulations, orders, or applicable license conditions whether such reports and documents are kept by the licensee or the contractor, (iii) the requirement in § 73.55(b)(4) of this section that the licensee demonstrate the ability of physical security personnel to perform their assigned duties and responsibilities, includes demonstration of the ability of the contractor's physical security personnel to perform their assigned duties and responsibilities in carrying out the provisions of the Security Plan and these regulations, and (iv) the contractor will not assign any personnel to the site who have not first been made aware of these responsibilities.

(2) At least one full time member of the security organization who has the authority to direct the physical protection activities of the security organization shall be onsite at all times.

(3) The licensee shall have a management system to provide for the development, revision, implementation, and enforcement of security procedures. The system shall include:

(i) Written security procedures which document the structure of the security organization and which detail the duties of guards, watchmen and other individuals responsible for security; and

(ii) Provision for written approval of such procedures and any revisions thereto by the individual with overall responsibility for the security functions.

(4) The licensee shall not permit an individual to act as a guard, watchman or armed response person, or other member of the security organization unless such individual has been trained, equipped, and qualified to perform each assigned security job duty in accordance with Appendix B, of this part "General Criteria for Security Personnel." Upon the request of an authorized representative of the Commission the licensee shall demonstrate the ability of the physical security personnel to carry out their assigned duties and responsibilities. Each guard, watchman, armed response person, and other member of the security organization shall requalify in accordance with Appendix B of this part at least every 12 months. Such requalification shall be documented. By (300 days after the rule becomes effective) each licensee shall submit a training and qualifications plan outlining the processes by which guards, watchmen, armed response persons, and other members of the security organization will be selected, trained, equipped, tested, and qualified to assure that these individuals meet the

requirements of this paragraph. The training and qualifications plan shall include a schedule to show how all security personnel will be qualified by (within two years after the rule becomes effective) or within two years after the submitted plan is approved, whichever is later. The training and qualifications plan shall be followed by the licensee after (500 days after the rule becomes effective) or 60 days after the submitted plan is approved by the NRC, whichever is later.

25. Section 73.55(g) is amended to add a new paragraph (4) to read as follows:

§ 73.55 Requirements for physical protection of licensed activities in nuclear power reactors against radiological sabotage.

* * * * *

(g) Testing and Maintenance.

* * * * *

(4) The security program shall be reviewed at least every 12 months by individuals independent of both security management and security supervision. The review shall include a review and audit of security procedures and practices, evaluation of the effectiveness of the physical protection system, an audit of the physical protection system testing and maintenance program and an audit of commitments established for response by local law enforcement authorities. The results of the review audit and evaluation along with recommendations for corrections and improvements, if any, shall be documented, reported to the licensee's plant management and to corporate management at least one level higher than that having responsibility for the day to day plant operation. The reports shall be kept available at the plant for inspection for a period of five years.

26. Section 73.55(h) is amended to renumber paragraph (h)(5) as (h)(6) and revise paragraph (h)(4) as paragraphs (h)(4) and (5) as follows:

§ 73.55 Requirements for physical protection of licensed activities in nuclear power reactors against radiological sabotage.

* * * * *

(h) Response requirement.

* * * * *

(4) Upon detection of abnormal presence or activity of persons or vehicles within an isolation zone, a protected area, material access area, or a vital area; or upon evidence or indication of intrusion into a protected area, a material access area, or a vital area, the licensee security organization shall:

(i) Determine whether or not a threat exists,

(ii) Assess the extent of the threat, if any,

(iii) Take immediate concurrent measures to neutralize the threat by:

(A) Requiring responding guards or other armed response personnel to interpose themselves between vital areas and material access areas and any adversary attempting entry for the purpose of radiological sabotage or theft of special nuclear material and to intercept any person exiting with special nuclear material, and,

(B) Informing local law enforcement agencies of the threat and requesting assistance.

(5) The licensee shall instruct every guard and all armed response personnel to prevent or impede attempted acts of theft or radiological sabotage by using force sufficient to counter the force directed at him including the use of deadly force when the guard or other armed response person has a reasonable belief it is necessary in self-defense or in the defense of others.

* * * * *

27. The undesignated first paragraph of § 73.60 is revised to read as follows:

§ 73.60 Additional requirements for the physical protection of special nuclear material at non-power reactors.

Each non-power reactor licensee who, pursuant to the requirements of Part 70 of this chapter, possesses at any site or contiguous sites subject to control by the licensee uranium-235 (contained in uranium enriched to 20 percent or more in the U–235 isotope), uranium-233, or plutonium alone or in any combination in a quantity of 5,000 grams or more computed by the formula, grams = (grams contained in U–235) + 2.5 (grams U–233 + grams plutonium) shall protect the special nuclear material from theft or diversion pursuant to the requirements of § 73.67 (a), (b), (c), and (d) and as follows, except that a licensee is exempt from the requirements of this section to the extent that he possesses or uses special nuclear material which is not readily separable from other radioactive material and which has a total external radiation dose rate in excess of 100 rems per hour at a distance of three feet from any accessible surface without intervening shielding.

28. The prefatory language of § 73.70 and § 73.70 (c) and (g) is revised to read as follows:

§ 73.70 Records.

Each licensee subject to the provisions of §§ 73.20, 73.25, 73.26, 73.27, 73.45, 73.46, 73.55 or § 73.60 shall keep the following records:

* * * * *

(c) A register of visitors, vendors, and other individuals not employed by the licensee pursuant to §§ 73.46(d)(10), 73.55(d)(6) or § 73.60.

* * * * *

(g) Shipments of special nuclear material subject to the requirements of this part, including names of carriers, major roads to be used, flight numbers in the case of air shipments, dates and expected times of departure and arrival of shipments, verification of communication equipment on board the transfer vehicle, names of individuals who are to communicate with the transport vehicle, container seal descriptions and identification, and any other information to confirm the means utilized to comply with §§ 73.25, 73.26 and 73.27. Such information shall be recorded prior to shipment. Information obtained during the course of the shipment such as reports of all communications, change of shipping plan including monitor changes, trace investigations and others shall also be recorded.

* * * * *

§ 73.71 [Amended]

29. Section 73.71(a) is amended to change the reference to § 73.36(f) to reference § 73.27(c) and to change the references to § 73.47(e)(3)(vi), or § 73.47(g)(3)(iii) to reference § 73.67(e)(3)(vi), or § 73.67(g)(3)(iii).

30. Part 73 is amended to change the term "industrial sabotage" to "radiological sabotage" wherever it appears.

PART 150—EXEMPTIONS AND CONTINUED REGULATORY AUTHORITY IN AGREEMENT STATES UNDER SECTION 274

§ 150.14 [Amended]

31. Section 150.14 is amended to change the reference to § 73.47 to reference § 73.67.

Effective date: March 25, 1980.

(Secs. 53, 161b, 161i, 161o, Pub. L. 83–703, 68 Stat. 930, 948–50, as amended Pub. L. 85–507, 72 Stat. 327, Pub. L. 93–377, 88 Stat. 475 (42 U.S.C. 2201); Sec. 201, Pub. L. 93–438, 88 Stat. 1242–1243, as amended Pub. L. 94–79, 89 Stat. 413 (42 U.S.C. 5841))

Dated at Washington, D.C., this 21st day of November 1979.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 79-38024 Filed 11-27-79; 8:45 am]

BILLING CODE 7590-01-M

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Wednesday, November 28, 1979

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AGENCY PUBLICATION ON ASSIGNED DAYS OF THE WEEK

The following agencies have agreed to publish all documents on two assigned days of the week (Monday/Thursday or Tuesday/Friday).

This is a voluntary program. (See OFR NOTICE FR 32914, August 6, 1976.)

Monday	Tuesday	Wednesday	Thursday	Friday
DOT/SECRETARY*	USDA/ASCS		DOT/SECRETARY*	USDA/ASCS
DOT/COAST GUARD	USDA/APHIS		DOT/COAST GUARD	USDA/APHIS
DOT/FAA	USDA/FNS		DOT/FAA	USDA/FNS
DOT/FHWA	USDA/FSQS		DOT/FHWA	USDA/FSQS
DOT/FRA	USDA/REA		DOT/FRA	USDA/REA
DOT/NHTSA	MSPB/OPM		DOT/NHTSA	MSPB/OPM
DOT/RSPA	LABOR		DOT/RSPA	LABOR
DOT/SLSDC	HEW/FDA		DOT/SLSDC	HEW/FDA
DOT/UMTA			DOT/UMTA	
CSA			CSA	

Documents normally scheduled for publication on a day that will be a Federal holiday will be published the next work day following the holiday.

Comments on this program are still invited. Comments should be submitted to the Day-of-the-Week Program Coordinator, Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408

***NOTE: As of July 2, 1979, all agencies in the Department of Transportation, will publish on the Monday/Thursday schedule.**

REMINDERS

The items in this list were editorially compiled as an aid to **Federal Register** users. Inclusion or exclusion from this list has no legal significance. Since this list is intended as a reminder, it does not include effective dates that occur within 14 days of publication.

Rules Going Into Effect Today

INTERIOR DEPARTMENT

Fish and Wildlife Service—

61910 10–26–79 / Determination that *Arctostaphylos hookeri ssp. ravenii* is an endangered species

61916 10–26–79 / Determination that *Echinocereus iloydii* is an endangered species

61918 10–26–79 / Determination that *Echinocereus veichen bachii* var. *albertii* is an endangered species

61927 10–26–79 / Determination that *Echinocactus horizonthalonius* var. *nicholii* is an endangered species

61912 10–26–79 / Determination that *Mirabilis macfarlanei* is an endangered species

62244 10–29–79 / Determination that *Pediocactus knowltonii* is an endangered species

61922 10–26–79 / Determination that *Pediocactus peeblesianus* var. *peeblesianus* is an endangered species

Next Week's Deadlines for Comments On Proposed Rules

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration—

64097 11–6–79 / Fish and Wildlife Coordination Act; uniform procedures for Federal Agency compliance; comments by 12–6–79

ENVIRONMENTAL PROTECTION AGENCY

63552 11–5–79 / Clean Air Act; additional modeling data; comments by 12–5–79

[Originally published at 44 FR 29495, May 21, 1979]

57362 10–4–79 / Fuel economy labeling requirements for 1981 and later model year automobiles; gas guzzler tax statement; comments by 12–3–79

64439 11–7–79 / Proposed revision of the West Virginia State implementation plan; comments by 12–7–79

FEDERAL COMMUNICATIONS COMMISSION

64442 11–7–79 / Designating frequencies in the 806–821 and 851–866 MHz bands for slow growth land mobile radio systems of utilities and public safety agencies; comments by 12–3–79

[*See also* 44 FR 50876, Aug. 30, 1979]

59568 10–16–79 / Ex parte communications; reply comments by 12–4–79

58763 10–11–79 / FM broadcast station in Warrensburg, Mo.; changes in table of assignments; comments by 12–3–79

59580 10–16–79 / FM broadcast station in Plainview, Tex.; comments extended to 12–4–79

[Originally published at 44 FR 47964, Aug. 16, 1979]

62305 10–30–79 / Freedom of Information rules; modified fees for records searches; comments by 12–6–79

51263 8–31–79 / Multiple licensing of land mobile radio systems in bands 806–812 and 851–866 MHz; reply comments by 12–5–79

59570 10–16–79 / Providing for the operation of a TV interface device; reply comments by 12–6–79

63558 11–5–79 / Second computer inquiry; furnishing of computer processing services; reply comments by 12–7–79

[Originally published at 44 FR 47961, Aug. 16, 1979]

FEDERAL ELECTION COMMISSION

63753 11–5–79 / Presidential Primary Matching Fund; comments by 12–5–79

HEALTH, EDUCATION, AND WELFARE DEPARTMENT

Health Resources Administration—

60342 10–19–79 / National Guidelines for Health Planning; draft regulations; comments by 12–3–79

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

Federal Housing Commissioner—Office of Assistant Secretary for Housing—

56927 10–3–79 / Multifamily housing mortgage insurance; special eligibility provisions for existing projects in target preservation areas; comments by 12–3–79

INTERIOR DEPARTMENT

Office of the Secretary—

64097 11–6–79 / Fish and Wildlife Coordination Act; uniform procedures for Federal agency compliance; comments by 12–6–79

JUSTICE DEPARTMENT

Immigration and Naturalization Service—

56368 10–1–79 / Proposed revisions to service fee schedule; comments by 12–3–79

MANAGEMENT AND BUDGET OFFICE

Federal Procurement Policy Office—

55912 9–28–79 / Draft Federal Acquisition Regulation; comments by 12–5–79

NATIONAL SCIENCE FOUNDATION

57127 10–4–79 / Nondiscrimination on basis of age in programs or activities receiving Federal financial assistance; comments by 12–3–79

RAILROAD RETIREMENT BOARD

62912 11–1–79 / Miscellaneous amendments and expanded procedure for notification to claimants annuitants and payees of annuities of initial decisions by its Bureau of Retirement Claims; comments by 12–3–79

SECURITIES AND EXCHANGE COMMISSION

54014 9–17–79 / Bearing of distribution expenses by mutual funds; comments by 12–7–79

TRANSPORTATION DEPARTMENT

Federal Aviation Administration—

56370 10–1–79 / Technical Standard Orders Revision Program; comments by 12–3–79

National Highway Traffic Safety Administration—

60120 10–18–79 / Heavy duty vehicle brake systems; comments by 12–3–79

TREASURY DEPARTMENT

Customs Service—

64434 11–7–79 / Public gaugers of imported petroleum and petroleum products; Proposed amendments; comments by 12–7–79

Internal Revenue Service—

57423 10–5–79 / Income Tax; Reasonable Funding Methods; comments by 12–4–79

57391 10–5–79 / Income Tax Rules; Requirements Relating to certain exchanges involving a foreign corporation for a certain tax year; comments by 12–4–79

Next Week's Meetings

AGRICULTURE DEPARTMENT

Federal Grain Inspection Service—

64853 11–8–79 / Grain Standards Act Advisory Committee, Washington, D.C. (open), 12–5–79

Food and Nutrition Service—

66009 11–16–79 / National Advisory Council on Maternal, Infant and Fetal Nutrition, Albuquerque, N. Mex. (open), 12–2–79

Forest Service—

65617 11–14–79 / Lincoln National Forest Grazing Advisory Board, Alamagordo, N. Mex. (open), 12–6–79

Office of the Secretary—

61237 10–24–79 / Structure of Agriculture, Sedalia, Mo. (open), 12–5–79

61237 10–24–79 / Structure of Agriculture, South Sioux City, Nebr. (open), 12–4–79

61237 10–24–79 / Structure of Agriculture, Wichita Falls, Tex. (open), 12–6–79

Science and Education Administration—

66645 11–20–79 / Committee of Nine, Oklahoma City, Okla. (open), 12–4 and 12–5–79

65113 11–9–79 / National Plant Genetics Resources Board, Mexico City, Mexico (open), 12–3 through 12–7–79

ARTS AND HUMANITIES NATIONAL FOUNDATION

66713 11–20–79 / Humanities Panel, Washington, D.C. (closed), 12–6 and 12–7–79

65686 11–14–79 / Media Arts Panel, Washington, D.C. (closed), 12–3 and 12–4–79

65494 11–13–79 / Music Panel (Orchestra Section), Washington, D.C. (partially open), 12–3 through 12–6–79

66113 11–16–79 / Special Projects Panel, Washington, D.C. (closed), 12–6 and 12–7–79

66266 11–19–79 / Special Projects Panel (Folk Arts Section), Washington, D.C. (partially open), 12–6 through 12–8–79

65494 11–13–79 / Visual Arts Panel (Artists Spaces), Washington, D.C. (closed), 12–3 and 12–5–79

65494 11–13–79 / Visual Arts Panel (Photography Surveys), Washington, D.C. (closed), 12–4 and 12–5–79

CIVIL RIGHTS COMMISSION

66862 11–21–79 / Idaho Advisory Committee, Twin Falls, Idaho (open), 12–8–79

65115 11–9–79 / New Jersey Advisory Committee, New York, N.Y. (open), 12–4–79

65802 11–15–79 / Tennessee Advisory Committee, Knoxville, Tenn. (open), 12–7–79

65619 11–14–79 / Wyoming Advisory Committee, Casper, Wyo. (open), 12–8–79

COMMERCE DEPARTMENT

Industry and Trade Administration—

65619 11–14–79 / Executive Committee of the President's Export Council, Washington, D.C. (open), 12–6–79

66009 11–16–79 / Export Promotion Subcommittee of the President's Export Council, Washington, D.C. (open), 12–5–79

National Oceanic and Atmospheric Administration—

65428 11–13–79 / Mid-Atlantic Fishery Management Council, Scientific and Statistical Committee, Philadelphia, Pa. (open), 12–3–79

DEFENSE DEPARTMENT

Army Department—

64884 11–8–79 / U.S. Army Medical Research and Development Advisory Panel Ad Hoc Study Group on Bacterial Diseases, Washington, D.C. (partially open), 12–3 and 12–4–79

Navy Department—

64865 11–8–79 / Board of Advisors to the President, Naval War College (open), 12–6 and 12–7–79

65622 11–14–79 / Board of Advisors to the Superintendent, Naval Postgraduate School, Monterey, Calif., 12–6 and 12–7–79

Office of the Secretary—

65430 11–13–79 / Electron Devices Advisory Group, Working Group A, Washington, D.C. (closed), 12–5 and 12–6–79

63431 11–13–79 / Electron Devices Advisory Group, Washington, D.C. (closed), 12–7–79

63431 11–13–79 / Electron Devices Advisory Group, Working Group C, Washington, D.C. (closed), 12–6–79

63430 11–13–79 / Electron Devices Advisory Group, Working Group B, Arlington, Va. (closed), 12–6–79

65812 11–15–79 / Evaluation of audit, inspection and investigative components of the Department of Defense Task Force, Washington, D.C. (open), 12–3–79

60368 10–19–79 / Wage Committee, Washington, D.C. (closed), 12–4–79

EMPLOYMENT POLICY NATIONAL COMMISSION

66112 11–16–79 / Washington, D.C. (open), 12–7–79

ENERGY DEPARTMENT

66013 11–16–79 / Public scoping meeting on environmental impact of proposed Clean Pipeline Gas Demonstration Plant in Noble County, Ohio; Caldwill, Ohio (open), 12–4–79

Conservation and Solar Energy Office—

65812 11–15–79 / Food Industry Advisory Committee and Subcommittees, Dallas, Tex. (open), 12–4–79

Economic Regulatory Administration—

66021 11–16–79 / Gasoline Marketing Advisory Committee, Atlanta, Ga. (open), 12–5–79

EXECUTIVE OFFICE OF THE PRESIDENT

Administration Office—

63478 11–13–79 / Personnel Advisory Committee, Washington, D.C. (open), 12–7–79

FEDERAL MEDIATION AND CONCILIATION SERVICE

65183 11–9–79 / Arbitration Services Advisory Committee, Washington, D.C. (open), 12–6 and 12–7–79

HEALTH, EDUCATION, AND WELFARE DEPARTMENT

Alcohol, Drug Abuse and Mental Health Administration—

65818 11–15–79 / Mental Health National Advisory Council, Rockville, Md. (open), 12–6 and 12–7–79

66687 11–20–79 / Minority Advisory Committee, Rockville, Md. (open), 12–3 through 12–5–79

Disease Control Center—

66687 11–20–79 / Working Group for Second International Conference on Nosocomial Infections, Atlanta, Ga. (open), 12–3–79

Education Office—

66252 11–19–79 / Adult Education National Advisory Council, Washington, D.C. (open), 12–6 through 12–8–79

65482 11–13–79 / Indian Education National Advisory Council, Denver, Colo. (open), 11–30 and 12–1–79

66693 11–20–79 / National Advisory Council on the Education of Disadvantaged Children, Washington, D.C. (open and closed), 12–6 and 12–7–79

66071 11–16–79 / National Advisory Council on Extension and Continuing Education, Tucson, Ariz. (open), 12–4 through 12–7–79

Food and Drug Administration—

65479 11–13–79 / Anti-Thymocyte Globulin Workshop, Bethesda, Md. (open), 12–6–79

66687 11–20–79 / Pulmonary-Allergy Drugs Advisory Committee, Rockville, Md. (open and closed), 12–6 and 12–7–79

National Institutes of Health—

66070 11–16–79 / Advisory Committee to the Director, NIH, Bethesda, Md. (open), 12–4 and 12–5–79

61459 10–25–79 / Aging Review Committee, Bethesda, Md. (partially open), 12–3 and 12–4–79

59653 10–16–79 / Arthritis National Advisory Board, Bethesda, Md. (open), 12–6–79

65481 11–13–79 / Bladder and Prostatic Cancer Review Committee (Bladder Subcommittee), Bethesda, Md. (partially open), 12–6 and 12–7–79

66071 11–16–79 / Board of Scientific Counselors, NICHD, Bethesda, Md. (partially open), 12–3–79

62954 11–1–79 / Board of Scientific Counselors of the National Eye Institute, Bethesda, Md. (partially open), 12–3 and 12–4–79

62955 11–1–79 / Chemical Selection Subgroup of the Clearinghouse on Environmental Carcinogens, Bethesda, Md. (open), 12–3–79

65480 11–13–79 / Clinical Trials Review Committee, Chicago, Ill. (partially open), 12–4 and 12–5–79

65480 11–13–79 / Clinical Trials Review Committee, Tampa, Fla. (partially open), 12–5 and 12–6–79

59653 10–16–79 / Diabetes National Advisory Board, (open), 12–4 and 12–5–79

61460 10–25–79 / General Research Support Review Committee, Bethesda, Md. (partially open), 12–3 through 12–5–79

65482 11–13–79 / Indian Education National Advisory Council, Denver, Colo. (open), 12–2–79

65480 11–13–79 / International Program for the Evaluation of Short-Term tests for Carcinogenicity, Bethesda, Md. (open), 12–3–79

65481 11–13–79 / Large Bowel and Pancreatic Cancer Review Committee, Large Bowel Subcommittee, Bethesda, Md. (partially open), 12–6 and 12–7–79

61461 10–25–79 / Mental Retardation Research Committee, Bethesda, Md. (partially open), 12–4 and 12–5–79

66071 11–16–79 / National Arthritis Advisory Board, Bethesda, Md. (open), 12–5 and 12–6–79

63074 11–1–79 / Recombinant DNA Advisory Committee, Bethesda, Md. (partially open), 12–6 and 12–7–79

61462 10–25–79 / Workshop on Criteria for Selection, Preparation, and Characterization of Mineral Samples for Biological Testing, Bethesda, Md. (open), 12–6–79

Office of Assistant Secretary for Health—

65675 11–14–79 / President's Council on Physical Fitness and Sports, Washington, D.C. (open), 12–6–79

Office of the Secretary—

65675 11–14–79 / Secretary's Advisory Committee on the Rights and Responsibilities of Women, Washington, D.C., 12–3–79

60415 10–19–79 / White House Conference on Families, Detroit, Mich., 12–7 and 12–8–79

65818 11–15–79 / Women, Rights and Responsibilities, Secretary's Advisory Committee, Washington, D.C. (open), 12–5–79

INTERIOR DEPARTMENT

Land Management Bureau—

62085 10–29–79 / Grazing Advisory Board, Grand Junction, Colo. (open), 12–6–79

66257 11–19–79 / Proposed Leasing of Federal Coal in the Uinta–Southwestern Utah Coal Production Region, Escalante, Utah, 12–3–79; Richfield, Utah, 12–4–79; Price, Utah, 12–5–79; Salt Lake City, Utah (open), 12–6–79

64918 11–8–79 / Roswell District Grazing Advisory Board, Roswell District Office, N. Mex. (open), 12–6–79

61262 10–24–79 / Winnemucca District Grazing Advisory Board, Winnemucca, Nev. (open), 12–6–79

National Park Service—

65821 11–15–79 / Golden Gate National Recreation Area Advisory Commission, San Francisco, Calif. (open), 12–8–79

63158 11–22–79 / Gulf Islands National Seashore Advisory Commission, Gulf Breeze, Fla. (open with restrictions), 12–7–79

Office of the Secretary—

65684 11–14–79 / Oil Shale Environmental Advisory Panel, Salt Lake City, Utah (open), 12–4–79

62968 11–1–79 / Outer Continental Shelf Advisory Board—Policy Committee, Scientific Committee and Regional Technical Working Groups, Norfolk, Va. (open), 12–5 through 12–7–79

Reclamation Bureau—

65483 11–13–79 / Colorado River Basin Salinity Control Advisory Council, Denver, Colo. (open), 12–4–79

JUSTICE DEPARTMENT

Law Enforcement Assistance Administration—

65686 11–14–79 / National Minority Advisory Council on Criminal Justice, San Francisco, Calif. (open), 12–7 and 12–8–79

National Institute of Corrections—

57523 10–5–79 / Advisory Board, Atlanta, Ga. (open), 12–4 and 12–5–79

LABOR DEPARTMENT

Labor Statistics Bureau—

63164 11–2–79 / Labor Research Advisory Council Committees, Washington, D.C. (open), 12–4, 12–5, and 12–6–79

Occupational Safety and Health Administration—

66706 11–20–79 / National Advisory Committee on Occupational Safety and Health, Washington, D.C. (open), 12–6 and 12–7–79

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

66712 11–20–79 / Aeronautics Advisory Committee, Subcommittee on Aviation Safety Reporting System, Washington, D.C. (open), 12–4 and 12–5–79

66112 11–16–79 / National Advisory Council (NAC) Space Systems, and Technology Advisory Committee, Cleveland, Ohio (open), 12–4 and 12–5–79

66712 11–20–79 / Space and Terrestrial Applications Advisory Committee, Washington, D.C. (partially open), 12–5 and 12–6–79

66713 11–20–79 / Space and Terrestrial Applications Advisory Commitee, Washington, D.C. (open), 12–7–79

NUCLEAR REGULATORY COMMISSION

66715 11–20–79 / Advisory Committee on Reactor Safeguards, Fire Protection Subcommittee, Washington, D.C. (open), 12–5–79

66715 11–20–79 / Advisory Committee on Reactor Safeguards, Procedures and Administration Subcommittee, Washington, D.C. (open), 12–5–79

66715 11–20–79 / Advisory Committee on Reactor Safeguards, Reliability and Probabilistic Assessment Subcommittee, Washington, D.C. (partially open), 12–5–79

66113 11–16–79 / Advisory Committee on Reactor Safeguards Subcommittee on Reactor Operations, Washington, D.C. (partially open), 12–3–79

66266 11–19–79 / Three Mile Island, Unit 2 accident implications re nuclear power plant design advisory committee, Washington, D.C. (open), 12–4–79

PRESIDENT'S MANAGEMENT IMPROVEMENT COUNCIL

66115 11–16–79 / Review and discussion of management improvement projects, Washington, D.C. (closed), 12–3–79

SOCIAL SECURITY, NATIONAL COMMISSION

66113 11–16–79 / Discussion of Commission's Interim Report, Washington, D.C. (open), 12–7 through 12–8–79

STATE DEPARTMENT

66116 11–16–79 / International Intellectual Property Advisory Committee, Washington, D.C. (open), 12–4–79

TRANSPORTATION DEPARTMENT

Federal Aviation Administration—

65513 11–13–79 / Radio Technical Commission for Aeronautics, Special Committee 139—Airborne Equipment Standards for Microwave Landing System, Washington, D.C. (open), 12–5 through 12–7–79

National Highway Traffic Safety Administration—

34235 6–14–79 / National Conference on Child Passenger Protection, Reston, Va. (open), 12–3 through 12–5–79

VETERANS ADMINISTRATION

65230 11–9–79 / Administrator's Education and Rehabilitation Advisory Committee, Washington, D.C. (open), 12–5–79

WAGE AND PRICE STABILITY COUNCIL

66235 11–19–79 / Pay Advisory Committee, Washington, D.C. (open), 12–7–79

Next Week's Public Hearings

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Food and Nutrition Service—

63107 11–2–79 / School Nutrition Programs, Atlanta, Ga., 12–4–79

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration—

64443 11–7–79 / Gulf of Mexico Fishery Management Council, Biloxi, Miss., 12–6–79

64443 11–7–79 / Gulf of Mexico Fishery Management Council, Foley, Ala. and Bayou LaBatre, Ala., 12–5–79

DEFENSE DEPARTMENT

Navy Department—

65623 11–14–79 / Naval Discharge Review Board, Salt Lake City, Utah; San Diego, Calif.; San Francisco, Calif., 12–2 through 12–8–79

ENERGY DEPARTMENT

Economic Regulatory Administration—

62848 10–31–79 / Crude oil reseller regulations, Houston, Tex., 12–6–79

63109 11–2–79 / Priority supply of crude oil and petroleum products under the Defense Production Act, Washington, D.C., 12–6–79

60236 10–18–79 / Voluntary guideline for solar energy and renewable resources implementing standards of the Public Utility Regulatory Policies Act of 1978, Washington, D.C., 12–4–79

Federal Energy Regulatory Commission—

66192 11–19–79 / Interim rules involving high-cost natural gas, Washington, D.C., 12–4–79

61977 10–29–79 / Small power production and cogeneration rates and exemptions, Washington, D.C., 12–4–79

ENVIRONMENTAL PROTECTION AGENCY

59565 10–16–79 / Water quality standards; Navigable Waters of the State of North Carolina, Plymouth, N.C., 12–6–79

HEALTH, EDUCATION, AND WELFARE DEPARTMENT

Office of the Secretary—

56029 9–28–79 / White House Conference on Families, Detroit, Mich., 12–7 and 12–8–79

66696 11–20–79 / White House Conference on Families, national hearing, Detroit, Mich., 12–7–79

66696 11–20–79 / White House Conference on Families, national hearing, Oak Park, Mich., 12–8–79

LABOR DEPARTMENT

Pension and Welfare Benefit Programs Office—

61694 10–26–79 / Proposed class exemption for certain transactions involving bank collective investment funds, Washington, D.C., 12–3–79

SELECT COMMISSION ON IMMIGRATION AND REFUGEE POLICY

65688 11–14–79 / Regional hearing, Boulevard, Miami, 12–4–79

List of Public Laws

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

[Last Listing November 6, 1979]

Documents Relating to Federal Grant Programs

This is a list of documents relating to Federal grant programs which were published in the **Federal Register** during the previous week.

RULES GOING INTO EFFECT

67040 11–21–79 / Interior / BIA—Grants for tribally controlled community colleges and Navajo Community College; effective 11–21–79

DEADLINES FOR COMMENTS ON PROPOSED RULES

67130 11–23–79 / Agriculture/AMS—Oranges and grapefruit grown in Tex.; comments by 12–7–79

APPLICATIONS DEADLINES

66253 11–19–79 / HEW/OE—Bilingual education; desegregation programs; apply 1–11–80

66253 11–19–79 / HEW/OE—Bilingual education; elementary and secondary program; apply by 1–11–80

66255 11–19–79 / HEW/OE—Bilingual education; fellowship program; apply by 2–15–80

66254 11–19–79 / HEW/OE—Bilingual education; training program; apply by 1–11–80

66694 11–20–79 / HEW/OE—Domestic mining and mineral fuel conservation fellowship program; apply by 1–8–80

66695 11–20–79 / HEW/OE—Public Service Education Program, apply by 1–8–80

MEETINGS

67250 11–23–79 / NFAH/—Museum Panel, Washington, D.C. (closed), 12–11–79

66266 11–19–79 / NFAH—Special Projects Panel (Folk Arts Section), Washington, D.C. (partially open), 12–6 through 12–8–79

OTHER ITEMS OF INTEREST

67250 11–23–79 / LSC—Grants and Contracts, Minnesota; comments solicited

66712 11–20–79 / LSC—Legal Assistance of North Dakota, Bismarck, N. Dak., grant to serve native Americans on Turtle Mtn. and Devils Lake Reservations; comments on application solicited

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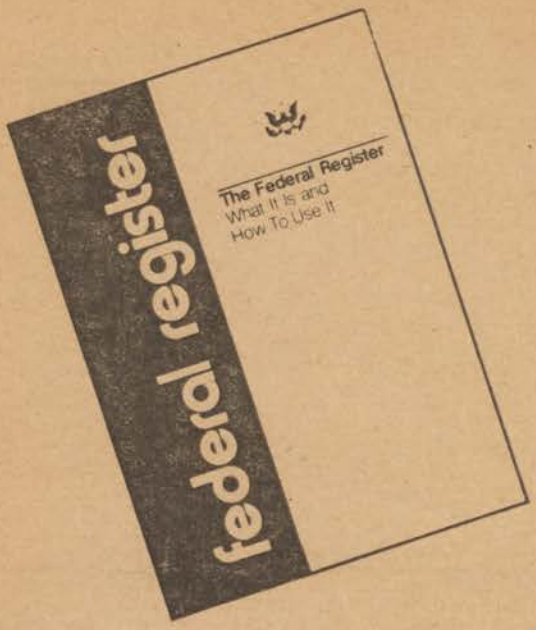

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Book 2 of 2 Books
Wednesday, November 28, 1979

Part IV

United States Regulatory Council

Calendar of Federal Regulations

UNITED STATES REGULATORY COUNCIL

Calendar of Federal Regulations

AGENCY: The United States Regulatory Council.

ACTION: Calendar of Federal Regulations.

SUMMARY: The United States Regulatory Council publishes the Calendar of Federal Regulations in order to provide a comprehensive catalog of important Federal regulations under development by participating agencies. This is the second edition. Starting with this edition, we will publish the Calendar every six months, in November and May.

Special indices and appendices to the Calendar help readers to determine quickly which entries might be of most interest to them; others help readers to understand the requirements for public participation in the rulemaking process at each Council department and agency.

The Calendar is designed to provide, in one place, a concise summary of important regulations under development. It provides a useful tool to increase public awareness of and participation in the regulatory process.

ADDRESS: United States Regulatory Council, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT:

For information about specific regulations, please refer to the "Agency Contact" listed at the end of each entry.

For information on the Council and the Calendar generally:

Peter J. Petkas
Director
United States Regulatory Council
Washington, D.C. 20503
(202) 395–6110

For information on this edition of the Calendar:

Mark G. Schoenberg
Associate Director
United States Regulatory Council
Washington, D.C. 20503
(202) 426–1962

SUPPLEMENTARY INFORMATION: The President directed the creation of the United States Regulatory Council on October 31, 1978. It is composed of 36 departments and agencies with significant regulatory responsibilities.

The Council's principal assignments are to ensure better coordination of Federal regulatory activities and to seek ways to improve the management of the regulatory process.

In working together to improve the overall management of the regulatory process and to coordinate regulatory action, the Regulatory Council agencies are seeking to do a better job of achieving the goals of regulation in the most cost effective way.

In its first year the Council has, under the President's direction:

- produced and published the first *Calendar of Federal Regulations* (44 FR 11388; February 28, 1979) and will publish a new edition every six months (Weekly Compilation of Presidential Documents, Week of November 6, 1978; *President Carter's Message to Congress Establishing the Regulatory Council);*
- developed and adopted the first government-wide policy on the control of cancer-causing chemicals (44 FR 60038; November 17, 1979; *Statement on Regulation of Chemical Carcinogens*);
- begun to implement (with the Small Business Administration and the Office of Management and Budget) a national policy of developing all new regulations in ways that recognize the special problems of small businesses and other small organizations (Weekly Compilation of Presidential Documents, Week of November 19, 1979; *Regulatory Programs and Small Businesses and Organizations*);
- established a process for the heads of all agencies that regulate or otherwise significantly affect the Automobile industry to jointly plan and coordinate major actions affecting that industry (Committee on Automobile Regulation);
- begun, with top level State and Federal officials, to remove the most serious causes for complaint from the coal industry, including overlapping paperwork, inconsistent inspection practices, and duplicative permitting requirements.
- launched a government-wide effort to develop and implement innovative, more cost effective ways to achieve the goals of regulation.

Other Council activities underway: an effort to identify and lessen inconsistent or duplicative Federal, State and local regulations on hospitals, an assessment of the economic impact of regulation on the non-ferrous metals industry, a project to improve the quality of economic analysis undertaken by Council agencies, and action to coordinate the regulation of specific chemicals or products (e.g., formaldehyde, wood preservatives).

The Calendar of Federal Regulations is an important new tool for the President, the Congress, the regulators, and the public to understand and shape the way we implement national regulatory policy goals. This Calendar is also the first comprehensive and continuously up-dated catalog of important Federal regulations under development. With the Calendar, and the semi-annual regulatory agendas now published by each agency under President Carter's Executive Order on Improving Government Regulation (E.O. 12044), most of the regulatory activity being planned by the Federal government can be followed as part of a single system.

Each entry in this edition of the Calendar describes:

- the problem which the agency developing the regulation intends to address,
- the major alternatives that the agency has identified while developing the regulation,
- the benefits and costs that could result from the proposal,
- the sectors affected by the action,
- the major related regulations,
- any collaboration that occurred while developing the proposal between the issuing agency, other agencies, and State and local governments, and
- the estimated timetable for agency action.

A separate index, allows the public to quickly locate the sectors affected by all the entries. A new appendix on public participation describes the functions of each agency, unique public participation procedures within each agency, any funding available to the public, an information contact and any special telephone services or mailing list opportunities that may be available.

Another appendix gives the publication dates for the next semi-annual regulatory agendas published by member agencies and the date and **Federal Register** citation of their last published agenda. We are exploring the possibility of tieing the agency semi-annual agendas and the Calendar more closely together by providing some consistent types of information in both documents and by coordinating their publication dates.

Other indices and appendices provide the dates of next regulatory actions for all items covered by the Calendar, a status report on regulations that appeared in the first edition but are not included in this edition, and a list of important regulations that are scheduled for agency review under the President's directive in E.O. 12044 for "Sunset" reviews of existing regulations or under an agency's own review process.

The Calendar is organized into six major functional areas:

- Energy, Environment and Natural Resources
- Finance, Banking, and Insurance
- Health and Safety
- Human Resources
- Trade and Commerce
- Transportation and Communications

The Calendar of Federal Regulations is a joint cooperative product of the Regulatory Council staff and the staffs of the 36 Council agencies.

In producing their contributions to the Calendar, agencies were asked to follow a set of guidelines developed by Council staff in consultation with them and with the Office of Management and Budget, the Council of Economic Advisors, the Council on Wage and Price Stability and others in the Executive Office of the President. These guidelines, distributed on July 20, 1979, are available on request from the Council.

Generally, agencies were given broad discretion in determining which of their regulatory activities were important enough for inclusion. At a minimum, they were asked to report on those regulations under development that would be "major" under E.O. 12044. (Under that Executive Order, executive agencies are required to prepare a "regulatory analysis" as they develop "major" regulations.)

The first edition of the Calendar (44 FR 11388; February 28, 1979) went far beyond our initial expectations in terms of both the quality and quantity of information presented. The second edition represents a significant improvement. The May 1980 edition will be even better. We welcome comments and suggestions for further improvement.

Dated: November 23, 1979.

Douglas M. Costle,

Chairman.

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USERS GUIDE

COUNCIL MEMBERS AND THE CALENDAR

The Regulatory Council is composed of thirty-six Federal departments and agencies. Eighteen Executive Agencies are participating members, and eighteen Independent Regulatory Agencies contribute to the activities of the Council in various capacities, including observer status. The extent of an independent regulatory agency's activity in any Council project is determined by the independent agency. All Council agencies have submitted information for some sections(s) of this Calendar. For a variety of reasons, eleven agencies have not submitted entries for this edition of the Calendar describing any of their regulations under development. These agencies have filed individual comments in Appendix V and they are identified with an asterisk (*) in the following list. Five of the eleven agencies who did not submit entries describing their regulations under development do not issue regulations of the type covered by this Calendar. These five agencies are identified by a dagger (†) in the following list.

Executive Agencies

†*Administrative Conference of the United States
Department of Agriculture
Department of Commerce
Department of Energy
Department of Health, Education, and Welfare
Department of Housing and Urban Development
Department of the Interior
Department of Justice
Department of Labor
Department of Transportation
Department of the Treasury
Environmental Protection Agency
Equal Employment Opportunity Commission
General Services Administration
National Credit Union Administration
*Small Business Administration
†*United States International Trade Commission
Veterans Administration

Independent Regulatory Agencies

Civil Aeronautics Board
*Commodity Futures Trading Commission
Consumer Product Safety Commission
Federal Communications Commission
*Federal Deposit Insurance Corporation
*Federal Election Commission
Federal Energy Regulatory Commission
Federal Home Loan Bank Board
Federal Maritime Commission
†*Federal Mine Safety and Health Review Commission
*Federal Reserve System
Federal Trade Commission
Interstate Commerce Commission
†*National Labor Relations Board
Nuclear Regulatory Commission
†*Occupational Safety and Health Review Commission
Postal Rate Commission
*Securities and Exchange Commission

HOW AGENCIES SELECT ENTRIES FOR THIS CALENDAR

This edition of the Calendar provides an overview of important regulations under development by member agencies of the Regulatory Council. Each agency submits entries for the Calendar according to several criteria. At a minimum, agencies were asked to use the same criteria as those they use for determining when to prepare regulatory analyses under the general guidelines in Executive Order 12044, *Improving Government Regulations* (43 FR 12661, March 14, 1978).

These Executive Order guidelines apply to Executive Agencies and those Independent Agencies who voluntarily choose to follow them and cover:

- regulations that have an annual effect on the economy of $100 million or more;
- regulations that will impose a major increase in costs of prices for individual industries, levels of government, or geographic regions;
- regulations otherwise determined by the agency head.

In addition to these criteria, agencies have submitted reports on regulations for this edition that concern:

—precedent-setting rules;
—issues of great public interest;
—rules that may increase productivity and/or profits without causing any adverse affects;
—grants and income transfer program regulations that may impose annual compliance costs of $100 million or more;

—regulations which the agency is reproposing after review pursuant to Executive Order 12044, if the proposed change will have important consequences.

In addition, any regulation which was noted in the first edition of the Calendar is also noted in this second edition unless it has been finally issued or withdrawn. If so, this action is noted in Appendix II Status of Regulations from the February, 1979 Calendar.

The regulations covered in the Calendar, that is, those that are "under development," are those for which an agency is reasonably likely to issue an Advance Notice of Proposed Rulemaking (ANPRM), a Notice of Proposed Rulemaking (NPRM), a Final Rule, or to take other significant action *within the next twelve months.*

A copy of the full set of Regulatory Council guidelines, used by agencies in preparing submissions to the Calendar, is available from the Council.

DESCRIPTION OF ENTRIES

Category—Each calendar entry describes a regulation and contains the following standard categories of information	Description—The following information is available in each category
Title	Self evident.
Legal Authority	A citation of the statutory authority under which the regulatory action is taken.
Statement of Problem	A brief discussion of the problem that the regulation is addressing.
Alternatives Under Consideration	A brief description of the major choices the agency is considering to achieve its regulatory objectives.
Summary of Benefits	A discussion of the expected direct and indirect benefits of the regulatory action.
Summary of Costs	A discussion of the expected direct and indirect costs of this action.
Sectors Affected	An identification of the sectors of the economy, population, government, etc., that will be affected by the proposed regulation.
Related Regulations and Actions	A description of other regulations or actions, either within or outside the agency, that are related to the regulation under consideration.
Active Government Collaboration	The steps the agency is taking to coordinate the proposed regulation with any other Federal, State or local agencies.
Timetable	A chronological listing of the future major steps which the agency will take to develop the regulation.
Available Documents	A list of major background documents related to the proposed regulation and notice of where they may be obtained or read.
Agency Contact	The name, address, and telephone number of a person in the agency who can respond to questions about the regulation.

DATA LIMITATIONS

Agencies prepared submissions for this edition of the Calendar to give the public the earliest possible notice of their schedules for proposing and promulgating regulations. They have tried to predict their future plans accurately, but dates and schedules are still tentative. Some regulations listed may be withdrawn, and some not listed may be proposed or promulgated. The regulations included that are going to be proposed or promulgated may be developed at an earlier or later date than those listed in the Calendar. This Calendar does not create a legal obligation on submitting agencies to adhere to schedules within it or to confine their regulatory activities to those regulations that appear. The information in this edition is accurate as of November 1, 1979, to the best of the submitting agencies' knowledge.

Readers should note that information on costs, benefits, and other economic impacts makes up only a part of the basis for decisions in regulatory agencies. In particular, agencies do not mechanically add up estimates of costs on the one hand, and benefits on the other, and then act on that basis. Furthermore, there is considerable disagreement about methods used for estimating costs, benefits, and other economic impacts. Necessarily, therefore, economic information contained in the Calendar is not developed using a common methodology.

INFORMATION ABOUT ADDITIONAL COPIES AND BOOK REPRINTS

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In addition, the Council will republish this Calendar in a book format. It too will be available from the Superintendent of Documents as Stock No. 052–003–00721–5. The price of the book volume is not available at the time of this publication. Please contact the Council or the Superintendent of Documents for further information.

REQUEST FOR COMMENT

The Calendar of Federal Regulations is designed as a tool for you, the user, to quickly locate information on the regulations described in it and to help you to participate effectively in the Federal regulatory process.

The Calendar is issued every six months; this is the second edition. We surveyed many of those who used the February, 1979 edition and incorporated in this edition, to the extent possible, the suggestions they had for improving the document.

We hope to continue to improve each edition and ask your help in doing so. Please send us any comments and suggestions that would make this document more useful to you. We would appreciate hearing from you.

Comments on the Calendar To:
Peter J. Petkas
Director
United States Regulatory Council
Washington, D.C. 20503
Telephone (202) 395–6110

HOW TO USE THE CALENDAR

The Calendar is organized to help users locate information about regulations of interest to them. The Calendar contains a Table of Contents, Users Guide, six chapters, two indices, and five appendices.

The USERS GUIDE briefly explains what criteria the agencies used to select regulations to be described in the Calendar, describes the form of the entries and the limitations on the data presented, explains how to use the Calendar, lists the abbreviations used, and indicates in which chapter individual regulations appear.

The CHAPTERS are divided into six major areas of regulatory activity. Regulations within the chapters are organized into chapters alphabetically, first by Executive, and then by Independent Agencies, then by agency division, and finally by title of regulation. The six chapters are:

Chapter I: Energy, Environment and Natural Resources, containing regulations concerning energy sources, environmental concerns such as air and water pollution, and natural resource concerns such as fishery management plans.

Chapter II: Finance, Banking and Insurance, contains regulations dealing with these financial matters.

Chapter III: Health and Safety, contains regulations dealing with human health and safety, such as those affecting medical care and nutrition, labeling requirements, and workplace safety requirements.

Chapter IV: Human Resources contains regulations dealing with social justice and nondiscrimination.

Chapter V: Trade and Commerce contains regulations dealing with business and trade practices such as advertising.

Chapter VI: Transportation and Communication contains regulations dealing with the management of various forms of transportation and communication.

We have created seven indices and appendices to aid the Calendar reader in quickly locating information of importance in this document.

The INDICES provide quick and easy ways to refer to material contained in

the entries, including the sectors affected by each proposal and the estimated date of the next regulatory action.

The APPENDICES provide helpful information to the Calendar user on public participation procedures, the status of the regulations from the last edition of the Calendar, the publication date for the semiannual Agency Regulatory Agendas, the important regulations scheduled for agency review, and any statement from agencies who did not submit entries for this edition of the Calendar.

Each index and appendix begins with a brief description of its contents and how to use it.

LIST OF ABBREVIATIONS

The following abbreviations appear throughout this edition of the Calendar:

ANPRM—The Advanced Notice of Proposed Rulemaking is a preliminary notice that an agency is considering a regulatory action. It is issued before the agency develops a detailed proposed rule. It usually describes the general area subject to the regulation, lists the alternatives that are under consideration and asks for public comment in developing a proposed rule.

EO—Executive Order

NPRM—The Notice of Proposed Rulemaking is the document issued by an agency and published in the Federal Register that solicits public comment on a proposed regulatory action. Under the Administrative Procedure Act, it must include, at a minimum:

- A statement of the time, place and nature of the public rulemaking proceedings.
- Reference to the legal authority under which the rule is proposed.
- Either the terms or substance of the proposed rule or a description of the subjects and issues involved.

The following is a list of abbreviations for the agencies and their subunits that are mentioned in the Calendar.

Executive Agencies

ACUS—Administrative Conference of the United States
USDA—United States Department of Agriculture
  AMS—Agriculture Marketing Service
  FNS—Food and Nutrition Service
  FSQS—Food Safety and Quality Service
  SCS—Soil Conservation Service
DOC—Department of Commerce
  EDA—Economic Development Administration
  ITA—Industry and Trade Administration
  NOAA—National Oceanic and Atmospheric Administration
  OCZM—Office of Coastal Zone Management
  MARAD—Maritime Administration
DOE—Department of Energy
  BCS—Buildings and Community Systems
  CS—Conservation and Solar Applications
  ERA—Economic Regulatory Administration
  RA—Resource Applications
HEW—Department of Health, Education, and Welfare
  FDA—Food and Drug Administration
  HCFA—Health Care Financing Administration
HUD—Department of Housing and Urban Development
  FIA—Federal Insurance Administration
  HOUS—Office of the Assistant Secretary for Housing
  NVACP—Neighborhoods, Voluntary Associations and Consumer Protection
DOI—Department of the Interior
  BLM—Bureau of Land Management
  FWS—Fish and Wildlife Service
  HCRS—Heritage Conservation and Recreation Service
  OSM—Office of Surface Mining
  WPRS—Water and Power Resource Service
DOJ—Department of Justice
  BOP—Bureau of Prisons
  CRD—Civil Rights Division
  INS—Immigration and Naturalization Service
  LEAA—Law Enforcement Assistance Administration
DOL—Department of Labor
  ESA—Employment Standards Administration
  ETA—Employment and Training Administration
  LMSA—Labor Management Services Administration
  MSHA—Mine Safety and Health Administration
DOT—Department of Transportation
  FAA—Federal Aviation Administration
  FHWA—Federal Highway Administration
  FRA—Federal Railroad Administration
  NHTSA—National Highway Traffic Safety Administration
  USCG—United States Coast Guard
TREAS—Department of the Treasury
  ATF—Alcohol, Tobacco and Firearms Bureau
EPA—Environmental Protection Agency
  OANR—Office of Air, Noise, and Radiation
  ORD—Office of Research and Development
  OPTS—Office of Pesticides and Toxic Substances
  OWWM—Office of Water and Waste Management
EEOC—Equal Employment Opportunity Commission
GSA—General Services Administration
  NARS—National Archives and Records Services
NCUA—National Credit Union Administration
SBA—Small Business Administration
USITC—United States International Trade Commission
VA—Veterans Administration

Independent Regulatory Agencies

CAB—Civil Aeronautics Board
CFTC—Commodity Futures Trading Commission
CPSC—Consumer Product Safety Commission
FCC—Federal Communications Commission
FDIC—Federal Deposit Insurance Corporation
FEC—Federal Election Commission
FERC—Federal Energy Regulatory Commission
FHLBB—Federal Home Loan Bank Board
FMC—Federal Maritime Commission
FMSHRC—Federal Mine Safety and Health Review Commission
FRS—Federal Reserve System
FTC—Federal Trade Commission
ICC—Interstate Commerce Commission
NLRB—National Labor Relations Board
NRC—Nuclear Regulatory Commission
OSHRC—Occupational Safety and Health Review Commission
PRC—Postal Rate Commission
SEC—Securities and Exchange Commission

REGULATIONS COVERED IN THIS EDITION (listed by agency)

The following table lists all regulations covered in this edition of the Calendar. The table is organized alphabetically first by Executive and by Independent Agencies, then by agency division, and finally by title of regulation.

Within the Calendar itself entries are organized into Chapters according to functional areas of regulatory activity. The righthand column of the table below identifies the Chapter in which each entry appears.

Chapter 1: Energy, Environment and Natural Resources
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DEPARTMENT OF AGRICULTURE

Soil Conservation Service

Watershed protection and flood prevention program

Legal Authority

Watershed Protection and Flood Prevention Act of 1954, 16 U.S.C. § 1001 *et seq.*

Statement of Problem

The Watershed Protection and Flood Prevention Act authorizes the Secretary of Agriculture to give technical and financial help to sponsoring local organizations to plan and install watershed projects to prevent erosion, sedimentation, and floodwater damage; to further the conservation, development, use, and disposal of water; and to further the conservation and proper use of land. Sponsoring local organizations consist of units of state and local government. The sponsoring local organizations for a watershed project must have the ability under state statutes to obtain lands for project works of improvement, bear their share of the cost of installation, and operate and maintain the project—such as a dam—after installation. The majority of watershed projects are located in rural areas and provide benefits such as flood damage reduction, erosion reduction, recreation, irrigation, water conservation, and municipal/industrial water supply to rural communities and agricultural lands. However, some projects benefit urban areas.

During recent years, the Administration, State and Federal agencies, and other groups have expressed concern about the environmental consequences, the economic evaluation procedures, and the equity and safety aspects of all water resource projects. As a result, the President directed that a comprehensive review of Federal water policy be made. In 1978, the Administration finalized its water policy. Thirteen directives were issued to implement the water policy initiatives. Some of these initiatives will require changes in procedures for all water resource projects and will probably require some changes in the rules and regulations for watershed programs. The U.S. Water Resources Council will establish standardized evaluation procedures for all water resource projects.

Executive Order 12044 and the Secretary of Agriculture's Memorandum 1955 require that the rules and regulations for all programs be systematically reviewed at regularly specified intervals. In keeping with this requirement, the President's initiatives, and other concerns, the Department of Agriculture has scheduled for review the rules and regulations governing the formulation, implementation, and operation of watershed projects.

Alternatives Under Consideration

USDA will develop and consider alternatives as a means of resolving issues in each of the problem areas (environment, economic evaluation, equity aspects, safety aspects).

The review will consider such things as the appropriate mix of structural and nonstructural alternatives to achieve flood control, appropriate levels of protection to achieve national flood damage objectives, and appropriate measures to improve soil and water conservation.

The alternatives will basically be geared to enhance protection which is economically and environmentally defensible.

Summary of Benefits

Not available at this time.

Summary of Costs

Not available at this time.

Sectors Affected

A change in the rules and regulations for the Watershed Protection and Flood Prevention Program could affect people living in rural and urban watersheds of up to 250,000 acres in size that have erosion, sediment, flood, drainage, irrigation, recreation, or water supply problems. The units of local government that might sponsor a watershed project and therefore be affected include the following: Soil and Water Conservation Districts; Conservancy Districts; Board of County Commissioners; County Councils; Water Districts; Natural Resources Districts; City, Town, and Village Councils; State Departments of Natural Resources; State Fish and Wildlife Departments; and State Park Departments.

Related Regulations and Actions

Internal: 1. Compliance with NEPA (National Environmental Protection Act), Procedures for SCS Assisted Programs, 7 CFR 650.1.

2. Compliance with NEPA, Related Environmental Concerns, Flood Plain Management, 7 CFR 650.25.

3. Support Activities, Compliance with NEPA, Protection of Wetlands, 7 CFR 650.26.

4. Procedures for the Protection of Archeological and Historical Properties Encountered in SCS-Assisted Programs, 7 CFR 656.

5. Prime and Unique Farmlands, 7 CFR 657. Describes prime and unique farmlands and states policy for protecting and preserving them for agricultural use.

External: 1. Principles and Standards for Planning Water and Related Land Resources—Water Resources Council (WRC).

2. Procedures for Evaluation of Natural Economic Development Benefits and Costs in Water Resources Planning—WRC.

Active Government Collaboration

During the study of rules and regulations for the watershed program, the Soil Conservation Service will coordinate applicable changes with the Forest Service, Farmers Home Administration, Agricultural Stabilization and Conservation Service, and the Economics, Statistics, and Cooperatives Service, in addition to its work with the Water Resources Council.

Prior to initiating review of the program, USDA will develop a plan for public participation by the public groups, State and local governmental groups, and other Federal agencies.

Timetable

USDA will not implement the study of rules and regulations for the watershed program until the Water Resources Council has finalized new procedures for planning and evaluating water resource projects. The present schedule is as follows:

Revision of "Principles and Standards for Planning Water and Related Land Resources"—November 1979.

National Economic Development Manual—November 1979.

Environmental Quality Manual—September 1980.

Supplement to National Economic Development Manual—September 1980.

Review of the rules and regulations for watershed projects (7 CFR Chapter VI, Part 622) is scheduled to begin in May 1980. USDA will publish notice of the start of this study in the **Federal Register.** The study will be conducted over a five-month period with a draft proposal in October 1980. Final rules and regulations are scheduled for publication in April 1981. An impact (regulatory) analysis will be done as a part of the rulemaking process.

Available Documents

Watershed Projects, 7 CFR 622, Source: 40 FR 12475, March 19, 1975.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Regulations implementing a fishery management plan for the butterfish fishery of the Northwest Atlantic Ocean under the Fishery Conservation and Management Act of 1976, as amended

Legal Authority

The Fishery Conservation and Management Act of 1976, as amended, 16 U.S.C. § 1801 *et seq.*

Statement of Problem

A. Background Information on Fishery Management Plans

The Fishery Conservation and Management Act of 1976, (FCMA) as amended, established a national fishery management program for the conservation and management of fishery resources which are subject to exclusive U.S. management authority in the fishery conservation zone (FCZ). The FCZ is the area between the seaward boundary of each coastal State and a point 200 miles from the baseline used to measure the territorial sea. Congress authorized this program as necessary to prevent overfishing, to rebuild overfished stocks, to ensure conservation, and to realize the full potential benefits of the Nation's fishery resources for present and future generations. To meet these objectives, the FCMA calls for the preparation of fishery management plans (FMP's) by the eight Regional Fishery Management Councils (the Councils) or, under certain conditions, by the Secretary of Commerce (the Secretary), and for the review, approval, and implementation of these FMP's by the Secretary. Each Council has the authority to prepare an FMP for each fishery within its geographical area of authority (a fishery is defined as one or more stocks of fish identifiable on the basis of geographical, scientific, technical, recreational, and economic characteristics). Enforcement of the FCMA, including the provisions of approved FMP's and the implementing regulations, is the joint responsibility of the Secretary and the Secretary of Transportation (who oversees the operations of the Coast Guard).

The FCMA established seven National Standards to be applied by both the Council and the Secretary in the preparation and review of any FMP, and in the promulgation of implementing regulations. The National Standards require that FMP's be designed to: (1) achieve the optimum yield of a stock of fish (a species, subspecies, geographical grouping, or other category of fish capable of being managed as a unit) on a continuing basis; (2) use the best scientific information available; (3) manage an individual stock of fish as a unit throughout its range; (4) be nondiscriminatory between residents of different states (assigning fair and equitable fishing privileges); (5) promote efficiency in harvesting techniques or strategies; (6) take into account the variability of fishery resources and the needs of fishermen, consumers, and the general public; and (7) minimize conservation and management costs. Optimum yield (OY) is based upon the maximum sustainable yield (MSY) of a fishery, modified by relevant economic, social, or ecological factors. MSY is an average over a reasonable length of time of the largest catch which can be taken continuously from a stock under current environmental conditions.

An FMP allows foreign fishing fleets to harvest that portion of the OY of a fishery which U.S. fishermen are unable to catch. In order to participate in a U.S. fishery in the fishery conservation zone (FCZ), a foreign fishing vessel must have a permit issued by the Secretary. Each permit contains a statement of the conditions and restrictions with which the foreign fishing vessel must comply.

A foreign nation begins to obtain entry into a U.S. fishery by signing a Govering International Fishery Agreement (GIFA) before making formal application for fishing permits. This agreement acknowledges the exclusive fishery management authority of the United States and forms a binding commitment of that nation to comply with the terms and conditions specified under the FCMA. Any existing international agreements, other than GIFA's, are considered valid only if they were in effect before the FCMA was enacted and have not expired, been renegotiated, or been negated in any manner.

B. The Butterfish FMP

The Mid-Atlantic Fishery Management Council (the Council) has developed an FMP for the butterfish fishery of the Northwest Atlantic Ocean to provide a framework for controlling the catch levels of U.S. and foreign fishing fleets. In 1978, the United States began to export significant quantities of butterfish to Japan. The development of this export market was partially caused by reductions in foreign butterfish catches in the FCZ from an annual average level of 9,146 metric tons (mt) between 1967–1976, to 5,500 mt in 1977, and 4,000 mt in 1978 and 1979. The Council anticipates that the growth of the U.S. butterfish fishery, coupled with foreign catches, can eventually lead to overfishing and depletion of the resource if it does not place limits on the total harvest. In addition, the Council is concerned with the foreign catch of butterfish in the FCZ, because it is an unavoidable by-catch in a directed fishery for Atlantic squid. An uncontrolled incidental catch of butterfish could adversely affect the harvesting costs of U.S. fishing vessels by reducing butterfish stock densities.

At present, the butterfish fishery is being managed by regulations implemented through a Preliminary Fishery Management Plan (PMP) for Foreign Trawl Fisheries of the Northwest Atlantic. Under a PMP, however, regulations may be implemented to cover only foreign fishing operations in the FCZ. By preparing an FMP, the Council can more effectively specify optimum yield and management measures for both domestic and foreign fishing in order to provide a stable and comprehensive management regime for butterfish. Specific management objectives the Council identified for this fishery are as follows: (1) promote the growth of the U.S. butterfish export industry; (2) minimize the cost of harvesting butterfish; (3) increase employment opportunities for U.S. commercial fishermen; (4) prevent exploitation of the butterfish resource beyond the level that produces the maximum sustainable yield; and (5) minimize costs of enforcement and management of the butterfish resource.

Alternatives Under Consideration

In the process of preparing the FMP, the Council considered alternative management options which were expected to lead to the attainment of the plan's objectives. Before making a final decision on a particular set of management options, the Council developed a draft FMP and solicited, through public hearings or other appropriate means, the advice and recommendations of all interested persons, including States, commercial and recreational fishery groups, and environmental organizations. After the Council selected the preferred management options, it prepared a final FMP for submission to the Secretary for review, approval, and implementation.

Alternative management options the Council has considered for the butterfish FMP were as follows:

1. Optimum Yields of 11,000 mt and 16,000 mt

The Council proposed an optimum yield of 11,000 mt. U.S. harvesting and processing capacity were estimated at 7,000 mt, and the total allowable level of foreign fishing (TALFF) was set at 4,000 mt. The TALFF remains unchanged from the 1978 and 1979 PMP's. Since the U.S. fishery is in its initial stages of development, the Council believes that an OY of 16,000 mt, with U.S. capacity set at 7,000 mt and a TALFF of 9,000 mt, might hinder U.S. export opportunities. In this case, foreign fleets could catch Atlantic butterfish rather than purchase it from U.S. processors. In addition, the Council believes that a TALFF of 4,000 mt is sufficient to allow foreign fleets to harvest their squid allocations as specified in the FMP for Atlantic squid.

2. Continue the 1979 PMP

Under this alternative the 1979 PMP prepared by the Secretary would remain in effect. This PMP proposed an optimum yield of 16,000 mt, a U.S. harvesting and processing capacity of 12,000 mt, and a TALFF of 4,000 mt. The continuation of the PMP would likely result in a large reallocation of butterfish to foreign fleets at the end of the 1979–1980 fishing season. This reallocation would come from any uncaught portion of the U.S. allocation. A reallocation would be expected to have an adverse impact on the U.S. export market for butterfish because foreign fleets could catch the butterfish instead of purchasing it from U.S. firms.

3. Different fishery management units

The Council considered the following management units: (a) butterfish within the FCZ north of Cape Hatteras; (b) butterfish within all U.S. waters north of Cape Hatteras; and (c) all butterfish under U.S. jurisdiction north of Cape Hatteras. The Council proposed option (c) since it covers the entire range of the butterfish stock (territorial waters, the FCZ, and Canadian waters). The proposed OY is based on this option in anticipation of a U.S.-Canadian bilateral fishing agreement. If the United States and Canada fail to achieve an agreement during the 1979–1980 fishing season, then the management unit is the same as option (b).

4. Gear, area, and fishing season restrictions

The Council believes that these management measures for domestic fishermen are not necessary at this time because overfishing is not a serious problem.

Summary of Benefits

A major goal of the Mid-Atlantic Council is to foster the development of the U.S. fishery for butterfish for export. The Council intends to achieve this goal by modifying maximum sustainable yield (MSY) as prescribed in the FCMA, on the basis of an economic factor concerning the impact of foreign fishing on the development of a U.S. export market for butterfish. The proposed OY of 11,000 mt is below the estimated MSY of 16,000 mt. U.S. capacity was estimated at 7,000 mt and the TALFF was set at 4,000 mt. The Council indicated in the FMP that a TALFF in excess of 4,000 mt will hinder the development of a U.S. butterfish export industry.

An increase in butterfish exports occurred in 1978. U.S. processors reported that exports were negligible in 1977 but in 1978 increased to 2,400 metric tons (mt). The ex-vessel (dockside) value of the exported butterfish was approximately $2 million. The estimated value of the processed exports ranges between $3–$4 million. Estimates of 1979 exports will not be

available until the height of the fall fishing season (September–November).

Under the FMP, the proposed TALFF is 4,000 mt. The current poundage fee for butterfish is 3.5 percent of $626 per metric ton as specified in the 1979 Foreign Fishing Fee Schedule established pursuant to the FCMA. The TALFF is expected to yield $87,640 in revenues to the U.S. Treasury.

Summary of Costs

Management costs incurred by the Mid-Atlantic Council and the National Marine Fisheries Service will be limited to the collection and processing of basic fishery data for monitoring and revising the FMP. These costs are expected to range between $10,000–$30,000 annually.

The Coast Guard will incur enforcement costs, although it is not possible to specify the actual costs for enforcement of the butterfish FMP because of the Coast Guard's concurrent responsibilities for other FMP's and PMP's. Most of the Coast Guard's enforcement costs will be attributable to surveillance and inspection of foreign fishing vessels.

Sectors Affected

Sectors of the U.S. economy directly affected by the butterfish FMP are commercial fishermen and processors located in Mid-Atlantic and New England States. In addition, this FMP will affect the fishing fleets of several foreign nations including Japan, Spain, Italy, Mexico, West Germany, and the Soviet Union.

Related Regulations and Actions

Internal: Regulations implementing the FMP for the squid fishery of the Northwest Atlantic are related to the butterfish FMP because of the potential by-catch of butterfish in a directed fishery for squid. The FMP's for Atlantic herring, Atlantic mackerel, Atlantic groundfish, and the PMP for silver and red hake are also related to the butterfish FMP, since these fisheries are part of the same general geophysical, biological, social, and economic setting. Regulations for a particular fishery may have an impact on the other fisheries by causing transfers of fishing effort. Moreover, the fisheries of the Northwest Atlantic are interrelated because of the high potential for by-catches of non-target species in a directed fishery for another species.

External: The Council has reviewed the Coastal Zone Management Programs of Massachusetts and Rhode Island for conflicts with the butterfish FMP. This review indicated that no conflicts presently exist.

Active Government Collaboration

The Council has requested comments on the butterfish FMP from the Departments of Interior, State, and Transportation, the Environmental Protection Agency, the coastal States of Maine through North Carolina, the New England and South Atlantic Fishery Management Councils, and various individuals and organizations.

Timetable

NPRM (if FMP is approved by the Secretary of Commerce)—November 1979.
Final Rule—January 1980.

Available Documents

Final Environmental Impact Statement/Fishery Management Plan for the Butterfish Fishery of the Northwest Atlantic Ocean.

Draft Regulatory Analysis for the Butterfish Fishery Management Plan. The documents may be obtained from the agency contact listed below.

Agency Contact

Robert A. Siegel, Economist
National Oceanic and Atmospheric Administration
National Marine Fisheries Service
Plan Review Division, F36
Washington, D.C. 20235
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DOC–NOAA

Regulations implementing a fishery management plan for the groundfish fishery for the Bering Sea Aleutian Island area under the Fishery Conservation and Management Act of 1976, as amended (FCMA)

Legal Authority

The Fishery Consevation and Management Act of 1976, as amended, 16 U.S.C. § 1801 *et seq.*

Statement of Problem

A. Background Information on Fishery Management Plans

The FCMA established a national fishery management program for the conservation and management of fishery resources subject to exclusive U.S. management authority in the fishery conservation zone (FCZ). The FCZ is the area between the seaward boundary of each coastal State and a point 200 miles from the baseline used to measure the territorial sea. Congress authorized this program as necessary to prevent overfishing, to rebuild overfished stocks, to ensure conservation, and to realize the full potential benefits of the Nation's fishery resources for present and future generations. To meet these objectives, the FCMA calls for the preparation of fishery management plans (FMP's) by the eight Regional Fishery Management Councils (the Councils), or under certain conditions, by the Secretary of Commerce (the Secretary), and for the review, approval, and implementation of these FMP's by the Secretary. Each Council has the authority to prepare an FMP for each fishery within its geographical area of authority, where a fishery is defined as one or more stocks of fish identifiable on the basis of geographical, scientific, technical, recreational, and economic characteristics. Enforcement of the FCMA, including the provisions of approved FMP's and the implementing regulations, is the joint responsibility of the Secretary and the Secretary of Transporation (who oversees the operations of the Coast Guard).

The FCMA established seven National Standards to be applied by both the Council and the Secretary in the preparation and review of any FMP, and in the promulgation of implementing regulations. The National Standards require that FMP's be designed to: (1) achieve the optimum yield of a stock of fish (a species, subspecies, geographical grouping, or other category of fish capable of being managed as a unit) on a continuing basis; (2) use the best scientific information available; (3) manage an individual stock of fish as a unit throughout its range; (4) be nondiscriminatory between residents of different states (assigning fair and equitable fishing privileges); (5) promote efficiency in harvesting techniques or strategies; (6) take into account the variability of fishery resources and the needs of fishermen, consumers, and the general public; and (7) minimize the costs of conservation and management measures. Optimum yield (OY) is based upon the maximum sustainable yield (MSY) of a fishery modified by relevant economic, social, or ecological factors. MSY is an average over a reasonable length of time of the largest catch which can be taken continuously from a stock under current environmental conditions.

An FMP allows foreign fishing fleets to harvest that portion of the optimum yield of a fishery which U.S. fishermen are unable to catch. The Secretary of State, in cooperation with the Secretary, determines the allocation of the total allowable level of foreign fishing (TALFF).

B. The Bering Sea/Aleutian Island Groundfish FMP

The North Pacific Fishery Management Council (the Council) has developed an FMP for the groundfish fishery of the Bering Sea/Aleutian

Island area off the coast of Alaska. The stocks covered by this FMP are Pacific Ocean perch, pollock, Pacific cod, yellowfin sole, turbots, sablefish, other flounders and flatfish, atka mackerel, squid, and "other species."

The FMP for the groundfish fishery in the Bearing Sea/Aleutian Island area was developed to replace the current Preliminary Fisheries Management Plan (PMP). Replacement of the PMP with an FMP was necessitated by the PMP's lack of coverage of a domestic groundfish fishery and the potential for it to have an adverse impact on the halibut fishery.

The FMP addresses four problems: maintaining stocks currently at levels of MSY; rebuilding depleted stocks to levels of abundance producing MSY; controlling the incidental catch of species of commercial importance to U.S. fishermen; and establishing an environment conducive to development of a U.S. groundfish fishery.

(1) *Maintaining or rebuilding of stocks*

NOAA has conducted stock assessment studies on the following categories of Bering Sea/Aleutian groundfish species: Alaska pollock, Pacific halibut, yellowfin sole, turbots, other flatfishes, Pacific cod, rockfishes, sablefish, Atka mackerel, squid, and other species. With the exception of Pacific Ocean perch, Pacific halibut, and sablefish, all other groundfish species in the Bering Sea/Aleutian area are believed to be at levels of abundance equal to or greater than those that would produce MSY.

Pacific Ocean perch stocks are currently considered to be at relatively low levels of abudance because of a continuous decline in catch per unit of effort (CPUE) since 1968, a drastic reduction in the availability of all sizes of Ocean perch between 1969–72, a heavy dependence of the fishery on younger fish, and the lack of any evidence of a strong incoming year class. The target level which would serve the development of a stock rebuilding program was defined as being equal to MSY in the FMP. Therefore, to promote rebuilding, we set the allowable biological catch (ABC=10.75 thousand metric tons (mt)) of Pacific Ocean perch at half of the current equilibrium yield (EY=21.5 thousand mt).

Pacific halibut stocks have declined sharply in the eastern Bering Sea since the early 1960's. Recent surveys indicate an increase in the abundance of juveniles; however, abundance is still below early 1960's levels. An allowable biological catch for Pacific halibut was not set in the FMP since the fishery is currently regulated by the International Pacific Halibut Commission (IPHC). Instead, OY for species other than halibut covered by the FMP were developed to accommodate rebuilding of halibut stocks. Further, halibut savings areas (closed areas) were proposed in order to reduce the incidental catch of halibut. It is important to note that the rebuilding program of the IPHC is governed by a philosophy rather than a mandate to achieve a specified stock size. Specifically, concern is focused on rebuilding stocks back to levels which can support the maximum catch given the biological and economic conditions of the fishery.

Analyses of catch-per-unit-effort (CPUE) data for sablefish by both U.S. and Japanese scientists show a declining trend. The declining trend in CPUE, coupled with catch data, has been interpreted as indicating that sablefish stocks in the eastern Bering Sea/Aleutian Region are at reduced levels of abundance. The allowable biological catch for sablefish was set at 75% of the estimated MSY (33,000 mt) to facilitate rebuilding of the stock.

(2) *Incidental catch*

Current fishery activity directed at Bering Sea groundfish resources is dominated by foreign fishing fleets. While foreign vessels target on groundfish, substantial numbers of halibut and crabs (king and tanner) are taken as an incidental catch. Although regulations require that these species be released, most die from injuries received during capture. In the eastern Bering Sea, the estimated annual yield loss of halibut due to the incidental catch by foreign vessels has been estimated to be 5,000 mt. Incidental catches of king and tanner crab during 1977 have been estimated to be about 0.6 million and 17.5 million crabs respectively. The magnitude of halibut and crab losses indicates that optimum yields, total allowable levels of foreign fishing, and domestic allowable harvests established in the FMP are capable of affecting several important domestic fisheries.

(3) *Facilitation of development of a U.S. groundfish fishery*

Many U.S. fishing interests perceive the presence of fleets of large foreign trawlers as a de facto impediment to the development of a domestic groundfish trawl fishery in the Bering Sea because of the possibility of: (a) preemption of favored grounds by concentrations of foreign vessels that are two-three times the size of the largest U.S. trawlers, and (b) competition for fish by foreign vessels that can apparently operate successfully at levels of abundance and average fish sizes that are less than those required for economic operation of domestic trawlers.

Management objectives for the groundfish fishery in the Bering Sea/Aleutian Island area are as follows:

(a) Continue rebuilding the halibut resource so that a viable halibut longline fishery is again available to American fishermen.

(b) Rebuild depleted groundfish stocks to, and maintain healthy groundfish stocks at, levels of abundance that will produce MSY.

(c) Provide an opportunity for U.S. involvement in the Bering Sea/Aleutian groundfish fishery, limited only by the OY of individual species and objectives a and b above.

(d) Allow foreign participation in the fishery, consistent with objectives (a), (b), and (c), above.

Alternatives Under Consideration

In the process of preparing the FMP, the Council considered alternative management options which it expected to lead to the attainment of the plan's objectives. Before making a final decision on a particular set of management options, the Council developed a draft FMP and solicited, through public hearings or other appropriate means, the advice and recommendations of all interested persons, including States, commercial and recreational fishery groups, and environmental organizations. After the Council selected the preferred management options, it prepared a final FMP for submission to the Secretary for review, approval, and implementation.

(1) Continue the 1979 FMP

Under this alternative, the 1979 PMP would be extended to cover the 1980 fishery season. However, a PMP can only regulate foreign fishing. As a result, the Council would not be able to develop regulations to permit the rebuilding of depleted stocks or to control the incidental catch of species of commercial importance to U.S. fishermen (halibut, king crab, and tanner crab).

(2) Develop an FMP

The FMP, developed by the North Pacific Fishery Management Council, contains management measures specifying OY for the total fishery (1,559,226 metric tons (mt)), domestic allowable harvest (56,000 mt), reserves (73,324 mt), and the Total Allowable Level of Foreign Fish (TALFF) (1,429,802 mt). We have set optimum yields for Pacific Oregon perch and sablefish at levels which should result in rebuilding these stocks to MSY levels. We set the domestic allowable harvest at a level

consistent with the production expectations of both U.S. harvesters and processors.

In order to prevent the OY from being exceeded without hindering unexpected domestic fishery development (an unanticipated increase in U.S. catching capability and intent), 500 mt or 5% of the OY (whichever is greater) of each species will be held in "reserve" for allocation later in the fishery season on the basis of domestic need. Unless specifically withheld by the National Marine Fisheries Service Alaska Regional Director, acting with the advice of the North Pacific Council, up to 25% of the reserve of each species can be released to TALFF every two months, beginning with the end of the second month of the fishing year. Initial TALFF's for each species were determined by subtracting the sum of domestic allowable harvest and reserve from optimum yield.

Additional management measures selected by the Council included: seasonal area closures for U.S. trawlers in fishing grounds where juvenile halibut are know to concentrate, statistical reporting requirements, and permit requirements and area closures for foreign fishery vessels.

(3) Areas Closed to Foreign Fishing

Relaxation of closure of the "Winter Halibut-savings Area" to longlining between December 1 and May 31, and of the area arond Petrel Banks to foreign trawlers constitute the alternative management measures considered in the FMP development process. Allowance of foreign fishing in these areas during the specified time periods would result in continuation of incidental halibut catches. The catches would have the effect of perpetuating the yield loss to the halibut fishery, which is associated with foreign fishing in these areas. While these areas are known to contain large concentrations of juvenile halibut, quantification of the yield losses for these narrowly defined areas is not possible at this time.

Summary of Benefits

The optimum yield of 1,559,226 mt set by the 1980 FMP represents an increase of 133,156 mt over the OY of 1,426,070 mt specified in the 1979 PMP. There were also increases in the domestic allowable harvest (46,100 mt), reserves (71,224 mt), and the TALFF (15,832 mt). We have estimated that foreign nations will pay $11.9 million in vessel and privilege fees to fish in the Bering Sea/Aleutian Island area in 1979.

At present, there is insufficient information to quantify the economic effects of this FMP on U.S. fishermen and processors. Projections of domestic catches are not reliable for the fishery because there has been only a limited amount of effort directed at the harvesting by U.S. fishermen of groundfish in the Bering Sea/Aleutian Island area. However, the preferential U.S. allocation of groundfish allows opportunity for expansion of U.S. harvests as rapidly as the private sector is willing to invest in the fishery. The U.S. allocation will permit the continued harvest of groundfish, which are used as crab bait, as well as the implementation of pilot projects for food fish production. If these projects are successful, there may be an opportunity for expansion of U.S. exports of seafood products.

Economic benefits also are expected from the rebuilding of stocks to levels of high abundance or to MSY levels. First, there are potential reductions in the cost of harvesting fish because of larger CPUE (i.e., greater productivity). Second, there is a strong consumer demand for halibut products. A rebuilt stock, under proper management, will enable the catch of the fishery to expand and increase the supply of halibut for the U.S. consumer.

A biological benefit of rebuilding depleted fish stocks is the maintenance of a large amount of genetic variability in the stock to increase its chances of adapting to changes in the environment. In addition, there is the benefit of stabilizing the fishable population to reduce the likelihood of sharp yearly variations in the harvest.

Summary of Costs

The cost of implementing the FMP is projected at $5.574 million. Of this total, the cost of the foreign fishery observer program of $370,000 will be reimbursed to the U.S. Treasury by foreign governments. The remaining $5.204 million is divided between the National Oceanic and Atmospheric Administration ($493,000), the State of Alaska ($11,000) and the Coast Guard ($4.7 million).

Sectors Affected

The sectors of the Alaskan economy most directly affected by this FMP are domestic fishermen and processors. In addition, the fishing fleets of Japan, Poland, Taiwan, Republic of Korea, and the Soviet Union, which combined may harvest between 92–98 percent of the catch allowed by this FMP, will be affected.

Related Regulations and Actions

Internal: Provisions of the Marine Mammal Protection Act of 1972, (16 U.S.C. § 1361 *et seq.*), have a bearing on this FMP through restrictions or killing or harvesting seals and sea lions (50 CFR Part 216), which may prey on fish already captured in nets. The FMP for Groundfish in the Gulf of Alaska (43 FR 17242) has implementing regulations designed to minimize the incidental catch of halibut. In addition, the directed catch of halibut is controlled by the Convention for the Preservation of the Halibut Fishery of the North Pacific Ocean and Bering Sea, 5 UST 5.

External: The Alaska Department of Fish and Game and the Alaska Limited Entry Commission issue State regulations which control the harvest of fishery resources in territorial waters (0–3 miles) off the coast of Alaska.

Active Government Collaboration

We requested comments on this FMP from the Environmental Protection Agency, the Marine Mammal Commission, and the Departments of Agriculture, Interior, State, and Transportation.

Timetable

NPRM (if FMP is approved)—November 1979.
Final Rule—December 1979—January 1980.

Available Documents

The Draft Environmental Impact Statement and Fishery Management Plan for the Groundfish Fishery in the Bering Sea/Aleutian Island area.

The Draft Regulatory Analysis for the Bering Sea/Aleutian Island Fishery Management Plan of the North Pacific Fisheries Management Council.

The documents may be obtained from the agency contact listed below.

Agency Contact

Robert A. Siegel
National Oceanic and Atmospheric Administration
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DOC—NOAA

Regulations implementing a preliminary fishery management plan for Pacific billfish and oceanic sharks under the Fishery Conservation and Management Act of 1976, as amended.

Legal Authority

The Fishery Conservation and Management Act of 1976, as amended, 16 U.S.C. § 1801 *et seq.*

Statement of Problem

A. Background Information on Fishery Management Plans

The Fishery Conservation Management Act of 1976, (FCMA) as amended, established a national fishery

management program for the conservation and management of fishery resources which are subject to exclusive U.S. management authority in the fishery conservation zone (FCZ). The FCZ is the area between the seaward boundary of each coastal State and a point 200 miles from the baseline used to measure the territorial sea. Congress authorized this program as necessary to prevent overfishing, to rebuild overfished stocks, to ensure conservation, and to realize the full potential benefits of the Nation's fishery resources for present and future generations. To meet these objectives, the FCMA calls for the preparation of fishery management plans (FMP's) by the eight Regional Fishery Management Councils (the Councils) or, under certain conditions, by the Secretary of Commerce (the Secretary), and for the review, approval, and implementation of these FMP's by the Secretary. Each Council has the authority to prepare an FMP for each fishery within its geographical area of authority (a fishery is defined as one or more stocks of fish identifiable on the basis of geographical, scientific, technical, recreational, and economic characteristics). Enforcement of the FCMA, including the provisions of approved FMP's and promulgated regulations, is the joint responsibility of the Secretary and the Secretary of Transportation (who oversees the operations of the Coast Guard).

The FCMA also states that the Secretary must prepare preliminary fishery management plans (PMP's) when the Secretary of State receives applications from foreign nations for permission to fish in the FCZ, provided that the appropriate Council will not prepare an FMP soon enough to respond to the application. PMP's are implemented by Federal regulations and remain in effect until they are amended or superseded by approved Council FMP's.

The FCMA established seven National Standards to be applied by both the Councils and the Secretary in the preparation and review of any FMP or PMP, and in the promulgation of implementing regulations. The National Standards require that FMP's and PMP's be designed to: (1) achieve the optimum yield of a stock of fish (a species, subspecies, geographical grouping, or other category of fish capable of being managed as a unit) on a continuing basis; (2) use the best scientific information available; (3) manage an individual stock of fish as a unit throughout its range; (4) be nondiscriminatory between residents of different states (assigning fair and equitable fishing privileges); (5) promote efficiency in harvesting techniques or strategies; (6) take into account the variability of fishery resources and the needs of fishermen, consumers, and the general public; and (7) minimize conservation and management costs. Optimum yields (OY) is based upon the maximum sustainable yields (MYS) of a fishery, modified by relevant economic, social, or ecological factors. MSY is an average over a reasonable length of time of the largest catch which can be taken continuously from a stock under current environmental conditions.

An FMP or PMP allows foreign fishing fleets to harvest that portion of the optimum yield of a fishery which U.S. fishermen are unable to catch. In order to participate in a U.S. fishery in the FCZ, a foreign vessel must have a permit issued by the Secretary. Each permit contains a statement of the conditions and restrictions with which the foreign fishing vessel must comply.

A foreign nation begins to obtain entry into a U.S. fishery by signing a Governing International Fishery Agreement (GIFA) before making formal application for fishing permits. This agreement acknowledges the exclusive fishery management authority of the United States and forms a binding commitment of that nation to comply with the terms and conditions specified under the FCMA. Any existing international agreements, other than GIFA's, are considered valid only if they were in effect before the FCMA was enacted and have not expired, been renegotiated, or been negated in any manner. The Secretary of State, in cooperation with the Secretary, determines the allocation of the total allowable surplus that the applicant nation will receive.

B. The Pacific Billfish and Oceanic Sharks PMP

In 1978, the Secretary prepared a PMP for Pacific billfish and oceanic sharks. However, the regulation of billfishes and sharks is complicated by the directed foreign longline fishery for tuna (a fishery that seeks to harvest tuna with hooks attached to a long rope suspended from buoys) which has been conducted in the Pacific Ocean for many years. The fishery has resulted in the incidental capture of billfishes and sharks because the fishing gear is not capable of selecting only tuna. (Several species of tuna are considered "highly migratory" and are not subject to management under the provisions of the FCMA).

The Administrator for Fisheries approved the original PMP in May 1978 and the proposed regulations were published in July 1978, establishing optimum yield, U.S. harvesting capacity (expected catch), and the total allowable level of foreign fishing (TALFF) for billfish and oceanic sharks in the FCZ in the Pacific Ocean off the mainland west coast of the United States (excluding the FCZ seaward of Alaska), Hawaii (including the Midway Islands), American Samoa, Guam, and other U.S. possessions in the Pacific Ocean. Management measures in the PMP included requirements for foreign fishing vessels to release all billfish caught in specific geographical areas of the FCZ, limits on the retention of billfish and oceanic sharks in other areas of the FCZ, and data on check-in/check-out reports.

However, the original PMP was never implemented because of objections from American Samoa and the Western Pacific Fishery Management Council. Reviewers claimed that regulations based on the original PMP could disrupt the tuna fishing operations of foreign longliners based in American Samoa. Tuna landed by these vessels supply two canneries at Pago Pago. These canneries are the economic backbone of American Samoa. Wahoo and mahimahi (dolphin fish) also caught incidentally to tuna would have remained in the category of prohibited species in the original PMP. Foreign longliners based in American Samoa, but fishing over large areas of the South Pacific, also deliver wahoo, mahimahi, and billfish, providing additional income for processing plants and foodfish for local consumption.

Another comment we received on the original PMP was that foreign longline vessels have unsophisticated communications systems and may be unable to satisfy the reporting requirements. In addition, reviewers indicated that OY, expected domestic harvest, and TALFF should be revised because of the availability of more recent information on stock conditions and on catch and effort in the FCZ.

The Secretary has prepared amendment to the original PMP to accomodate the needs of American Samoa. These amendments are discussed in alternative two.

Alternatives Under Consideration

In the process of preparing a PMP, the Secretary considers alternative management options which are expected to lead to the attainment of the plan's objectives. We considered the following alternatives in developing the amended PMP:

1. Continue the original PMP

Under this alternative, OY and TALFF for each species would be determined

for the entire FCZ, but non-retention zones (areas where billfish must be returned to the ocean without removing them from the water) would vary in different portions of the FCZ. A single TALFF for the entire FCZ would allow foreign vessels to concentrate effort in areas where the target species are abundent. It could also lead to crowding or to intensified fishing effort.

2. Revise the original PMP

This alternative would revise the OY, U.S. capacity, and TALFF and specify the componenets separately for each of five sub-areas of the FCZ: (1) mainland West Coast, (2) Hawaii, (3) American Samoa, (4) Guam and the Northern Mariana Islands, and (5) the U.S. possessions. In addition, it would establish OY's and TALFF's for wahoo and mahimahi (so that a fishery for those species would be permitted); include the FCZ around the Northern Mariana Islands in the PMP management area; include "reserves" for certain species of billfish in Hawaii, Guam, and the Northern Mariana Islands and for sharks in Hawaii to accommodate the possiblity that domestic catches may exceed the estimated levels; and clarify and simplify reporting and inspection requirements for foreign fishing vessels. These are the preferred management measures.

3. Prohibit all retention of billfish in the FCZ

Foreign vessels would be required to release all billfish taken incidentally to tuna fishing in the FCZ. This would result in considerable waste of billfish, because most billfish caught by longline are dead when brought to the surface.

4. Establish areas closed to those foreign fishing operations which result in the taking of billfish

Tuna fishing would be allowed, provided that the gear was selected and precluded the incidental by-catch of billfish. This would result in a prohibition of foreign longlining for tuna in selected portions of the FCZ.

5. Exclude American Samoa from the PMP

Under this alternative, the PMP would not apply in the FCZ seaward of American Samoa. The FCMA requires that foreign vessels obtain permits to fish in the FCZ. If American Samoa were not covered under the PMP and its implementing regulations, there would be a prohibition on foreign longlining. There would be no basis under the FCMA (PMP or FMP) to permit foreign fishing in the FCZ. This would not be responsive to the special economic and social needs of American Samoa, because it could reduce foreign landings of billfishes, sharks, wahoo and mahimahi caught indicentially to tuna.

Summary of Benefits

The amended PMP will provide benefits to the economy of American Samoa because of the dependence of its processing plants on foreign catches of tuna, billfish, oceanic sharks, wahoo and mahimahi.

The subarea approach (alternative two) for OY, U.S. capacity and TALFF—as opposed to a single value for the FCZ—takes into account the special concerns of American Samoa by allowing foreign fishing to continue. We set the billfish TALFF for the American Samoa subarea equal to the estimated 1971–1975 average annual catch by foreign longliners (52.6 metric tons (mt)) in that area. In addition, we established TALFF's for wahoo (2 mt), mahimahi (2 mt), and sharks (101.6 mt).

For the 1979–1980 PMP, the expected U.S. domestic harvest of billfish and oceanic sharks is defined as the average annual domestic catch for a specified base year (1976) or the 1971–1975 period plus 10 percent for increased participation by commercial and recreational fishermen. The estimated catch for 1979–1980 is 1,729 mt. The 1979–1980 TALFF for billfish and oceanic sharks has been proposed at 2,261.9 mt, which is below the 1971–1975 annual average foreign catch of 2,537.6 mt.

If foreign fishing vessels catch the proposed TALFF (2,261.9 mt for all species), the estimated revenues to the U.S. Treasury from these foreign fishing fees could reach $68,000.

Summary of Costs

Enforcement costs for the PMP will vary with the amount of effort and the pattern of foreign fishing in the FCZ. Initially, enforcement in 1979–1980 will be carried out with available personnel from the National Marine Fisheries Service (NMFS) and the Coast Guard. We have estimated that total observer the enforecement costs, including salaries, permium pay, travel, training and equipment under the original PMP at $185,000 per year. This estimated also applies to the amended PMP for 1979–1980. However, the final cost may be lower if the foreign fishing effort is below current estimates. We do not expect there to be any compliance costs imposed on the private sector of the U.S. economy.

If there is a significant increase in foreign effort in 1979–1980 compared to 1978–1979, we may need more active enforcement of the PMP. This could require up to 1,450 hours of Coast Guard aerial patrols, 430 days of Coast Guard vessel patrols, and 10 person-years (Coast Guard and NMFS), at an estimated annual cost of $300,000.

In addition, NOAA/NMFS and other Federal agencies (e.g., Department of State) will incur administrative costs in processing foreign fishing requests. NOAA/NMFS also will incur costs for processing, storing, and analyzing data from foreign vessels to ensure that the TALFF's are not exceeded. We expect these administrative costs to range from $5,000 to $10,000.

Sectors Affected

Sectors of the U.S. economy that the PMP will most directly affect are commercial and recreational fishermen in American Samoa, Guam, Hawaii, the mainland west coast of the United States, and the Northern Mariana Islands. In addition, it will affect processors and foreign longliners based in American Samoa.

Related Regulations and Actions

Internal: None.

External: The amendments to the original PMP would be consistent with the approved State Coastal Zone Management Plans of California and Hawaii.

Active Government Collaboration

We requested comments on the amended PMP from: Western Pacific and Pacific Fishery Management Councils; Governments of American Samoa, Guam, and the Northern Mariana Islands; States of California, Hawaii, Oregon, and Washington; Department of State, Transportation, and Interior; Environmental Protection Agency; Pacific Marine Fisheries Commission; and various individuals and organizations.

Timetable

Final Rule—November 1979–January 1980.

Available Documents

First Supplement to the Final Environmental Impact Statement/ Preliminary Fishery Management Plan for Pacific Billfish and Oceanic Sharks.

These documents may be obtained from the agency contact listed below.

Agency Contact

Robert A. Siegel, Economist
National Oceanic and Atmospheric Administration
Plan Review Division, F36
Washington, D.C. 20235
(202) 634–7449

DOC-NOAA—Office of Coastal Zone Management

Channel Islands Marine Sanctuary regulations

Legal Authority

Marine Protection, Research and Sanctuaries Act of 1972, § 302(f), 16 U.S.C. § 1432(f).

Statement of Problem

The waters immediately around the northern Channel Islands and Santa Barbara Island support an extraordinary assemblage of marine mammals, numerous seabirds including the endangered brown pelican, and important fishery resources including kelp and shellfish. Until recently, these waters have been left relatively untouched by human activity because of their distance from the populous mainland. Use of the Santa Barbara Channel is increasing; however, thus placing additional pressures on these natural resources.

Title III of the Marine Protection, Research and Sanctuaries Act of 1972, (16 U.S.C. §§ 1431–1434) authorizes the Secretary of Commerce, after consultation with appropriate Federal agencies, and with Presidential approval, to designate ocean areas having distinctive conservation, recreational, ecological, or aesthetic values as marine sancturies and issue necessary and reasonable regulations to protect the resources in these areas.

Based on different recommendations submitted by the Resources Agency of the State of California, the National Park Service, and the County of Santa Barbara, and on hearings held by the California Coastal Commission, the Office of Coastal Zone Management (OCZM) of the National Oceanic and Atmospheric Administration (NOAA) is considering designating a marine sanctuary in the waters around the northern Channel Islands and Santa Barbara Island. A Draft Environmental Impact Statement (DEIS) is being prepared on the proposed action. Consultations on the DEIS with other Federal agencies may affect the final scope and content of the regulations. The regulations discussed here represent NOAA's current position on the regulations which would be necessary in the proposed sanctuary.

Presently the area likely to be described in the DEIS as the preferred alternative for a sanctuary extends six nautical miles (nmi) (11.1 kilometers) seaward from the mean high tide line around the Islands. The following activities which have potentially harmful impacts on the resources of the area are likely to be proposed for regulation:

—oil and gas operations
—discharging or depositing any substance into the sanctuary waters
—alteration of or construction on the seabed
—navigation and operation of vessels (other than fishing and kelp harvesting vessels) and aircraft overflights below 1000 ft. (305 meters)
—removal or otherwise deliberate harm to cultural or historical artifacts.

Although many agencies currently regulate or have authority over aspects of these activities and over the natural resources of the waters, the focus of their responsibilities differs from that of the marine sanctuary program, which is to protect the area's ecosystem. Further, individual agencies evaluate separately the impacts of various activities which might affect the resources, and cumulative impacts may be overlooked. Moreover, without marine sanctuary regulations, certain activities which could potentially be damaging, such as the disposal of trash in sanctuary waters, are not subject to any regulatory authority. Finally, as a result of designation as a marine sanctuary additional enforcement resources could become available for the area.

Alternatives Under Consideration

The major alternatives are to (1) designate or (2) not designate a marine sanctuary. Impacts of designation are explained above. Non-designation could result in environmental degradation because of the projected increase in use of these waters and the lack of any specific protection mechanism focused on this area. A number of restrictions applying under existing State and Federal laws would continue to apply to the activities in question (see Related Regulations and Actions), however, lack of coordination could reduce their effectiveness.

Another alternative would be to designate a smaller or larger sanctuary than that proposed, which could range from a sanctuary extending 3 nmi from the limit of the territorial waters around the Islands to an area including the entire Santa Barbara Channel and extending 12 nmi around the Islands. Within any area proposed, there are a number of alternatives as to the activities subject to regulation and the nature of the restriction placed on each activity.

Summary of Benefits

Marine sanctuary designation would result in enhanced preservation of ecological, recreational and aesthetic resources, particularly endangered species, marine mammals and birds, and the habitats of these populations. Fishing and recreation activities, two major sources of income for the region, also depend on the continued health of the marine resources of the area. In 1975 commercial fishermen landed 12,248,000 pounds of fish and shellfish from the waters around the northern Channel Islands and Santa Barbars Island. The California Department of Fish and Game reported that 187,500 angler days occurred in the Channel (from partyboats) in 1970 with a catch of 517,558 fish and estimated and related expenditures of $2,294,000. The natural resources of the island waters are also a factor in attracting tourists other than recreational fishermen to the Santa Barbara area, but that factor cannot be easily quantified. The Santa Barbara Chamber of Commerce estimated the total tourist expenditures in the County at $60,534,520 in 1973. Most of these expenditures occur on the mainland rather than island, coast, and waters. The designation of a marine sanctuary in these waters would help assure protection for the natural resources upon which these economic activities partially depend.

The proposed prohibition of petroleum operations on leases acquired on or after the effective date of the sanctuary designation will ensure a partial buffer of 6 nmi between petroleum development and the nearshore resources, to provide increased time and distance for natural forces to weather and volatilize oil spills and for at-sea cleanup and oil spill containment. The buffer also reduces the visual and acoustic disturbances of petroleum development which affect both the marine mammals and seabirds and the aesthetic qualities of the Islands.

The proposed prohibition of discharges and littering will enhance the area's aesthetic features and will reduce the threat to living marine resources in the sanctuary from such deposits. The suggested restrictions on alteration of or construction on the seabed and on navigation and operation of vessels and aircraft will reduce disturbance of marine mammals and seabirds which could affect their behavior and possibly their reproductive success. The proposed prohibition on removing or harming historical or cultural artifacts will preserve these resources for future study.

Summary of Costs

These proposed regulations will impose minimal costs except for those that can be associated with the prohibition of oil and gas operations on tracts leased after the effective date of

the regulations. The extent of these costs is unclear for the following reasons:

First, reliable data on the hydrocarbon reserves within the sanctuary is not available. Approximately half of the proposed sanctuary has never been condidered for leasing and NOAA has no resource estimates in these areas. In the remaining half, there are 43 unleased tracts, 24 of which were considered for Lease Sale #48 and then withdrawn (Leases in the other 19 tracts have expired due to insufficient attempts at development—possibly indicating low resource potential). For the 24 withdrawn tracts, the U.S. Geological Survey has estimated reserves of 5.7 million barrels of oil and 8.9 billion cubic feet of gas, but this was before revising its estimate for the entire Lease Sale #48 area downward by about 84 percent. These figures are the only available indication of the total value of the area.

Secondly, the extent of which any resources, whatever their potential, will be foregone as a result of the proposed prohibition is questionable. At least some of the available reserves could be recovered by slant drilling from outside the sanctuary despite any prohibition. Eleven of the forty-three currently leased tracts fall only partially within the Sanctuary. Furthermore, in many areas where recovery will be infeasible under the prohibition, it would also be blocked by other agencies. The Department of the Interior has already withdrawn 24 tracts, and the number of tracts it would actually offer for lease cannot be predicted. The State of California prohibits oil and gas development within its waters around four of the five islands in the proposed sanctuary.

Finally, to the extent that the capital available for the development of oil and gas reserves in the Southern California Bight can be directed to other tracts outside the sanctuary, the costs of lost profits attributable to the prohibition would be minimal. The reserves in the sanctuary would not necessarily be unavailable in the future, and their value should increase.

Sectors Affected

Federal and State Government

The primary sectors affected are the Federal Government and the State of California because of the loss of possible revenue from lease sales. It is likely that the industry will not bid on affected tracts located completely within the sanctuary if those tracts are offered in future lease sales and will either not bid or will offer reduced bids on tracts located partially within the sanctuary. As we explained above, the actual loss of revenues cannot be estimated at this time. The Department of Interior estimated the social value of the 24 tracts removed from Sale 48 to be $1 million based on the reduced U.S. Geological Survey (USGS) resource estimates. The social value is the saving gained by producing oil domestically rather than importing it. The Federal government obtains most of these savings through leases, royalties, and taxes.

Industry

The petroleum industry would forego the profits it could otherwise realize from the development of the affected tracts. Companies that have leased tracts in the area include Texaco, Chevron, Exxon, Mobil, Continental, Union, Phillips, and Champlin oil companies. However, as discussed above, in the short term this prohibition will impose only minor losses, if any, on the industry, because operators can channel their capital for exploration and development to other areas of the Southern California Bight.

Finally, development on tracts and portions of tracts within six nmi of the Islands which are already leased would have to meet certain provisions for oil spill containment equipment in excess of those imposed by USGS operating order #7. However, since it is likely that in many cases the California Coastal Commission would also require identical equipment, NOAA's minimum may not impose any additional cost.

Related Regulations and Actions

Internal: None.

External: A number of State and Federal agencies have regulatory authority over the activities and resources subject to the proposed regulations. The major ones are:

State

(A) The California Coastal Act of 1976, (Cal. Publ. Res. Code § 3000 *et seq.*) establishes comprehensive policies for the protection of coastal resources and the management of orderly economic development. These policies apply to activities within State waters and to Federal activities and Federally licensed or funded activities with requisite effects on the coastal zone.

(B) The California Fish and Game Code, § 1580 *et seq.*, establishes ecological reserves in a portion of the proposed sanctuary. Within these reserves, the State can control activities that threaten the resources.

(C) The Water Quality Control Act, (Cal. Water Code § 13300 *et seq.*) regulates water quality in state waters, particularly in Areas of Special Biological Significance which are designated within 1 nmi from the islands.

(D) The Cunningham—Shell Tidelands Act, as amended (Cal. Publ. Res. Code § 6850 *et seq.*), establishes State regulation of offshore oil and gas development. The California legislature has created an oil and gas sanctuary generally prohibiting oil and gas development within 3 nmi of the islands, except in Santa Barbara.

Federal

(A) The Fishery Conservation and Management Act, (16 U.S.C. § 1801 *et seq.*) provides for fishery management between 3 and 200 miles.

(B) The Endangered Species Act, (16 U.S.C. §§ 1531–1543) provides protection for listed species, of which several are located within the proposed sanctuary.

(C) The Marine Mammal Protection Act (16 U.S.C. § 1361 *et seq.*) provides for the protection and management of marine mammals.

(D) The Clean Water Act, (33 U.S.C. § 1342) authorizes the Environmental Protection Agency to issue National Pollution Discharge Elimination System (NPDES) permits regulating the discharge of any pollutant into navigable water from a point source.

(E) The Outer Continental Shelf Lands Act (43 U.S.C. § 1331 *et seq.*) gives the Secretary of the Interior primary responsibility for managing OCS oil and gas activities while requiring a variety of measures to mitigate impacts and protect living marine resources.

Active Government Collaboration

OCZM has worked closely with the State on the development of this proposal. OCZM wrote an Issue Paper at the request of the State, and is proceeding further to write a DEIS on the proposal as the direct result of the recommendation of the State. Representatives from State and local government were sent copies of the Issue Paper and preliminary draft chapters of the DEIS and will be sent the DEIS, the NPRM, and all other applicable documents. OCZM is consulting with the State on the feasibility of joint State/Federal sanctuary management.

OCZM held two meetings with Federal agencies on January 23 and April 13 in accordance with the new regulations of the Council on Environmental Quality to determine the issues involved. OCZM is inviting the Departments of Energy and Interior, the Environmental Protection Agency, the Coast Guard, and the Navy to be

cooperating agencies in the preparation of the DEIS. The Department of Energy has already agreed.

OCZM regulations require active consultation with all relevant agencies throughout the remaining process (15 CFR 922.24(b), 922.25, 922.26(a)—44 FR 44831, July 31, 1979).

Timetable

NPRM—November, 1979.
Notice of Availability of DEIS in Federal Register—November, 1979.
Hearings in California—December, 1979.
Public Comment—60 days following issue of NPRM and DEIS.
Notice of Availability of FEIS—April, 1980.
Final Rule—April, 1980.

Available Documents

Issue Paper on Possible California Marine Sanctuary Sites, distributed in December 1978, is available from the agency contact identified below. Transcripts of the following meetings are also available.

Public workshop in Santa Barbara, California—April, 1978.

Public Comment on Issue Paper (California Coastal Commission hearings)—February, March, April, 1979.

Prelimary Draft Chapters "Description of the Affected Environment (Sec. E)" and "Status Quo (Sec. F-1. a & b)" of the DEIS dated May 24 are available from the agency contact identified below.

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DEPARTMENT OF ENERGY

Buildings and Community Systems Division

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Neighborhoods, Voluntary Associations and Consumer Protection

Energy performance standards for new buildings

Legal Authority

Energy Conservation Standards for New Buildings Act of 1976, 42 U.S.C. §§ 831-6840; Department of Energy Organization Act, § 304, 42 U.S.C., § 7101, *et seq.*

Statement of Problem

A major goal of the National Energy Plan (which by law DOE must submit to Congress annually) is to reduce our dependence on uncertain and expensive foreign oil supplies by reducing the growth in demand for energy used in buildings. The Department of Energy (DOE) and the Department of Housing and Urban Development (HUD) are pursuing this goal through a number of conservation programs. The intent of this regulation is to reduce the amount of energy consumed in new buildings by requiring construction which would make them energy efficient. One-third of all energy consumed in the U.S. is now used in buildings, and inefficient building designs and equipment waste about forty percent of this energy.

The regulations DOE is developing will set energy consumption "budget" levels which buildings must be designed to meet. Energy consumption will be measured on the basis of building design, in terms of consumption per square foot of floor space per year. These "design energy budgets" will take into account the differences in energy consumption required by climate and by the different functions of buildings.

Current plans call for HUD to implement and administer the regulations DOE will issue.

Alternatives Under Consideration

According to the legislation the requirements of the Building Energy Performance Standards permit consideration of few alternatives. However, these regulations are performance-oriented, and adapt to differences in regional conditions and building functions. The regulation does not require certain construction techniques. This is an innovative "alternative" approach, which will allow the private sector a great deal of flexibility.

The main alternatives which we are now considering within this program deal with (1) the way in which energy use is measured, and (2) the method of implementation.

The energy consumption measured at the building site does not indicate the loss which occurred in transmitting the energy to the building site. The proportion of this loss varies by energy type. It takes about seven percent more energy to deliver one British Thermal Unit (Btu) of oil to a building than it does to deliver one Btu of natural gas. Almost two Btu's of energy are lost in delivering one Btu of electricity. These figures are national averages, and they can be higher or lower for specific localities, depending on fuel availabilities, transportation distance, and the demand for energy at each locality. Basing design energy budgets only on the energy consumption at a site would overlook a significant amount of energy consumption.

An alternative is to relate the energy that is actually used to the amount of energy that is consumed at the building site, and to set standards based on the actual use. This would be done through the use of Resource Utilization Factors (RUFS) to account for energy losses, and Resources Impact Factors (RIFS) to account for economic and environmental impacts. These factors would be applied to the energy used to give an adjusted total energy use.

Another alternative would be to relate the use of each type of enrgy to the "marginal cost" of that type of energy, and to set standards based on marginal cost. (Marginal cost includes the costs of added energy facilities, and the loss of energy involved in conversion to different forms and in transmission or transportation to the point of use.) It is easier to determine marginal costs for specific localities than to get RUF and RIF values.

Alternative implementation methods range from a voluntary (no Federal sanctions) approach through a mandatory (strong sanction) approach. Research on the effectiveness of different implementation methods is underway.

Summary of Benefits

Buildings which meet these energy budgets will consume about 35% to 40% less energy than recently constructed buildings. We expect this to result in an energy savings of 3.2 quadrillion Btu's per year by the year 2000, and cumulative savings of 21 quadrillion Btu's by the year 2020. About 60 quadrillion Btu's are now used annually in the U.S. (A quadrillion Btu is 10 British Thermal Units. A Btu is the amount of energy required to raise one cubic centimeter of water one degree fahrenheit at specified pressure and temperature levels.) The standards that we will propose may, by 1990, increase the real Gross National Product by 0.1 percent, increase employment by 1.0 percent, and improve the balance of trade by 5 percent. These effects are primarily the result of increased energy savings and reduced oil imports.

Summary of Costs

Construction costs for all new buildings will increase slightly. For new commercial buildings, we expect the increase to be about 2.5 percent. The cost of a typical residential building will increase slightly; the cost of a 1,640

square foot one-story home will increase, on the average, about $1200. However, the energy savings that are achieved under the regulation will more than offset these increased construction costs. The added cost to enforce the standards may be about $22 million per year. An estimated $38 million per year is currently being spent to enforce existing energy standards for buildings. These existing standards would remain in effect.

Sectors Affected

The Standards will apply to the building industry. They will also affect the general public, because the cost of constructing new buildings will increase by the amounts we estimated above. There may be an increase in the resale price of existing buildings, since these buildings compete in the market with new buildings that will become more expensive.

If sanctions are provided, they may involve the loss of Federal benefits to governmental jurisdictions, rather than Federal penalties to builders. Therefore, with a sanction, the rule could directly affect all governmental jurisdictions that have new building activity. These include the 50 States, four territories, 16,000 permit issuing jurisdictions within the states and territories, and a large but unknown number of local jurisdictions that do not control construction activity within their own boundaries.

Related Regulations and Actions

Internal: DOE: DOE is developing a Model Building Code. This model code specifies detailed requirements for building components (e.g., "install six inches of attic insulation") that are consistent with the performance standards under development.

HUD: Minimum Property Standards for One and Two Family Dwellings, Department of Housing and Urban Development (HUD); Minimum Property Standards for Multifamily Dwellings, HUD Handbook 4910, Revision 5, April 1977; Proposed Increase in Thermal Insulation Requirements for the Minimum Property Standards for One and Two Family Dwellings, 43 FR 17371–17374, April 24, 1978; Farmers Home Administration, Form 424.1, 7 CFR 1804, Subpart A, Appendix D, Construction Standards.

External: None.

Active Government Collaboration

The Department of Energy, The Department of Housing and Urban Development, and the National Bureau of Standards are participating in activities related to the development of these regulations.

Timetable

NPRM on standards (DOE)—fourth quarter 1979.
Final Rule on standards (DOE)—February, 1980.
Final Rule effective—60 days after we issue the final rule.
NPRM on implementation and enforcement (HUD)—fourth quarter 1979.
Public Comment—for at least 60 days following NPRM.
Final Rule on implementation and enforcement (HUD)—second quarter 1980.
Regulatory Analysis—available upon publication of the DOE NPRM.

Available Documents

Phase One/Base Data for the Development of Energy Performance Standards for New Buildings (Final Report), PB–286 898;
Climatic Classification, PB–286 900;
Data Collection, PB–286 902;
Residential Data Collection and Analysis, PB–286 899;
Data Analysis, PB–286 901;
Building Classification, PB–286 904;
Sample Design, PB–286 903, January 12, 1978.
Documents are available from the Agency contact listed below.

Agency Contact

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DOE—Conservation and Solar Energy

Energy conservation program for consumer products (other than automobiles)

Legal Authority

Title III, Part B of the Energy Policy and Conservation Act (P.L. 94–163) as amended by the National Energy Conservation Policy Act (P.L. 95–619)

Statement of Problem

Major consumer products now being manufactured are less energy efficient than they could be. The Department of Energy's (DOE) Energy Conservation Program for Consumer Products (other than automobiles) seeks to reduce energy consumption (or slow down increases in energy consumption) by improving the operating efficiencies of major household consumer products. The Energy Policy Conservation Act (EPCA), as amended by the National Energy Conservation Policy Act (NECPA), establishes thirteen product categories for review. These product categories are refrigerators and refrigerator-freezers, freezers, dishwashers, clothes dryers, water heaters, room air conditioners, home heating equipment (not including furnaces), television sets, kitchen ranges and ovens, clothes washers, humidifiers and dehumidifiers, central air conditioners, and furnaces.

The EPCA mandates that DOE develop test procedures for determining compliance with any performance standards it may ultimately issue for the products listed above. If DOE issues standards, these standards will establish the minimum level of energy efficiency required to be achieved by the covered product, but will not prescribe the methods, designs, processes, or materials to be used to achieve the particular efficiency level. This will minimize Federal intrusion into the marketplace. The EPCA further directs that any standards DOE issues be designed to achieve the maximum improvement in energy efficiency which is technologically feasible and economically justified. Manufacturers will be required to certify that their products are in conformance with the standards by testing them in accordance with DOE test procedures before they can place such products on the market.

Alternatives Under Consideration

DOE's analysis will examine the implication of setting standards on a regional rather than a national basis. Regional standards would require greater energy efficiency in areas where products were used more intensively. For example, a more stringent standard for air conditioners could be justified in the South than in New England. DOE belives, however, that this approach would be unworkable and unduly burdensome.

DOE's analysis will also consider what would happen if no mandatory standards were set. Under EPCA the Federal Trade Commission (FTC) will institute a program of mandatory

efficiency labeling of appliances. However, DOE is mandated to set minimum efficiency standards regardless of the effectiveness of the FTC labeling program.

Summary of Benefits

Implementation of Federal standards for energy efficiency will assure that new consumer products are built in a way which reflects current energy costs, so that these products will use less energy (per product). DOE expects these more efficient products to replace existing units gradually over a 15 year period. As new units replace old, national energy savings will increase. The total energy consumed by consumer products (other than automobiles) will of course also be affected by the numbers of products in use.

Summary of Costs

The statute requires that standards issued under this program be economically justified. Thus, while the program may increase the purchase price of new consumer products, energy savings will offset any increased *purchase* price. This does not mean that energy efficiency improvements will necessarily be so great as to offset future increases in energy costs.

Sectors Affected

This program will affect manufacturers of consumer products and purchasers of these products. Utilities will sell less energy for use in each product as the efficiency of the stock of appliances is improved; however, total sales will also depend on the number of appliances in use.

Related Regulations and Actions

Internal: Energy Performance Standards for New Buildings; Residential Conservation Service Program. See entries elsewhere in this calendar.

External: Minimum Property Standards for One and Two Family Dwellings, Department of Housing and Urban Development.

Active Government Collaboration

DOE and the FTC have collaborated in the development of test procedures for these products.

Timetable

NPRM for nine products, and draft regulatory analysis—March 1980.
Draft Environmental Impact Statement or Environmental Assessment—March 1980.
Public Comment—following NPRM.
NPRM for four products, and draft regulatory analysis—fourth quarter, 1979.
Public Comment—following NPRM.
Final Rule for nine products, and final regulatory analysis—December 1980.
Final Rule for four products, and final regulatory analysis—November 1981.
Final Rule effective—not earlier than 180 days after we issue final rules.

Available Documents

Test Procedures:

1. Refrigerators, Refrigerator-freezers—42 FR 46140, September 14, 1977.
2. Freezers—42 FR 46140, September 14, 1977.
3. Dishwashers—42 FR 39964, August 8, 1977.
4. Clothes Dryers—42 FR 46140, September 14, 1977.
5. Water Heaters—42 FR 54110, October 4, 1977.
6. Room Air Conditioners—42 FR 27896, June 1, 1977.
7. Home Heating Equipment—43 FR 20108, May 10, 1978.
8. Television Sets—42 FR 46140, September 14, 1977.
9. Kitchen Ranges and Ovens—43 FR 20108, May 10, 1978.
10. Clothes Washers—42 FR 40802, September 28, 1977.
11. Humidifiers and Dehumidifiers—42 FR 55599, October 18, 1977.
12. Central Air Conditioners—42 FR 60150, November 25, 1977.
13. Furnaces—43 FR 22410, May 10, 1978.
14. Sampling Requirements of Consumer Products Test Procedures—44 FR 22410, April 13, 1979.

Standards:

ANPRM Regarding Energy Efficiency Standards for Nine Types of Consumer Products—44 FR 49 (January 2, 1979).

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DOE—Economic Regulatory Administration

Amendments to Puerto Rican naphtha entitlements regulations

Legal Authority

Emergency Petroleum Allocation Act of 1973, 15 U.S.C. § 751 *et. seq.*

Statement of Problem

During the 1950's and 60's the Federal Government and the Puerto Rican government encouraged the development of a refining and petrochemical industry in Puerto Rico. Commonwealth Oil Refining Company (CORCO), Phillips, Sun, and Union Carbide were among the major firms which invested large amounts of capital in refinery facilities, based on the tax relief afforded by the Puerto Rican government and the allocation of substantial quantities of low cost foreign crude oil and naphtha (a volatile, colorless, distillate product between gasoline and refined oil) by the Federal Government. Both naphtha and crude oil are "feedstocks" convertible into one or more end products in the process of refinery operations and petrochemical production.

Two major considerations governed the joint policy of the Puerto Rican and the Federal Government towards the establishment of this refining capacity. First, the policy was based on the availability of low-cost imported feedstock, particularly naphtha, which provided a cost advantage over petrochemical producers on the mainland. This advantage was needed to offset the higher shipping and other costs of starting up the industry in the relatively underdeveloped economy of Puerto Rico. A second major consideration was that the new refinery facilities would expand employment and provide Puerto Rico with fuel for manufacturer, transportation, and agriculture.

Since the 1960's, the petrochemical industry in Puerto Rico has grown to such an extent that it now contributes greatly to U.S. petrochemical capacity and to the economy of Puerto Rico. In 1977, petroleum related industry in Puerto Rico contributed more than $2 billion to the island's economy, approximately one-third of its total income. In addition, 10 percent of U.S. petrochemical output is now located in Puerto Rico.

Despite these gains, Puerto Rican oil refineries have been severely affected by the world wide increase in the price of imported crude oil, coupled with the imposition of price controls on domestic crude oil by the Federal Government.

The combination of soaring prices for imported naphtha and crude oil, joined to Federal regulatory policy which enabled mainland refiners to purchase cheaper domestic crude oil, has reversed the feedstock cost advantage that the Puerto Rican petrochemical industry formerly enjoyed. Mainland competitors now pay less for feedstocks than do Puerto Rican refiners.

To lessen the competitive disadvantage to Puerto Rican companies of higher feedstock costs, the Federal Energy Administration (FEA) amended the entitlements program on July 20, 1976, to permit Puerto Rican petrochemical producers to receive entitlement benefits for imported naphtha feedstocks. (An "entitlement" is a credit given by DOE to a refiner, and is equivalent to the difference between the average (volume weighted) delivered cost per barrel of imported crude and stripper crude, and the average (volume weighted) delivered cost per barrel of so-called "old" oil, i.e., oil which is the lesser of 1972 or 1975 production on a property, reduced by a decline factor.) The entitlement credit, in effect, reduces the price or purchased feedstocks. FEA determined that it would be inappropriate to grant the full crude oil entitlement benefit to naphtha imports in months when the differential between the prices of imported and domestic naphtha is less than that month's per-barrel entitlement value. Accordingly, the rules the FEA adopted tie the entitlement credit for naphtha imported into Puerto Rico to the difference between the average (volume weighted) cost for imported naphtha and an imputed domestic naphtha price. This imputed value is set at 108 percent of the average (volume weighted) cost of crude oil to refiners. (It is necessary for the government to impute this price because very little naphtha is sold domestically.) The maximum entitlement value that can be received is still limited to the actual per-barrel entitlement value of the crude oil.

These rules are now the responsibility of the Department of Energy (DOE), and are administered by the Economic Regulatory Administration (ERA) within DOE. DOE believes that two factors in the current regulations are causing problems: (1) the naphtha entitlement value is limited to a crude oil entitlement value, and (2) the factor used to impute the domestic naphtha price is too low. FEA never expected that it would need to grant more than a full crude oil entitlement, since, historically, world naphtha prices have paralleled crude oil prices. However, during the last year the prices for imported naphtha have increased much faster than those for crude oil. Further, ERA's review of current data on naphtha prices and crude oil costs shows that the factor presently used to impute the domestic naphtha cost is much too low. As a result of these factors, approximate feed-stock cost equalization (the goal of the entitlements system) is not given to firms that import naphtha at their current prices.

In recognition of the problems facing the petrochemical industry in Puerto Rico, DOE's Office of Hearings and Appeals (OHA) issued, on May 16, 1979, a proposed Decision and Order which would have made an exception to existing rules to provide relief for a period of six months to those petrochemical companies in Puerto Rico that import naphtha. This interim relief was proposed in order to provide ERA with sufficient time to address these issues through the rulemaking process. The relief OHA proposed would have given two entitlements for each barrel of imported naphtha used in Puerto Rican petrochemical plants. On August 15, 1979, OHA decided to reverse their earlier finding, based upon their belief that the Puerto Rican petrochemical industry was not experiencing extraordinary financial difficulties which required the immediate attention of DOE. Thus, they recommended that the difficulties described by the petitioners be handled through the rulemaking process.

Alternatives Under Consideration

DOE will consider several options for better calculating the imputed cost of domestically produced naphtha. The cost of naphtha to the mainland domestic petrochemical industry is a central issue is determining the appropriate level of price protection that should be afforded through the entitlement program to maintain a competitive petrochemical industry in Puerto Rico. These Puerto Rican producers find it difficult to compete with mainland domestic firms because these mainland firms have access to naphtha produced from lower cost domestic crude oils.

The possible approaches to imputing a domestic naphtha price that we will examine include:

- using the current approach of imputing a price based on domestic crude oils, but periodically changing the factor to reflect changes in world market naphtha prices;
- basing the imputed naphtha price on the prices in alternative but related markets, such as the market for unleaded regular gasoline, jetfuel, or heating oil;
- using the current approach, but comparing international naphtha prices to international costs of low-to-medium sulfur crudes rather than domestic crude costs in setting an imputed cost factor.

In addition to examining changes in the ways of calculating the imputed cost of domestically produced naphtha, DOE is considering the possibility of removing the current restriction on a naphtha entitlement value. Currently, the naphtha entitlement cannot exceed the value of a crude oil entitlement. In light of the increasing prices of naphtha worldwide, this may no longer be reasonable.

Summary of Benefits

These proposals should increase the ability of the Puerto Rican petrochemical industry to compete with petrochemical producers located on the mainland. The Puerto Rican petrochemical industry maintains that if no regulatory changes are made to equalize their naphtha costs with those fo firms operations on the Gulf Coast, they will be forced either to seriously trim their operations or to incur large operating losses. In fact, a major Puerto Rican petrochemical plan, Puerto Rican Olefins, has already closed. As we formerly stated, the development of refining and petrochemical facilities has had a great impact upon the economy of Puerto Rico. Thus, the proposed changes would have a direct positive effect on Puerto Rico's entire economy.

The proposals should reduce the costs of naphtha-derived petrochemicals to U.S consumers by a small amount.

Summary of Costs

None of the proposed changes to the entitlements program will increase ERA's compliance or administrative costs. There will be no added reporting requirements for the petroleum industry. However, by providing larger entitlements benefits to naphtha, credits available for oil are reduced. This would raise the price of oil products to U.S consumers by a very small amount.

An increased naphtha entitlement value might also have the adverse effect of increasing the price of naphtha in the world marketplace.

Sectors Affected

The Puerto Rican petroleum industry would be most directly affected. Domestic refiners and consumers of petrochemicals and other oil producers will be affected indirectly.

Related Regulations and Actions

None.

Active Government Collaboration

None.

Timetable

NPRM—Draft Regulatory Analysis—fourth quarter, 1979.
Public Comment—60 days following NPRM.
Final Rule—first quarter, 1980.
Final Rule effective—60 days after it is issued.

Available Documents

None.

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DOE—ERA

Amendments to the emergency provisions of the crude oil buy/sell program

Legal Authority

Emergency Petroleum Allocation Act of 1973, 15 U.S.C. 751 *et seq.*

Statement of Problem

The crude oil buy/sell program is designed to implement provisions of the Emergency Petroleum Allocation Act of 1973 which require the protection of the competitive viability of small refiners. The program requires the fifteen major, integrated refiners (i.e., refiners with integrated systems of exploration, production, transportation, and marketing) to sell crude oil to small refiners. The size of the major refiners enables them to obtain access and favorable terms in negotiating for oil supplies. By contrast, small refiners lack access to adequate supplies of domestic and foreign crude oil and have difficulty obtaining desirable terms.

Under the terms of this program, DOE has made emergency allocations of crude oil totalling over 21 million barrels to small refiners during the first eight months of 1979. These allocations were required by the weak position of the small refiners in the market and by the continued tightening of world crude oil supplies. DOE has received reports from many small refiners that their contracts for crude oil supply have been broken and that they were unable to obtain enough foreign crude oil at any price. Thus, the crude oil buy/sell program is needed to maintain the competitive position of the small refiners.

At the same time, the fifteen major refiners, required to sell oil under the program, contend that the emergency allocations have caused them undue hardship. They advance two principal objections against the present administration of the program. First, the major refiners contend that the present method of determining the price at which oil is to be sold to small refiners prevents them from recovering their full costs of acquiring that oil. Under the present pricing system, refiner-sellers may only charge the average weighted landed cost of crude oil (i.e., the average price of oil purchased during the month of sale, both imported and domestic). This pricing scheme does not reflect the actual cost of crude oil purchases in periods of rapidly escalating prices, because supplies must often be replaced at much higher costs. Second, refiner-sellers state that emergency allocations have required them to reduce output from their refineries. The major refiners have been compelled to absorb the expense of unused refinery capacity.

The crux of the problem is to maintain the crude oil buy/sell program, while finding a way to alleviate the burdens on the major refiners that we have described. There appears to be a need to distribute sales obligations in a more equitable manner, and to allow refiner-sellers to charge prices which are closer to the market rate.

Alternatives Under Consideration

DOE has proposed two amendments to the crude oil buy/sell program. One of these amendments would expand the classification of refiner-sellers under the program to include all refiners with refining capacity in excess of 175,000 barrels per day. There are seven large "independent" refiners that fall into this classification. Including the large independent refiners in the crude oil buy/sell program would increase the number of refiner-sellers from 15 to 22 (15 major refiners plus 7 large independent refiners), thereby distributing the sales obligations of the program among a greater number of participants. Second, DOE proposed that refiner-sellers be allowed to charge the actual landed cost of crude oil to refiners with a refining capacity in excess of 50,000 barrels a day (B/D) for emergency allocations only. Refiner-buyers with a refining capacity less than 50,000 B/D would continue to pay the weighted average price.

DOE is exploring the following range of alternatives in relation to a pricing mechanism which would reduce burdens the program imposes on major refiners:

(a) *No Action.* We could keep the present pricing mechanism, charging refiner-sellers the monthly weighted average landed cost. This option would be reasonable if shortages of crude oil supply disappeared and the rapid escalation in spot market prices eased.

(b) *Other Means of Calculating Price.* We could attach a surcharge handling fee to the current weighted average cost of crude oil sold under the buy/sell program. The current handling fee (paid by buyers to sellers) is $0.05 per barrel; the handling fee under standby emergency allocation regulations is $0.25 per barrel.

(c) *Different Basis for Pricing Cutoff.* We could redefine the separate pricing scheme for refiner-buyers with a refining capacity of more that 50,000 barrels per day to cover refiners with larger refining capacities.

DOE is exploring the following alternatives with relation to the proposed expansion of the refiner-seller list.

(a) *No Action.* If the current shortfall of crude oil supply stabilizes and if emergency allocations are greatly reduced, we could keep the refiner-seller list as it is, consisting of only the fifteen major integrated oil companies.

(b) *Implementing Standby Regulations.* We have adopted standby rules for the allocation of crude oil and we could make them effective. We could implement this program if the Administrator of ERA determined that the crude oil supply situation had worsened.

(c) *Product Allocation.* Instead of allocating crude oil to refiner-buyers, we could allocate refined products, on an equitable basis.

(d) *Large Independents Selling to Only Certain Small Refiners.* We could require the large independents to sell crude oil only to refiner-buyers with refining capacities greater than 50,000 B/D. Thus, if the proposed price change for small refiners is implemented, these new sellers could recover the total cost of crude sold under the program.

Summary of Benefits

The proposed changes could result in several benefits. Expansion of the refiner-seller list will increase the sources of crude oil to small independents. Buyers would then be able to buy crude from twenty-two rather than from just the fifteen firms included in the current program. The average number and volume of sales per refiner-seller would decrease. The proposal to increase the price of crude oil sold by refiner-sellers would result in

a price closer to the market price in such sales. This might be fairer to the major integrated oil companies, and because the price would be higher it might provide more incentive for refiner-buyers to order their own crude supplies. For these reasons, refiner-sellers would probably be more willing to negotiate sales with potential refiner-buyers.

Summary of Costs

The costs of compliance and administration associated with the proposed amendments would be slight. Only the seven largest independent refiners, if they are included as sellers, would face added reporting requirements.

Sectors Affected

The regulations would impose only minimal costs on the industrial and public sectors. Including the large independents as sellers and changing the price of the crude sold would probably increase the price of crude sold to the refiner-buyers. The increase in crude costs legally can and probably would be passed on to the consumer. The impact on prices would be slight. Including large independent refiners as sellers would only have a small financial effect on them as long as they could pass through cost increases for their feedstock in these sales.

The sector of the petroleum industry that would benefit from the proposed changes, as intended, would be the fifteen major, integrated refiners. Refiner-buyers would pass on costs to consumers, who would probably pay slightly higher prices.

Related Regulations and Actions

None.

Active Government Collaboration

None.

Timetable

Further NPRM—fourth quarter 1979.
Draft Regulatory Analysis—fourth quarter 1979.
Public Comment—60 days following NPRM.
Final Rule—fourth quarter 1979 and/or First Quarter 1980.
Final Rule effective—60 days after final rule is issued.
Regulatory Analysis—fourth quarter 1979.

Available Documents

NPRM—44 FR 26060 (May 14, 1979).

Transcripts and public comments of the public hearing held on May 31, 1979.

All documents are available in the DOE Freedom of Information Reading Room, Forrestal Building, Room GA-142, 1000 Independence Avenue, S.W., Washington, D.C. 20585.

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DOE-ERA

Gasohol marketing regulations

Legal Authority

Emergency Petroleum Allocation Act of 1973, 15 U.S.C. § 751 *et seq.*

Statement of Problem

Gasoline supplies can be stretched further if increased use is made of gasohol, which is a blend of ethanol (a kind of alcohol) and unleaded gasoline. Because the ethanol in gasohol can be produced from domestic resources of grain, the President has set increased use of gasohol as a national goal. This would reduce our dependence on foreign oil.

Existing Federal regulations on the allocation of motor gasoline control the distribution of gasoline in the U.S. These controls are important primarily during supply shortages. Unless these rules provide for supplies to new gasohol blenders, it will be difficult for these new businesses to plan production and distribution of gasohol, since their suppliers might be required to cut them off during shortages to supply customers who have allocation rights. Therefore, the Department of Energy (DOE) is considering a rule which would require gasoline suppliers to furnish gasoline to gasohol blenders.

Alternatives Under Consideration

DOE may do nothing at this time, or may delay any action. The production of unleaded gasoline is expected to increase, which would make DOE's allocation regulations less important, and make it easier for blenders to secure supplies in the market on their own. This alternative might also allay fears that the allocation of unleaded gasoline to gasohol blenders will reduce supplies of gasoline to other distributors.

The Department is also considering ending price and allocations controls on motor gasoline, which would allow gasohol blenders to compete in the market for the gasoline supplies they need.

Summary of Benefits

Allocation of unleaded gasoline for blending with ethanol to produce gasohol could provide a regulatory framework within which ethanol fuel production could increase, perhaps from the present 60 million gallons per year to as much as 300 million gallons per year by 1982. Gasohol use may eventually reach three billion gallons per year, or three percent of present gasoline consumption, as a result of this and other measures. In addition, use of gasohol would also reduce dependence on foreign oil. (See the Report of the Alcohol Fuels Policy Review, DOE, June 1979.)

Summary of Costs

Allocation of unleaded gasoline to gasohol blenders would reduce the amount of unleaded gasoline available to other distributors, though not to end users. During a sustained shortage it is possible that some firms would become blenders primarily to secure access to unleaded gasoline; this would distort the marketplace and could result in uneconomic ethanol production for gasohol blending.

Because we expect ethanol production and blending to occur primarily in the Midwest, near resources to produce ethanol, this rule could result in a shift of gasoline supplies to the Midwest at the expense of other regions, unless present rail-freight can evenly distribute supplies throughout the nation during the start-up stages of this new industry. DOE has not yet determined whether the gasohol, once blended, would flow back to the regions affected by reduced gasoline supplies.

Sectors Affected

Gasoline consumers will be affected signficantly if this rule changes regional fuel availability. Otherwise, consumers will supply experience an increased availability of gasohol. Any action would affect gasoline resellers and refiners, since they would face a new requirement to sell unleaded gasoline to new purchasers who are gasohol blenders. The other customers of these suppliers would face reduced availability.

This new rule will require the Department of Energy's regional offices to process applications from gasohol blenders. However, it is unlikely that this would require new staff or budget authority. Present staff who have received such applications now await criteria to evaluate them.

Related Regulations and Actions

DOE has already provided certain price incentives for the marketing of gasohol. DOE price regulations permit gasohol resellers and retailers to pass through as product costs the cost of nonpetroleum-based alcohol blended

with gasoline (43 FR 24265, June 5, 1978). DOE has issued a proposed rule to permit refiners to allocate all of the costs of purchasing or producing alcohol to gasohol, or among the various grades of gasoline (44 FR 32622, June 6, 1979). DOE has issued a proposed rule to offer an entitlement benefit (a payment related to the difference in costs between imported and domestic crude) to alcohol producers or gasohol blenders automatically rather than on an application basis (44 FR 32225, June 5, 1979).

Active Government Collaboration

None.

Timetable

NPRM—fourth quarter, 1979.
Public Comment—to follow NPRM.
Final Rule—to be determined.
Regulatory Analysis—draft with NPRM, final with Final Rule.

Available Documents

DOE's Report of the Alcohol Fuels Policy Review, June, 1979 (prepared by the Office of the Assistant Secretary for Policy and Evaluation).

This document is available from:
National Technical Information Service (NTIS)
U.S. Department of Commerce
5285 Port Royal Road
Springfield, Virginia 22161
Price: Printed copy—$7.25; Microfiche—$3.00

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DOE—ERA

Incentives for refinery investment

Legal Authority

The Emergency Petroleum Allocation Act of 1973, 15 U.S.C. § 751 *et seq.*

Statement of Problem

In general, it is the Department of Energy's (DOE) policy that price regulations provide reasonable incentives to refiners to make the most efficient possible use of crude oil. Some refiners claim that pricing regulations relating to refinery investment do not provide such an incentive. Specifically, they claim that the pricing regulations do not allow a passthrough in product prices of an amount which reflects a fair rate of return on investment in new refinery equipment. These refiners have suggested that the refiner price rule should be amended to permit refiners to receive an annual rate of return on new investments designed to modernize and improve refineries. New refinery investments would enable these refiners to process lower grade crude, oil, upgrade refinery yields, and produce more unleaded gasoline.

Currently, the refiner price regulations provide various mechanisms for the recovery of certain investment costs, in order to encourage refiners to make needed investments in refineries. The following recovery mechanisms are presently in effect: (1) The capital costs of new refining investments can be depreciated and those depreciation costs can be passed through in the form of higher product prices. (2) The cost of borrowed capital, insofar as it is reflected in the interest paid on such borrowings, may be passed through in the form of higher product prices. (3) The so-called gasoline tilt rule, adopted March 1, 1979, provides refiners with the opportunity to pass through more of their costs as increased gasoline prices. (4) Prices of all products other than gasoline are exempt from regulations.

None of the above mechanisms, however, provides for the direct pass through in product prices of an amount which reflects a fair rate of return on equity investments related to gasoline production. None of these mechanisms specifically allows refiners to retain savings from the decreased crude costs which may be available when new investments allow them to process lower quality crude oil into gasoline.

Alternatives Under Consideration

Some type of allowance for return on investment could be added to selling prices to provide an incentive for refinery investments. The DOE is exploring the need to provide a return, and the level of return which might be appropriate. Alternatively, refiners might be allowed to retain the cost savings from investments which allow processing of lower quality crude oil.

We will also consider the use of other allowances, such as adjusting the "tilt" for investments or allowing accelerated depreciation for the purposes of cost passthrough. DOE will retain present rules if we do not develop a suitable justification for a change.

Summary of Benefits

Providing a return on investment could lead to a more modern refining capability, better able to meet the nation's needs for production of unleaded gasoline and better able to process cheaper low-quality crude oils. With new investment, it is possible that average crude prices could be driven down in the long run, as could prices for unleaded gasoline.

Summary of Costs

The prices of petroleum products will, at least initially, be increased by the added return the rule allows. New refinery investment was estimated at $1.2 billion for 1977, and we expect it to increase. At the $1.2 billion investment rate, the additional annualized cost to consumers for petroleum products that could result from rule changes of the kind under consideration could reach approximately $180 million at the end of the first year and $360 million at the end of the second year. However, petroleum price and allocation controls are scheduled to expire before the end of the second year in which any rule would be in effect.

Sectors Affected

The proposed rule would affect crude oil refiners, and provide incentives to increase the available supplies of unleaded gasoline.

Related Regulations and Actions

Internal: Amendments to permit the allocation of additional increased costs to motor gasoline C "gasoline tilt rule").

External: None.

Active Government Collaboration

None.

Timetable

NPRM—December 1979.
Public Comment—following NPRM.
Regulatory Analysis—draft with NPRM, final with Final Rule.

Available Documents

Notice of Inquiry, 44 FR 50148, August 30, 1979.

Comments in response to above.

Transcript of hearings on above.

All documents are available in the DOE Freedom of Information Reading Room, Forrestal Building, Room GA–142, 1000 Independence Avenue, S.W., Washington, D.C. 20585.

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DOE-ERA

Natural gas curtailment priorities and related issues

Legal Authority

Natural Gas Act. Natural Gas Policy Act of 1978 (P. L. 95–621), §§ 401, 402, 403. Department of Energy Organization Act, (P. L. 95–91), §§ 301(b) and 402(a)(1)(E).

Statement of Problem

Natural gas curtailment priorities deal with the order in which end-users of natural gas shall be deprived of requirements in the event of shortages. "Curtailment" is generally defined as requirements, calculated according to a predetermined base period, less deliveries. Under the recent provisions of the Natural Gas Policy Act of 1978 (NGPA) and the Department of Energy Organization Act (1977), the Secretary of Energy is assigned responsibility for developing a priority system for determining the order in which curtailment shall occur. The Secretary of Energy has delegated this authority to the Administrator of the Economic Regulatory Administration (ERA). This legislation also authorized the Federal Energy Regulatory Commission (FERC) to administer and implement the curtailment plans drafted by the ERA.

Historically, the Federal Power Commission (FPC) has exclusive Federal jurisdiction for curtailing natural gas in the interstate pipelines pursuant to its authority under the Natural Gas Act (NGA). The FPC dealt with curtailment of natural gas on a case-by-case basis. From the rulings issued in these cases, a priority system developed which ranked end users of natural gas from high (last to be curtailed) to low (first to be curtailed). The FPC priority system generally placed residential and small commercial use in the highest priorities and interruptible large volume industrial users in the lowest, first-curtailed, priorities. Several considerations shaped the above priority system: first, the importance of gas used to protect health, safety, and other human needs; second, the operational difficulty of physically cutting off or reducing service to residential and small commercial customers; third, the differences in the costs that different kinds of end-users would experience in converting to an alternate fuel.

The proposed rule addresses the possible need to reconcile the curtailment priority system that the FPC developed with the new provisions of the NGPA, the Department of Energy Organization Act, and the National Energy Act. An additional reason motivating the proposed rulemaking is that the existing policy on natural gas curtailment priorities, which was adopted in 1973, has long needed to be reviewed in the light of current circumstances and requirements. Specifically, the areas which the review of curtailment priorities will select for focus are as follows:

(1) Essential agricultural uses. Section 401 of the NGPA requires the Secretary of Energy to prescribe a rule restricting interstate pipelines from curtailing the essential agricultural use requirements that the Secretary of Agriculture has certified. Essential agricultural uses may only be curtailed to meet the needs of other high priority users (e.g., schools, hospitals, residences) or when FERC determines in consultation with the Secretary of Agriculture that an alternate fuel is economically practicable.

(2) Industrial process or feedstock use. Section 402 of the NGPA directs the Secretary of Energy to prescribe a rule limiting the circumstances in which an interstate pipeline may curtail gas supplies used in an industrial process or as a feedstock. Such use refers to gas employed as an ingredient of the end-product of production as distinguished from gas used to power production machinery.

(3) Emergency allocation authority. Relevant sections of the National Energy Act authorize the President to declare a natural gas emergency which would trigger various curtailment plans. As an example, the President could authorize an interstate pipeline to make emergency purchases from intrastate pipelines under short term contracts. This authority, while outside the scope of the curtailment priority system itself, must work in concert with it. Therefore, this inquiry will consider how best to implement this authority.

(4) Development of supplemental supplies and reductions in oil imports. Supplemental gas volumes such as Synthetic Natural Gas (SNG) produced from coal and Liquefied Natural Gas (LNG) imported from abroad should be treated as a part of a common system of gas supplies. The question arises to what extent the ERA should use its curtailment powers under the NGPA and the Department of Energy Organization Act to facilitate and encourage the development of these supplemental gas volumes. Facilitation of the development of SNG and LNG sources would promote the objective of reducing oil imports.

Alternatives Under Consideration

ERA is considering several alternative approaches to a curtailment priority system. They are as follows:

(1) Maintaining the present system as developed by the FPC while making those changes, primarily concerning essential agricultural use and industrial process and feedstock, required by the NGPA.

(2) Developing a rationing system that reflects the requirements during a current base period, and reflecting the agriculture, industrial process, and feedstock gas priorities that are determined by statute.

(3) Relating the incremental pricing provisions of the NGPA to the curtailment priority system. Under this approach, low priority users of natural gas would be among the first to pay the relatively high cost of additional units of natural or synthetic gas. High priority users, by contrast, would continue to pay the lower average or "rolled-in" costs of additional increments of gas.

Consideration is also being given to the manner is which these alternatives should be applied. There is a question concerning whether ERA guidelines should apply strictly to all interstate pipelines which transport gas, or whether FERC should be allowed to apply the general policy under the ERA rule to the differing circumstances of individual pipelines, making adjustments where they are necessary.

Summary of Benefits

The review of gas curtailment priority systems would benefit interstate pipelines, natural gas distributors, direct users of natural gas, indirect users (customers of direct gas users), employees of direct users and indirect users of gas, and the general public. It could also modernize and perhaps simplify the complex Federal curtailment scheme. It appears that direct users of gas may be the most likely to benefit from improvements which could result from ERA's assessment of natural gas curtailment priorities. The costs of minimizing the risks of supply disruptions and of coping with gas curtailments would be reduced.

Summary of Costs

Cost data will not be available until we complete economic and environmental analyses in late November or December 1979. The costs categories users incur during any future shortage will depend upon the priorities we eventually assign, as well as on any incremental pricing relationships that we establish.

Sectors Affected

Forthcoming economic and environmental studies will show the manner in which curtailment policy will affect economic and regional sections. In the past, the states that curtailment has affected most have been the Atlantic States stretching south from New York; several mid-Western States, such as Ohio and Kentucky; and California. The industrial segments that curtailment affects most are those which could not use alternate fuels because of the nature of their processes or because the capability to use alternate fuels had not been installed. If we change the current policy on curtailment priorities, it will affect Government, industry, and ultimately end-use customers at the regional, county, and local level where gas supply is at issue.

Related Regulations and Actions

Internal: "Curtailment Priorities for Essential Agricultural Use," Final Rule issued March 15, 1979, 44 FR 15642.

"Emergency Natural Gas Regulations," under consideration.

External: FERC—Incremental Pricing Rules issued under Title III of the NGPA.

FERC—Curtailment Implementation Rules issued under Title IV of the NGPA.

Active Government Collaboration

The Federal Energy Regulatory Commission staff is kept informed of Department of Energy, Economic Regulatory Administration activities. The Commission will formally review the DOE/ERA rule, as provided in § 404 of the DOE Act.

Timetable

NPRM—first quarter of 1980.
Public Comment—following NPRM.
Final Rule—second quarter of 1980.
Final Rule effective—30 days after we issue the Final Rule.
Regulatory Analysis and draft Environmental Impact Statement—DOE is preparing and will issue drafts of these documents with the NPRM.

Available Documents

Final Rule—"Curtailment Priorities for Essential Agricultural Uses," (44 FR 15642, March 15, 1979).

Notice of Inquiry (NOI) (44 FR 16954, March 20, 1979).

Public comments on the above.

All documents are available in the DOE Freedom of Information Reading Room, Forrestal Building, Room GA-142, 1000 Independence Avenue, S.W., Washington, D.C. 20585.

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DOE—Resource Applications

Outer continental shelf (OCS) sequential bidding regulations

Legal Authority

Department of Energy Organization Act, §§ 302(b)(1) and 303(c), 42 U.S.C. §§ 7152(b)(1) and 7153(c); and the Outer Continental Shelf Lands Act, as amended § 8(a)(1), 43 U.S.C. § 1337(a)(1).

Statement of Problem

The present cash bonus, fixed royalty bidding system for Outer Continental Shelf (OCS) leases requires the Federal Government to offer all drilling areas ("tracts") included in an OCS lease sale to bidders at the same time. All bids must be sealed and accompanied by one-fifth of the cash payment the bidder intends to pay for the lease (the "cash bonus"). Bids are opened, announced publicly, and recorded, but no bids are accepted or rejected, and no leases are awarded at that time. Within sixty days of the opening of bids, the Department of the Interior (DOI), which administers this program, decides whether to accept the bid from the highest qualified bidder for each tract. Bids that DOI does not accept within the sixty-day period, it rejects. The Department returns the money that was deposited on rejected bids.

The present system requires a commitment of cash resources by firms to particular OCS lease sales; this may strain the ability of some firms to participate in the OCS leasing process. Bidders must be prepared to support each bid immediately with a deposit of one-fifth of the total cash payment. Opening all bids at the same time limits the number and magnitude of bids that an individual firm is able to submit. In addition, a firm might win on a greater number of tracts in an OCS lease sale than it had anticipated, which could call for bonus payments that exceed the firm's financial resources, forcing it to search for additional sources of capital.

The Department of Energy (DOE) expects that smaller firms are more subject to restraints of this type than larger firms. Some small companies may have withdrawn from competition for tracts because of financial barriers. In addition, the simultaneous nature of the bidding process may tend to preserve an informational advantage that larger firms may have over smaller ones because they can afford more extensive exploration in advance of a lease sale.

Under § 302(b)(1) of the Department of Energy Organization Act, DOE is responsible for promulgating regulations which foster competition for Federal leases, to assure the public the maximum return on its resources. Thus, DOE is interested in alternative bidding mechanisms which may improve the ability of smaller companies to compete in these lease sales.

Sequential bidding would address these problems by dividing an OCS lease sale into at least three bidding sessions, separated by a minimum of 24 hours. Tracts would be assigned to bidding sessions through a random selection procedure; bidding sessions each would consist of an approximately equal number of tracts. Bids would be opened at the conclusion of each bidding session and the amount of the highest bid for each tract would be announced. Cash bonus deposits accompanying the highest bids would be retained by DOI until it made a decision on awarding leases. DOI would return all other cash bonus deposits to the bidders that submitted them immediately after the conclusion of each bidding session.

Alternatives Under Consideration

Possible alternatives to sequential bidding which we have been considering include a "bid limit" option, which would allow bidders to set a "maximum aggregate winning cash bonus limit" for a lease sale. This would enable a firm to bid on tracts with the assurance that its winning bids would not exceed an amount which it had stipulated.

Another possible approach that might achieve results similar to sequential bidding would be to hold lease sales at shorter intervals, each sale with approximately the same number of tracts. However, in order to reduce a bidder's financial exposure as effectively as we think sequential bidding could do, 18 to 24 lease sales would be necessary each year. The administrative burdens to DOE associated with this alternative are severe.

Retention of the present bidding system is another alternative. This alternative would preserve a maximum degree of simplicity in administrative matters, but would not solve the problems we have discussed above.

DOE has proposed that sequential bidding be tested on an experimental basis. This will allow bidders to become familiar with the process, and allow DOE to study bidder reactions. This

experimental approach is an innovative alternative to an immediate move to an unproven new bidding system.

Summary of Benefits

DOE expects sequential bidding to foster competition for Federal OCS leases, partially by easing financial barriers to participation, and partially by reducing informational advantages that major OCS participants currently have. Returning cash bonus deposits of unsuccessful bidders after each session will allow them to use returned funds in the subsequent bidding session. Announcing the amount of the high bid for each tract will provide information on the value other bidders have placed on tracts as a result of their exploration. These changes will tend to equalize the informational and financial position of smaller firms participating in leasing competition.

DOE estimates that the application of sequential bidding to an OCS lease sale would yield greater revenue to the Government because of increased competition for OCS leases.

Summary of Costs

The use of sequential bidding imposes a relatively minor administrative cost on DOE and DOI in performing additional analyses and extending the actual conduct of the sale over a minimum of three days.

Sectors Affected

The use of sequential bidding primarily affects current and prospective bidders for OCS leases. DOE anticipates that smaller firms would benefit more from sequential bidding than would the major participants in OCS lease sales.

Related Regulations and Actions

Internal: Proposed OCS bidding system regulations, published at 44 FR 46236. See entry elsewhere in this Calendar.

External: Current OCS lease sales bidding procedures, administered by the Department of the Interior, found at 43 CFR 3300.

Active Government Collaboration

Department of the Interior. The Department of Justice, and the Federal Trade Commission are advising on competition issues.

Timetable

Final Rule—first quarter, 1980.
Final Rule effective—60 days after it is issued.

Available Documents

Draft Regulatory Analysis, "Increasing Competition for Federally-Owned Mineral Fuels by Altering the Present Bidding Process to Allow for Sequential Bidding," (September 2, 1979).

NPRM—44 FR 52842, September 11, 1979.

Public comments in response to NPRM.

All documents are available in the DOE Freedom of Information Reading Room, Room GA-142, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585

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DOE—RA

Profit share bidding system regulations for Federal outer continental shelf (OCS) oil and gas leases

Legal Authority

Outer Continental Shelf Lands Act, ch. 345, 67 Stat. 462 (43 U.S.C. § 1331 *et seq.*), as amended by P.L. 95-372; Department of Energy Organization Act, P.L. 95-91, 91 Stat. 565 (42 U.S.C. § 7101 *et seq.*).

Statement of Problem

The Department of the Interior (DOI) currently leases outer continental shelf (OCS) oil and gas tracts to developers. Department of Energy (DOE) must promulgate regulations to foster competition for bidding on these tracts, implement alternative bidding systems, and calculate net profits of developers. The present "cash bonus, fixed royalty" bidding system places a heavy reliance on large front-end cash payments by bidders (the "cash bonus") as the principal means of selecting a winning bidder and obtaining a fair price on the public's property (See Calendar entries relating to OCS Sequential bidding and Proposed OCS bidding systems). The requirement for large cash bonus payments may inhibit competition for OCS leases by preventing smaller firms from participating as fully as they might in OCS development. The "fixed net profit share" bidding system is designed to shift Government return away from initial cash bonuses into deferred payments which, in the case of this bidding system, would be based on net profits from the actual production of oil and gas.

In connection with a fixed net profit share bidding system, we must establish rules to govern the calculation of "net profits." Any regulations will therefore include accounting procedures designed to permit lessees to calculate net profits in a uniform manner, as well as procedures for audits by the Federal Government, and challenges to any adjustments the Government might make as a result of such audits.

Alternatives Under Consideration

A net profit share bidding system requires a procedure for determining the value or amount of oil and gas produced from a lease. In addition, a means to identify and measure the costs of operating the lease must be specified, and those costs must be subtracted from revenues to determine the net profits attributable to a lease. The need to identify costs makes the fixed net profit share system considerably more complex than bidding systems that were previously used for OCS lease sales.

Several different profit sharing systems are now being examined by DOE. All of these basic systems set rules for adding up costs and for subtracting these costs from production revenue to determine net profits. The systems differ primarily in the method by which each allows the successful bidder to recover money invested during the early development stages of a lease term. Those differences involve technical accounting issues. A complete description and comparison of these systems requires too much space to be included here; however, the information is available elsewhere (see "Available Documents" section).

We have chosen the proposed accounting procedures to conform, as closely as is practicable, with the accounting procedures for joint offshore operations developed by the Council of Petroleum Accountants Societies of North America (COPAS). The COPAS procedures are an appropriate base for the cost identification portion of the accounting system because: (1) the net profit share lease relationship is analogous to a joint working interest agreement between private parties (i.e., an agreement that shares at a fixed rate all costs and revenue); (2) COPAS is only a procedure for identifying, measuring, and allocating costs for direct billing of joint interest partners; hence, it is not complicated by rules for capitalization or other guidelines for disposition of costs that would be contained in a complete financial

accounting procedure; and (3) the COPAS procedures or minor variations on it, are in widespread use; thus, its adoption by DOE would minimize the accounting burden and interpretation problems for the industry.

Summary of Benefits

The profit share bidding system should make it possible for small firms to compete more effectively for OCS leases and to free funds for exploration that previously have been tied up in cash bonuses. Because the system will require smaller lease payments from less productive OCS leases, we believe that the regulation will foster the development of smaller oil and gas fields, maximize production of oil and gas from the OCS, and increase the total revenue to the public from the lease of public OCS property.

Summary of Costs

The administration of the regulation is the responsibility of the U.S. Geological Survey (USGS) within the Department of the Interior (DOI). Use of this bidding system will result in greater administrative responsibilities for the USGS, which will have to make determinations on the allowability of certain costs, and perform periodic audits.

Firms seeking leases under the net profit share system will be required to comply with the accounting and reporting procedures established by these regulations. A preliminary study of industry account practices indicates that most firms that might participate in profit share leasing already use internal accounting procedures that can identify and assign costs to individual OCS tracts they have leased. Thus, the profit share system would impose periodic reporting requirements, but would not substantially alter internal accounting operations.

Sectors Affected

This regulation will affect those companies bidding for and receiving Federal OCS leases. No significant indirect effects to other sectors are anticipated.

Related Regulations and Actions

Internal: Proposed OCS bidding system regulations (44 FR 46235). See description elsewhere in this Calendar.

External: Regulations of the Department of the Interior regarding OCS leases, found at 43 CFR 3300.

Active Government Collaboration

As required by § 303(b) of the DOE Act, we have consulted the Secretary of the Interior on these proposed regulations and we gave him 30 days to comment formally on them. The Secretary of the Interior made preliminary comments on initial drafts of these regulations, and formally reviewed the final draft.

Timetable

Public Comment—following NPRM.
Final Rule—early 1980.
Final Rule effective—60 days after we issue the final rule.
Regulatory Analysis—fourth quarter October 1979.

Available Documents

NPRM and draft Regulatory Analysis—November 1979; citation not available at the time of this publication.

"Evaluation of Profit Share Leasing System," draft dated March 1979.

This document is available from the Leasing Policy Development Office, Room 2317, Federal Building (Mail Stop 3344), Department of Energy, 12th & Pennsylvania Avenue, N.W., Washington, D.C. 20461.

Agency Contact

Stuart W. Edwards, Director
Economic Analysis Division
Leasing Policy Development Office
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DOE—RA

Proposed outer continental shelf (OCS) bidding systems regulations

Legal Authority

Department of Energy Organization Act, §§ 302(b)(2) and 303(c)(1), 42 U.S.C. §§ 7152(b)(2) and 7153(c); Outer Continental Shelf Lands Act, as amended, § 8(a)(1), 43 U.S.C. § 1337(a)(1).

Statement of the Problem

Under 302(b)(2) of the Department of Energy Organization Act, the Department of Energy (DOE) is responsible for promulgating regulations concerning implementation of alternative bidding systems for Outer Continental Shelf (OCS) leases. This proposed regulation would establish three bidding systems for use in OCS lease sales.

A bidding system is a set of economic (and other) terms and conditions by which the rights to explore, develop and produce Federal OCS energy resources are offered for sale and transferred to private parties. The terms and conditions of the bidding system affect attitudes toward exploration, development and production of a lease. Bidding systems should:

(a) provide a fair return to the Federal Government,
(b) stimulate competition,
(c) prevent speculation,
(d) contribute to the discovery of oil and gas,
(e) promote development of new oil and gas resources in an efficient and timely manner, and
(f) limit administrative burdens on government and industry.

The OCS Lands Act Amendments of 1978 ("the Amendments") directed a review of current bidding systems to determine whether they represent an ideal mix of the listed objectives. The Amendments particularly focused attention on the "cash bonus bid, fixed royalty" bidding system. Under this system, which has been used for over 95 percent of the acreage leased, the royalty rate to be paid out of lease production is fixed, and firms bid for leases on particular tracts by offering the government a cash payment up front. The highest "cash bonus" bid for a tract wins the lease, provided the bid exceeds a minimum level (established by the U.S. Geological Survey prior to the sale).

This system requires bidders to (a) submit all bids simultaneously and (b) back them with substantial deposits. The degree of financial exposure which the system requires enables large firms to compete more effectively than smaller ones, since large firms can more readily meet the cash requirements of this type of bidding system. The constraints this system imposes on smaller companies reduce competition and limit the number of bids per tract.

Alternatives Under Consideration

DOE has proposed two alternatives to the cash bonus, fixed royalty bidding system. One of these is the "royalty bidding, fixed cash bonus" system. Under this system, the cash bonus is fixed (at a nominal level) and companies bid on the royalty rate that will apply if the lease is productive. Because royalty bidding de-emphasizes the cash bonus, it encourgages participation by smaller companies. There is no immediate penalty to the bidder for increasing his royalty bid. Yet there is a danger, inherent in this system, that a bidder will increase his royalty bid in an attempt to win the lease only to find that the royalty rate is too high to permit economic development of the resource eventually discovered.

Another proposed alternative is the "cash bonus bid, sliding scale royalty." A sliding scale royalty system also uses a cash bonus bid variable, but the royalty rate that applies for each time period is based on the value of production from the lease during that time period. Thus, the royalty rate could

and probably will change from period to period. When compared with the cash bonus, fixed royalty systems under similar conditions, the sliding scale systems tend to reduce the expected cash bonus required to win a lease. Also, when compared to higher-rate fixed royalty systems, the sliding scale tends to reduce the risk that companies will not develop lease tracts with smaller deposits of oil and gas, and correspondingly reduces the probability that companies will terminate production prematurely. The reduced cash bonuses would probably encourage bidding by smaller companies, and could entice firms to bid on tracts that would not be leased under the traditional system.

Summary of Benefits

DOE anticipates that the regulations would improve the OCS oil and gas leasing program. Adoption of the "cash bonus bid, sliding scale royalty" would principally benefit smaller companies, which would be able to compete on a more equal footing with the large firms in leasing sales. The public will also benefit if revised bidding systems do a better job of meeting the stated objectives.

Summary of Costs

DOE anticipates no significant additional costs as a result of this regulation. Government administrative costs may increase slightly.

Sectors Affected

This regulation would primarly affect participants in OCS lease sales.

Related Regulations and Actions

Internal: OCS sequential bidding regulations (see related item in this Calendar).

External: Regulations of the Department of the Interior regarding OCS leases, 43 CFR 3300.

Active Government Collaboration

Department of the Interior. The Department of Justice is advising on competition issues.

Timetable

Final Rule—fourth quarter, 1979.

Final Rule effective—60 days after we issue final rule.

Available Documents

We have prepared a regulatory analysis entitled, "Outer Continental Shelf Bidding System Regulations," and it is available from the agency contact listed below.

NPRM—44 FR 46235, August 6, 1979.

Public comments in response to NPRM.

All documents are available in the DOE Freedom of Information Reading Room, Forrestal Building, Room GB–142, 1000 Independence Avenue, S.W., Washington, D.C. 20585.

Agency Contact

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Resource Applications
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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Neighborhoods, Voluntary Associations and Consumer Protection

Energy performance standards for new buildings

Please see text of joint HUD and DOE entry under DOE—BCS on page 68218.

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Surface management of mining claims located on the public lands

Legal Authority

Revised Statutes, § 2319, 30 U.S.C. § 22.

Revised Statutes, § 2478, 30 U.S.C. § 1201.

The Federal Land Policy and Management Act of 1976, §§ 302(b) and 603(c), 43 U.S.C. § 1701 *et seq.*

Statement of Problem

The 1872 Mining Law gave individuals the right to go on the public lands to explore for and develop hard rock minerals. This right has gone unregulated since it was granted in 1872. In the period since 1872, thousands of mining claims have been located and developed on the public lands with little or no regard for their environmental impact on the public lands.

The objective of these regulations is to assure environmental protection to the public lands and their resources by preventing undue and unnecessary degradation of the public lands that may be caused by careless mining practices, while having a minimal effect on the legitimate mining industry.

Alternatives Under Consideration

At the heart of the question of how much control the Department of the Interior can exercise over the mining of hardrock minerals on the public lands is the right granted by the 1872 Mining Law to anyone who wishes to enter the public lands for the purpose of exploring for and developing hardrock minerals. The alternatives the Department of the Interior is considering vary from the present non-control to the most stringent control possible without denying an individual the right of entry that the 1872 Mining Law grants.

The primary method the Department is considering as a method of regulation is setting a threshold or level of permissible mining activity that will be allowed without requiring an individual to obtain a permit from the Bureau of Land Management to engage in mining activity. The principal alternatives have to do with the level of the threshold for the allowed activity. Once it determines the allowed level, the Department of the Interior will require a permit for all mining activity that exceeds that level. Since the Department has never regulated this activity before, we have no estimate of the number of individuals the regulations will affect. It is clear that the lower the level of activity that the Department allows without a permit, the higher will be the number of individuals the regulation will affect.

The aim of the regulations is to balance the right of entry permitted by the law against the need to protect the public lands, to the greatest extent possible, from unnecessary degradation.

In determining the level of mining activity that the Department of the Interior will allow without imposing a requirement for a permit, the Department has worked closely with all sectors of the mining industry, State and local governments, and environmentalists.

Summary of Benefits

The resultant benefits of this action could include reduced air pollution, cleaner water, acceptable landscape management, and better road locations and designs. There also could be improved protection of soils; plants; animals; survey monuments; areas of critical environmental concern; and cultural, historical, and scientific resources. In addition, there could be improvements in waste disposal, and fire prevention and control.

Summary of Costs

The Department of the Interior cannot estimate the extent of the economic effects, because this activity has never

been regulated and there is no basis for determining the number of individuals, number of mines, or areas that the regulations will affect. The costs involved can be balanced against the worth of environmentally protected public lands and the increased costs of minerals that the protection extended by the implementation of regulations will cause. Rough estimates of the costs per operation for reclamation have ranged from less than $5,000 to over $12,000.

Sectors Affected

The regulations would affect the mining industry; all members of the public who engage in mining of hardrock minerals on the public lands either as a profession or as a hobby; all members of the public who use the public lands for general purposes, particularly those in the public land states of the West; and the general public, to the extent that mining costs increase as a result of compliance with this regulation and are passed on to the public.

Related Regulations and Actions

None.

Active Government Collaboration

There have been consultations with the Department of Agriculture so that the Department of the Interior regulations will be as consistent as possible with those published by the Forest Service. The Environmental Protection Agency will be involved through the review of an environmental impact statement related to the preparation of these regulations.

Timetable

NPRM—November 19, 1979.
Final Rule—March 3, 1980.

Agency Contact

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DOI—Fish and Wildlife Service

Endangered Species Act, § 4, regulations for listing endangered and threatened wildlife and plants

Legal Authority

16 U.S.C. §§ 1531-1543

Statement of Problem

The intent of this regulation is to interpret and implement the provisions of § 4 of the Endangered Species Act of 1973 and its 1978 amendments. Section 4 of the Act requires the Department of the Interior (DOI) to list appropriate wildlife and plants as "Endangered" or "Threatened." The List of Endangered and Threatened Wildlife and Plants is codified at 50 CFR 17.11.

The Endangered Species Act also requires that DOI designate areas termed "Critical Habitats." These are geographical areas on which are found the physical or biological features essential to the conservation of a particular species and which may require special management considerations or protection for the survival of a Threatened or Endangered species.

Species listed and Critical Habitats determined under § 4 of the Act will benefit from the protection provided to them under § 7(a) of the Act, which requires each Federal agency to insure, in consultation with DOI, that actions they authorize, fund or carry out do not jeopardize the continued existence of listed species or result in the destruction or adverse modification of their Critical Habitat.

Under § 9 of the Act, no person shall import, export, possess, sell, deliver, carry, transport, or ship any Endangered or Threatened species without obtaining a permit from DOI under § 10 of the Act.

The 1978 Amendments to the Act directed DOI to revise the existing formats, definitions, and explanatory notes for listing wildlife and plants. The Amendments were needed to encourage State and local governments and the interested public to participate in determining Endangered or Threatened status of wildlife and plants, and in determining their Critical Habitat. The Amendments establish procedures to publish general notice of proposed listings and Critical Habitat determinations and to specifically provide notice, not less than 60 days before the effective date of the listings, to all local governments located within or adjacent to a proposed Critical Habitat.

There are also provisions for public meetings and hearings to solicit from State and local governments and the interested public input relative to the proposed listing and Critical Habitat determinations and to provide those participants with the biological data on which the proposal is based and information on the economic impact of the Critical Habitat designation on the area.

Alternatives Under Consideration

The only alternatives being considered deal with varying formats for displaying the information required, and do not produce substantive differences in the proposal.

Summary of Benefits

The proposed rule will benefit the public by allowing them to participate more fully in the designation of Threatened and Endangered wildlife and plants, and their Critical Habitats. The designated species will benefit form the proposed actions since the public close to their habitat, and therefore knowledgeable about it, will be participating more fully.

Summary of Costs

The Secretary of the Interior shall consider the economic effect and any other relevant effect of specifying any particular area as a Critical Habitat, unless he determines that the failure to so specify the area will result in the extinction of the species. We cannot make predictions of the exact economic effects of this regulation at this time. However, since each Federal agency must insure that its actions do not adversely affect Critical Habitats, it is possible that determination of Critical Habitat could require Federal agencies, through § 7 consultation, to seek reasonable and prudent alternatives to the planned action, such as the building of a dam, the location of a highway, etc.

Sectors Affected

Endangered or Threatened wildlife and plants; Federal Agencies; businesses and persons that import, export, possess, sell, deliver, carry, transport, or ship any Endangered or Threatened species.

Related Regulations and Actions

Internal: We are also developing the following regulations to implement the 1978 Amendments to the Endangered Species Act: Amendment of Procedures to Apply for an Exemption; Amendment of the Endangered Species Committee; Amendments to § 7 (consultation); New Raptor Regulations; Disposal of Antique Articles Regulations; New Self-Defense Regulations; and Quarantine Station and Licensing Regulation. (No citations on any of the above related regulations were available at the time of the publication of the Calendar.)

External: Marine Mammal Protection Act of 1972, 16 U.S.C. § 1361 *et seq.;* Convention on International Trade in Endangered Species of Wild Fauna and Flora; and the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere.

Active Government Collaboration

We are consulting with the National Marine Fisheries Service under the

Department of Commerce in developing this regulation.

Timetable

Final Rule—January 2, 1980.
Regulatory Analysis—unknown, pending Congressional action.

Available Documents

Review Draft of § 4 Regulations Prepared—March 10, 1979.
NPRM—April 10, 1979.

Agency Contact

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DOI—Heritage Conservation and Recreation Service

Rules and regulations pertaining to the urban park and recreation recovery program

Legal Authority

Urban Park and Recreation Recovery Act of 1978, 16 U.S.C. § S2501-2514.

Statement of Problem

In 1977, the Heritage Conservation and Recreation Service, U.S. Department of the Interior, completed a National Urban Recreation Study, mandated by Congress, which described and assessed the current condition of urban recreation in the country. The Study indicated that the quality of life in urban areas is closely related to the availability of fully functional park and recreation systems, and that city residents need close-to-home recreation opportunities that meet specialized urban demands. The greatest recreational deficiencies are in large cities, especially at neighborhood levels. In addition, inadequate financing of urban recreation programs, because of the fiscal difficulties of many large cities, has led to the deterioration of facilities, nonavailability of recreation services, and an inability to adapt recreational programs to changing circumstances. There was no existing Federal assistance program which fully addressed the needs for physical rehabilitation and revitalization of these park and recreation systems.

In his policy message of March 27, 1978, President Carter proposed a new Federal grant program whereby urban communities could compete for funds to revive and rebuild their parks and recreation facilities. On October 13, 1978, Congress passed the National Parks and Recreation Act of 1978, and on November 10, 1978, the President signed the bill into law. Title X, the Urban Park and Recreation Recovery Act (UPARR) of 1978, authorized the Secretary of the Interior to establish a five-year program to provide Federal grants to economically hard-pressed communities, specifically to help rehabilitate critically needed recreation areas and facilities and develop improved recreation programs. The Secretary of the Interior has delegated the responsibility for developing the Urban Park and Recreation Program to the Director of the Heritage Conservation and Recreation Service.

Beginning in Fall 1979, this new program has operated under interim rules to provide grants to local governments to rehabilitate existing indoor and outdoor recreation facilities, to demonstrate innovative ways to enhance park and recreation opportunities, and to develop local Recovery Action Programs, which are documents that identify community needs, objectives, action priorities, and strategies for revitalizing the total public and private recreation system. This proposal outlines the content of the final rule DOI will publish.

Alternatives Under Consideration

Alternatives which we considered for distributing funds under this program included the following: (1) first-come, first-served, (2) allocation by jurisdiction, and (3) competition for funds based on a series of specific criteria.

On a first-come, first-served basis only those jurisdictions with enough money to initially hire staff and prepare a Recovery Action Program more quickly than their economically distressed neighboring communities would receive grants. Since this program is meant for distressed communities, according to the legislation, it would not be fair to accept the first completed programs and applications without allowing ample time for other hard-pressed and/or inexperienced jurisdictions to find or acquire the resources to plan their programs.

DOI feels that allocations of a specific fund amount to eligible jurisdictions would not be fair, because each jurisdiction is unique, with different needs and priorities. Some jurisdictions may only need a rehabilitation grant to satisfy needs in a small distressed area, while others may need both rehabilitation and innovation grants to help revitalize a recreation system which has long had financial problems.

The Department of the Interior rejected these two alternatives, because they did not satisfy the intent of the President's message to Congress on the National Urban Policy. The message stated that these grants would be "challenge grants." Therefore, the intent of the program would not be served if funds were allocated without competition or without considering the quality of local planning and commitment.

The third alternative we considered was a competitive program for selecting proposals. The Department of the Interior decided to use this method, by developing a set of criteria for judging the quality of proposals. This method will allow us to consider a larger variety of factors. Emphasis will be on the existing conditions that are unique to each community, on the quality of the specific projects it proposes, and on its overall commitments to improvements in planning, design, coordination and support for recreation.

Summary of Benefits

This program will improve the quality of life for residents of large distressed urban areas. It will upgrade parks and facilities, to improve areas, both environmentally and aesthetically. It will create job opportunities for low income people, minorities, and youths in rehabilitating park areas and facilities. It will encourage urban jurisdictions to rehabilitate existing recreation areas and develop plans and programs for long-term operation and maintenance. Money for innovative projects, otherwise unfundable because of budget restraints, will also be available. The rehabilitation of park and recreation areas and facilities will encourage careful and creative use of existing resources and historic facilities. Energy costs should decrease as recreation facilities and areas are provided close to home for neighborhood residents.

Congress authorized a total of $725 million to be spent on the UPARR program over the next five years, $150 million for FY 1979-1982, and $125 million for FY 1983. Congress appropriated a supplementary budget of $20 million for FY 1979; the House passed an appropriation for FY 1980 of $125 million. Except for administrative costs, the Department of the Interior will award these funds to urban jurisdictions to implement their recovery plans.

Summary of Costs

We anticipate few adverse effects from the program, and we expect minimal negative environmental impacts. DOI administrative functions will increase only to the extent that this is a new program and requires staff for its administration. Grant applications require applicants to do minimal

paperwork. The local agencies involved in implementing the program will bear a majority of the administrative costs. Most local administrative and planning costs can be counted as the local matching grants portion, if the locality is selected for a grant award.

Sectors Affected

The UPARR program will have the largest beneficial effect on low and moderate income groups, minorities, and populations under 18 and over 60. All members of the public who use the areas, facilities or programs improved with UPARR grant money will also benefit. The general public will be affected to the extent that it will enjoy the overall benefits of an improved and upgraded community.

The UPARR will have an effect on the local urban jurisdictions receiving grant monies and on the State in which the jurisdiction is located. The Federal government will be affected to the extent that it will be implementing and monitoring the UPARR program.

Related Regulations and Actions

Internal: "Eligibility Regulations," Interim Rule, March 14, 1979.

"Uniform Criteria for Preparation of Local Recovery Action Programs;" Interim Rule, July 5, 1979.

"Grant Procedure Regulations for Administration of the Urban Park and Recreation Recovery Act of 1978," Interim Rule, August 19, 1979.

We will develop final rules on the Interim Rules following 60-day public comment periods.

External: None.

Active Government Collaboration

The Department of Housing and Urban Development is cooperating with the Division of Urban Programs in Title X Compliance.

Timetable

Final Rule for Planning—December 1, 1979.

Final Rule for Grants—January 15, 1980.

Available Documents

36 CFR 1228. Eligibility Regulations, March 14, 1979.

"Uniform Criteria for Preparation of Local Recovery Action Programs," Interim Rule, July 5, 1979.

"Grant Procedure Regulations for Administration of the Urban Park and Recreation Recovery Act," Interim Rule, August 9, 1979.

"Program Eligibility Provisions," October 9, 1979.

A Draft Regulatory Analysis, an Urban Community Urban Impact Statement, an Environmental Assessment, and the public comments received on the interim regulations are available for review at the: Urban Programs Office, Heritage Conservation and Recreation Service, Department of the Interior, 440 G Street, NW., Washington, D.C. 20243.

Agency Contact

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DOI–Water and Power Resource Service

Rules and regulations for acreage limitation under Federal Reclamation law

Legal Authority

The Reclamation Act of 1902, as amended and supplemented, 43 U.S.C. § 371 *et seq.*

Statement of Problem

Federal Reclamation law administered by the Water and Power Resource Service (WPRS, formerly Bureau of Reclamation) of the Department of the Interior (DOI) places a limit of 160 acres on the quantity of land an individual may own and irrigate with water from a Federal water supply project. Only projects where specific congressional or administrative exemptions or modifications to the law have been granted may exceed this limit, which has been in effect since the basic Reclamation law was enacted in 1902. Land in excess of 160 acres may receive project water if the owner enters into a contract with the United States agreeing to sell the excess land to an individual who, after the purchase, will not own more than 160 acres. The sale must be made under terms and conditions that satisfy the Secretary of the Interior and at a price that does not reflect the increase in the value to the land attributable to the construction of the Federal Reclamation project. The contract specifies the time period during which the landowner must sell the excess land. If the landowner does not sell the land within that period, the Secretary of the Interior has power of attorney to sell the land. If the landowner chooses not to use Federal project water for the excess land, there is no requirement that he place the land under contract or that he sell it. The 1902 Act also imposes a requirement that the landowner be a resident on or in the neighborhood of the land, interpreted to be 50 miles from the land, to be eligible to receive project water.

The purposes of the acreage limitation provisions of the Reclamation law are to promote owner-operated family farms, provide opportunity for a maximum number of farmers on land that Federal project water serves, and preclude speculative gain in the disposition of land that project water serves. In the past, these provisions have been administered through irrigation districts and other entities that have contracted with the United States for the Federal Reclamation project. Determinations on the application of the provisions have been made on a case-by-case basis, based on court decisions and opinions of the Solicitor of the Department of the Interior. The DOI or the Water and Power Resource Service has never promulgated formal rules by which the acreage limitation provisions would be administered.

The practices followed in the past have resulted in a lack of uniformity among districts in administering the acreage limitation provisions, and in some cases, lax enforcement of those provisions. In August 1976, a United States district court ordered the Secretary of the Interior to prepare and publish rules and regulations dealing with acreage limitation under Reclamation law, with specific reference to procedures to be used to approve sales of excess land (National Land for People, Inc. v. The Bureau of Reclamation of the Department of the Interior (417 F. Supp. 449 (D.C.D.C. 1977)). Such rules and regulations will provide the needed guidelines for the uniform administration of the acreage limitation of the Reclamation law to assure that the purposes of the law are carried out.

On August 25, 1977, the DOI published proposed rules and regulations for acreage limitation in the **Federal Register** (43 CFR 426). During the 128-day comment period on these proposed rules, the DOI received over 11,000 written comments and heard testimonies from 1,075 witnesses at 17 public hearings. The Department then revised the proposed rules, taking these comments into consideration. These revised rules will serve as the basis for the environmental impact statement (EIS) the DOI is preparing to comply with the order of a United States district court, issued December 7, 1977, halting the rulemaking until the Department completed an EIS. The draft EIS will be published by December 15, 1980, and the final EIS by July 1, 1981. The EIS will

assess the economic, social, community, and environmental effects of the proposed rules.

Alternatives Under Consideration

The EIS will address a number of alternatives to amend the acreage limitation provisions of Reclamation law and the rules that the DOI can establish under existing law. The alternatives will deal with the size of ownerships and operations that are eligible for Federal project water, residency requirements, ownership arrangements, and procedures that the DOI must use in processing sales of land receiving Federal project water. The alternatives will include the following:

Alternative one is a small farm alternative, with the size of the farm operation eligible to receive Federal project water limited to 320 acres.

Alternative two is based on the DOI legislative proposal that reflects the revised proposed rules. It limits the size of the farm operation that is eligible to receive Federal project water to 960 acres, and limits the multiple ownership arrangements that are permitted.

Alternative three is based on procedures used in the past which limited ownership to 160 acres per individual, permitted loose multiple ownership arrangements and unlimited leasing.

Alternative four is based on the pricing structure for Federal project water that would permit delivery of project water to excess land upon payment to the Federal Government of the full cost of providing the water service.

Alternative five is based on no acreage limitation or the repeal of the acreage limitation provisions and residency requirements of Reclamation law.

The EIS will consider other alternatives as well. Both the draft and final EIS will address the pros and cons of the alternatives; the draft statement is scheduled to be published December 15, 1980, and the final statement July 1, 1981.

Summary of Benefits

The major effect of the proposed rules will be related to the change in the size of farm operations on Federal Reclamation projects and to the number of family farms that may result. On many projects the change in the number and size of farms may not be significant, while on others where larger farm operations exist, there would be a noticeable increase in the number of farms and a reduction in their size. The change in the agricultural sector could result in economic effects on production efficiency, improving the efficiency in some cases and reducing it in others; changes in income to the farm family both up and down; increases to the community income as the number of farms increases; and changes in the nature and number of employment opportunities. The EIS on the proposed rules will identify and analyze these and other impacts of the rules. While the reduction in large-scale farming may result in a change in the number of farming opportunities, the overall change in income to the agricultural sector may not be significant; however, DOI will complete a regulatory analysis of the proposed rules if it appears necessary after we have completed the draft EIS.

Summary of Costs

Until we complete the EIS, it is difficult to provide reliable estimates of the direct and indirect costs of the regulations to the sectors they affect. The net farm income of some farmers may be reduced as the size of their farms decreases, which may be offset by the income to the new farms that may develop. Increases may occur in the cost of administering the acreage limitations of law under the regulations by the Federal Government in record keeping, inspections, and monitoring irrigation water deliveries in projects involved. There may be an increase in the cost of public services in some areas where new farms may be established.

Sectors Affected

The principal effect of the regulations will be on the agricultural sector in the areas in the 17 Western States where the Reclamation projects are located. The regulations will apply to deliveries of irrigation water to over 12 million acres of land in about 150,000 farms in these projects. The main purpose of the regulations is to limit the land in a farm operation that is eligible to receive an irrigation water supply from a Federal project; however, the regulations also would impose other eligibility requirements on the landowner and farm operator. The change in the number and size of farms will result from a reduction in large agribusiness farm operations; the type and variety of crops grown may change, and new business opportunities in the agricultural communities can be expected to develop. The EIS will address the nature of these and other effects.

Related Regulations and Actions

None.

Active Government Collaboration

The Department of Agriculture is cooperating in preparing the EIS on the proposed regulations.

Timetable

Draft EIS and Revised NPRM—December 15, 1980.
Public Hearings—December 15, 1980–March 16, 1981.
Regulatory Analysis—After December 15, 1980, if required.
Final Rule—September 1981.

Available Documents

"Department of the Interior, Bureau of Reclamation, Acreage Limitation Rules and Regulations." NPRM—43 CFR 426, August 25, 1977.

"Environmental Assessment of the Impact of Proposed Rules and Regulations for Acreage Limitation Administration as published in the **Federal Register**, August 25, 1977," Prepared by the Bureau of Reclamation, Janurary 1977.

The above documents are available at offices of the Water and Power, Resource Service, Washington, D.C.

Agency Contact

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DEPARTMENT OF JUSTICE

Law Enforcement Assistance Administration

Procedures relating to the implementation of the National Environmental Policy Act

Legal Authority

National Environmental Policy Act, 42 U.S.C. § 4321 *et seq.;* Environmental Quality Improvement Act, as amended, 42 U.S.C. § 4371, *et seq.;* (Council on Environmental Quality, "Regulations to Implement the National Environmental Policy Act") 40 CFR 1500, *et seq.*

Statement of Problem

The National Environmental Policy Act (NEPA) requires regulatory agencies to consider the effect of their actions on the environment.

NEPA requires that each agency, before taking an action, analyze potential environmental effects and

prepare an Environmental Impact Statement (in cases where the environment may be affected) or a Finding of No Impact upon the proposed action on the environment.

The Law Enforcement Assistance Administration (LEAA) currently undertakes few projects which significantly affect the environment. In addition, LEAA adopted a policy in August 1979, prohibiting the use of its funds by State or local governments to undertake any new construction projects. Accordingly, we expect the number of projects necessitating the use of the NEPA regulations to be small. However, in accordance with the direction of the Council on Environmental Quality (CEQ) and the Supreme Court in Andrus v. Sierra Club, 47 USLW 4676 (June 11, 1979), LEAA is simplifying and clarifying these regulations to eliminate unnecessary expenditures of staff time and effort for compliance with the requirements of NEPA.

As a granting and contracting agency which allots funds to State and local agencies for criminal justice improvement programs, such as prison renovations, which may affect the environment, LEAA must have specific NEPA regulations. We anticipate that 28 CFR 19, the current codification of LEAA's NEPA regulations, will be substantially modified so that only those procedures which are specific to LEAA will be included, inasmuch as proposed Department of Justice and current CEQ regulations provide adequate guidelines in all other areas.

Alternatives Under Consideration

Alternative approaches are as follows:

(1) to add the current 28 CFR 19 to reflect supplementary procedures for complying with the new regulations of the CEQ;

(2) to remove 28 CFR 19 and replace it with updated and simplified procedures to conform with the new CEQ regulations and OMB policy on reduction and simplification of regulations.

Option one would do little to streamline the process of environmental assessment and would require time-consuming rulemaking procedures in accordance with the Administrative Procedure Act. Moreover, 28 CFR 19 is in many respects outdated and merely duplicates existing CEQ regulations, and LEAA feels it should be substantially changed.

Option two, though it requires the same rulemaking procedures, would effectively eliminate much of the duplicative work currently required by the existing NEPA regulations, while preserving the basic objectives of NEPA. It would also reflect the fact that few of LEAA's current projects require detailed environmental review. Both applicants for funds and the agency itself would benefit from these simplified and clearer procedures.

Summary of Benefits

Reduced paperwork and processing time for funding projects will result in savings to the agency, to taxpayers, and to recipients of funds.

Summary of Costs

We do not expect to bear or cause any additional costs.

Sectors Affected

The regulations will affect all State and local agencies which are applying for LEAA funds.

Related Regulations and Actions

Internal: Proposed Department of Justice Procedures for Implementing the National Environmental Policy Act, 44 FR 93751, July 26, 1979.

External: Regulations of the Council on Environmental Quality, 40 CFR Parts 1500–1508. In accordance with the CEQ guidance, the new regulations will incorporate by reference other environmental statutes including: Fish and Wildlife Coordination Act, 16 U.S.C. § 661, *et seq.;* the National Historic Preservation Act of 1966, 16 U.S.C. § 470, *et seq.;* Flood Disaster Protection Act of 1973, 42 U.S.C. § 4001, *et seq.;* Clean Air Act and Federal Water Pollution Control Act, 42 U.S.C. § 1857, *et seq.;* 33 U.S.C. § 1251,*et seq.;* Safe Drinking Water Act 42 U.S.C. § 300, *et seq.;* Wild and Scenic Rivers Act, 16 U.S.C. § 1271, *et seq.;* the Coastal Zone Management Act of 1972, 16 U.S.C. § 1451, *et seq.;* and other environmental review laws and executive orders.

Active Government Collaboration

We will request and consider seriously the views of the Department of Justice's Land and Natural Resources Division and Office of Legal Counsel and the Council on Environmental Quality in the Executive Office of the President.

Timetable

NPRM—November 30, 1979.
Regulatory Analysis—not required.
Final Rule—January 30, 1980.

Available Documents

None.

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Fuel economy standards for model years 1982–85 light trucks

Legal Authority

The Motor Vehicle Information and Cost Savings Act, § 502(b), 15 U.S.C. § 2002 (1978).

Statement of Problem

In 1978 roughly half of the total petroleum consumed in the United States was used for transportation. The light truck fleet, which includes vehicles such as conventional pickups and vans, consumed approximately 20 percent of that amount. During the past ten years, light truck sales have grown dramatically. Although sales recently have declined, in part because of the poor gasoline mileage of those vehicles and the rising price of gasoline, the National Highway Traffic Safety Administration (NHTSA) expects them to return to their former high levels. Such increased sales mean that the amount of fuel consumed by light trucks will continue to increase. NHTSA has already set fuel economy standards for passenger cars in the 1981–84 model years. Without fuel economy standards for light trucks, the gap between the improving fuel efficiency of passenger cars and the low fuel efficiency of light trucks would widen, contrary to the national objective of fuel conservation.

In response to the Congressional mandate of Title V, Improving Automotive Efficiency, of the Motor Vehicle Information and Cost Savings Act (the Act), NHTSA already has established fuel economy standards for light trucks in the 1979–81 model years. In order to comply with the statutory requirements of the Act, fuel economy standards for 1982 trucks must be set no later than March 1980. To provide manufacturers with ample lead time to implement major improvements to their light trucks, the agency will also establish fuel economy standards for light trucks in the 1983–85 model years.

Alternatives Under Consideration

Specific information for developing the fuel economy standards is currently under development and is not available at this time. The final standard would be one which satisfies the statutory

criterion for maximum feasible average fuel economy and reflects technological feasibility, economic practicability, the impact of other Federal standards for motor vehicles, and the nation's need to conserve energy. NHTSA is assessing the capabilities of light truck manufacturers to meet various levels of fuel efficiencies and their associated costs. Simply extending the 1981 standard will not be an alternative unless it meets the criterion of maximum feasible average fuel economy.

Summary of Benefits

Setting fuel economy standards for light trucks will reduce the amount of gasoline those vehicles consume. Reduced gasoline consumption will, in turn, reduce the operating costs of those vehicles over their lifetime. The actual benefits of the proposed regulation would be in a direct proportion to the improvement in fuel efficiency required of the new light truck fleet. NHTSA anticipates that the decreased demand for oil would have a favorable impact on the balance of trade, but the agency cannot determine the actual amount of fuel that will be saved until it establishes prospective standards. However, to illustrate the benefits of the current standards for fuel economy, NHTSA estimates that the standard it set for light trucks in the 1980–81 model years will save 8 billion gallons of gasoline over the lifetime of these trucks.

Summary of Costs

NHTSA is currently developing information on the costs associated with the fuel economy standards. Specific information is not available at this time. The general economic effect would probably be as follows. Vehicle manufacturers would incur capital expenditures and increases in variable manufacturing costs to implement technologies for fuel efficiency. The absolute amount of such increases depends upon the level of the standards. Material suppliers would experience changes in demand. For example, the substitution of aluminum for steel would increase the demand for aluminum and reduce the demand for steel. Components for new vehicles such as computerized controls to improve the efficiency of the engine may be installed. Thus, demand for these items would increase. The petroleum industry would face a reduced increase in demand for gasoline. State and local governments would face a lower rate of increase in revenue from gasoline taxes due to a decrease in the rate of growth of the demand for gasoline. The initial purchase price of light trucks may increase due to potentially higher manufacturing costs. Buyers would also realize savings in operating costs as fuel efficiency improves. For example, NHTSA estimates that the current fuel economy standards for 1980–81 light trucks will result in an increase in retail price in the range of $60 per truck. This relatively small increase compares to a reduction in the lifetime operating cost of about $600 per vehicle, due to the reduction in the gasoline they consume. The effect of the rules on the GNP, inflation, urban areas, and employment will depend directly on the level of fuel economy set in the standards.

Sectors Affected

The standards would affect manufacturers of light trucks, suppliers of materials and components, buyers of new light trucks, the petroleum industry, and State and local governments.

Related Regulations and Actions

Internal: NHTSA has already issued standards for fuel economy for light trucks in model years 1979, 1980, and 1981 (49 CFR 533).

External: The Environmental Protection Agency (EPA) has issued regulations governing how fuel economy in motor vehicles is to be measured (40 CFR 600). The EPA also has issued regulations governing emissions from light trucks (40 CFR 86) and recently issued an NPRM proposing new emission standards for light trucks in 1983 and later model years (44 FR 40784, July 12, 1979). The Federal Trade Commission has issued guidelines governing the advertising of fuel economy for motor vehicles (16 CFR 259).

Active Government Collaboration

NHTSA principally coordinates its program for fuel economy standards with the Department of Energy and the Environmental Protection Ageny. NHTSA also reviews the program with the Council on Wage and Price Stability.

Timetable

NPRM—December 1979.
Final Rule—March 1980.

Available Documents

No documents are available. During the rulemaking, NHTSA will prepare and make available to the public a Regulatory Analysis, an Environmental Impact Statement, and a Rulemaking Support Paper, which will contain information on the technical and economic basis of the rulemaking.

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DOT—Coast Guard

Construction standards for the prevention of pollution from new tank barges due to accidental hull damage; and regulatory action to reduce pollution from existing tank barges due to accidental hull damage

Legal Authority

Port and Tanker Safety Act of 1978, P.L. 95–474, § 5, 92 Stat. 1480 (1978).

Statement of Problem

Data gathered by the Coast Guard show that, from 1973 through 1977, the total volume of oil spilled by tank barges was about 174,000 barrels. Approximately 85 percent of the oil spilled resulted from hull damage, which occurred as a result of groundings and collisions in the normal course of barge movements. Since barges operate mainly on the inland river system, most of the oil spilled by tank barges enters highly sensitive inland waters where the effect on the marine environment is more significant than it would be on the high seas. While the amount of pollution entering the waters from tank barges fluctuates annually, it is not decreasing in general. Thus, the present regulations dealing with pollution prevention, which essentially regulate only loading and unloading operations, are insufficient to reduce oil pollution from tank barges. Based on a study entitled "Tank Barge Oil Pollution Study," prepared by Automation Industries, Inc., the Coast Guard has concluded that the lack of construction standards for tank barges is a major factor in the pollution they cause. The Coast Guard believes that barges need the protection of a double hull to prevent cargo discharge resulting from groundings and the minor collisions that breach the hulls of single skinned barges.

Alternatives Under Consideration

In 1971 the Coast Guard proposed a requirement for double walls on new tank barges constructed for the carriage of oil in specified trades. In order to accelerate the retirement of single hull barges already in service, it contained a provision that would have precluded the complete rebuilding of existing vessels, and would have allowed only limited

repair to damaged areas on these vessels. This provision was designed to gradually reduce the number of existing single hull barges. Another proposed alternative was to specify a date after which owners and operators could not use single hull barges.

Because of the extensive negative comments we received, we did not impose the double wall construction requirement for new tank barges at that time. Instead, the Coast Guard initiated two studies. The first, "Alternative Inland Tank Barge Designs for Pollution Avoidance," developed design and construction alternatives and evaluated their effectiveness. The second, "Tank Barge Study," evaluated design, construction, and equipment standards for tank barges which carry oil. These studies have convinced the Coast Guard that a double hulled tank barge fleet is necessary to prevent pollution due to hull damage.

The present barge fleet consists of about 1,200 full double hull barges, 2,200 single hull barges, and 428 barges with partial double skins. Hastening the retirement of single hull barges could significantly affect both the economic viability of many individual tank barge operators and the tank barge industry's collective ability to respond to the nation's need to transport bulk liquid cargo. The comments we received in response to the 1971 NPRM indicated that, while the industry supported the intent of the regulations to prevent pollution, it strongly objected to the methods we proposed to accelerate the retirement of existing single hull vessels and to substitute double hulled barges. We received no comments suggesting economically acceptable ways to accelerate the retirement of these vessels.

The Coast Guard is aware that the problems and costs associated with constructing new barges differ greatly from the problems and costs associated with modifying an existing barge. For this reason, the Coast Guard has issued an ANPRM requesting comments and information on how to minimize the pollution threat from existing barges in the most cost-effective way. The alternatives we considered in the ANPRM are early retirement of vessels, conversion to other service, restriction of routes, increased inspection standards, and reduction of the numbers of barges towed together as a single unit.

In the case of new construction, the NPRM proposed two alternatives to the double hull approach: taking no action or requiring the use of heavier internal structures in either selected areas of the vessel or, overall, to make the hulls more resistant to penetration. We selected the double hull alternative as a result of information that was gathered in a joint Coast Guard/Maritime Administration study known as the "1974 Tank Barge Study."

Summary of Benefits

The Coast Guard has concluded that double hulls would be 95 percent effective in preventing pollution due to hull damage. This conclusion is based on the report we mentioned previously, the "1974 Tank Barge Study."

Summary of Costs

The cost of a double hull inland tank barge would range from $146,000 to $425,000 more than for a single hull inland barge of comparable size. In 1978, added costs for full double hulls on ocean barges ranged from $700,000 to $1,700,000 for each barge.

The costs for modifying existing barges are more difficult to determine. The proposals in the ANPRM would cost approximately $222 million dollars in total, or a 31 percent increase over present expenses for the tank barge industry. The ANPRM solicits estimates of these costs as well as costs the industry would incur for activities such as oil recovery and cleanup resulting from spills related to hull damage.

Sectors Affected

Obviously, the largest impact of these regulations would be on owners and operators of barges that transport oil. However, compliance costs would be passed on to some segments of the consuming public in the form of higher rates for transportation and products.

Related Regulations and Actions

Internal: The Coast Guard is also considering double hull requirements as a possible solution to spillage of hazardous materials.

External: The Environmental Protection Agency is developing restrictions on the handling and transport of hazardous materials, which may make double hulls more economically attractive to barge owners and operators.

Active Government Collaboration

The Coast Guard has informed the Environmental Protection Agency and the Maritime Administration of its regulations in this area.

Timetable

NPRM for existing tank barges—spring 1980.
Final Rule for new tank barges—spring 1980.

Available Documents

Karlson, E. S., et al., "Alternative Inland Tank Barge Designs for Pollution Avoidance," May 22, 1974.

"Polluting Incidents In and Around U.S. Waters," annual reports for 1971 through 1977. Coast Guard publication number C.G. 487.

Joint Coast Guard/Maritime Administration Study, "Tank Barge Study," October 1974. National Technical Information Service number COM–75–10284/AS.

Bender, A., et al., "Tank Barge Oil Pollution Study," prepared for the Coast Guard by Automation Industries, Inc., 1978.

NPRM—36 FR 24960, December 24, 1971 (superseded).

NPRM—44 FR 34440, June 14, 1979, for new construction.

ANPRM—44 FR 34443, June 14, 1979, for existing construction.

Draft Regulatory Analysis and Environmental Impact Statement, "Design Standards for New Tank Barges and Regulatory Analysis for Existing Tank Barges to Reduce Oil Pollution Due to Accidental Hull Damage," May 1979. Documents available from agency contact.

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ENVIRONMENTAL PROTECTION AGENCY

Office of Air, Noise, and Radiation

Gaseous emission regulations for 1985 and later model-year heavy-duty vehicles

Legal Authority

The Clean Air Act Amendments of 1977, § 202(a), 42 U.S.C., § 7521(a)

Statement of Problem

Heavy-duty vehicles emit significant amounts of oxides of nitrogen (NO_x). For this reason, in the 1977 amendments to the Clean Air Act, the Congress has required that manufacturers of heavy-duty vehicles (those vehicles that have gross vehicle weight ratings above 8,500 pounds) reduce NO_x emissions by 75 percent from the levels they emitted in 1973 (baseline levels.) This reduction is to take effect for 1985 and later model-years.

In the atmosphere, the NO_x emitted from all sources is converted to NO_2

(nitrogen dioxide) by direct reaction with oxygen and by photochemical processes. NO (nitric oxide) is an important component of the photochemical reactions which lead to the formation of smog. In addition, elevated levels of NO_2 are associated with both long-term and short-term adverse effects on the human respiratory system. NO_2 in the atmosphere also causes visibility reductions and gives a brownish color to the air.

Alternatives Under Consideration

EPA is considering two major alternatives at this time. They are:

1. Implementing an oxides of nitrogen standard for heavy-duty vehicles that reflects the 75 percent reduction mandated in the Clean Air Act; and

2. Revising NO_x standards (making them either less stringent or more stringent), as provided under § 202(a) of the Clean Air Act.

The Clean Air Act (as amended August 1977) directs EPA to set standards for NO_x for the 1985 model-year that reflects a 75 percent reduction from 1973 levels. However, there are provisions in the Act that allow EPA to set either more stringent standards or less stringent standards. EPA can make such revisions to the standards if it finds that the emission standards can or cannot be achieved by available technology at reasonable cost. EPA is currently evaluating both of these alternatives in formulating this regulation.

Summary of Benefits

Based on the adoption of 75 percent reduction standards, the primary benefit from this regulation would be a 34 percent reduction in the emission of NO_x from mobile sources in urban areas.

This reduction would be accomplished by a lowering in ambient air levels of NO_2, and associated benefit to public health and welfare. The exact degree of air quality improvement has not been quantified at this time.

Summary of Costs

EPA is still studying the cost effects associated with this rulemaking and cannot accurately estimate the cost at this time. However, our preliminary estimates suggest that total costs for manufacturers and users will exceed $100 million per year during the first five years of implementation. Therefore, we will develop a "regulatory analysis" for this rulemaking that will include an in-depth assessment of both the economic and environmental impact of the regulations.

Sectors Affected

This rulemaking will affect three industrial sectors: heavy-duty engine manufacturers, heavy-duty vehicle manufacturers, and purchasers/users of heavy-duty vehicles.

Reduction in ambient pollution levels of NO_2 will affect, in a positive way, the public at large.

Related Regulations and Actions

Internal: "Certification and Test Procedures for Heavy-Duty Engines for 1979 and Later Model Years," 40 CFR Part 86.

EPA is also developing:

(1) Proposed emission regulations for 1983 and later model-year light-duty trucks,

(2) Proposed gaseous emission regulations for 1983 and later model-year heavy-duty engines (hydrocarbon and carbon monoxide emissions only),

(3) Evaporative emission (those emissions emitted into the atmosphere from the vehicle's fuel system) regulations for heavy-duty gasoline vehicles, and

(4) Measurement procedures and standards for particulate emissions from heavy-duty diesel engines.

External: None.

Active Government Collaboration

None.

Timetable

NPRM—May 1980.
Public Hearing—July 1980.
Final Rule—December 1980.
Regulatory Analysis—May 1980.

Available Documents

None.

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EPA-OANR

Gaseous emission regulations for 1983 and later model-year heavy-duty vehicles

Legal Authority

The Clean Air Act, §§ 202, 206, 207 and 301, 42 U.S.C. §§ 7521, 7525, 7541, and 7601

Statement of Problem

Emissions of total hydrocarbons (HC) and carbon monoxide (CO) from heavy-duty vehicles are a significant fraction of total emissions from all vehicles. (Heavy-duty vehicles are vehicles that have gross vehicle weight ratings above 8,500 pounds.) For this reason, the Congress has required, and EPA has proposed, that emissions of HC and CO from heavy-duty vehicles be reduced by 90 percent from levels of emissions in 1969 (baseline levels) for gasoline engines for the 1983 and later model-years. In this same rulemaking, EPA has proposed a new procedure which we will use to demonstrate that heavy-duty vehicle emissions are actually reduced by 90 percent. This "transient test" procedure estimates emissions from heavy-duty vehicles as they are operated in actual use; that is, under "stop and go" conditions. The present "steady-state" test procedure for heavy-duty vehicles only measures emissions under certain constant speed conditions. While the present testing procedure has proved to be adequate at present levels of emission control, at the 90 percent reduction level this procedure cannot adequately predict the emissions from heavy-duty vehicles in actual use.

If EPA were to take no action to reduce heavy-duty vehicle emissions down to the 90 percent reduction level, we expect that in 1995 these vehicles would contribute 16 percent of all HC emissions from vehicles in urban areas, up from 8 percent in 1975. Similarly, CO emissions from heavy-duty vehicles would climb from 9 percent in 1975 to 24 percent by 1995.

Both HC and CO emissions are related to adverse health effects. HC emissions aid in the formation of ozone, an irritant that impairs respiratory functions. CO replaces oxygen in the blood, and adversely affects the capacity of the blood to carry oxygen to the body.

Alternatives Under Consideration

On February 13, 1979, EPA published a proposal calling for a 90 percent reduction in emissions from heavy-duty vehicles, based on testing using a new transient test procedure. This was the level which Congress mandated. Therefore, before proposing regulations, we considered only two alternatives:

(1) To require standards more stringent than 90 percent; or

(2) To require a 90 percent reduction in HC and CO as measured by the existing steady-state test procedures.

Because of the limited time available for proposing these regulations, EPA did not conduct an in-depth study of the first alternative. We were confident that the technological assessments that had led Congress to specify 90 percent reductions were accurate assessments. In addition, we were concerned that if we required more stringent standards,

manufacturers' compliance costs would increase substantially.

EPA did not propose the second alternative, because it considers the transient test procedure more representative of actual operating conditions than the present procedure, and believes that it will provide greater assurance that heavy-duty vehicles are meeting the standards on the road. The transient cycles were generated from actual in-use data and evolved from a six-year study of the problem by EPA.

Summary of Benefits

If we promulgate the regulations as proposed, by 1995 urban areas should realize reductions in vehicular emissions up to 11 percent for HC and up to 21 percent for CO, as compared to emission levels in 1975. These reductions correspond to improvements in ambient air quality of two percent for ozone and six percent for CO.

Summary of Costs

EPA estimates that the proposed regulations will increase aggregate five-year costs—1983–87—(including operating costs for engines over their useful lives) by $2.5 billion for manufacturers and users of heavy-duty vehicles. (This estimate is based on the present value of the dollar, discounted at an annual rate of 10 percent.)

EPA anticipates that to comply with the 1983 standards, gasoline-fueled engines will require oxidation catalyst systems and engine calibration changes, in addition to the exhaust gas recirculation (EGR) and air injection systems already in use. We estimate that the costs for added systems to control emissions will be $171 per engine. Adding costs for certification testing, assembly-line testing, and testing facilities, the increase in the purchase cost per engine that will be attributable to this proposed action will be $204. This cost is equivalent to 1 to 2.5 percent of the price of a new gasoline-fueled heavy-duty vehicle. The increased costs of unleaded fuel, catalyst replacement (assuming that 60 percent of catalysts in use will have to be replaced), and inspection and maintenance fees may total an attitional $1,016 (1979 dollars discounted to January 1, 1983, assuming a 10 percent annual discount rate) over the useful life of a gasoline-fueled heavy-duty vehicle. The increase in cost from using unleaded fuel (because of expected use of catalysts on gasoline-fueled engines) is the major cost that will result from these proposed regulations. In fact, under the proposed regulations, more than 80 percent of the purchase and operating costs per vehicle is attributable to the use of unleaded fuel.

At present, we anticipate that diesel engines can meet the proposed 1983 standard with minor changes to engine fuel injectors and calibration. EPA estimates that these changes will cost an average of $25 per engine. The agency estimates that the total increase in the purchase cost resulting from these proposed regulations will be $185 per engine. (This figure includes amortized facility costs, certification costs, and testing costs.) This cost is equivalent to 0.2 to 1 percent of the price of a new diesel-powered heavy-duty vehicle. Because catalysts will not be required for these vehicles, we expect these regulations to cause no increase in lifetime operating costs.

Sectors Affected

The proposed regulations will affect three industrial sectors: the manufacturers of heavy-duty engines, the manufacturers of heavy-duty vehicles, and the purchasers/users of heavy-duty vehicles.

The general public, particularly in urban centers, will also be favorably affected through reduced levels of air pollution.

Related Regulations and Actions

Internal: The regulations which are in effect now and which we will modify in this action are entitled, "Certification and Test Procedures for Heavy-Duty Engines for 1979 and Later Model Years" (40 CFR Part 86).

EPA is also developing:

(1) Proposed emission regulations for 1983 and later model-year light-duty trucks,

(2) Evaporative emission (those emissions emitted into the atmosphere from the vehicle's fuel system) regulations for heavy-duty gasoline-fueled vehicles,

(3) More stringent oxides of nitrogen standards for 1985 and later model-year heavy-duty engines, and

(4) Procedures and standards for measuring particulate emissions from heavy-duty diesel engines.

External: None.

Active Government Collaboration

None.

Timetable

Final Rule—before December 31, 1979.

Available Documents

NPRM—44 FR 9464, February 13, 1979.

All documents pertaining to this proposed regulation, including the Draft Regulatory Analysis, transcripts of the Public Hearings, comments on the proposal, etc., may be found in Public Docket OMSAPC–78–4 at the Environmental Protection Agency, Central Docket Section, Waterside Mall, Room 2903B, 401 M Street, S.W., Washington, DC 20460.

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EPA—OANR

Listing of coke oven emissions as a hazardous air pollutant and development of emission limitations

Legal Authority

The Clean Air Act Amendments of 1977, § 112, 42 U.S.C. § 7412

Statement of Problem

Section 112 of the Clean Air Act specifically requires the Administrator of the Environmental Protection Agency (EPA) to make a regulatory decision regarding control of atmospheric emissions of polycyclic organic matter (POM). On the basis of a health risk assessment of these emissions, conducted by EPA and supported by a similar assessment of coke oven emissions, the Administrator is considering listing POM as a hazardous air pollutant under section 112 of the Act. Currently, EPA is in the process of developing regulations limiting POM emissions from coke production facilities.

Chemically, POM refers to that class of organic compounds that contains two or more fused aromatic rings. Fused aromatic rings are benzene rings (cyclic rings of hydrogen and carbon) that are joined together and may or may not have other substances substituted for the carbon in the rings. Of major concern are the POMs formed in the combustion of organic matter. These include the polynuclear aromatic hydrocarbons [particularly benzo(a)-pyrene (BaP)] and their nitrogen analogs (e.g., aza and imino arenes). In assessing the health risk of POM, we judged BaP to be a satisfactory indicator of, and surrogate for, POM.

We have used data from epidemiological studies and ambient monitoring to estimate the health risk from POM (BaP) emissions from coke plants. These data indicate that the 1975 POM (BaP) emission rate from coke plants would result in approximately 80 cancer deaths per year in the population not exposed to it in their occupations. Since 1975, emission control has improved at coke plants because of

State regulations, consent agreements, Occupational Safety and Health Administration (OSHA) regulations, and industry initiatives. As a result of these actions, the 1975 risk figure of about 80 deaths per year is being significantly reduced. Additional emission control could reduce the remaining health risk. Therefore, EPA is considering promulgating regulations for at least three POM (BaP) sources at new and existing coke plants: (1) wet-coal charging operations, (2) topside leaks, and (3) oven door leaks.

Alternatives Under Consideration

The regulations we are considering would, at a minimum, limit emissions to levels that are attainable with "best available control technology" as it is defined by EPA's Policy and Procedures for Identifying, Assessing, and Regulating Airborne Substances Posing a Risk of Cancer. (See available documents.) The types of controls on which we would base the standard will vary among the sources within the coke plant but may include revised operating and maintenance procedures as well as modifications to equipment and application of control devices. The alternatives that we are considering have to do with the degree of control we will require.

Summary of Benefits

The direct benefit will be a decreased incidence of cancer from POM emissions from coke plants.

Indirect benefits include decreased adverse health and welfare effects associated with other pollutants emitted from coke plants (e.g., particulates, benzene). These pollutant emissions will also be reduced by the techniques designed to control POMs.

Summary of Costs

The total cost of installing controls resulting from an EPA regulation of POM from coke ovens is not well defined at present, but may exceed $50 million per year. Costs at individual plants will depend on plant size, existing control systems, other applicable regulations, and the stringency of the EPA standard.

Sectors Affected

The population that will benefit is the approximately 50,000,000 people who are exposed to atmospheric emissions from the Nation's 65 coke plants. These plants are located primarily in Ohio, Indiana, and Pennsylvania. Costs will be borne primarily by the major iron and steel producers (SIC 3312), which own about 75 percent of the Nation's coke production capacity.

Related Regulations and Actions

Internal: Ambient air quality standards for particulate and water effluent guidelines are in effect. EPA has proposed a "Policy and Procedures for Identifying, Assessing, and Regulating Airborne Substances Posing a Risk of Cancer."

External: The Occupational Safety and Health Administration standards that limit worker exposure to coke oven emissions are in effect.

Active Government Collaboration

The Occupational Safety and Health Administration and the Environmental Protection Agency have worked together to assess the need for EPA action. Their conclusion was that the EPA standards are needed and will result in additional benefits to public health.

Timetable

Listing of POM under section 112—March 1980.
Regulatory Analysis—October 1980.
NPRM—December 1980.
Public Hearing—January 1981.
Final Rule—October 1981.

Available Documents

Interagency Regulatory Liaison Group Development Plan (EPA—November 1978) National Emission Standards for Hazardous Air Pollutants; Policy and Procedures for Identifying, Assessing, and Regulating Airborne Substances Posing a Risk of Cancer, 44 FR 58642, October 10, 1979.

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EPA—OANR

National emission standards for hazardous air pollutants—benzene.

Legal Authority

The Clean Air Act Amendments of 1977, §§ 112, 301(a), 42 U.S.C. § 7412.

Statement of Problem

Benzene is a volatile hydrocarbon compound which is present in gasoline and is a basic chemical used in the production of other organic compounds. Exposure to benzene has been related to the occurrence of a number of blood disorders, including leukemia (a cancer of the blood-forming system), various cytopenias (decreased levels of an element in the circulating blood), aplastic anemia (a nonfunctioning bone marrow), and potentially inheritable chromosomal aberrations. Because these effects are serious and generally irreversible, the EPA Administrator listed benzene as a hazardous air pollutant under § 112 of the Clean Air Act on June 8, 1977.

EPA is developing standards for controlling benzene from maleic anhydride plants, refineries, chemical plants, storage facilities, ethylbenzene/styrene production, and coke-oven by-product plants. Emission points within these facilities include process equipment leaks, vents, and stacks. Maleic anhydride plants account for about one-third of the benzene emissions from stationary sources and are by far the largest source of benzene emissions in the chemical manufacturing industry.

Failure to control benzene emissions could increase the probability of incidence of leukemia in people who live near facilities which emit benzene.

Alternatives Under Consideration

For hazardous pollutants, § 112 of the Clean Air Act requires EPA to establish emission standards which provide an ample margin of safety to protect public health. EPA is considering alternative standards which include percentage limitations on the uncontrolled emissions, changes in processes, changes in feedstocks, improved processing equipment that is designed to minimize emissions, and leak-detection and repair programs.

Summary of Benefits

Standards to reduce benzene emissions would decrease the incidence of leukemia, blood cell deficiencies, and aplastic anemia.

Indirect effects of the standard would be decreased emissions of other toxic or oxidant-forming hydrocarbons and the accompanying lessening of the environmental problems that are associated with these pollutants.

Summary of Costs

The costs to implement standards that would limit benzene emissions depend on the regulatory alternatives that we select as the basis for each standard. Precise cost projections are not yet available for most benzene sources. For maleic anhydride manufacture, EPA has projected rough control cost estimates, however. A standard based on 99 percent control would result in nationwide capital costs of about $9.1 million, an increase in yearly costs of about $4.5 million, a potential price increase of 1.7 percent, and an increase in energy use of 85,000 barrels of oil per year. The energy is consumed to operate the control equipment. A 97 percent control standard would involve capital

costs of $6.6 million, yearly costs of about $2.5 million, a potential price increase of 1.2 percent, and an increase in energy use of almost 50,000 barrels of oil per year.

Generalized projections for controlling fugitive emissions (i.e., leaks from refineries and certain chemical plants) vary from $1 million to $17 million for capital costs, and yearly increased costs of up to $3.5 million.

We are studying other categories of sources, but we have not yet generated precise cost information in the current early stages of the project.

Sectors Affected

The people that benzene emissions affect most live in the East and along the Gulf of Mexico. Industries that the regulations will affect include: refineries; benzene storage facilities; industries that produce organic compounds such as maleic anhydride, ethylbenzene/styrene; and coke oven by-product plants.

Related Regulations and Actions

Internal: EPA has proposed a "Policy and Procedures for Identifying, Assessing, and Regulating Airborne Substances Posing a Risk of Cancer."

External: In September 1976, and again in December 1976, the National Institute of Occupational Safety and Health (NIOSH) recommended to the Occupational Safety and Health Administration (OSHA) that Federal occupational standards for benzene be reduced from a 10-ppm (parts per million) level for 8 hours to 1 ppm. OSHA promulgated a standard on February 10, 1978, which reduced the exposure limit to 1 ppm (8-hour average). That standard is currently being litigated.

Active Government Collaboration

The Interagency Regulatory Liasion Group Committee on Benzene has met periodically for the past 2½ years. Chaired by EPA, the Committee meetings have been attended by representatives of the Consumer Products Safety Commission, Occupational Safety and Health Administration, National Institute of Occupational Safety and Health, and the Food and Drug Administration.

Timetable

Maleic Anhydride:
- Regulatory Analysis—November 1980.
- NPRM—January 1980.
- Public Hearing—February 1980.
- Final Rule—November 1980.

Refinery and Chemical Industry Fugitive Emissions:
- Regulatory Analysis—March 1980.
- NPRM—May 1980.
- Public Hearing—June 1980.
- Final Rule—March 1981.

Storage Facilities:
- Regulatory Analysis—June 1980.
- NPRM—September 1980.
- Public Hearing—October 1980.
- Final Rule—August 1981.

Ethylbenzene/Styrene Production:
- Regulatory Analysis—April 1980.
- NPRM—June 1980.
- Public Hearing—July 1980.
- Final Rule—April 1981.

Coke Oven By-Product Plants:
- Regulatory Analysis—September 1980.
- NPRM—November 1980.
- Public Hearing—December 1980.
- Final Rule—September 1981.

Available Documents

At the time of NPRM, the following documents may be obtained from the U.S. EPA Library (MD-35), Research Triangle Park, N.C. 27711, telephone number (919) 541-2777:

"Benzene Emissions from Maleic Anhydride Plants—Background Information Document, Volume I."

"Assessment of Health Effects of Benzene Germane to Low Level Exposure."

"Assessment of Human Exposures to Atmospheric Benzene."

"Carcinogen Assessment. Group's Report on Population Risk to Ambient Benzene Exposures."

"National Emission Standards for Hazardous Air Pollutants; Policy and Procedures for Identifying, Assessing and Regulating Airborne Substances Posing a Risk of Cancer," 44 FR 58642, October 10, 1979.

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EPA-OANR

Noise emission standard for newly manufactured motorcycles

Legal Authority

Noise Control Act of 1972, §§ 6 and 8, 42 U.S.C. § 4901.

Statement of Problem

Motorcycles are one of the greatest causes of citizen noise complaints in this country. For example, in a recent EPA urban noise survey, respondents cited sources of traffic noise, particularly motorcycles, as the most annoying of all noise sources.

The sound levels of recently manufactured street motorcycles range as high as 85 decibels measured at fifty feet, some are as low as 76 dB, and about half are approximately 80 dB. The sound levels of some off-road motorcycles are as low as 86 dB, but many are up to 10 dB higher. We recognized at the time we identified motorcycles as a major source of noise that much of the noise is from motorcycles with modified exhaust systems. This "modification" problem consists of two parts: alterations to original equipment exhaust systems (tampering), and the availability and use of replacement systems with poor muffling performance. Motorcycles which are modified by either method often exceed the noise levels of newly manufactured motorcycles by 10 to 20 decibels.

Despite the modification problem, however, studies indicate that the unmodified motorcycles, if not quieted below current levels, will become the single loudest source of traffic noise when other vehicles are quieted as a result of EPA's program to reduce traffic noise. Noise from motorcycles that are used in off-road environments constitute a major noise problem, not only in wilderness areas, but also in backyards, vacant lots, and other near-residential areas. EPA has identified continuous sound levels in excess of 55 dB (or the non-continuous sound energy equivalent) to be sufficient to cause harmful health and welfare effects to people.

Alternatives Under Consideration

On March 15, 1978, EPA proposed noise regulations for newly manufactured motorcycles and replacement exhaust systems intended for use on these regulated motorcycles. The proposed regulations require that new motorcycles not exceed 83 dB beginning in 1980, 80 dB in 1982, and finally 78 dB in 1985. Later effective dates, yet to be determined, will be established in the final regulations.

(1) The major alternatives to the proposed regulations are: (a) setting a less stringent standard than 78 dB and/or, (b) extending the schedule for compliance. Based on docket comments, hearing testimony, and staff analysis, EPA considers the proposed standards and implementation schedules to be achievable by all current motorcycle manufacturers. However, there is reason to believe that smaller manufacturers, AMF/Harley-Davidson, the sole U.S. manufacturer (6 percent of the total U.S. market), and several European firms may encounter adverse economic effects in complying with the proposed

standards and the schedule of effective dates. A less restrictive standard of 80 dB could achieve up to 90 percent of the benefits of the 78 dB standard at reduced cost to the industry, and would affect some manufacturers less. It could, however, result in motorcycles standing out as the loudest source of noise from surface transportation within the urban residential/suburban environment as other sources become quieter in the coming years. Extending the time schedule for compliance with the 78 dB standard could also lessen the regulation's economic effect upon some manufacturers.

(2) Since a major cause of the current motorcycle noise problem arises from modifications to exhaust systems (either by tampering or by replacement of stock mufflers with less effective ones), one option is that of reserving Federal authority and supporting State and local noise enforcement programs exclusively. The Agency's studies have shown, however, that reductions in the noise emissions of new motorcycles, when combined with exhaust system standards and in-use enforcement programs, are the most effective means of achieving the desired reductions in noise from motorcycles over the next several decades. In addition, most State and local governments with voluntary active in-use enforcement programs have called for Federal regulations requiring reduced noise emissions from new motorcycles.

In addition, local resources to enforce noise control may be limited, so that some areas will not have the benefit of reduced traffic noise without Federal regulations.

(3) An alternative to setting Federal emission standards would be to require that manufacturers label new motorcyles with their noise emission levels. This would facilitate the setting of both new product and in-use emission standards for motorcycles by concerned States and localities as opposed to the Federal Government. However, this would also likely bring about a proliferation of motorcycle emission standards at different levels of stringency, with different compliance schemes, and possibly even different test procedures, all of which *each* motorcycle manufacturer and manufacturer of replacement exhaust systems would have to comply with in order to sell his products in all States and localities.

Both options two and three would require a change in the Act or a determination by the Administrator that motorcycles are not a major source of noise or that control is not technically feasible. Neither determination would be supported by the facts as the Agency now understands them.

Summary of Benefits

At the 78 dB regulatory level, the Agency estimated that the extent and severity of outdoor speech interference that is attributable to motorcycle noise would be reduced from current levels by 55–75 percent, and that the incidence of disturbance of sleep would fall by 50–65 percent. These figures assume that regulation of replacement exhaust systems would reduce the numbers of exhaust-modified motorcycles from the recently estimated 12 percent of the street motorcycle population (nationwide) to between 3 and 7 percent.

Summary of Costs

The estimated increase in the purchase price of motorcycles that the proposed regulations would cause was ten percent ($140) for street motorcycles and seven percent ($75) for off-road motorcycles, with a total annualized cost of $202 million. The estimated increase in purchase price for replacement exhaust systems was 50 percent ($50) over current stock replacement prices, with a total annualized cost of $22 million. The figures above include manufacturer's administrative and testing costs, which EPA estimated to average less than two dollars per motorcycle sold.

Thus, we estimated the total annualized cost of the regulation, as proposed, to be $224 million.

Sectors Affected

This regulation will affect motorcycle manufacturers and manufacturers and distributors of motorcycle mufflers. These sectors will be affected to the extent that their products require application of quietening technology. Notably, the Japanese motorcycle manufacturers and the larger U.S. motorcycle muffler manufacturers have devoted substantial resources toward creating a quieter product. Their dealers and distributors should experience the least difficulty in producing a quieter environment for the public.

Related Regulations and Actions

Internal: Noise emission standards for newly manufactured medium and heavy trucks as well as interstate motor carriers are in effect. We have published proposed standards for buses over 10,000 pounds Gross Vehicle Weight Rating (GVWR) and we expect to finalize them in early 1980. EPA is also investigating noise emission standards for newly manufactured tires and light vehicles. In addition, we are investigating, and intend in the future to issue more stringent regulation revisions for medium and heavy trucks.

External: None.

Active Government Collaboration

National Highway Traffic Safety Administration of the Department of Transportation.

Timetable

Final Rule—Exact date not available at time of this publication.
The regulation as proposed applied to motorcycles manufactured after January 1, 1980. We will establish a later date, yet to be determined, in the final regulations.
Regulatory Analysis—concurrent with the Final Rule

Available Documents

NPRM—43 FR 10822, March 15, 1978
"Background Document for Proposed Motorcycle Noise Emission Regulations;" U.S. Environmental Protection Agency, November 1977
Available from EPA Public Information Center (PM–215) Washington, D.C. 20460

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EPA—OANR

Noise emission standard for newly manufactured wheel and crawler tractors

Legal Authority

The Noise Control Act of 1972, §§ 6 and 8, 42 U.S.C. § 4905.

Statement of Problem

There are currently in excess of 2.4 million active construction sites, exclusive of highway construction, within the continental limits of the United States. This includes residential, mixed residential-commercial, industrial, and public works (sewer, water, electric, gas and street repair) construction. We estimate, based on national surveys of the locations of these construction sites and the average population densities typically surrounding such sites,that more than 37 million people are exposed to noise exceeding levels which the Environmental Protection Agency (EPA) has determined are requisite to protect the public health or welfare with an

adequate margin of safety. Further, our studies show that the class of construction equipment that the industry identifies as wheel and crawler tractors (frequently referred to as "bulldozers," "loaders" and "loader-backhoes") are the single largest contributor (greater than 16 percent) to the total noise at a construction site.

Congress showed its concern about the adverse effects of construction site noise on the public in § 6 of the Act. This section requires the Administrator of EPA to publish proposed regulations which set noise emission limits (for four categories of products, specifically including construction equipment) requisite to protect the public's health and welfare taking into account the magnitude and conditions of use of the products alone or in combination with other noise sources, the degree of noise reduction achievable through the application of the best available technology, and the cost of compliance.

Alternatives Under Consideration

The major alternative under consideration is setting noise level limits, phased with respect to stringency and effective dates, based on machine type and horsepower rating. The differences among allowable noise levels would be based on the nature of the different machines and their uses, the levels of noise they emit that affect people, the difficulties of applying necessary control technology, and the attendant costs and potential economic effects. The Noise Control Act requires EPA to proceed to a final regulation (after NPRM) unless control is not technically feasible. Thus, we are not considering non-regulatory alternatives. Comments on the proposed rule that we received during a 90-day public comment period are now under review.

Summary of Benefits

The rule, as proposed, (42 FR 132; July 11, 1977) would establish noise emission levels not to be exceeded and dates they would become effective for wheel and crawler tractors that are used in construction. As proposed, the rule would result in approximately a 12 percent reduction in the severity and extensiveness of noise effects on an estimated 37 million people who are now exposed to noise from construction sites.

Summary of Costs

We estimate that the increase in annualized costs to industry to comply with the proposed regulation would be about $228.0 million. This compliance cost includes capital expenditures for changes in the manufacturing process, product testing, recordkeeping, maintenance, and changes in productivity. We anticipate that 100 percent of these costs would be passed through to the construciton equipment owner and user and ultimately to the consumer in the form of increased charges for construction. These potential cost increases represent less than 0.01 percent of the total construction receipts for 1978. We do not anticipate significant, if any, unemployment to result from this proposed action, nor do we expect significant differential effects on small contracting firms as compared to larger firms.

Sectors Affected

Manufacturers and users of construction equipment and the general public.

Related Regulations and Actions

Internal: EPA has issued the following noise emissions standards for the products listed:

(1) Portable Air Compressors—published December 31, 1975: effective dates—January 1 and July 1, 1978;

(2) Medium and Heavy Trucks—published March 31, 1976: effective dates—January 1, 1978 and 1982;

(3) Truck-Mounted Solid Waste Compactors—published October 1, 1979: effective dates—October 1, 1980 and July 1, 1982.

EPA is currently developing noise emission standards for pavement breakers and rock drills, identified by the Administrator on January 19, 1977 as a major source of noise requiring regulation.

External: None.

Active Government Collaboration

National Bureau of Standards (noise testing); U.S. Army (noise testing); Federal Highway Administration (noise model); Bureau of Mines (equipment quieting).

Timetable

Final Rule—summer or fall of 1982.
Regulatory Analysis—concurrent with the regulation.

Available Documents

NPRM—42 FR 35804, July 11, 1977.
Draft Environmental Impact Statement.
Economic Impact Statement.
Background Document—EPA 550/9–77–250, dated June 1977.
Available at office of Agency Contact (see below).

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EPA—OANR

Particulate regulations for light-duty diesel vehicles

Legal Authority

The Clean Air Act Amendments of 1977, §§ 202, 206, 207, and 301, 42 U.S.C. §§ 7521, 7541, 7601.

Statement of Problem

The Congress has required the Environmental Protection Agency (EPA) to prescribe standards for emissions of particulates from light-duty diesel vehicles and light-duty diesel trucks by the 1981 model year. These standards are to be based upon the lowest emission rates that EPA finds to be possible through the application of technology that is available at the time the standards are to take effect, and are to take cost, noise, energy, and safety factors into consideration. The proposed standards are 0.60 grams per mile (0.373 gram per kilometer) for 1981 and 1982 and 0.20 gram per mile (0.124 gram per kilometer) for 1983 and later model years.

EPA believes that by the late 1980's, light-duty diesel vehicles will make up between 10 and 25 percent of the light-duty vehicle fleet. These vehicles emit significantly more particulate matter than do catalyst-equipped gasoline vehicles that operate on unleaded fuel. Depending upon the share of the market that is made up of diesels, this class of vehicles, if uncontrolled, could add an additional 160,000–400,000 tons of particulate matter to the atmosphere each year. The effect of these additional emissions would be particularly significant at the roadside. If controls are not applied, these additional emissions will cause many urban air quality control regions to exceed the primary National Ambient Air Quality Standard for Total Suspended Particulate which was set at a level to "protect the public health" and which is presently under review.

Alternatives Under Consideration

EPA is proposing to set standards of 0.60 grams per mile (0.373 grams per kilometer) for 1981 and 1982 and 0.20 grams per mile (0.124 grams per kilometer) for 1983 and later model-years. Additional alternatives EPA is considering are:

(1) Apply additional controls to stationary sources.

(2) Control mobile sources other than light-duty diesel vehicles (i.e., heavy-

duty diesel vehicles, locomotives, light-duty gasoline-powered vehicles, etc.)

(3) Adopt different levels of control for light-duty diesel vehicles (e.g., 0.3 grams per mile for 1983 and later models).

(4) Prescribe an average particulate standard that manufacturers would be required to meet with a sales-weighted average of their certification particulate levels, as opposed to the proposed individual vehicle standards.

In its analysis of alternatives, the Agency concluded that applying additional controls to stationary sources would put a disproportionate emphasis on control of stationary sources. The control of other mobile sources, specifically heavy-duty vehicles, is part of the Agency's overall strategy for controlling particulates; EPA is currently developing regulations for particulates from heavy-duty diesel vehicles. The Agency considered standards for other light-duty diesel vehicles reflecting both greater and lesser degrees of control, but concluded that the proposed standards most successfully fulfilled the criteria the Clean Air Act set out. Finally, certain manufacturers have suggested that the Agency adopt a mechanism whereby particulate emissions either from a manufacturer's total production or from its total diesel production would be averaged. The manufacturers argued that such a standard would allow greater marketing flexibility than would the individual vehicle standards.

Summary of Benefits

This rulemaking, if adopted as proposed, could reduce nationwide particulate emissions from light-duty diesels by 77 percent by 1990, reducing their particulate emissions from an uncontrolled level of 160,000–400,000 tons per year to 37,000–93,000 tons per year. This will also have a significant effect on roadside levels of particulate emissions from light-duty vehicles, reducing them from an uncontrolled range of 8.4–21.2 micrograms per cubic meter to 1.9–4.9 micrograms per cubic meter.

These emissions reductions will provide a benefit to human health because of the well-known effect of particulate matter on the human respiratory tract, including increased susceptibility to bronchitis, asthma, and pneumonia. There is also very preliminary evidence that diesel particulate matter may be mutagenic and/or carcinogenic.

Summary of Costs

Assuming light-duty diesel penetration of 10–25 percent of the light-duty vehicle market by 1983, the aggregate cost of control should be between $349 million and $872 million (1978 dollars) for the 5-year period from 1981–85. Expressed as an increased sticker price to the consumer, for 1983 and beyond, EPA estimates a price increase of $285 per vehicle.

Sectors Affected

This regulation will affect the industrial sector, in that the manufacturers of light-duty diesels will have to comply with the rulemaking. This rulemaking will also affect the general public. Nearly everyone will benefit from the lower levels of total suspended particulates in the ambient air, and those who purchase light-duty diesel vehicles will pay a higher sticker price for the vehicles.

Related Regulations and Actions

Internal: 40 CFR Part 86, "Control of Air Pollution from New Motor Vehicles and New Motor Vehicle Engines: Certification and Test Procedures."

EPA is also developing proposed gaseous emission regulations for 1983 and later model-year light-duty trucks.

External: None.

Active Government Collaboration

None.

Timetable

Final Rule—4th quarter 1979.

Available Documents

NPRM–44 FR 6650, February 1, 1979.

All documents pertaining to this rulemaking, including the draft regulatory analysis, transcripts of the Public Hearing, comments on the proposal, etc., are found in Public Docket OMSAPC–78–3 at the Environmental Protection Agency, Central Docket Section, Waterside Mall, Room 2903B, 401 M Street S.W., Washington, D.C. 20460.

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EPA–OANR

Proposed emission regulations for 1983 and later Model-year light-duty Trucks

Legal Authority

The Clean Air Act Amendments of 1977, §§ 202, 206, 207 and 301, 42 U.S.C. §§ 7521, 7525, 7541, and 7601.

Statement of Problem

By 1995, light-duty trucks (LDTs) (vehicles in the 0–8500 pound category for gross vehicle weight) may contribute more than 20 percent of the hydrocarbon (HC) emissions, 29 percent of the carbon monoxide (CO) emissions, and 10 percent of the oxides of nitrogen (NO_x) emissions in urban areas.

Of the 3215 counties or county equivalents in the nation, 19 percent are classified as non-attainment for photochemical oxidants (reaction of HC with sunlight) and 6 percent are classified as non-attainment for CO. Non-attainment status indicates that the given areas fail to meet the primary national ambient air quality standards (NAAQS) for the pollutant under consideration. The numbers are more significant in light of the fact that those non-attainment areas are large urban centers with high concentrations of the population. To reduce the number of people exposed to concentrations in excess of the NAAQS, further emission reductions are necessary.

Alternatives Under Consideration

EPA is considering two alternatives to reduce HC, CO, and NO_x emissions.

(1) 1983 HC and CO standards for heavier light-duty trucks which are more stringent than the minimum stringency required for these vehicles under the Clean Air Act.

(2) A division of the light-duty truck class into subcategories with separate sets of standards established for each category.

EPA could propose these in any combination.

The Clean Air Act does not allow less stringent HC and CO standards for heavier LDTs unless the Administrator determines that the 90 percent-reduction standards are infeasible in the allowed interval. The Administrator cannot make this determination. Therefore, less stringent standards were not considered.

The first of the listed alternatives can not be considered in depth due to time constraints on the rulemaking. EPA is confident that its own and industry's technology assessments have resulted in reasonable Congressionally mandated reductions.

The second alternative would allow more stringent emission standards to be set for those light-duty trucks which are best able to comply with them. California has adopted this alternative under EPA waivers. While EPA may at some time also adopt this alternative, it has chosen not to do so at present. The single set of proposed standards for

light-duty trucks meets all statutory requirements.

Summary of Benefits

This action, if adopted as proposed, will reduce HC and CO emissions from light-duty trucks by 90 percent. This means that between 580 and 840 fewer pounds of HC and 4.9 to 6.1 fewer tons of CO will be emitted by vehicles that are subject to the proposed regulations than are emitted under the present standards. EPA believes that this proposed rulemaking will reduce total emissions from mobile sources by up to 17 percent for HC and up to 26 percent for CO. This corresponds to an urban air quality improvement of 3.4 percent for oxidants and 9 percent for CO.

Summary of Costs

EPA estimates that compliance with the proposed 1983 requirements will increase the average price of a light-duty truck by approximately $62 over the price that would prevail if EPA made no changes in the existing regulations. There will also be an increase of about $60 in maintenance and operating costs (discounted to year of sale) over the life of the average LDT. This projected increase results from the anticipated need for inspection programs which would be funded through inspection fees and the need for other maintenance that the inspection programs show to be necessary (e.g., replacing catalysts). The action we are proposing here will not itself cause these two or three increases in operating and maintenance costs. They will occur only if States and localities implement inspection and maintenance programs for 1983 and later model-year LDTs. For localities which are non-attainment areas, we will require inspection and maintenance (I/M) programs if the locality is in violation of the NAAQS in 1982. The Clean Air Act mandates this.

The estimated increase in the average price of a light-duty truck will contribute about 0.005 percentage points to the rate of increase in the 1983 Consumer Price Index, an indicator of general price levels of products that consumers purchase.

This increase cannot properly be called inflationary, since the public will receive air quality benefits in exchange for the higher prices of light-duty trucks.

The EPA estimates that the aggregate cost to the nation of complying for the five-year period 1983 through 1987 will be $1.97 billion. This figure is the aggregate cost discounted to the beginning of the five-year period. Expressed as a required investment per vehicle for each vehicle made in the year the vehicle is manufactured, the aggregate cost of compliance is about $116 per truck. This includes both the retail price increase of the trucks and the increased cost of operation and maintenance.

Sectors Affected

The proposed rules on HC and CO would have a direct effect on the manufacturers of light-duty trucks and an indirect effect on the general populace in terms of improved air quality.

The population of those persons purchasing a new light-duty truck would also be affected indirectly by the additional $116 cost applied to all new trucks.

Related Regulations and Actions

Internal: 40 CFR Part 86, "Control of Air Pollution from New Motor Vehicles and New Motor Vehicle Engines: Certification and Test Procedures."

EPA is also developing proposed emissions regulations for particulates for diesel light-duty vehicles and light-duty trucks, and regulations for gaseous emissions for heavy-duty engines.

External: None.

Active Government Collaboration

None.

Timetable

Final Rule—second quarter, 1980.

Available Documents

NPRM—44 FR 40784, July 12, 1979.

All documents pertaining to this rulemaking, including the draft regulatory analysis, transcripts of the public hearing, comments on the proposal, etc., are in public docket OMSAPC–79–2, at the Environmental Protection Agency, Central Docket Section, Waterside Mall, Room 2903B, 401 M Street, S.W., Washington, D.C. 20460.

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EPA—OANR

Regulations for the Prevention of Significant Deterioration (PSD) resulting from hydrocarbons, carbon monoxide, nitrogen oxides, ozone, and lead (PSD Set II)

Legal Authority

The Clean Air Act Amendments of 1977, § 166, 42 U.S.C. § 7476

Statement of Problem

The purpose of this program is to provide for adequate representation of the public interest where the nation's clean air resources are threatened by increases in the concentration of hydrocarbons, carbon monoxide, nitrogen oxides, ozone and lead. The present Prevention of Significant Deterioration (PSD) regulations administered by EPA require the use of "best available control technology" (BACT) on all new or modified major sources of these pollutants. These BACT emission requirements do not, however, limit area-wide emission levels or air quality impacts and therefore cannot protect against the degradation of air quality up to the National Ambient Air Quality Standards (NAAQS). The Environmental Protection Agency is addressing this problem in response to a specific requirement in the Clean Air Act Amendments of 1977 (§ 166, 42 U.S.C. § 7476).

Alternatives Under Consideration

EPA is now reviewing a range of regulatory alternatives which appear to be most reasonable at this time. These alternatives include the following:

Emission Controls Only—This system would rely primarily on the requirements for best available control technology (BACT) on major new stationary sources and the Federal standards for motor vehicle emissions, with the possible addition of inspection and maintenance requirements. Control requirements under this system would not vary as a function of ambient concentrations or the proximity of sources as long as the National Ambient Air Quality Standards were not violated.

Ambient Air Quality Increments—This would call for developing an area classification system establishing numerical limits for allowable degradation of ambient air quality. This system would be similar to that already in effect for particulates and sulfur dioxide but not now applicable to other pollutants.

Emission Density Zoning (EDZ)—An EDZ system would set theoretical ambient air quality increments to be used only as a guideline for establishing limits on maximum allowable emissions per unit land area. Once EPA established these emission density limits, the appropriate State or local air pollution control agency would base preconstruction review and enforcement actions on compliance with the emission density limits rather than on ambient air quality.

Inventory Management—This system would require State and local agencies to develop and maintain detailed emission inventories, with the provision for mandatory periodic public review whenever the local emission inventory increased by a preestablished quantity or percentage. The system would require this public review before allowing any further incremental increase in emissions and could include an environmental analysis, a community environmental education program, a public hearing, and a vote by elected officials from the potentially affected areas.

Statewide Emission Limitation (Bubble)—This system would be designed to ensure that the aggregate Statewide emissions would not increase. Every local increase (after some fixed time) would require an equivalent decrease somewhere else within the State to offset it.

Avoidance of Juxtaposed Major Sources of Hydrocarbons and Nitrogen Oxides—This approach would be designed to prevent significant deterioration in air quality which results from the formation of ozone. Such a program would focus special attention on the hydrocarbon/nitrogen dioxide ratio and would prevent the location of major sources within a certain fixed distance of each other.

Emissions Fees—A fee system would be set up to strengthen the requirements for BACT on major new stationary sources. The State air pollution control agency would then levy a fee on each major new source. The fee would be based on the quantity of emissions and would thus give the source an incentive to develop and incorporate new and more effective strategies for controlling emissions.

Marketable Permits—A marketable permit system would establish permits to emit a certain fixed quantity of emissions and allow air pollution sources to buy and sell those permits. As in an emission fee system, the cost of these permits gives the source an incentive to minimize the quantity of emissions. Furthermore, the responsible air pollution control authority could limit the exact quantity of emissions within any one area by limiting the number of marketable permits allowed within that area.

Summary of Benefits

These regulations are at such an early stage of development that we cannot yet quantify benefits and costs. The benefits will vary depending on the alternative or alternatives we select. As we noted above, the regulations are unlikely to impose additional direct emission control requirements on air pollution sources, but they may impose siting restrictions because of limitations on area-wide emission totals. The benefits of these regulations will be the preservation of clean air in areas of the country which currently have less pollution than the maximum allowable under the National Ambient Air Quality Standards. Once we complete the regulatory analysis, we will have a better estimate of the benefits and costs associated with this regulation.

Summary of Costs

As we noted above, we will assess the costs of implementing these regulations as a part of the regulatory analysis. We already require the affected sources under Section 165 to install the best available control technology (40 CFR 51.24). Therefore, the costs resulting from this regulation alone will be those related only to site location.

Sectors Affected

This regulation could affect a wide range of industries, including: transportation, electric power plants, refineries, smelters, petrochemical, and manufacturing industries. Since Congress intended these regulations to give special protection to certain national parks and wilderness areas (The Clean Air Act Amendments of 1977 § 164, 42 U.S.C. § 7476), they will affect areas in and around these parks in particular.

We do not anticipate that the regulation will affect small businesses disproportionately. The regulatory analysis will, however, specifically address this problem.

Related Regulations and Actions

Internal: EPA has developed and currently administers regulations for the prevention of significant deterioration of air quality resulting from emissions of particulate matter and sulfur dioxide (40 CFR 51.24). The same regulations also require best available control technology on the sources potentially affected by this regulation.

External: None.

Active Government Collaboration

Collaboration within the Federal government to date has included contacts with the Department of Transportation, Department of Energy, Department of Interior, Department of Commerce and the Department of Housing and Urban Development. We will also invite other agencies with related interests to participate. We will solicit the participation of State governments through the State and Territorial Air Pollution Program Administrators, and we will solicit the participation of local governments through the Association of Local Air Pollution Control Officers.

Timetable

ANPRM—December 1979.
Public Meeting—January 1980.
NPRM—September 1980.
Public Hearing—October 1980.
Regulatory Analysis—October 1980.
Final Rule—April 1981.

Available Documents

None.

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EPA–OANR

Review, and possible revision, of the national ambient air quality standards for carbon monoxide (CO)

Legal Authority

The Clean Air Act Amendments of 1977, § 109(d)(1), 42 U.S.C. § 7409.

Statement of the Problem

Section 109(d) of the Clean Air Act Amendments of 1977 directs EPA to review the existing National Ambient Air Quality Standards by December 31, 1980. This is to include review of the scientific basis of the standard (the air quality criteria) as well as the standard. Where appropriate, EPA is to revise the air quality criteria and promulgate new standards. Therefore, EPA is undertaking a review of the current carbon monoxide (CO) standard, which may or may not result in new proposed rulemaking.

The magnitude of the problem associated with human exposure to carbon monoxide has not been completely quantified. However, there are several population groups that are sensitive to carbon monoxide exposure, i.e., patients with coronary heart disease (e.g., angina pectoris), peripheral vascular disease, cerebrovascular disease, or chronic obstructive pulmonary disease; pregnant mothers and their fetuses; and patients with anemia. Estimates of these population segments affected by CO exposure range from about 5 to 12 percent of the total U.S. population. In other words, several million persons in the U.S. with cardiovascular, pulmonary, and central nervous system disease can have these conditions aggravated by exposure to carbon monoxide.

Alternatives Under Consideration

The existing ambient air quality standards for carbon monoxide are set at 9 parts per million (ppm) over an 8-hour period and 35 ppm averaged over a 1-hour period. The major alternatives to maintaining the existing standards are:

(1) to change the concentration levels of the standards, and

(2) to change the period over which the concentration is measured. The Environmental Protection Agency (EPA) may make the health-based (primary) standards more stringent, less stringent, or keep them at current levels. We are looking at various levels of possible standards to determine whether we need to make any change in the standard. EPA is also reviewing the need for a secondary standard to protect against environmental and other non-health damages.

Summary of Benefits

There are several benefits that accrue from attaining the current ambient CO standard; they are related to the public health concerns we cited in "Statement of Problem." The benefits include improvement in general public health, the quality of life, and protection of the natural environment.

Summary of Costs

We will complete a study of the costs and economic effects of controlling carbon monoxide for alternative standards at the time we propose a revised standard.

Sectors Affected

Motor vehicles account for nearly 75 percent of the nationwide CO emissions and most high CO monitoring readings occur in urban areas with heavy traffic concentrations. Thus, control strategies for attaining the CO ambient air quality standard will have to focus on reducing emissions from motor vehicles. This proposed regulation will affect the automotive industry, the driving public, transportation planning and the operational highways.

Related Regulations or Actions

Internal: Revision of the National Ambient Air Quality Standard for carbon monoxide may result in revised emissions standards for motor vehicles as well as the development and implementation of measures to control transportation, and planning programs for areas where the standard is not attained.

External: Modifications in the existing standards would require States to reassess their current State implementation control programs and make revisions in control measures and strategies if necessary.

Active Government Collaboration

Other Federal agencies which will be actively involved in reviewing the standard include the Departments of Transportation; Energy; and Health, Education, and Welfare. In addition, EPA has contacted the Interagency Regulatory Liaison Group (IRLG) and will involve them in developing the standard. The IRLG functions to coordinate the regulatory authorities of the Environmental Protection Agency, Food and Drug Administration, Consumer Product Safety Commission, and Occupational Safety and Health Administration.

Timetable

NPRM—December 1979.
Regulatory Analysis—December 1979.
Public Hearing in Washington, D.C.—February 1980.
Final Rule—May 1980.

Available Documents

ANPRM—"Review of the Carbon Monoxide Air Quality Standard," 43 FR 56250, December 1, 1978.

"Air Quality Criteria for Carbon Monoxide" (External Review Draft, April 1979), are available from the Environmental Criteria and Assessment Office, MD–52, U.S. Environmental Protection Agency, Research Triangle Park, N.C. 27711.

U.S. Environmental Protection Agency Science Advisory Board Clean Air Scientific Advisory Committee, Subcommittee on Carbon Monoxide, "Transcript of Proceedings" for January 30 and 31, 1979 and June 14–16, 1979 are available for review in the Central Docket Section, U.S. EPA, Room 2903B, 401 M Street, S.W., Washington, D.C. between 9:00 a.m. and 4:00 p.m. on weekdays.

"Control Techniques for Carbon Monoxide Emissions," EPA–450/3–79–006, June 1979, is available from U.S. EPA Library (MD–35), Research Triangle Park, N.C. 27711. (919) 541–2777.

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EPA—OANR

Review, and possible revision, of the national ambient air quality standards for particulate matter (PM)

Legal Authority

The Clean Air Act Amendments of 1977, § 109(d)(1), 42 U.S.C. § 7409 *et seq.*

Statement of Problem

Section 109(d) of the Clean Air Act Amendments of 1977 directs EPA to review the existing National Ambient Air Quality Standards by December 31, 1980. This is to include review of the scientific basis of the standard (the air quality criteria) as well as the standard itself. Where appropriate, EPA is to revise the air quality criteria and promulgate new standards.

As part of this review program, EPA is revising the air quality criteria for particulate matter and is considering possible changes to current standards. The current Primary Standard (set to protect public health) is 75 micrograms per cubic meter ($\mu g/m^3$) annual geometric mean and 260 $\mu g/m^3$, maximum 24-hour concentrations, not to be exceeded more than once per year. The current Secondary Standard (set to protect public welfare) is 150 $\mu g/m^3$, maximum 24 hour concentration, not to be exceeded more than once per year.

Exposure to airborne particulate matter aggravates asthma and other respiratory disorders, cardiovascular diseases, and can impair pulmonary function and increase coughing and chest discomfort. Ambient levels of PM may increase the adverse health effects of gaseous air pollutants, such as SO_2. Depending on their chemical composition, specific types of PM may have more serious toxic or carcinogenic effects than others. Elevated PM levels result in increased soiling of exposed materials and increased acidity of rain. Acid rain adversely effects crops, materials, and aquatic ecosystems.

Alternatives Under Consideration

Based on the revised air quality criteria, EPA may decide to keep the existing standard without change, or may decide to change the allowable air concentration of particulate matter, the period over which the concentration is measured, or the number of allowable exceedances. EPA is also considering standards based on the size of the particulate as well as its concentation and the possibility of combining the ambient air quality standards for particulate matter and sulfur oxides. This consideration is based on evidence that smaller particles penetrate deeper into the lung, and evidence that elevated

concentrations of particulate matter occur in combination with elevated levels of sulfur oxides.

Summary of Benefits

Revision of the air quality criteria and review of the existing ambient standard will result in greater assurance that the standard that EPA will reaffirm or newly promulgate will protect the public health and welfare without unnecessary economic burden.

Summary of Costs

We will complete a study of the costs and economic effects of controlling particulate matter for alternative standards at the time we propose a revised standard.

Sectors Affected

Standards for particulate matter primarily affect the iron and steel industry, the utility industry, the non-ferrous metal industry, and industries which use large quantities of fossil fuels.

Related Regulations and Actions

Internal: Changes to the current ambient standard for particulate matter affect EPA's regulations for prevention of significant deterioration (PSD) or air quality, the ambient air quality standard for sulfur oxides (SO_x), and EPA regulations for new source review.

External: Modifications in the existing standards would require states to reassess their current state implementation control programs and make revisions in control measures and strategies if necessary.

Active Government Collaboration

Other Federal agencies which will be actively involved in reviewing the standards for particulate matter are the Department of Energy; Department of Transportation; Department of the Interior; Department of Commerce; Department of Health, Education, and Welfare; Department of Agriculture; and the Tennessee Valley Authority. In addition, the Interagency Regulatory Liaison Group (IRLG) has been informed of this review. The IRLG functions to coordinate the regultory authorities of the Environmental Protection Agency, Food and Drug Administration, Consumer Product Safety Commission and Occupational Safety and Health Administration.

Timetable

NPRM—May 1980.
Regulatory Analysis—May 1980.
Public Hearing—July 1980.
Final Rule—December 1980.

Available Documents

"Air Quality Criteria for Particulate Matter," AP–49, January 1969, available from the National Technical Information Services, 5285 Port Royal Road, Springfield, VA 22161.

"Health Effects Considerations for Establishing a Standard for Inhalable Particles," July 1978, available from the Health Effects Research Laboratory, Environmental Protection Agency, Research Triangle Park, N.C. 27701.

Airborne Particulate, National Academy of Sciences, 1977 available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

ANPRM—"National Ambient Air Quality Standards; Review of Criteria and Standards for Particulate Matter and Sulfur Oxides," 44 FR 192, October 2, 1979.

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EPA–OANR

Review of the national ambient air quality standards for sulfur dioxide

Legal Authority

The Clean Air Act Amendments of 1977, § 109(d)(1), 42 U.S.C. § 7409.

Statement of Problem

Section 109(d) of the Clean Air Act Amendments of 1977 directs the Environmental Protection Agency (EPA) to review the existing National Ambient Air Quality Standards by December 31, 1980. EPA will review the scientific basis of the standard (the air quality criteria as well as the standard itself). Where appropriate, EPA is to revise the air quality criteria and promulgate new standards.

As a part of this review program, EPA is revising the air quality criteria for sulfur oxides, and is considering possible changes to the current standards for sulfur dioxide. The present primary standard (set to protect public health) is 80 micrograms per cubic meter ($\mu g/m^3$) annual arithmetic mean, and a maximum 24-hour concentration of 365 $\mu g/m^3$, not to be exceeded more than once per year. The current secondary standard set to protect public welfare is 1300 $\mu g/m^3$, maximum 3-hour concentration not to be exceeded more than once per year.

Sulfur oxides in the air, working alone or in combination with other pollutants, aggravate respiratory disease such as asthma, chronic bronchitis and emphysema, and also irritate the eyes and respiratory tract. Sulfur oxides also contribute to the degradation of visibility and to the formation of acid rain. Acid rain adversely effects crops, materials, and aquatic ecosystems.

Alternatives Under Consideration

Based on the revised air quality criteria, EPA may decide to keep the existing standard without change, or may alter the air concentration of sulfur dioxide or the period over which the concentration is measured. EPA is also considering a combined standard for sulfur oxides and particulate matter, and a possible standard for sulfates.

Summary of Benefits

Revision of the air quality criteria and review of the existing ambient standard will result in greater assurance that the standard that EPA will reaffirm or newly promulgate will protect the public health and welfare without unnecessary economic burden.

Summary of Costs

A study of the costs and economic effect of controlling sulfur oxides for alternative standards will be completed at the time we issue the NPRM.

Sectors Affected

The ambient air quality standards for sulfur dioxide primarily affect the utility industry, the non-ferrous metal industry, the chemical industry, and industries which use large quantities of fossil fuels.

Related Regulations and Actions

Internal: Changes to the current ambient standard would affect EPA's regulations for prevention of significant deterioration (PSD) of air quality, the ambient air quality standard for particulate matter (PM) and EPA regulations for new source review.

External: Modifications in the existing standards would require states to reassess their current state implementation control programs and make revisions in control measures and strategies if necessary.

Active Government Collaboration

Other Federal agencies which will be actively involved in reviewing the sulfur oxide standards are the Department of Energy; Department of Transportation; Department of Interior; Department of Commerce; Department of Health, Education and Welfare; Department of Agriculture; and the Tennessee Valley Authority. In addition, the Interagency Regulatory Liaison Group (IRLG) has been informed of this review. The IRLG

functions to coordinate the regulatory authorities of the Environmental Protection Agency, Food and Drug Administration, Consumer Product Safety Commission, and Occupational Safety and Health Administration.

Timetable

NPRM—May 1980.
Regulatory Analysis—May 1980.
Public Hearing—July 1980.
Final Rule—December 1980.

Available Documents

"Air Quality Criteria for Sulfur Oxides," AP-50, January 1969—available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

"Sulfur Oxides," National Academy of Sciences, 1978—available from the National Academy of Sciences, Printing and Publication Office, 2101 Constitution Avenue, Washington, D.C. 20418.

ANPRM—"National Ambient Air Quality Standards; Review of Criteria and Standards for Particulate Matter and Sulfur Oxides," 44 FR 192, October 2, 1979.

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EPA—OANR

Review of the national ambient air quality standards for nitrogen dioxide

Legal Authority

The Clean Air Act Amendments of 1977, §§ 109(d)(1), 109(c), 42 U.S.C. § 7409.

Statement of Problem

Section 109(d) of the Clean Air Act Amendments of 1977 directs EPA to review the existing National Ambient Air Quality Standards by December 31, 1980. This is to include review of the scientific basis of the standard (the air quality criteria) as well as the standard itself. Where appropriate, EPA is to revise the air quality criteria and promulgate new standards.

As part of this review program, EPA is revising the air quality criteria for nitrogen dioxide (NO_2) and is considering possible changes to the current standards for nitrogen dioxide. The present primary standard is 100 micrograms per cubic meter ($\mu g/m^3$), annual arithmetic mean. A primary standard is the pollution concentration which, if not exceeded, will protect people from adverse health effects.

In addition, Section 109(c) of the Clean Air Act Amendments of 1977 requires EPA to promulgate a short-term standard (1 to 3 hours) for NO_2 if available evidence suggests that such a standard is needed to protect the public health and welfare.

Public exposure to NO_2 can result in impairment of pulmonary function and can increase susceptibility to respiratory infection. NO_2 or other nitrogen oxide compounds in the ambient air can affect crops, visibility, and materials, and can cause acid rainfall. Acid rain adversely affects crops, materials, and aquatic ecosystems.

Alternatives Under Consideration

Based on the revised air quality criteria, EPA may decide to keep the existing standard without change, or may alter the allowable air concentration of nitrogen dioxide, the period over which the concentration is measured, or the number of exceedances allowed. EPA is also considering a short-term standard.

Summary of Benefits

Revision of the air quality criteria and review of the existing ambient standard will result in greater assurance that the standard that EPA reaffirms or newly promulgates will protect the public health and welfare without unnecessary economic burden.

Summary of Costs

A study of the costs and economic effects of controlling oxides of nitrogen for alternative standards will be completed at the time we propose a revised standard.

Sectors Affected

If the review results in a new regulatory action, the regulation could affect point sources of nitrogen oxides emissions, such as power plants and industrial boilers. Mobile source emissions are currently being controlled under existing emissions limits for motor vehicles.

Related Regulations and Actions

Internal: Changes to the current ambient standard could affect EPA's regulations for nitrogen oxides emissions from motor vehicles, and for prevention of significant deterioration (PSD) of air quality, and EPA regulations for new source review.

External: Modifications in the existing standards would require states to reassess their current state implementation control programs and make revisions in control measures and strategies if necessary.

Active Government Collaboration

Other Federal agencies which will be actively involved in reviewing the nitrogen dioxide standards are the Department of Energy; Department of Transportation; and the Department of Health, Education, and Welfare.

Timetable

NPRM—March 1980.
Regulatory Analysis—March 1980.
Public Hearings—May 1980.
Final Rule—September 1980.

Available Documents

"Air Quality Criteria for Nitrogen Dioxide" (external review draft, June 1979), available from the Environmental Criteria and Assessment Office, U.S. Environmental Protection Agency, MD-52, Research Triangle Park, North Carolina 27711.

U.S. Environmental Protection Agency, Science Advisory Board, Clean Air Scientific Advisory Committee, Committee meeting on Air Quality Criteria for Oxides of Nitrogen, "Transcript of Proceedings" conducted in Washington, D.C. on January 29 and 30, 1979, available from ECAO.

"Control Techniques for Nitrogen Dioxide Emissions" (draft, January 1978), available from Emission Standards and Engineering Division, U.S. Environmental Protection Agency, MD-13, Research Triangle Park, North Carolina 27711.

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EPA—OANR

Standards of performance to control atmospheric emissions from industrial boilers

Legal Authority

The Clean Act Amendments of 1977, § 111, 42 U.S.C. § 7411.

Statement of Problem

Combustion of coal, oil, and gas in industrial boilers results in the emission of significant quantities of particulate matter, sulfur dioxide, and nitrogen oxides to the atmosphere. Because of the large number of boilers and the associated emission rates, industrial boilers are a significant contributor to the pollution problems in the United States. In 1975, emissions from industrial boilers were estimated to include 2.77 million tons of particulate matter (PM), 3.24 million tons of sulfur dioxide (SO_2),

and 2.01 million tons of nitrogen oxides (NO_x). The projected growth rate of the use of industrial boilers, coupled with the emphasis on shifting fuel from gas and oil to coal, will increase the potential for emissions. These air pollutants affect the health and welfare of most of our urban-dwelling citizens. Effects include respiratory disease in people and animals, reduced visibility in the atmosphere, damage to vegetation, and soiling and deterioration of real estate. Failure to provide more effective control of emissions from industrial boilers will allow increased exposure to the undesirable effects of excessive particulates, sulfur dioxide, and nitrogen oxides, and will expand the portions of the country that exceed EPA's ambient standards for these pollutants.

Alternatives Under Consideration

The 1977 Clean Air Act requires that EPA adopt standards of performance for stationary sources of air pollution that are fired by fossil fuels. EPA is gathering information on eight technologies for reducing boiler emissions: (1) oil cleaning and existing clean oil, (2) coal cleaning and existing clean coal, (3) synthetic fuels, (4) fluidized bed combustion, (5) particulate control, (6) flue gas desulfurization, (7) NO_x combustion modification, and (8) NO_x flue gas treatment. Alternatives pertain to the levels of emissions we will permit, the basis for regulating the emissions, and the possible exemption of specific sizes or classes of emission sources. For example, more restrictive limitations may be adopted for large sources, or for sources that use fuels with high pollution potential.

Summary of Benefits

Installing equipment that represents the best available control technology at new and modified industrial boiler facilities will help lessen air pollution in already affected areas and preserve clean air in yet unpolluted areas of the country. Such controls will reduce the need for using the "cleanest" fuels, which can be diverted to existing plants in which new add-on controls are less cost effective.

A regulation that requires more stringent controls on new and modified industrial boilers will allow industrial expansion and economic growth without an accompanying assault on ambient air quality.

Summary of Costs

Cost estimates for applying the control technology required by a regulation governing emissions from industrial boilers would be determined by the number, sizes, and types of sources we regulated and the degree of control we required. EPA estimates annual added costs of control at more than $100 million, but these estimates are necessarily very tentative.

Sectors Affected

Since boilers are fairly commonplace, the air pollution that they emit affects the population in most urban areas in a generally uniform manner. Additional rural effects result from the transport of pollutants by shifting air masses as weather changes take place. The type of plants involved are those for energy-intensive industries: glass (SIC 321, 322, 323), pulp and paper (SIC 261, 262, 263), and chemical manufacturing (SIC 281) are the specific industries that regulatory control would affect most. EPA will prepare an Urban Impact Statement.

The most direct effects of the proposed regulation will be on those industries that will install additional equipment to meet a standard. Such industries will be subjected to additional capital and operating costs. Because industry will increase product prices somewhat to comply with the standard, purchasers of those products will feel an indirect effect.

Related Regulations and Actions

Internal: We have issued water pollution regulations in the form of "Best Practical Technology Currently Available" and "Best Available Technology Economically Achievable." Industrial boilers are also subject to requirements of the Resource Conservation and Recovery Act.

External: Industrial boilers are subject to the Fuel Use Act and associated regulations established by the Department of Energy.

Active Government Collaboration

Because emissions from industrial boilers come from the combustion of fossil fuels, EPA is working closely with the Department of Energy to share information and stimulate advances in technology.

Timetable

Regulatory Analysis—July 1980.
NPRM—October 1980.
Public Hearing—November 1980.
Final Rule—August 1981.

Available Documents

ANPRM—44 FR 37632, June 28, 1979.

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EPA—OANR

Visibility plan requirements

Legal Authority

The Clean Air Act Amendments of 1977, § 169A, 42 U.S.C. § 7491.

Statement of Problem

Certain types of air pollution reduce visibility and in some areas of the country, there has been a documented deterioration of visibility because of inadequately controlled sources of air pollution. The deterioration of visibility is of special concern in and around parks and wilderness areas where scenic beauty is important. The Congress required the Environmental Protection Agency to develop regulations to prevent any future impairment and remedy any existing impairment of visibility in certain national parks and wilderness areas ("mandatory class I areas" as defined by § 169A of the Clean Air Act).

Alternatives Under Consideration

These regulations are still at a very early stage of development, and EPA is still formulating the regulatory alternatives. The regulations will state national requirements for visibility protection and call for State plans to implement these requirements. Among the policy issues we are discussing are: the definition for "baseline" visibility conditions, the protection to be provided to those scenic areas outside the boundary of the class I area, and the definition of "reasonable progress" towards the goal of visibility protection. EPA intends to adopt a phased approach to this problem. The first phase will involve controlling isolated major sources whose visible stack emissions impair visibility (so-called "plume blight"). The second phase will address the degradation of visibility on a regional scale, resulting from multiple sources, urban plumes, and problems in the Eastern U.S.

Summary of Benefits

These regulations and the State plans that are developed to implement them will reduce the impairment of scenic views from man-made pollution in class I areas where visibility is an important value. Since the regulations are at such an early stage of development, we cannot quantify the benefits. However, the millions who use parks and wilderness areas each year will benefit from the improved visibility.

Summary of Costs

It is expected that the economic effects of the first phase of these regulations will fall primarily on power plants fired by fossil fuels. The initial effects will likely be concentrated in the Western U.S. because of the location of the national parks and wilderness areas involved. The costs to the industries involved will be the capital and annual operating costs of control equipment. In the case of electric power plants, we expect the costs to be passed on, in the form of rate increases, to the customers of these facilities. We will quantify costs as we define regulatory alternatives.

Sectors Affected

As we noted above, the industrial sectors which the first phase of the regulations are most likely to affect are fossil-fuel power plants. Geographically, the regulations will primarily affect sources and consumers in the Western U.S.

Related Regulations and Actions

Internal: EPA's Prevention of Significant Deterioration regulations (40 CFR 51.24), which govern new source controls and location, affect many of the sources which visibility regulations will affect. Also, EPA's new source performance standard for utility boilers (40 CFR 60 Subpart D) places controls on power plants.

External: None.

Active Government Collaboration

Consultation within the Federal government to date has included the Departments of Interior, Agriculture and Energy. EPA will initiate collaboration with other levels of Federal, State, and local government.

Timetable

EPA's current schedule for the first phase shows:
ANPRM—December 1979.
Designate class I areas—December 1979.
Regulatory Analysis—May 1980.
NPRM—May 1980.
Public Hearing—June 1980.
Final Rule—November 1980.

Available Documents

None.

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EPA—Office of Research and Development

Fuels and fuel additives registration

Legal Authority

Clean Air Act Amendments of 1977, § 211(e) in support of § 211(b) (A and B), 42 U.S.C. §§ 7545 and 7601(a).

Statement of Problem

In 1977, Congress amended the Clean Air Act and added § 211(e) to the Act, which requires the Environmental Protection Agency (EPA) to develop regulations to test the environmental and health effects of fuels and fuel additives. Section 211(e)(2) establishes deadlines by which the manufacturer must provide the requisite information to the EPA Administrator. Section 211(e)(3) authorizes the Administrator to: (1) exempt small businesses from the regulations, (2) provide for sharing of testing costs among manufacturers who desire to register identical compounds, and (3) exempt businesses from duplicative testing requirements.

The present registration regulation requires that manufacturers submit certain information on the chemical composition and the toxicity of fuels and fuel additives to the extent this information is known to the manufacturer as the result of testing conducted for reasons other than fuel registration (40 CFR 79.31(c)).

The proposed action may require the manufacturer to perform certain physical, chemical, and biological testing of fuels and fuel additives before registration.

Alternatives Under Consideration

Our preferred alternative is to require testing on a tier basis. This approach would require that manufacturers report the chemical composition of all candidate fuels and fuel additives. If, based on chemical composition, we can make a finding that the environmental and health impacts are insignificant, we could decide that further testing is not required.

The second alternative is to require full testing for all fuels and fuel additives with no exemptions. Approximately 2,000 fuels and fuel additives would require full environmental and health testing. This alternative would be unnecessarily costly, since many fuels and fuel additives whose environmental impact we can predict to be small or negligible will have to be tested.

The third alternative would be to submit regulated pollutants (NO_x, CO, hydrocarbons) to registration and performance testing, but not to health or environmental testing. This is the present system as required by 40 CFR 79, which Congress mandated be changed.

Summary of Benefits

The benefit we expect from this regulation is the protection of public health. Fuels and fuel additives and the products of their combustion, which may be harmful to public health, will be eliminated from the market place.

We cannot estimate the economic benefits, in terms of reduction in respiratory and other diseases, at this time. However, because of the cost of medical services and because of the generally accepted view that prevention is preferable to treatment of diseases, the expected economic and social benefits, although they are not quantifiable at this time, will be significant.

Summary of Costs

There are over 2,000 fuels and fuel additives presently registered under § 211 of the Clean Air Act. We estimate that approximately 200 of these will require some degree of testing by the manufacturers. The cost to the industry of implementing these tests will be between $90 and $120 million. These costs will be distributed over the next three years, because by law all fuels and fuel additives must meet the testing requirements within three years of the date of promulgation of this regulation.

Sectors Affected

This proposed regulation would affect the petroleum industry, the automotive industry, and the driving public (to the extent that the petroleum industry would pass through to the consumers increased testing cost). The proposed regulations contain provisions to exempt small businesses from the most costly tests.

Related Regulations and Actions

Internal: Fuels and Fuel Additives Registration (40 CFR 79).

Proposed Guidelines for Registration of Pesticides (40 CFR 162, 163, 181).

Toxic Substances Control Act, § 4, Carcinogen Protocols and Chronic Toxicity Protocols (40 CFR 772).

Ambient Air Quality Standards (40 CFR 50).

External: None.

Active Government Collaboration

Health testing protocols will be submitted to the Interagency Regulatory Liaison Group for screening before the regulation is promulgated.

Timetable

NPRM—December 1979.
Final Rule—March 1980.
Regulatory Analysis—will accompany NPRM.

Available Documents

"Testing for Health Effects on Fuels and Fuel Additives" by Gause, et al, Environmental Monitoring Systems Laboratory, Research Triangle Park, N.C. 27711.

Test Plan to "Study the Effect of MMT on Emission Control Performance" (Draft).

"Protocol to Characterize Gaseous Emissions as a Fuction of Fuel and Additive Composition", EPA–600/2–750048, September 1975.

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EPA—Office of Water and Waste Management

Effluent guidelines and standards controlling the discharge of pollutants from steam electric power plants in navigable waterways

Legal Authority

The Clean Water Act, P.L. 92–500, as amended, §§ 301, 304, 305, 306, 307, 311, 402, and 504, 86 Stat. 816.

Statement of Problem

The Environmental Protection Agency (EPA), under the statute cited above, is required to develop technology-based effluent limitations guidelines and standards for discharges into navigable waterways and review such regulations once every five years. We initially promulgated effluent limitations guidelines for the steam electric industry on October 8, 1974. The U.S. Court of Appeals for the Fourth Circuit remanded parts of the guidelines (Appalachian Power v. Train, 545 F. 2d 1351 (4th Cir. 1976)).

We are reviewing the 1974 regulations to reflect updated information and remedy deficiencies pointed out by the Fourth Circuit Court of Appeals. In addition to the pollutants examined in the previous regulations, we are expanding the review to include toxic substances cited in the June 8, 1976 Consent Decree, Natural Resources Defense Council et al. v. Train, 8 ERC 2120 (D.D.C. 1976). We expect to publish the NPRM in the Federal Register, February 1980. We will not include guidelines for thermal discharges in these regulations.

The steam electric generating industry is composed of approximately 1, 068 generating plants nationwide. Steam electric generating plants have extremely large discharge flows. For this reason, the quantity of pollutants that is discharged is substantial even though the concentration is relatively low. Pollutants detected in significant quantities in the wastewaters of steam electric plants during an EPA sampling program were total residual chlorine, copper, zinc, nickel, chromium, arsenic, and trihalomethanes.

Alternatives Under Consideration

The Agency is considering various wastewater treatment technologies for controlling pollutant discharges from steam electric plants to the Nation's waterways. The primary focus of this effort is to control the discharges of toxic substances. We have determined that cooling water and ash transport water from power plants are the major contributors of toxics. For cooling water, the Agency is concerned with the discharge of pollutants resulting from the use of chlorine and other chemical additives. Technologies for wastewater control include end-of-pipe treatment (such as dechlorination) and management practices (such as using alternative chemicals). For ash transport water (defined below), the Agency is concerned with the discharge of inorganic toxic substances. The control technologies that the Agency has evaluated include: (1) methods of ash transport without the use of water, (2) complete recirculation, (3) partial recirculation, and (4) end-of-pipe treatment.

In evaluating the options for regulation development we consider several important factors, including: the quantity and type of pollutants each wastewater source discharges, treatment technologies that are available for the control of these wastewaters, the air and solid wastes that the wastewater treatment systems may produce, and the cost of these systems.

The various technologies under consideration for streams, other than ash transport water, have minimal economic impact. However, ash transport control technologies may cause major economic impact for smaller size facilities. Whenever coal or oil is burned in a steam electric power plant's boiler, varying amounts of ash are formed that require periodic collection and disposal. Some of the ash is relatively fine in size and light in weight, and is carried from the boiler in the flue gas and collected with air pollution control equipment. This type of ash is called "fly ash." Some ash is relatively bulky and heavy and will settle at the bottom of the boiler's furnace. This type of ash is called "bottom ash." These two types of ash can be transported wet or dry to their ultimate or temporary disposal sites. The advantages and disadvantages associated with the control options for ash transport water are given below because of their potentially significant economic impact.

Fly Ash

There are three technological options under consideration for developing effluent guidelines in steam electric plants. The first option requires zero discharge of water used for fly ash transport. The technology for achieving this option is to use transport methods that do not require the use of water (dry transport). The advantages of this option are that the technology is demonstrated and available and it will eliminate the discharge of toxic metals. The disadvantage is that the cost is high.

The second option requires recycling and reuse of the ash transport water. The advantage is that it will reduce toxic pollutants in both their suspended and, to a lesser degree, their dissolved form. However, data are not available yet to determine the degree of recirculation that is possible.

As a third option, the Agency is considering adding a further requirement to the second option that will reduce arsenic from fly ash transport water to 0.05 mg/l, through coagulation and lime precipitation. The advantage of this treatment is that it would be required only of those plants with high levels of arsenic. Since this technology is presently not used by steam electric plants for this wastewater stream, EPA would be required to use data from other industries to determine the efflent concentration that is achievable.

Bottom Ash

There are two technological options under consideration for bottom ash transport water, including a zero discharge option. The zero discharge option can be achieved through complete reuse/recycling of the ash sluice water or by the use of transport methods that do not require water. This option will remove completely all toxics in both their dissolved and suspended forms. The other technological option under consideration is partial recirculation of bottom ash transport water. This will remove suspended toxic

metals and a limited amount of dissolved metals, although technology for further removal of dissolved metals is available.

We are still gathering additional information on the costs and availability of the technologies. We have not selected the option for proposal, although the zero discharge requirements are the most environmentally acceptable.

Summary of Benefits

The major benefit of the proposed rule will be improvement of the aquatic environment through the reduction and/or elimination of discharges from steam electric generating facilities containing toxic compounds, primarily total residual chlorine and metals. The quantity of inorganic toxics that the zero discharge option for fly ash would remove is estimated to be 2,876 lb./day for existing plants and 1,192 lb./day for new plants. The zero discharge option for bottom ash sluice water would remove an estimated 1,131 lb./day of priority pollutants for existing plants and 477 lb./day for new plants.

Summary of Costs

We are currently refining the cost data for the various technology options. A rough estimate of the cost of compliance with the revised guidelines for the discharge of chemicals ranges from a $240 million to a $3.0 billion increase in cumulative utility capital costs through 1985. The high cost estimate is less than 2% of total utility capital costs through 1985. This would result in an increase in annual requirements for operating revenue of up to $400 million in 1985. These cost increases will be spread over the utility system, resulting in a national average cost increase to consumers of less than 0.5%. None of these requirements is expected to cause plant closings; however, they could slightly shift the generation of power from older and smaller coal-fired plants to larger ones.

Sectors Affected

These guidelines would directly affect establishments engaged in the generation, transmission, and/or distribution of electric energy for sale. They would also indirectly affect users of electric power, through rate increases.

Related Regulations and Actions

Internal: The scrubber systems used to comply with air pollution regulations may result in the discharge of contaminated water. The proposed requirements of the New Source Performance Standards under § 111 of the Clean Air Act will increase the number of facilities with scrubber systems in the future.

Section 316(b) of the Clean Water Act authorizes the Agency to require the best technology available in the location, design, construction, and capacity of intake structures for cooling water, to minimize adverse environmental impact.

Requirements for the management of solid wastes under the Resource Conservation and Recovery Act may affect the economic and environmental factors associated with various wastewater treatment technologies.

External: The recent emphasis on converting oil-fired power plants to other fuel types and the problems associated with nuclear waste disposal will affect the distribution of generating capacity by fuel types in the industry and, therefore, the amount of pollutants that would be discharged and controlled.

Active Government Collaboration

The Nuclear Regulatory Commission, the Department of Interior, and the Department of Energy have provided assistance by supplying the Agency with information and/or reviewing materials.

Timetable

NPRM—February 1980.
Final Rule—August 1980.
Regulatory Analysis—February 1980.

Available Documents

"The Final Development Document for Effluent Limitations Guidelines and New Source Performance Standards for the Steam Electric Power Generating Point Source Category", EPA (October 1974) [National Technical Information Service (NTIS) Number PB–240853/P5].

"Supplement for Pretreatment to the Development Document for the Steam Electric Power Generating Point Source Category", EPA (April 1977) [EPA–440/1–77/084]; and

"Technical Report for the Revised Effluent Limitations Guidelines for the Steam Electric Power Generating Point Source Category", EPA (September 1978).

Copies of the above reports can be obtained from NTIS or the EPA contact designated below.

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Procedures governing applications for special relief under §§ 104, 106 and 109 of the Natural Gas Policy Act of 1978 (Docket No. RM79–67)

Legal Authority

The Natural Gas Policy Act of 1978, P.L. 95–621, 92 Stat. 3350. Department of Energy Organization Act, 42 U.S.C. § 7107 *et seq.* Executive Order No. 12009, 42 FR 46267, October 1, 1978. Natural Gas Act, as amended, 15 U.S.C. § 717 *et seq.*

Statement of Problem

In the past, the Federal Energy Regulatory Commission, or its predecessor the Federal Power Commission, set maximum lawful prices for sales of natural gas made by producers of that gas. These maximum or ceiling prices were set to cover an entire class of producers. The highest price a producer could charge for his gas, depending upon when a well was drilled and started production, was a particular nationwide or areawide rate. Sometimes, however, a producer found himself in the situation where the ceiling price was not high enough to permit him to make a fair profit producing and selling his natural gas. In such circumstances the producer could continue to operate the well and sell the gas at a loss or he could abandon the well. Either alternative was unsatisfactory. Operating a well at a loss obviously affected the producer and would likely discourage further business ventures; abandoning the well or otherwise removing its gas from the market resulted in harm to consumers. To alleviate this problem, the Commission adopted regulations, called "special relief procedures," whereby producers could apply for special ceiling prices above those set as area or nationwide rates.

In the fall of 1978 the Congress passed the Natural Gas Policy Act (NGPA). This Act sets ceiling prices for producers who sell natural gas and fundamentally removes from the Commission the responsibility for establishing ceiling rates. Prices under the Act are set for different types of natural gas production, depending upon when the well is drilled, where the gas is produced, and whether it was priced under the earlier practices of the Commission. However, as a part of its general regulatory scheme, the NGPA provides that the Commission may set a ceiling price higher than that stated in the Act for certain types of producer sales. In other words, the

Commission may continue to grant "special relief" under the NGPA.

The Commission believes that it is necessary to continue providing producers with the opportunity to obtain relief from the ceiling prices. To this end, the Commission has proposed new regulations for granting such relief. The new regulations describe the circumstances under which a producer-seller of natural gas may seek a special relief rate, the manner in which the seller may apply for the rate, the process by which the Commission will consider an application, and the cost standards which the Commission will use to determine a special relief rate.

Alternatives Under Consideration

In providing regulations to govern the application for, and granting of, special relief under the NGPA, the Commission must determine which of the various categories of natural gas that are priced under that Act will be eligible for the relief and on what basis it will grant the relief. There are alternatives for both of these questions.

The Commission has the authority to grant special relief for three of the eight categories of natural gas sales defined under the Act. The proposed rules cover only these three categories. However, the Act could be read to permit higher ceiling rates for the other five categories under circumstances which might be considered as warranting "special relief." The Commission is, therefore, considering expanding the rule to encompass some or all of the other categories.

One of the more complex problems in establishing a rule for special relief is the criteria by which the Commission will grant special relief. Under the old special relief rules, a producer could recover either out-of-pocket expenses or a rate sufficient to provide a fair return on total past and future costs, including any extra investment he had to make. The new regulations, while simplifying the standards, also distinguish between a producer who must undertake an important investment to make his well economically productive and one who requires no such investment. There are criteria for each, the major difference being the treatment of the producer's return on investment. The Commission could treat both situations in the same way by providing for a return on total investment.

The relative pros and cons of alternative standards are extremely complex. In deciding among them the Commission must balance the impact of each alternative against the practicalities of producer regulation, the supplies affected, the difficulty (or simplicity) of the regulations, and the intent of the NGPA.

Summary of Benefits

This proceeding will directly benefit producer-sellers of natural gas. It will provide the sellers with an opportunity to petition for maximum lawful prices greater than those explicitly set forth under the NGPA. This is important for those sellers who might incur real economic harm or be hesitant to undertake new projects because the cost to produce their gas exceeds the ceiling price they could get for the gas under the Act. In addition, the proceeding will benefit the pipelines that purchase the gas and the ultimate consumers. The benefits will be in the form of added supplies of natural gas which would otherwise be kept off the market and which would have to be replaced with fuel oil or other expensive alternatives.

Summary of Costs

The procedures to allow special relief applications will place upon the Commission an administrative burden and, with that burden, an administrative cost. The number of petitions for special relief that may be filed cannot be determined at this time and will depend upon many variables, including general economic trends and the particulars of individual cases. About 50 to 60 cases per year were administered under the old special relief procedures. This would be a realistic estimate for cases filed under the proposed regulations. The new procedures of the proposed rule would result in a more economical use of the Commission's time. Thus, administrative costs should be less than under prior practices. However, about 130 requests for special relief are now pending. These cases, originally filed under the old procedures, form an immediate backlog for administrative action under the new procedures.

The granting of a special relief rate means that a producer can receive a higher price for the sale of his gas. This higher price can be passed through to the ultimate consumer. The exact magnitude of this effect is unknown but could well reach into the millions of dollars.

Sectors Affected

The procedure under consideration would directly affect two sectors of the natural gas industry, natural gas producers and the pipelines which purchase from producers. In addition, the procedure, by allowing for increased ceiling prices which can be passed through to the consumer, will affect ultimate consumers.

Related Regulations and Actions

Internal: Regulations implementing the Natural Gas Policy Act.
External: None.

Active Government Collaboration

In that the proceeding is one which will establish procedures for direct applications by producer-sellers of natural gas to the Commission, no other government entity is, or will be, involved.

Timetable

Commission consideration of Final Rule—late fall 1979.
Final Rule—late 1979.
Final Rule effective—early 1980.

Available Documents

NPRM issued August 14, 1979 under Docket No. RM79–67.

Notice Granting Extension of Time to Comment, issued September 10, 1979 under Docket No. RM79–67.

Notice of Public Hearing, issued October 13, 1979 under Docket No. RM79–67.

Transcript of Public Hearing and written comments. All of these documents are available at the Commission's Office of Public Information, 825 North Capitol Street, N.E., Washington, D.C.

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FERC

Regulations concerning sales of electric power between qualifying cogeneration and small power production facilities and electric utilities, and exemption of such facilities from regulation, under §§ 201 and 210 of the Public Utilities Regulatory Policies Act of 1978 (PURPA)

Legal Authority

The Public Utility Regulatory Policies Act of 1978 (PURPA), P.L. 95–617, Title 2, 92 Stat. 3117.

Statement of Problem

Within 12 months after enactment of the Public Utilities Regulatory Policies

Act of 1978 (PURPA), the Federal Energy Regulatory Commission (FERC) must prescribe rules requiring electric utilities to purchase electric power from and sell electric power to cogeneration and small power production facilities. Cogeneration facilities produce two forms of useful energy, such as electric power and steam, simultaneously, while small power production facilities use waste or renewable resources to produce power. Under § 201 of PURPA, cogeneration facilities and small power production facilities which meet certain standards and which are not owned by persons primarily engaged in the generation or sale of electric power, can apply to the FERC to obtain qualifying status. Under § 210 of PURPA, electric utilities must offer to purchase electric power produced by such qualifying facilities, and sell power to such facilities. In addition, the FERC can exempt qualifying facilities from regulation under the Federal Power Act, the Public Utility Holding Company Act, and State laws regarding rates and financial organization.

Cogeneration facilities can produce two or three times more usable energy than a conventional energy facility can produce from the same amount of fuel. When used in industrial processes, they can produce electric power in excess of the industry's overall requirements. They can supply electric power to the grid of the electric utility which serves the area, and can save the electric utility from burning additional fuel that it would require if the utility had to generate an equivalent amount of power.

Small power production facilities produce electrical energy from wind, solar, biomass, or waste. ("Biomass" means plant materials which are obtained from cultivation, or harvested from naturally occuring vegetation without significant depletion of the resource. "Waste" includes municipal, agricultural, and other wastes and includes any by-product materials of any operation for which the market value is less than the disposal cost.) Reliance on these sources of energy can similarly reduce the need to consume traditional fuels to obtain electric power.

Prior to the enactment of PURPA a cogenerator or small power producer wishing to sell electric energy to a utility faced two major obstacles. First, there was no legal requirement that a utility purchase the electric output, or that it pay a just and reasonable rate for such purchases. Second, a cogenerator or small power producer which provided electricity to a utility's grid ran the risk of being considered a public utility and thus being subjected to State and Federal regulation. Sections 201 and 210 of PURPA are designed to remove these obstacles. Each electric utility is required under § 201(a) to offer to purchase all available electric energy from cogeneration and small power production facilities which obtain qualifying status under § 201 of PURPA. For such purchases electric utilities are required to pay rates which do not discriminate against cogenerators or small power producers. Section 210(e) of PURPA provides that the FERC can exempt qualifying facilities from State regulation regarding rates and financial organization and Federal regulation under the Federal Power Act and the Public Holding Company Act.

Implementation of the FERC rule is reserved to the State regulatory authorities and non-regulated electric utilities. Within 12 months after the FERC issues rules, each State regulatory authority and non-regulated electric utility must, after notice and opportunity for hearing, implement its rules.

The states must set specific rates for the sales of power between electric utilities and qualifying cogeneration and small power production facilities, pursuant to the principles established by the Commission. They can accomplish this by issuing regulations, on a case-by-case basis, or by any method reasonably designed to implement the FERC's rules, but they must do so only after notice and an opportunity for a hearing. The State regulatory authorities may also establish standards for safe interconnected operation between electric utilities and qualifying small power producers and cogenerators. In summary, the states will carry out the program, following general guidelines prescribed by the FERC.

Alternatives Under Consideration

The option that the Commission Staff task force presently favors would permit the State regulatory authorities a great deal of latitude with regard to the specifics of the rate provisions under § 210(a). Section 210(b) relates the rate to be paid for purchases of electric energy by electric utilities from qualifying facilities to the "incremental cost to the electric utility of alternative electric energy." The FERC's Staff interprets this standard to mean that the rate for such a purchase must be based on the costs that a purchasing electric utility can avoid by purchasing an equivalent amount of electric energy from a qualifying facility. The concept of decentralized and non-utility owned inputs into an electric system is a new one, and the determination of a utility's avoided cost is a new and difficult rate problem. As a result, the FERC proposes to allow the State regulatory authorities room for experimentation within the broad guidelines of the Commission's rules.

With regard to the granting of exemption from regulation of cogenerators as electric utilities, comment the FERC received during public hearings and in response to a Staff discussion paper has indicated a general desire that exemptions be as broad as possible under § 210(e) of PURPA. Such broad exemption should remove much of the disincentive for cogeneration and small power production that was previously associated with the fear that these energy sources would be regulated as electric utilities.

With regard to the proposed rulemaking on obtaining qualifying status, a major issue is whether cogeneration facilities which use oil or natural gas should be eligible for qualifying status.

Under PURPA, the FERC may establish fuel use requirements for qualifying cogenerators of any size, but any such requirements regarding the use of natural gas or petroleum would only be effective at facilities below the thresholds established under the Powerplant and Industrial Fuel Use Act. At such lower levels, a fuel burning installation that does not seek classification as a qualifying cogenerating facility would not be subject to a FERC rule and could burn natural gas or oil. Hence, a restriction on the use of gas or oil for cogeneration, imposed by FERC, could discourage cogeneration at the lower heat input levels, while not significantly reducing the use of oil or natural gas.

An alternative to the proposed rule might be only to grant qualifying status if oil or gas used by a cogeneration unit would displace oil or gas that an electric utility would otherwise use to supply the power needs of the facility. At this time, useful cogeneration is limited to machinery which uses oil or gas. As a result, to so limit eligibility to cogeneration would not comply with the mandate under PURPA that FERC encourage cogeneration.

Another issue arising in the adoption of a Final Rule in Docket No. RM79-54 concerns the minimum size for qualifying facilities. The minimum size set forth in the proposed rulemaking was ten kilowatts. However, comment FERC received indicated that viable wind machines and other small systems can be economically feasible at sizes as small as one kilowatt. A residence or small business can use these machines,

and in the aggregate, could achieve significant energy savings.

Summary of Benefits

These rules should significantly encourage the development of alternative energy sources. In turn, such development should reduce the need of electric utilities to consume increasingly expensive traditional fuels. In the long run the aggregate capacity of cogeneration and small power production facilities should reduce the need for utilities to construct new electric plants, since such capacity will be provided instead by cogeneration and small power production facilities.

Summary of Costs

Cogeneration produces much greater efficiency than do traditional power systems. As a result, fewer resources are needed to produce an equivalent amount of energy. Accordingly, there are few direct costs associated with cogeneration.

Similarly, small power production uses renewable resources or waste to produce energy. The use of these renewable fuel sources is similarly without significant direct costs.

Section 210 of PURPA prohibits the utilities from charging higher rates so as to subsidize cogenerators and small power producers. These customers will not have to pay higher costs to encourage these technologies.

The chief costs resulting from these rules are the costs associated with the operation of decentralized electric power supply systems. Heretofore, large central power plants owned by utilities have produced virtually all the power used on a utility's system. Safety equipment, billing, and service provided by the utility have related entirely to equipment owned and operated by that utility. Under the rules proposed by the Commission, many industries, businesses, and private individuals will have the opportunity to generate electric power and feed it into the utility's electric system. This interconnected operation may result in the need for additional safety equipment, and for increased administrative costs. Under PURPA, these additional costs must be borne by the cogenerators and small power producers, so that the utility's customers are not required to pay higher rates than they would have paid if the utility provided all of the power.

Sectors Affected

These rules will affect each electric utility; they are not limited to those which sell electric energy for resale in interstate commerce and are thus subject to the Federal Power Act.

Related Regulations and Actions

Internal: On June 27, 1979, the FERC issued proposed regulations providing for qualification of small power production and cogeneration facilities under § 201 of PURPA, in Docket No. RM79–54. These rules establish criteria by which small power production and cogeneration facilities may be certified as qualifying facilities and thus made eligible for the rate and exemption provisions of § 210 of PURPA.

External: Each State regulatory authority must set specific rates for these sales of power. States may do so by issuing regulations or on a case-by-case basis, but in all events must provide notice and opportunity for a hearing. States may also establish operating standards for interfacilities.

Active Government Collaboration

None.

Timetable

Public Hearing—November 19 (Seattle), November 28 (New York), November 30 (Denver), December 4 (Washington, D.C.).

Final Rule—January 1, 1980.

Available Documents

Staff Paper Discussing Commission Responsibilities to Establish Rules Regarding Rates and Exemptions for Qualifying Cogeneration and Small Power Production Facilities pursuant to § 210 of the Public Utility Regulatory Policies Act of 1978, Docket No. RM79–55, issued June 26, 1979;

Proposed Regulations Providing for Qualification of Small Power Production and Cogeneration Facilities under § 201 of the Public Utility Regulatory Policies Act of 1978, issued June 27, 1979, Docket No. RM79–54; NPRM, Regarding the Implementation of § 210 of the Public Utility Regulatory Policies Act of 1978, Docket No. RM79–55, issued October 18, 1979;

Request for Further Comments in Proposed Rulemaking Establishing Requirements and Procedures for a Determination of Qualifying Status for Small Power Production and Cogeneration Facilities, Docket No. RM79–54, issued October 19, 1979.

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FERC

Regulations governing applications for major unconstructed projects

Legal Authority

Federal Power Act, Part I, 16 U.S.C. §§ 792–823; Public Utility Regulatory Policies Act of 1978, § 405, 16 U.S.C. § 2705.

Statement of Problem

This rulemaking is the third phase of a program of licensing reform for all projects built for the generation of electric energy by means of water power that are within the jurisdiction of the Federal Energy Regulatory Commission (FERC). See "Related Regulations and Actions". The licensing of water power projects, whether they are being developed by private enterprise, states or municipalities, is subject to FERC regulation, if they are located on navigable waters or public lands of the United States, use surplus water from a Government dam, or were built after 1935 on non-navigable waters that affect the interests of interstate commerce. In licensing such projects, the FERC considers design features, financial and economic factors involved in constructing the project, and environmental consequences.

Section 405 of the Public Utility Regulatory Policies Act of 1978 (PURPA) charges the FERC with establishing simple licensing procedures for water power projects that have a capacity to generate 15 megawatts (20,000 horsepower) or less of electricity at any one time. The Commission is extending the benefit of that mandate to all water power projects. In this rulemaking, the licensing reforms will deal with all "major" (those with a generating capacity of more than 1.5 megawatts or 2,000 horsepower) projects (1) for which there is no dam or impoundment at the time of the application, or (2) which would result in a significant increase in the normal surface elevation of an existing impoundment, or (3) which are otherwise determined, pursuant to the Commission's regulations implementing the National Environmental Policy Act of 1969 (NEPA) (see "Related Regulations and Actions"), to have a potentially significant environmental impact.

The objectives of the revised provisions for licensing these major "unconstructed" projects, as for all other projects, are to simplify and clarify licensing requirements and procedures, to ease the burden of compliance (by reducing and clarifying reporting requirements consistent with the FERC's statutory responsibilities), and thereby to make the development of new sources

of hydroelectric power generation more attractive and efficient. The current regulations governing major water power projects are scattered in various sections of the Commission's regulations. An applicant also faces the prospect of submitting information as requested in up to 23 different exhibits within each application. Frequently, the existing regulations do not explain with sufficient detail what information applicants must submit. The result can be duplication of effort or deficient applications. The revision of the regulations governing major unconstructed projects will consolidate and simplify the exhibits required of any applicant in a way which elicits only that information that is relevant to an informed decision on the application.

Projects of the magnitude covered by this rulemaking naturally result in more significant environmental disturbances than other water power projects. The FERC will therefore require of any applicant for a major unconstructed project an Environmental Report of considerably greater depth and detail than it will for smaller projects or projects at existing dams. The FERC is also revising its NEPA regulations that set forth the specifications of an Environmental Report for all projects, tailoring the requirements for such reports to the type of water power project for which the applicant seeks a license. The need for relatively greater detail about such projects will also extend to information relating to their structural and financial integrity.

Alternatives Under Consideration

Insofar as licensing reform is mandated by statute, there is no alternative. The choices facing the FERC involve the extent to which it will require an applicant to supply particular kinds of information.

Summary of Benefits

Better licensing procedures should result in more expeditious licensing of water power projects and the encouragement of such development. One consequence of the creation of more hydroelectric facilities may be more stability in the cost of electricity to consumers.

Improved regulations conserve the manpower and financial resources of the FERC and assist applicants in using their time and money to the best advantage. For example, if regulations are more understandable on their face and are reasonable in their demands on the applicant, there may be fewer deficient applications requiring upgrading, less time wasted in interpretation, and less litigation. With improved regulations, FERC will be better able to fulfill its obligations under NEPA through identification and minimization of adverse environmental disturbances.

Summary of Costs

Many developers find adapting to unfamiliar new regulations difficult, regardless of the clarity of those regulations. Overall, there would be no new costs added to the licensing process.

Sectors Affected

Projects of the U.S. Army Corps of Engineers, the Bureau of Reclamation, and any other agency of the Federal government that is empowered to construct, own, or operate water power projects are not subject to FERC regulations. The rulemaking will affect State, municipal and private development of water resources for purposes of power generation.

Related Regulations and Actions

Internal: The first phase of the licensing reform program revised the licensing regulations for all "minor" (installed capacity of 1.5 megawatts or less) projects (FERC Order No. 11, 43 FR 40215, September 11, 1978). The second phase revises the regulations for "major" (more than 1.5 megawatts of installed capacity) projects where at least a dam and impoundment are in existence at the time of the application (Docket No. RM 79–36, 44 FR 24095, April 26, 1978). In conjunction with these reforms, the Commission is also revising its procedural regulations governing licenses and preliminary permits for all water power projects (Docket No. RM 79–23, 44 FR 12432, March 7, 1979).

The FERC has proposed new Regulations Implementing the National Environmental Policy Act of 1969 which relate to all its actions. (Docket No. RM 79–69, 44 FR 50052, August 20, 1979.)

External: None.

Active Government Collaboration

None.

Timetable

NPRM—early 1980.

Available Documents

None.

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FERC

Regulations to implement the second stage of incremental pricing under the Natural Gas Policy Act

Legal Authority

Natural Gas Policy Act, P.L. 95–621, Title II, 92 Stat. 3371.

Statement of Problem

The Natural Gas Policy Act of 1978 (NGPA) requires the Federal Energy Regulatory Commission (FERC) to promulgate rules to implement incremental pricing of natural gas for certain industrial facilities. FERC must have promulgated the first ("Phase I") rule by November 9, 1979. Under the Phase I rule, the higher prices for natural gas which the legislation permits will be selectively channeled to large industrial boiler fuel users whose natural gas supplies are delivered through interstate pipelines.

This will have the immediate benefit of initially shielding residential and other users of non-incrementally priced gas from some of the wellhead price increases that will occur under the legislation.

The NGPA further requires that the FERC promulgate an amendment to this rule within 18 months of the Act's enactment (by May 9, 1980). This "Phase II" incremental pricing rule may extend incremental pricing to other industrial uses such as chemical manufacturing or heat treating. FERC must submit this Phase II amendment to Congress for review. It will become effective if neither House disapproves it within 30 days.

The Commission has instructed the staff to prepare an NPRM to expand the application of incremental pricing to other industrial users. Title II of the NGPA gives the FERC authority to propose as broad or narrow a Phase II expansion of the Phase I incremental price rule as it determines is appropriate. However, any decision the Commission reaches on this question must be subject to Congressional review and may take effect only if not disapproved by either House. Commission action on the NPRM is expected in November 1979.

Alternatives Under Consideration

The staff will most likely propose a relatively broad Phase II expansion. Staff sees this approach as the best way to elicit public views on the proper course for the Commission to take in implementing incremental pricing. The Commission's final decision on how broad an expansion should occur in Phase II will derive from the views received in response to the proposed rule.

Summary of Benefits

Incremental pricing is intended to lead to both short-term and longer-term benefits to consumers of natural gas. In the short run, recovering a larger share of the increased cost of natural gas from low priority industrial customers will permit higher priority customers, such as residential and small commercial users, to pay correspondingly less for their natural gas. Overall, incremental pricing is merely a transfer of costs, but the residential and small commerical users would benefit directly.

Over the longer term, the intended result of incremental pricing is to bring the price of gas to large industrial customers up to the price of competing or alternative fuels, which will normally be fuel oil. When this result is achieved, interstate pipelines will face a strong incentive to keep the bidding price for natural gas as low as possible for fear that higher prices will drive users of the incrementally priced gas from the system. This objective is of particular importance after January 1, 1985, when new gas is freed from price controls.

In the short term, there should be no macroeconomic benefit or cost attributable to incremental pricing. Industrial users will pay more than they would have otherwise, and residential and commercial users will pay less. The law requires that the increased costs to some users be of equal magnitude to the benefits to other users. Higher industrial prices due to incremental pricing may affect the competitive position of some firms, and may in this regard have discernable economic impact. Another potential consequence of higher industrial prices is increased conservation.

Summary of Costs

Many commentors in the proceedings to implement the first stage of incremental pricing have argued that such rules may, over time, have negative economic consequences. If the price of natural gas to large industrial users is placed too high, these users will switch to alternative fuels. A massive shift of industrial customers away from natural gas would reduce the total volume of natural gas sales, and would force gas pipelines and distribution companies to raise the unit price of remaining sales in order to recover their fixed costs. Under this scenario, an improperly implemented set of incremental pricing rules would not only raise natural gas prices to high priority users (contrary to the intent of Title II), but would also give rise to additional imports of crude oil and petroleum products. The Commission recognizes these potentially adverse economic consequences that could attend its implementation of these regulations. On the other hand, the Commission recognizes the Congress' intent in enacting incremental pricing, and will seek to promulgate rules that are both consistent with that intent and have maximum economic benefits.

Sectors Affected

All gas consumers will be affected by the Commission's action on Phase II of incremental pricing. If the Commission significantly increases the number of industrial users subject to incremental pricing, there will be an adverse effect (in the form of higher delivered natural gas prices) for the users added under Phase II. But other users who are not made subject to incremental pricing would enjoy lower gas prices if additional gas costs were shifted onto Phase II industrial customers. The sectors that would benefit include residential, small commercial, and other high priority users such as schools, hospitals, and agriculture. Finally, the large boiler fuel users subject to Phase I may be benefitted by a broad Phase II expansion if the result is to substantially defer the point at which they reach the price that would make them switch to an alternative fuel.

Related Regulations and Actions

Internal: Regulations implementing the first stage incremental pricing rules (Docket Nos. RM79–14, RM79–21, and RM79–48). In addition, cogeneration facilities as defined in RM79–54 are exempt from Phases I and II of incremental pricing.

External: None.

Active Government Collaboration

The Office of Policy and Evaluation of the Department of Energy and the Council on Wage and Price Stability have each filed comments on proposals issued by the Commission in the above dockets.

Timetable

Final Rule—no later than May 9, 1980.

Available Documents

(1) NPRM—issued in November 1979; no citation available at the time of this publication.

(2) Regulations Implementing the Incremental Pricing Provisions of the Natural Gas Policy Act of 1978, Docket No. RM79–14, Commission Order No. 49, Final Rule, issued September 28, 1979.

(3) Regulations Implementing Alternative Fuel Price Ceilings on Incremental Pricing Under the Natural Gas Policy Act of 1978, Docket No. RM79–21, Commission Order No. 50, Final Rule, issued September 28, 1979.

(4) Regulations Implementing Alternative Fuel Price Ceilings on Incremental Pricing Under the Natural Gas Policy Act of 1978, Docket No. RM79–21, Commission Order No. 51; Rule Exempting Industrial Boiler Fuel Facilities from Incremental Pricing Above the Price of No. 6 Fuel Oil, Commission Order No. 51, issued September 28, 1979.

(5) Section 206(d) Exemption for New Small Boilers from the Incremental Pricing Provisions of the Natural Gas Policy Act of 1978, Docket No. RM79–48, NPRM and Public Hearing, issued September 28, 1979.

(6) Regulations Implementing the Second Stage Incremental Pricing Provisions of the Natural Gas Policy Act of 1978, Docket No. RM79–56, Notice of Inquiry Into the Potential to Interface Incremental Pricing and Curtailment Policy, issued June 28, 1979.

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FERC

Valuation of common carrier pipelines

Legal Authority

Interstate Commerce Act; § 1, 49 U.S.C. § 1 *et seq.*; Administrative Procedure Act, §§ 553, 554; 5 U.S.C. §§ 553, 554; Department of Energy Organization Act, §§ 306, 402, 42 U.S.C. §§ 7155, 7172.

Statement of Problem

Section 19a of the Interstate Commerce Act (Act) requires the Federal Energy Regulatory Commission (FERC) to ascertain and report the value of all property owned or used by all oil pipelines subject to the jurisdiction of the FERC. Valuation is a single sum computation of the "fair value" of the company's property. The "fair value" computation includes consideration of seven elements of value of the property: cost of reproduction new, cost of reproduction new less depreciation, original cost, present value of lands, present value of rights-of-way, working capital, and going concern value.

Valuation can be used for several purposes, but the principal purpose is to establish the legal rate of earnings of the regulated oil pipeline company. The Interstate Commerce Commission (ICC) had determined that a rate of return on valuation of 8 percent for crude

pipelines and 10 percent on valuation for petroleum product pipelines was reasonable and not excessive. Crude pipelines are those which transport crude petroleum from oil fields to central collecting points and then to refineries, while petroleum product pipelines transport refined products such as gasoline, kerosene, jet fuel and home heating oil from refineries to pipeline marketing terminals.

The ICC reconsidered this question of fair rate of return in "Petroleum Products, Williams Brothers Pipe Line Company," ICC Docket No. 35533, 1976, a complaint before the ICC in which certain shippers argued against the rates charged by Williams Brothers Pipeline Company as well as the methodology it used to construct the rates. The ICC refused at that time to consider challenges to the valuation methodology on the grounds that an overall review of methodology was inappropriate in an adjudicatory proceeding dealing with a specific carrier. The ICC then instituted this proceeding on August 28, 1974 (ICC Docket, Ex Parte No. 308) to investigate the ratemaking methodology. Specifically, the ICC wished to determine the need for any modifications in the way oil pipeline common carrier property is valued. The ICC expanded the rulemaking proceeding, however, on December 18, 1975, to include an examination of the proper rate of return for crude petroleum and petroleum product pipelines. The ICC named all oil pipelines subject to its jurisdiction as respondents in this proceeding.

This rulemaking was transferred to the FERC pursuant to the Department of Energy Organization Act in 1977. The FERC currently is considering whether the proceeding should be expanded to include an issue of oil pipeline ratemaking policy, specifically whether the valuation rate base should be abandoned in favor of an "original cost" rate base.

Ignoring this issue would mean that valuation would reamin as the rate base, which some argue allows the pipelines an excessive rate of return on their investment.

Alternatives Under Consideration

The major issue in this rulemaking is what is the appropriate ratemaking methodology for oil pipelines. In particular, the FERC must decide whether to continue using the "fair value" methodology to determine rate base, or to change to another, such as "original cost." Rates for natural gas pipelines are currently set using the "original cost" methodology to determine rate base. A "net original cost rate base" means the total actual construction cost recorded on the books pursuant to a Uniform System of Accounts, with certain adjustments.

The FERC has, as an alternative to deciding the ratemaking issue in a rulemaking proceeding, the option of deciding the proper methodology for individual pipelines in rate cases. Under provisions of § 15(7) of the Interstate Commerce Act, the FERC can suspend newly filed rates of pipeline companies and order a hearing to investigate the reasonableness of these rates. At such a hearing, the FERC can use a methodology it thinks would be appropriate for that individual company.

At present, a FERC Administrative Law Judge is holding hearings in "Williams Pipe Line Company," FERC Docket No. OR79–1, to investigate both the justness and reasonableness of the company's rates as well as the methodology that it used to develop these rates. When the FERC makes a decision in this case, it could set a precedent for future oil pipeline rate cases as far as what type of methodology should be employed.

Summary of Benefits

Many oil pipeline companies favor a valuation rate base because it includes reproduction costs, thereby protecting investors from inflation by including the inflation factor in the rate base rather than in the rate of return. They also argue that valuation methodology has been successful in fostering a sound economic environment for the pipeline industry for many years. Those who are proposing that the FERC apply to oil pipelines the same methodology that it uses for gas pipelines (original cost less depreciation) include the Department of Justice and petroleum shippers. They argue that valuation is an out moded methodology which over-compensates investors for inflation. They state that "original cost" methodology is simpler and easier to determine.

Summary of Costs

While this rulemaking and other major rate cases are pending before the FERC, there is a possibility of delayed pipeline construction or expansion caused by uncertainty over possible substantial changes in ratemaking methodology. It is important, therefore, that this issue be resolved, whether in this rulemaking or in a lead rate case.

Independent oil pipeline companies argue that a change to an "original cost less accumulated depreciation" rate base will discourage them from acquiring existing lines from major companies because the cost of acquisition probably will exceed the rate base, and the rate of return on "original cost" will not represent a satisfactory required return on their investment.

Sectors Affected

The outcome of this proceeding will have a direct effect on all oil pipeline companies within the jurisdiction of the FERC. It will affect financing, accounting, ratemaking, and other practices of all the companies. The decision will affect shippers of petroleum, since it will affect the entire structure of rates pipelines charge them. Since petroleum transportation costs normally comprise a very small percentage of the delivered price of petroleum products, this rulemaking should have a minimal effect on the price paid by the ultimate consumer.

Related Regulations and Actions

Internal: Williams Pipe Line Company, as we mentioned in the "Alternatives Under Consideration" section, is currently involved in an adjudicatory proceeding at the FERC. The U.S. Court of Appeals remanded this case to the FERC. The issues in this case are virtually identical to those in FERC Docket No. RM78–2.

The Trans-Alaska Pipeline System (TAPS) is also involved in a rate case before this Commission. Again, the issues are closely aligned with those in FERC Docket No. RM78–2.

External: None.

Active Government Collaboration

The Department of Justice is taking a very active role in this proceeding by filing briefs and participating in cross-examination and oral argument. The Department of Energy also is a party to this proceeding.

Timetable

Future dates in this proceeding are not firmly established and await guidance from the Commission.

Available Documents

All documents in this proceeding, including transcripts from oral argument held October 23rd and 24th, 1978, are filed under FERC Docket No. RM78–2 and can be obtained from the Office of Public Information, FERC. Documents that were in possession of the ICC were transferred to the FERC.

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Chapter 2—Finance, Banking, and Insurance

NCUA

Organizing a Federal Credit Union 68259

THLBB

Monitoring Fair Lending Practices 68260
Proposed Amendments on Outside Borrowing 68261
Washington, D.C.-Md.-Va. SMSA Branching 68261

NATIONAL CREDIT UNION ADMINISTRATION

Organizing a Federal Credit Union

Legal Authority

Federal Credit Union Act, §§ 103, 104, 108, 109, 120, and 209, 12 U.S.C. §§ 1753, 1754, 1758, 1759, 1766 and 1789.

Statement of Problem

Credit unions are cooperative associations, chartered by either the Federal government or the States, for the purpose of promoting thrift among their members and making loans to their members. The members of credit unions chartered by the Federal government must have a common bond of occupation (such as employees in the same factory) or association (such as members of a local fraternal lodge), or must be within a well-defined neighborhood, community, or rural district.

The National Credit Administration (NCUA) is required by law to approve or disapprove all applications for Federal credit union charters. NCUA approves approximately 350 charter applications for Federal credit union charters each year. In addition, NCUA approves, each year, almost 1,500 amendments to the "field of membership" provisions of existing charters. The "field of membership" defines the group of people that a Federal credit union may, by law, serve. Regulations and guidelines concerning chartering and changes in field of membership provide the public and NCUA with guidance on fulfilling NCUA's statutory responsibility in this area.

NCUA's last revision to its chartering manual, "Organizing a Federal Credit Union" (which was incorporated by reference into NCUA's regulations (12 CFR § 701.2(d)), was in 1972. Since that time, numerous changes have occurred in the social and economic structure of the United States. Recent legislation has broadly expanded the powers available to Federal credit unions and has, as a result, increased their impact on the nation's economic and financial structure. In addition, NCUA has begun, in accordance with Executive Order No. 12044, to review its existing regulations to update, clarify and simplify them, and to eliminate redundant and unnecessary provisions. The combination of these factors is the reason that NCUA has decided at this time to review and update its existing regulation and manual on organizing Federal credit unions.

The consequences of not taking this action are numerous. First, it may lead NCUA to apply policies and principles that do not reflect the changes in the laws, the society, and the economy of this country. Second, it may lead NCUA to create "exceptions" to the previously established policies in order to reflect these changes. This will create less uniformity in the charter approval process. Third, creating changes through the publication of a proposed regulation and manual, rather than through exceptions or unpublished decisions, increases the public's awareness of, and ability to participate in formulating NCUA's chartering policies. Finally, the failure to review and revise chartering policies to reflect changes in the existing world could mean that credit union services would be available to fewer people who might legitimately qualify to be members.

Alternatives Under Consideration

Since the Federal Credit Union Act requires NCUA to pass upon all charter applications and provides specific guidance on the factors that it must consider, alternatives are limited. For example, § 104 of the Federal Credit Union Act (12 U.S.C. § 1754) requires NCUA to investigate and determine the economic advisability of establishing the proposed credit union before granting it a charter. Therefore, NCUA cannot consider the alternative of allowing market forces, such as competition, to determine whether a credit union is economically advisable.

One range of alternatives we are considering is the degree of public participation NCUA will allow in the chartering process. The proposed rule (44 FR 43737) would require that a group applying for a community credit union charter publish a notice in a newspaper of general circulation in the community it proposes to serve. The notice would invite the public to submit written comments to NCUA on the proposed charter. One alternative would be to continue NCUA's present policy (which does not require publication of this notice). The consequence of adopting this alternative would likely be less public participation in NCUA's chartering decisions than there might be if the proposed rule were adopted. Another alternative would be to extend the publication requirement to all charter applications (such as those filed by associational or occupational groups) and field of membership amendments. However, adopting this alternative might not substantially increase public participation in chartering decisions, because the general public is not directly affected by these applications.

Another set of alternatives concerns the proposed changes to the chartering standards, as set forth in the 1972 manual. These alternatives focus on the definition of the "common bond" requirement for the field of membership. One alternative would be to permit a field of membership based on common belief or philosophy. At the other extreme, the common bond could require day-to-day interaction between members of the proposed field of membership. A middle course is to identify the characteristics of groups that have been recognized as having a common bond, and to use this as a guide for chartering decisions. We adopted this approach in the proposed rule, and set forth the characteristics of these groups in the proposed "Chartering and Organizing Manual for Federal Credit Unions."

Summary of Benefits

The primary direct benefit of revising the chartering regulation and manual is to make the services of Federal credit unions available to more people on a basis that reflects both the intent of the Federal Credit Union Act and the economic and social realities of our nation. The economic consequences may be an increase in savings and in the availability of credit to the public. The primary indirect benefit will be an increase in public awareness of, and participation in, NCUA's chartering program. These effects will result from both the creation and future revision of the proposed "Chartering and Organizing Manual for Federal Credit Unions" in accordance with regulatory requirements. Also, if the final regulation adopts the requirement for publishing notices of community charter applications, the public will have the opportunity to participate in the chartering process by submitting written comments.

Summary of Costs

We anticipate that the additional compliance costs we impose on the public (if we adopt the proposed rule) will be minimal. The only additional burden would be the requirement that a notice of a community charter application be published in one general circulation newspaper for three successive days in the geographic area

that the proposed credit union will serve.

Sectors Affected

The industrial sector that the proposed rule would most directly affect would be the financial institutions industry, to the extent that the proposed changes would provide credit union services to people who don't have access to such services at present.

The proposed changes may affect well defined neighborhoods, communities, or rural districts with populations greater than 25,000 people. The previous policy established the 25,000 population figure as an upper limit for the chartering of community credit unions. The proposed rule would eliminate this limitation, thus making credit union services more available to these geographic sectors.

Finally, the proposed manual will affect medical groups, combined government groups, feminist groups, and central credit union groups by recognizing these groups as having a common bond for chartering purposes. Thus, the proposed rule could result in providing credit union services to members of these groups.

Related Regulations and Actions

None.

Active Government Collaboration

We have given the State government supervisors of State-chartered credit unions copies of the proposed rule and manual for their comments. These supervisors have a wealth of experience in chartering credit unions. Also, any changes to NCUA's chartering policy may affect decisions to apply for Federal, instead of State, charters. Therefore, the proposed changes may affect these supervisors and the dual (Federal/State) chartering system.

Timetable

Final Rule—December 1979.
Final Manual—December 1979.
Regulatory Analysis—not required, but task force report contains similar information.

Available Documents

NPRM—44 FR 43737, July 26, 1979.

Draft manual "Chartering and Organizing Manual for Federal Credit Unions."

Task force report, "Studies in Federal Credit Union Charter Policy."

These documents may be obtained by writing to:

National Credit Union Administration
Office of Administration/Division of Office Services Publication
Washington, D.C. 20456

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FEDERAL HOME LOAN BANK BOARD

Monitoring fair lending practices

Legal Authority

(Title VIII, Pub. L. 95–128, 91 Stat. 1147 (12 U.S.C. 2901); Title VII, Pub. L. 93–495 (15 U.S.C. 1691); Title VIII, Pub. L. 90–284, 82 Stat 81 (42 U.S.C. 3601–3619), 16 Stat. 144, 14 Stat. 27 (42 U.S.C. 1981); EO 11063, 27 FR 11527; sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437); secs. 402, 403, 407, 48 Stat. 1256, 1257, 1260, as amended (12 U.S.C. 1725, 1726, 1730); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR 1943–48 Comp. 1071)

Statement of Problem

The Federal Home Loan Bank Board ("Board") has statutory responsibility to enforce compliance by all Federal Home Loan Bank System member institutions with Federal laws which prohibit discrimination in lending. In order to monitor member institutions' compliance with statutes and regulations designed to prohibit discriminatory lending practices, the Board designed a loan application register ("register") to be kept by all member institutions. This register and the data analysis which followed were substituted for the monitoring system in Regulation B (12 CFR 202.2(z)) established by the Federal Reserve Board under the Equal Credit Opportunity Act (ECOA). This was done to provide more compehensive monitoring in the least burdensome and most efficient manner, since the Board must regulate compliance with prohibitions contained not only in ECOA but also in other fair lending statutes.

The Board has now completed an extensive analysis of information obtained by Board examiners from every member institution in three Standard Metropolitan Statistical Areas (SMSAs), using an extensive data base as well as information derived from discussion with examination and supervisory personnel in the field who have been working with currently available material. The Board finds that the existing register's value for monitoring can be markedly improved.

Alternatives Under Consideration

The Board is considering alternatives for collecting data the registers produce and will consider formats for uniform data collection which best serve the needs of the institutions and the Board.

Summary of Benefits

The Board is proposing to restructure some items in the register and add others, such as information concerning loan applicants' income and debt obligations. Another proposed change is that information would be recorded after disposition of a written loan application, rather than while it is pending. The Board believes that such a step would substantially reduce handling time and expenses for associations and facilitate examiners' comparison of loans made during given time periods.

Summary of Costs

The central data collection point provided by the register eliminates costs of additional examination time required if Board examiners recorded the information needed for monitoring. Costs associated with a new register format should be offset by this more efficient system.

Sectors Affected

The proposed changes would affect all savings and loans which are Federal Home Loan Bank System members and all present and potential applicants for dwelling-related loans from them. The social costs of discrimination in lending are difficult to quantify, but the effects have compounded results when credit is unavailable.

Related Regulations and Actions

Internal: The proposal is part of the Board's existing nondiscrimination-in-lending regulations and guidelines in 12 CFR 528 and § 531.8.

On November 1, 1979, the Board adopted a resolution on credit rationing and warned of the need to assess whether any method used to ration credit is the least discriminatory under the circumstances. This notice appeared in the **Federal Register** during the second week of November.

External: None.

Active Government Collaboration

The Board regularly considers, along with other Federal financial regulatory agencies, uniform policies affecting fair lending.

Timetable

Public Comment—period closes December 18, 1979.

Available Documents

NPRM, 44 FR 60310, December 18, 1979.

Public comment letters, at address below.

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FHLBB

Proposed amendments on outside borrowing

Legal Authority

(Sec. 5B, 47 Stat. 727, as added by sec. 4, 80 Stat. 824, as amended; sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1425b, 1437); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); secs. 402, 403, 48 Stat. 1256, 1257, as amended (12 U.S.C. 1725, 1726). Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943-48 Comp. 1071)

Statement of Problem

Savings and loan institutions with accounts insured by the Federal Savings and Loan Insurance Corporation (FSLIC) are limited by regulations in the type and amount of their borrowing from sources other than Federal Home Loan Banks and State-chartered central reserve institutions. Changing economic conditions, which include trends of decreasing savings flows and increasing use of non-deposit funds (i.e., commercial paper, commercial bank borrowings, mortgage-backed securities), combined with present regulatory limitations, will unnecessarily restrict institutions' ability to attract funds. Therefore, a more liberal regulatory approach is needed to permit borrowing from outside sources.

As proposed, the changes would apply to all FSLIC-insured institutions, but in different ways. Federal associations' borrowings are regulated entirely by Federal Home Loan Bank Board regulations, but State-chartered insured institutions must comply with State and Federal regulations.

The proposal would make changes applicable to Federally and State-chartered institutions, as follows: (1) Total authorized borrowing would be increased to 50 percent of assets. Within that limit, total outside borrowing would be increased to 20 percent of assets. It should be noted that the asset base is greater than the savings base and basing borrowing limites on assets would liberalize the present regulations. (2) Special requirements for mortgage-backed securities would generally be eliminated. (3) Not more than 20 percent of assets could be pledged as security for outside borrowing. (4) For any outside borrowing with a maturity over one year secured by mortgages, in case of default, FSLIC would have the right to acquire collateral sold. (5) For any outside borrowing with an original maturity in excess of one year, an association must file a notice of intent to issue a security consistent with FHLBB-specified content and form requirements. (6) All securities evidencing outside borrowings must bear notice that they are not insured savings accounts. (7) Minimum denominations for outside borrowings would be $100,000 except—$50,000 for subordinated debentures; no minimum for securities issued in private placement to institutional investors, and for borrowings from commercial banks; $10,000 for securities (a) not offered through general advertising or (b) meeting prescribed disclosure requirements. (8) Federal associations would have borrowing authority equal to the authority of other insured institutions. (9) A provision would be included stating that, for purposes of maximum borrowing and collateralization limits, sales of mortgages with agreement to repurchase will be considered borrowings if only current loans must be repurchased and there is no provision for substitution of collateral. Otherwise such transactions would be considered a sale with recourse. (10) Borrowing would be included in the general limitation on bunching. (11) Subordinated debentures could be qualified as part of net worth by obtaining subsequent Board approval of the issue. Additional changes applicable to subordinated debentures would make disclosure requirements for those issues consistent with proposed requirements applicable to all types of borrowings.

By raising the outside borrowing limitation to 20 percent and basing all borrowing limitations on total assets rather than total savings, borrowing authority for insured institutions would be significantly increased. Basing borrowing limits on total assets also represents a liberalization, because insured institutions are experiencing a narrowing of their savings base, while their overall assets are increasing. The Board believes that liberalization is warranted, because even though few institutions are constrained by current outside borrowing limitations, the Board perceives a trend toward greater use of non-deposit funds. The Board foresees that trend continuing and the need for additional borrowing authority increasing.

Alternatives Under Consideration

The Board will consider alternatives that are brought to its attention during the public comment period on the proposal.

Summary of Benefits

The proposal is aimed at expanding savings institutions' capacity to attract funds for mortgage lending and other purposes by increasing their flexibility in borrowing from outside sources. Delays in obtaining Board approval of certain types of borrowing would be eliminated, thus resulting in a more efficient marketing system for debt obligations of insured institutions.

Summary of Costs

The Board has no reason to believe that the proposal will increase costs.

Sectors Affected

The proposed changes would affect all FSLIC-insured institutions by liberalizing restrictions on the type and amount of their borrowing activity.

Related Regulations and Actions

None.

Active Government Collaboration

None.

Timetable

Public Comment—period closes December 31, 1979.

Available Documents

The NPRM published October 31, 1979, may be found at 44 FR 62519. Public comment letters are available for inspection at the address below.

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FHLBB

Washington, D.C.-Md.-Va. SMSA branching

Legal Authority

Sec. 5, 48 Stat. 132, as amended; 12 U.S.C. § 1464. Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR 1943-48, Comp. 1071.

Statement of Problem

The Federal Home Loan Bank Board ("Board") regulates geographic branching boundaries, those boundaries

within which Federally-chartered savings and loan associations may open branch offices.

Although Washington, D.C. is currently treated like a state for purposes of geographic branching boundaries (i.e., branching is permitted statewide, but not interstate), it differs from any state in comprising only a 61 square mile urban land area surrounded by other states, namely Maryland and Virginia. The Washington Standard Metropolitan Statistical Area (SMSA) is the only interstate SMSA in which no Federally-chartered savings and loan associations headquartered in the central city (or cities) of the state in which the central city is located have any suburban areas in which to branch. Conversely, no associations headquartered in suburban areas can branch into the central city.

A staff study done at the Board in 1976 at the request of the Subcommittee on Financial Institutions of the Senate Committee on Banking, Housing and Urban Affairs analyzed the statistics on branching in great detail. The study concluded that a greater degree of branching throughout an SMSA is likely to provide increased convenience of location for the typical saver. The study also indicated that branching throughout an SMSA did not appear to lead to greater concentration of associations' offices. It was noted in the study that, when account is taken of the fact that branching throughout an SMSA broadens the size of the savings market within which the various savings and loans can compete directly, there were grounds for believing that the results of metropolitan-wide branching in intrastate SMSAs had encouraged competition among financial institutions.

The proposed rule would permit Federal associations with offices within the Washington, D.C.–Md.–Va. SMSA to branch throughout the SMSA, with Board approval, rather than being restricted to branching only within the state (or D.C.) within which the home office is located.

Alternatives Under Consideration

The Board is awaiting results of the McFadden Study (an examination of present McFadden Act limitations on branching by banks) which may suggest maintaining the present system of branching for commercial banks or altering it in specific ways. The Study may also address issues that relate to savings and loan branching. Also, the Board may determine, on the basis of additional information, not to adopt the proposed change.

Summary of Benefits

The evidence on full-market branching that presently exists in the 246 SMSAs falling within one state's boundaries throughout the nation convincingly demonstrates that increased opportunities for branching will improve competition and that enhanced consumer services can be anticipated for the Washington SMSA without harming small competitive institutions.

In addition to improved services, individual consumers cited convenience as the most important reason to support Washington SMSA branching. Many commenters would prefer branches closer to home because they are elderly and have difficulty transacting business in person in D.C. Commenters also cited fuel conservation for customers as a probable result of suburban branching by D.C. associations.

Summary of Costs

Congress is currently studying the economic and social impact of the McFadden Act and may consider changes to it. Many commenters, including members of Congress, urged the Board to wait for the results of the McFadden Study before making a decision on this issue. The Board realizes the importance of the McFadden Study, and has kept open the comment period on the proposal until at least thirty days after the Study is submitted to Congress.

Sectors Affected

All lending institutions in the Washington SMSA and consumers doing business with them would be affected by the proposal in some way.

Related Regulations and Actions

None.

Active Government Collaboration

The Board has received comments from a number of Federal, State, and local government offices and agencies, as well as from members of Congress. The Board will consider all viewpoints, including those presented in the McFadden Study, before it decides upon appropriate action on the proposal.

Timetable

The Board is holding open its public comment period on the proposal until after the release of the McFadden Study, which is expected to be presented to Congress in the very near future. A **Federal Register** announcement will set the cut-off date for comments, which will be at least 30 days after the Study is submitted to Congress.

Available Documents

ANPRM—44 FR 11090, February 21, 1979.

NPRM—44 FR 36057, June 20, 1979.

Extension of comment period on NPRM—44 FR 58744. October 11, 1979.

Public comment letters available at address below.

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Chapter 3—Health and Safety

USDA–FNS

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DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Regulation by the Secretary of Agriculture of foods sold on school premises in competition with the National School Lunch Program and the School Breakfast Program

Legal Authority

National School Lunch Act of 1946, 42 U.S.C. § 1751–1768.

Child Nutrition Amendments of 1977, § 17, 42 U.S.C. § 1779.

Statement of Problem

The primary objective of the National School Lunch Program (NSLP) is to "maintain the health and well-being of the nation's children." The 1977 amendments to the Child Nutrition Act amended the National School Lunch Act to restore to the Secretary of Agriculture the authority to regulate the sale of competitive foods in schools participating in the National School Lunch Program and/or the School Breakfast Program.

A competitive food is defined as any food sold in competition with the federally subsidized meals in schools. Such foods may be available in alternate or a la carte lunch lines, or from vending machines or snack counters. Competitive foods presently sold in schools include items of varied nutritional value such as soups, sandwiches, fruit, candies, chips, and soda pop.

USDA formulated the competitive foods rule because of concern about the impact of foods sold in competition with the school feeding programs on the nutritional objectives of these programs. Specifically, the Department, along with others, is concerned about the impact of competitive foods on participation in the school feeding programs, nutrition education, dietary practices, and the overall health and well-being of children.

Prior to 1977, the sale of competitive foods in schools had twice engaged the attention of Congress:

1. Regulations implementing a 1970 amendment allowed the competitive sale of only those foods which either fulfilled a Type A meal pattern requirement (described below) or were served along with the Type A lunch.

The Type A meal pattern, which is the basis for federal reimbursement, includes specified minimum quantities of food components: meat and meat alternates, vegetables and fruits, bread and bread alternates, and fluid milk. Local schools have considerable flexibility in making up the menus that meet this minimum federal requirement.

Because of wide local discretion in the choice of foods served, the result of this rule in many places was that only soft drinks and some candies, which were rarely served along with the school meals, were disallowed. While the impact of the 1970 rule was thus limited, it nonetheless aroused controversy, and some groups advocated the transfer to State and local education agencies of the Secretary's authority to regulate competitive foods.

2. A 1972 amendment restricted the Secretary's regulatory powers under the statute by providing that federal regulations could not prohibit the sale of competitive foods if the proceeds of such sale accrued to the schools or approved student organizations. This amendment placed authority for the regulation of competitive foods with State agencies and local school food authorities.

Nationwide, the regulation of the sale of competitive foods was unsystematic. Approved foods varied among localities, and many jurisdictions developed no competitive foods regulation at all.

In response to the 1977 amendment, on April 25, 1978, National School Lunch Program (43 FR 17476), the Department published a proposed rule which would have prohibited the sale of soda water, frozen desserts, candy, and chewing gum to children on school premises until after the last lunch period. Subsequently, in view of the fundamental questions raised by commentors, both in favor of and opposed to the published proposal, the Department decided to provide additional opportunities for comprehensive public participation in the rulemaking process. The Department then published a notice of withdrawal of the proposed regulations, an announcement of three public meetings, and supplementary information. At that time, the public was asked to address the competitive foods issue and to consider specific alternative regulatory approaches.

On July 5, 1979, the Department published a second proposed rule. In preparing it, the Department reviewed public comments it received and relevant analytic materials. It formulated the rule on the basis of findings on the health and nutritional status of children, current studies on the associations between diet and disease, food composition information, and methods used to evaluate foods according to nutritional criteria.

Alternatives Under Consideration

The Draft Impact Analysis supporting the second proposed rule identified elements of the rule and specified alternatives which were considered for each.

Elements of a competitive foods rule include: (a) the determination of which foods are to be prohibited for sale; (b) the time period for which they are restricted; (c) the location covered by the restriction; and (d) whether age distinctions among children ought to be made within the rule.

(a) Options USDA considered to determine which foods are to be prohibited for sale:

Option 1. Use of a food composition standard: Competitive foods would be assessed by the level of ingredients such as sugar, fat, or salt they contain.

Option 2. Use of a Type A meal standard: Foods credited and/or sold as meeting part of the Type A meal pattern would be approved.

Option 3. Use of a nutrient analysis standard: Foods would have to contain a minimum level of specified nutrients in order to be approved for sale.

The options were analyzed in terms of four general standards: (a) objectivity, (b) availability of data, (c) ability to assess individual foods, and (d) administrative feasibility. The reproposed regulations reflect Option 3, use of a nutrient analysis standard.

(b) Options USDA considered relative to the time period for which competitive foods are to be restricted:

Option 1. From the beginning of the school day until the end of the last lunch period.

Option 2. During the period in which school breakfasts and lunches are served, including a period of 30 minutes before and after such service.

Option 3. From the beginning until the end of the school day.

These options were considered in terms of their administrative feasibility and their support of the proposed rule.

The reproposed regulations reflect Option 1.

(c) Options USDA considered in determining where in the school the sale of competitive foods should take place:

Option 1. In the cafeteria and its environs.

Option 2. Throughout the school premises.

Using the same standards as in (b) above, administrative feasibility and support of the intent of the rule, USDA selected Option 2, and the reproposed rule reflects it.

(d) Options USDA considered in deciding whether there should be age exemptions in the rule:

Option 1. Require the rule in elementary and middle schools only.

Option 2. Require that the rule apply to all students (K–12).

USDA has selected Option 2 because Option 1 lacked the coverage necessary for effective rulemaking; the reproposed regulations reflect Option 2.

Summary of Benefits

The primary intent of this rule is to encourage children in school to reduce their consumption of foods of minimal nutritrional value. It attempts to do this in two ways: by reducing the time during which children have ready access to such foods in schools and by influencing their attitudes about such foods in the belief that this may lead to changes in their eating behavior outside of school.

The reduction in consumption of such foods could result in a decrease in overall intake of foods which provide calories but few nutrients. Two alternative outcomes are possible with the reduction in consumption of these foods. Other foods which contain more nutrients could be consumed in place of the restricted foods (for example, milk instead of soft drinks), or those foods could be eliminated without substitution and overall intake of calories would be reduced. The first situation would help to ensure adequate intake of nutrients by children. Both alternatives might be helpful in preventing obesity and dental caries, which are among the principal nutritional problems facing the school-aged population. There are, of course, numerous other factors related to these nutritional problems, but the reproposed rule could in part help to reduce the prevalence of these nutritional disorders.

The educational aspect of the rule could affect the children's nutrition positively. Teaching children in school about the problems caused by the overconsumption of foods restricted by the rule would increase the likelihood that they would eat less of these foods.

Summary of Costs

Determining the economic impact of the proposed regulation is difficult, because there is little information that directly examines children's schooltime consumption of competitive foods. The information that is available indicates that only a limited number of students have access to competitive foods. Preliminary data from the 1977–78 evaluation of the USDA school breakfast program show that only 8 percent of elementary schools and 41 percent of secondary schools offer competitive foods through cafeterias, snack bars, or vending machines. The results are very similar to those of the 1975 evaluation of the special milk program, which revealed that 6 percent of elementary schools and 42 percent of secondary schools offer soft drinks for sale. If we assume that students are distributed relatively evenly throughout schools, then the results suggest that 22 percent of the nation's students have access to competitive foods.

Impact on Manufacturers

Because of the limited nature of the regulation, industries should not experience large changes in sales, though individual firms may be affected to a greater degree than the industry as a whole. The types of candies restricted by this proposal (hard candies, marshmallow candies, jellies, etc.) represent 23 percent of manufacturers' candy sales.

A 1975 survey conducted by the National Automatic Merchandising Association (NAMA) showed that 60 candy machines located in 37 schools sold an average of 3.44 items per person per month. The 1978 "Vending Times" census of the industry indicates that the average price for a selection from candy vending machines is 20¢. If every student with access to competitive foods purchased as much candy in school as students in the NAMA study, the retail value of the candy sold would be $59 million. Assuming that 23 percent of such candies are affected by the new rule, then $13.6 million of sales would be restricted. This is less than 0.5 percent of the value of candy sold in the U.S.

The candy industry may not experience a $13.6 million sales drop because of the regulation, in view of the fact that other candies such as chocolates and nut bars may be substituted for the less nutritious items banned by the rule.

The Department has no information with which to estimate the quantity of gum that children buy in schools. USDA does not know what the effect of the regulation on the gum industry will be.

The NAMA survey indicates that schools with canned soft drink vending machines sold an average of 1.61 cans per person per month. Schools with cup soft drinks sold 3.28 servings per person per month. "Vending Times" identified the average price for such purchases as 29¢ and 17¢, respectively. If all students with access to soft drinks purchased cup drinks as frequently as students in the NAMA study, total retail sales in school would be $48 million. The comparable figure for canned soft drinks is $40 million. Figures are unavailable on what proportion of canned versus cup soft drinks children purchase. However, taking the larger of the two figures, the $48 million, it would be less than 0.6 percent of manufacturers' $8.4 billion soda and syrup sales. It would be an even smaller percentage of retail sales.

Only a small portion of the ice cream and frozen dessert industry sales are affected by the ban. Frozen ices, the only frozen dessert restricted, represent less than 3 percent of industry sales. The percent of such desserts that students purchase in schools would be a small part of the $2.2 billion total sales of the ice cream and frozen dessert industry total sales.

Impact on Vendors

The NAMA study indicates that one-third of vending sales to students occurs in schools that do not participate in the NSLP, and these will not be affected by this proposed rule. Sales in the remaining schools constitute less than 3 percent of the vending industry's volume. A rough estimate derived from the NAMA study school sales data and from "Vending Times" current price information indicates that the foods restricted by the proposal constitute approximately 40 percent of vending sales in schools. Thus, the restriction affects only about 1 percent of total sales for the vending machine industry.

Sectors Affected

The groups this rule will affect include school children, school administrators, and manufacturers and vendors of foods defined as being of minimal nutritional value.

Approximately 41 million children attend schools participating in the school feeding programs. Since many States already have competitive foods rules that are more restrictive than this rule, the number of children this rule will affect is reduced.

There are about 92,000 schools participating in the school feeding programs. The school administrators in each of these schools that presently do not have more restrictive competitive

foods policies will be affected by this rule.

Industries that the rule will affect include soft drink, frozen dessert, certain candies, and gum manufacturers. The rule will affect distributors of these foods, including those involved in direct sales to schools for resale, and the vending industries.

Related Regulations and Actions

None.

Active Government Collaboration

None.

Timetable

Final Rule—January 1980.
An impact (regulatory) analysis will be prepared as part of the rulemaking process.

Available Documents

"National School Lunch Program," 43 FR 17476, April 25, 1978.

"National School Lunch Program Regulation of Competitive Foods: Withdrawal of Proposed Rule; National School Lunch Program Regulation of Competitive Foods: Notice of Meeting," 43 FR 58780–58788, December 15, 1978.

"National School Lunch Program and School Breakfast Program," 44 FR 40004–40014, July 6, 1979.

Draft Impact Analysis (on reproposed rule).

Summary of Public Comments (available at cost).

Carol Foreman editorial, *The Washington Post* (July 17, 1979).

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USDA-FSQS

Voluntary meat and poultry quality control systems

Legal Authority

Federal Meat Inspection Act, 21 U.S.C. § 601 *et seq.*

Poultry Products Inspection Act, 21 U.S.C. § 451 *et seq.*

Statement of Problem

The inspection requirements of the Federal Meat Inspection Act and the Poultry Products Inspection Act are administered by the inspection personnel of the Food Safety and Quality Service (FSQS), United States Department of Agriculture (USDA). The growth in number of meat and poultry plants and the innovations within the industry have increased both the volume and the number of processed products being produced. Processed products are those which are created through manufacture, such as frankfurters and luncheon meat, as opposed to those which are created through merely slaughter and butchering, such as steaks and roasts. The increase in the supply of processed products has resulted in increased responsibilities for the FSQS inspection programs.

Federal meat and poultry inspectors currently inspect approximately 6,900 processing plants, as compared to 4,037 in 1970. The annual volume of processed products inspected increased 25 percent between 1970 and 1978. Federal processing inspectors inspected 74.1 billion pounds in 1978, as compared to 59.4 billion pounds in 1970. Most of this increase may be attributed to increases in production volumes and additional plant facilities, but Federal assumption of State inspection responsibilities has also been a factor. As of June 1, 1979, the Department has assumed responsibility for 25 State poultry and 17 State meat inspection programs in 25 States which were either unwilling or unable to effectively maintain their own programs. This number should continue to grow in the near future.

FSQS must continue to guarantee that products marketed continue to be wholesome, unadulterated, and properly labeled, in spite of this tremendous increase in the volume of product it must inspect. To insure this, FSQS currently employs 2,350 processing inspectors, as compared to 1,928 in 1970, and relies more heavily on laboratory testing. Combined with inflation, which has increased the salaries which have to be paid to inspectors, this has resulted in an increase in inspection costs from $25 million in 1970 to $69 million in 1979. Food processing inspection, as opposed to animal slaughter inspection, accounts for an ever-increasing share of total inspection costs. Thus, while total inspection costs increased 130 percent, processing inspection increased 176 percent.

Despite the increase of processed products, the basic techniques of inspection have remained essentially the same, as the underlying bases of the inspection laws have remained unchanged since the beginning of this century; therein lies the problem. The proposal could result in a solution in that it would bring about increased access by FSQS to a plant's records concerning its quality control process. This would lead to more complete and efficient inspection.

Quality control refers to controlling a process so that certain specifications are met. The result is a consistent and uniform product, involving a predictable cost, which meets Federal regulatory requirements. During the process of production, checks are conducted to determine if a change in the process is needed to assure the wholesomeness of the finished product. Problems are detected during, rather than after, the process. The data resulting from these checks would then be supplied to FSQS to aid in inspection. While not replacing the older system, this would add to it and improve the ability of FSQS to regulate processed products. Not all Federal requirements would have to be met by a plant volunteering to participate in a quality control program. Thus, the proposal provides for both total and partial inspection programs for quality control.

In exchange for this increased access to a plant's records, FSQS would grant plants operating under an approved quality control program the right to use special labeling. Such labeling would differentiate products inspected through such a program from those inspected only in the usual manner. The labeling would signify to the consumer that the product had gone through a more thorough, systematic inspection involving the use of increased technology. Therefore, the consumer would have an enhanced regard for such products.

In December 1977, the General Accounting Office (GAO) released a report on "A Better Way for the Department of Agriculture to Inspect Meat and Poultry Plants." This report recommended that a quality control program be implemented on a mandatory basis. This would require a change in the existing statutory law. At the present time, over 600 processing establishments voluntarily have instituted one or more partial quality control programs which have been approved by FSQS. Without such a program, the burdens arising from the growth in the meat and poultry processing industries will be increasingly difficult to manage. Effective use of voluntary systems of quality control, operated by the plants themselves, should serve to strengthen the inspection system while allowing FSQS to be more cost-effective in the use of its inspection budget.

Alternatives Under Consideration

In developing this proposal, FSQS evaluated, among other things, the two basic alternatives to the establishment of a voluntary quality control system: (1) the retention of the present inspection

system, which, while incorporating some use of quality control, does not provide for the total use of the process as an inspection system, and (2) the mandatory imposition of a requirement for a quality control program. The latter alternative would require that all processed meat and poultry products be inspected through a quality control program. The proposal would provide such a system as an alternative which a plant can follow if it chooses. It is the view of FSQS that mandatory quality control cannot be required under the existing law. Consequently, FSQS is currently considering the possibility of seeking legislative authority to impose mandatory quality control systems, while proceeding to propose systems on a voluntary basis.

Another potential benefit which could be realized through the proposal would be the generation of data from the voluntary system which would better enable both the Department and the Congress to properly evaluate the advisability of such a legislative change.

FSQS has recognized the need to consider the impact and effect of the proposal on the smaller operator. In the past, the Department has assisted many small establishments in implementing microbiological monitoring of their sanitation programs without employing a microbiologist, determining fat and moisture content of frankfurters and bologna without expensive laboratory equipment or chemists, and controlling the count of meatballs in a container by periodic samples and charting methods. FSQS will provide the same assistance to small operators in implementing other quality control systems and will approve all such systems which meet departmental criteria.

Thus, FSQS is seeking to adopt a more non-traditional approach to the inspection system. FSQS will not require participation in the program, but will encourage it by the availability of the special labeling. Such labeling will aid the consumer via an informational approach, increasing the knowledge with which a purchase is made.

Summary of Benefits

FSQS expects implementation of a voluntary quality control system to result in a gain in inspectors' efficiency. Currently, inspections are required even where voluntary quality control programs have been established. This results in a duplication of effort. Voluntary quality control will allow FSQS to concentrate inspection resources on chronic problem areas, and in the future will allow for the inspection of additional processing plants and increased product volumes with little or no additional increase in inspection resources. Improved inspection efficiency could result in a total net savings to the Department over the next five years of between $511,200 and $1,462,000.

Industry will benefit, because plants which elect to use a quality control program will be able to exercise a more systematic control over their operations, increasing their ability to comply with standards. There will be savings for the following reasons: (1) the ability of each processor to assure a uniform amount of ingredients in each package will be enhanced; (2) because of this uniformity, manufacturers will be able to develop formulas for ingredient use, thus enabling them to purchase large quantities of ingredients at a minimum cost; (3) this uniformity will also reduce the amount of errors which require reprocessing, repackaging, and relabeling; (4) overhead costs will thus be lowered.

This reduction in costs can then be passed on to the consumer. Consumers will also benefit as the Department improves its ability to assure the distribution of wholesome, unadulterated, and properly labeled products. Products which do not conform to Federal requirements will be detected and removed or remedied early in the processing chain. The program should serve to increase product quality and uniformity and increase consumer confidence in the safety and quality of meat and poultry products as well.

Summary of Costs

If this proposal is implemented, FSQS will need approximately 13 full-time quality control specialists at a GS–13/3 level, in addition to those who are presently employed in the inspection force. The evaluation and approval of individual quality control plants will cost the Department about $439,600. However, as noted earlier, FSQS expects an overall savings.

Industry will bear the primary costs of implementing and maintaining these systems. The proposal would affect those plants which voluntarily elect to participate. At the end of five years, an estimated 100 plants would have quality control programs that USDA has approved. The great majority of these plants already have acceptable quality control programs, and they would incur no additional costs. Some plants would choose to participate even though they would incur some additional expenses, mostly in start-up costs. FSQS estimates that 10 to 15 plants would fall into this category, and that their start-up costs would be approximately $1,000 per plant. Total additional costs to industry would then be in the range of about $15,000 over a 5-year period.

Sectors Affected

This regulation would affect three sectors.

Consumers of meat and poultry products will benefit, as described above.

Within the industry, processing plants will enjoy reduced costs in the long run, as already described. The immediate cost impacts associated with this proposal will vary with the size of the plant. FSQS expects that no additional compliance and implementation costs would be incurred by those meat and poultry processing plants which produce 13 million to 1,197 million pounds of product per year, and the upper 50 percent of those plants which produce 3 million to 13 million pounds of product per year (medium-size plants). These are the plants which already have in-plant programs for quality control that should meet FSQS's minimum requirements for quality control. The impact would occur only on the lower 50 percent of the medium-sized plants. FSQS does not expect any plants producing 0.5 to 3 million pounds of product per year to participate voluntarily.

Government involvement in this program would be only at the Federal level.

Related Regulations and Actions

Internal: Informal approvals of pilot quality control programs and techniques (via industry permission for FSQS inspection of records and reports and samples). The proposal would formalize these approvals into a formal regulatory system.

External: Food and Drug Administration, 21 CFR, Parts:

103—Quality Standards for Food With No Identity.

109—Unavoidable Contaminants in Food for Human Consumption and Food Packaging Material.

110—Current Good Manufacturing, Processing, Packaging, or Holding Human Food.

113—Thermally Processed Low-Acid Foods Packaged in Hermetically Sealed Containers.

118–169—Requirements for Various Food Products.

197—Seafood Inspection Program.

The above contain requirements issued by FDA which are insured through industries' use of quality control. Since FDA does not provide for mandatory inspection of food programs, these are substitutes for inspection rather than components of a mandatory inspection system.

Active Government Collaboration

This is an action which has been and would be carried out solely by FSQS. FDA does not deal with meat and poultry inspection.

Timetable

Final Rule effective—first quarter 1980.
Final Impact Statement—available from Agency Contact listed below upon publication of final rule.

Available Documents

NPRM—44 FR 53526–53534, September 14, 1979.
Draft Impact Analysis—available from Agency Contact listed below.
Public comments received on or before November 13, 1979.
"A Better Way for the Department of Agriculture to Inspect Meat and Poultry Processing Plants." Single copies available free from: U.S. General Accounting Office, Distribution Section, 441 G Street, N.W., Washington, D.C. 20548. Multiple copies available at $1.00 per copy from: U.S. General Accounting Office, Distribution Section, P.O. Box 1020, Washington, D.C. 20013.

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DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

Chemical compounds used in food-producing animals; criteria and procedures for evaluating assays for carcinogenic residues

Legal Authority

Federal Food, Drug, and Cosmetic Act, 21 U.S.C. §§ 512(d)(i)(H) and 701(a).

Statement of Problem

Section 512(d)(i)(H) of the Federal Food, Drug, and Cosmetic Act requires the Secretary and, by delegation, the Commissioner of Food and Drugs, to refuse approval for veterinary uses of any drug if "such drug induces cancer when ingested by man or animal or, after tests which are appropriate for evaluation of the safety of such drug, induces cancer in man or animal, except [if] the Secretary finds that, under the conditions of use specified in the proposed labeling and reasonably certain to be followed in practice (i) such drug will not adversely affect the animals for which it is intended, and (ii) no residue of such drugs be found (methods of examination prescribed or approved by the Secretary by regulation . . .) in any edible portion of such animals after slaughter or in any food yielded by or derived from the living animals."

The enactment, in 1962, of this diethylstilbestrol (DES) proviso to the Delaney (anti-cancer) clause of the Act has been a source of continuing controversy that has stemmed from the phrase "no residue will be found." This phrase can be interpreted either in an absolute or an operational sense. There are two important facts bearing on this controversy. First, the introduction of a compound, whether or not carcinogenic, into the system of a food-producing animal is likely to leave in its edible tissues minute residues that cannot be detected or measured by any known or likely to be developed method of analysis. Second, for any test developed to measure the concentration of a residue in an edible tissue, there is some level of residue in that tissue below which the test will show no interpretable result. In view of these facts, the Commissioner could not permit any use of carcinogenic drugs in animals if he adopted the absolute interpretation of the phrase "no residue will be found." The effect of that interpretation would be to deny the DES proviso any effect whatever. The second possible interpretation is to assume that the Congress intended to require the Commissioner to give an operational and more realistic definition to the phrase "no residue" and to proceed accordingly. As a matter of policy, to enact the DES proviso the Agency has adopted the second interpretation as a more likely reflection of Congressional intent, for two reasons. First, by its very nature the absolute interpretation constitutes a negation of the DES proviso to the Delaney Clause and leads to the conclusion that the Congress introduced this proviso intending it to have no effect. Second, the critical term in the proviso is that no residue will be "found," not that none will exist. Therefore, application of the Delaney Clause to animal drugs, and of the DES proviso to that clause, hinges on the availability of appropriate analytical methods that determine whether residues are present in edible tissues from animals that have been treated with carcinogenic drugs. Although FDA has adopted the second interpretation, it has never specified by regulation the criteria and the procedures that apply in the process of approving methods for analyzing animal tissues for residues of carcinogenic drugs. The proposed regulation specifies such criteria and procedures.

Alternatives Under Consideration

The Agency examined three approaches for alternative ways to implement the language "no residue shall be found." The first approach, which the Agency has considered inappropriate from the start, defines the phrase "no residue" as the lowest limit of measurement or detection of the best analytical method capable of measuring the residues of a drug in edible tissues of treated animals that happens to be available at the time the drug was approved. The Agency has rejected this approach. Different chemicals have differing carcinogenic potencies. These differences are not in any way related to the availability, or lack thereof, of sensitive analytical methods that measure residues in edible tissues from treated food-producing animals. As a result this approach would inevitably lead to anomalies. For instance, in some cases FDA would permit public consumption of meat contaminated with very large levels of potently carcinogenic residues, while in others it would require that meat be essentially free from residues of carcinogenic drugs of low potency.

The second approach, the one the Agency used up until a few years ago, defines the term "no residue" as the lowest limit of measurement practically attainable at the time of approval of the drug. Accordingly, from 1962 until about 1972, carcinogenic animal drugs were approved if meat from treated animals contained no residue above two parts per billion. This approach suffers from the same defect as the first approach, that of the differing levels of accuracy of measurement devices. Since about 1973 the Agency has been using a third approach, one that requires that the lowest limit of measurement of residues in meat be tailored to the carcinogenic potential of the animal drug for which a manufacturer is seeking approval. This means that the risk of human cancer inherent in different levels of residue contamination of meat derived from animals treated with a carcinogenic animal drug is estimated by statistical procedures from carcinogenesis bioassay data that is obtained in experimental animals. A very low level of risk of cancer (one in one million) is considered acceptable, and the petitioner for a drug is required to develop analytical methods that will measure a level of residue low enough

so that it presents a risk of cancer no larger than the acceptable level of risk. The regulation is an attempt to formalize and promulgate this approach to determining what methods of analysis of carcinogenic residue the Commission should approve.

Summary of Benefits

The proposal provides uniform and stable criteria and procedures for evaluating the carcinogenic risk of residues of chemical compounds in the tissues of food animals. It outlines a practical, workable approach to the goal of "no residues" that will eliminate uncertainties and expenses that have resulted from requirements to withdraw animal drugs from the market as methods of testing have become more sophisticated.

Summary of Costs

Any estimate of costs depends on the number of already approved animal drugs that will have to meet the critieria specified by the proposed regulation. The "Cyclic Review of Animal Drugs" recently begun by the agency will decide which among the approved drugs are carcinogens. We cannot now make an estimate of the number of affected drugs.

It is possible, however, to provide an upper limit to the cost of meeting the specified criteria per substance in each of the two general classes of synthetic or natural substances that are administered to food-producing animals. The first class comprises synthetic or natural origin substances which are not produced in the body of the food-producing animals. The cost for each "exogenous" substance to meet the criteria is an estimated $3 million. The second class comprises substances normally produced in the body of food-producing animals (e.g., hormones). This "endogenous" category contains a number of substances that are either known or suspected carcinogens. We estimate the cost of compliance for one of these substances to be $0.5 million.

Sectors Affected

The proposed regulation will mainly affect the animal drug industry. In addition to the added costs of the required testing and development of analytical methods, the Agency may require that drug producers withdraw certain animal drugs from the market. In addition, manufacturers of drugs with small sales may elect to withdraw those drugs from the market rather than comply with these requirements.

If some drugs are withdrawn from the market, either voluntarily or involuntarily, producers of animal drugs and, indirectly, consumers may feel some impact from the regulation. Our regulatory analysis did not consider these impacts explicitly. However, in a regulatory analysis on the withdrawal of a specific drug we would consider such impacts.

Related Regulations and Actions

Internal: FDA conduct of its "Cyclic Review of Animal Drugs" to evaluate approved drugs for carcinogenic substances.

External: None.

Active Government Collaboration

We are keeping the Department of Agriculture (USDA) informed of our action. Analytical methodology that is required is under review by the USDA.

Timetable

Tentative Final Order—July 1980.
Regulatory Analysis—Final regulatory analysis with Final Rule.

Available Documents

NPRM—44 FR 17070, March 20, 1979.

An administrative record supporting the proposal and a transcript of public hearings is available in the office of FDA's Hearing Clerk.

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HEW–FDA

Food labeling initiatives

Legal Authority

Federal Food, Drug, and Cosmetic Act, 21 U.S.C. § 343 *et seq.*

Statement of Problem

The Food and Drug Administration (FDA), the U.S. Department of Agriculture (USDA), and the Federal Trade Commission (FTC) believe that the existing food labeling laws and implementing regulations should be updated. The Federal laws governing the labeling of food are enforced by the USDA (meat and poultry) and FDA (all other foods). The FTC is interested in food labeling because it is responsible for regulating food advertising. Congress enacted the Federal food laws in 1906, and although some changes have been made since, the basic concepts of food labeling have remained unchanged for many years. For example, the last major revision of the food labeling provisions of the Federal Food, Drug, and Cosmetic Act (FD&C) that FDA administered was in 1938.

Since these food laws were enacted, significant changes have occurred both in the food industry and in Americans' attitudes toward the food supply and their diet. Advances in the food industry have resulted in a wider variety of available foods and an increased availability of fresh foods. At the same time, the number of processed foods on the market now accounts for more than half of the American diet.

Federal agencies have attempted to meet these changes through labeling regulations. Since the different regulatory agencies are responsible for different aspects of food labeling, the resulting rules have been complex, duplicative, or inconsistent. FDA, USDA, and FTC realized a need to reassess the existing food labeling regulations before implementing any further revisions.

In 1978, the agencies conducted a series of public hearings soliciting views from the public on food labeling issues, and FDA sponsored a Consumer Food Labeling Survey to determine public opinion. These efforts were designed to provide the agencies with information that would help them develop legislative proposals or goals, devise new or revised regulations, and avoid initiating unwarranted actions. The announcement of hearings and requests for comments on a series of food labeling topics were published in the **Federal Register** of June 9, 1978 (43 FR 25296). The agencies sought the public's views on many issues, including: ingredient labeling; nutrition labeling and dietary information; open date labeling; food fortification; imitation and other substitute foods; safe and suitable ingredients; and the total food label (as an information source for consumers).

Over 9,000 people commented on these and other related food labeling issues. They especially wanted: labels describing all ingredients for all foods; nutrition labeling on more foods; open dating on more foods; labeling telling sugar content; and labels telling the amount of salt.

FDA, USDA, and FTC have analyzed these comments and are preparing tentative positions on 27 food labeling issues for publication in the **Federal Register.** These 27 issues range from ingredient labeling to nutrition labeling to the labeling of imitation and substitute foods. At this time, it is premature to discuss these as single actions, because they are closely related and are part of a total package. Any specific action that will change the

present legal requirements for food labeling would come only after we have considered comments on the individual issues.

None of these actions will go to the rulemaking stage until we have considered the additional comments.

Alternatives Under Consideration

New legislation and new or revised regulations will be needed to effect the changes in food labeling that are suggested in the tentative positions. In addition to these alternatives, the agencies could encourage industry to institute voluntarily some of the food labeling changes, or they could take no action.

To do nothing would run the risk of FDA being told by consumers that the Federal government does not listen to the public's wants and needs with respect to improved food labeling. In addition, the agencies themselves feel that more informative labeling is needed to assist consumers in making appropriate purchases based on health, nutrition, and personal preference.

Some of the tentative positions the agencies have adopted could be implemented by voluntary action of the food industry. In fact, the agencies will be encouraging industry to take steps itself to institute certain food labeling policies. For example, industry is encouraged to develop a means of sharing information for the purposes of nitrition labeling, which would save analytical costs that would otherwise be passed on to consumers in the form of higher prices. In addition, development of such bases could stimulate greater use of nutrition labeling, because sharing information would reduce the burden on individual food producers.

Although some of the food labeling initiatives can be realized through voluntary compliance, others will require agency action through regulations or Congressional action through legislation to ensure uniformity and consistency in food labeling.

Summary of Benefits

It is difficult to quantify the benefits that will accrue from improved food labeling. Qualitatively, the benefits can be viewed in the context of helping consumers make sound purchasing decisions and, most important, in terms of protecting public health. From this latter standpoint, consuming essential nutrients in sufficient quantities is vital to human health. This goal can be achieved only by eating a variety of foods. An improper selection of foods, however, can result in a person receiving inadequate or excessive amounts of nutrients, either of which may be detrimental to health. Accurate and informative labeling concerning a product's ingredients and nutrient content is of even greater public health significance now than in the past, because advances in technology have created more processed and fabricated foods whose nutrient content and other characteristics are not readily discernable to consumers without adequate food labeling. As the relationship of nutrition to certain diseases is becoming better understood, food labeling becomes even more important to provide consumers with information for choosing products.

Many Americans must modify their diets for medical reasons. They need special diets because of disease or abnormal physiological conditions, such as allergies. These people especially need accurate food labeling information.

Of the factors that guide the agency in making food labeling changes, the consideration of public health is the most important. In those instances where food labeling is the most effective method for providing health protection (e.g., sodium labeling), the additional cost is considered acceptable to society.

Summary of Costs

Since none of these food labeling initiatives has proceeded to the proposal stage, FDA has not made an economic or regulatory assessment. Of the various initiatives under consideration the majority are at a stage where proceeding directly to proposals for implementing regulations would be premature, either because legislative changes will be needed to clarify the agencies' authority, or because further study is necessary to determine the best approach. For these initiatives, the agencies expect that the evidence of economic impact will accumulate during the course of the legislative and research process. A number of other initiatives, however, warrant immediate and detailed analysis of their economic impact as a step toward selecting specific proposals and courses of action. The agencies, therefore, are asking the public for data or analyses that may be helpful in clarifying and quantifying the economic impact of the current proposals on industry and consumers. We will request this information in the Federal Register notice. The agencies in particular are requesting economic data in areas of ingredient labeling and nutrition labeling.

In addition to this request for economic information, FDA will contract a study to determine the economic impact of the possible labeling changes. We expect the study to begin in early 1980 and be completed by the end of that year.

Sectors Affected

The total food labeling initiatives have the potential for affecting almost everyone in our society, either directly or indirectly. Improved fool labeling will be particularly effective for those people who need or desire certain information for health reasons, e.g., to avoid ingredients that may cause an allergy.

The food labeling initiatives will affect all segments of the food producing industry, regardless of size. The smaller segments of this industry will be most adversely affected because of the costs associated with revising labels. We can alleviate this effect somewhat by providing sufficient time for making the changes and by setting a reasonable uniform effective date. The agencies assume that the immediate cost impacts on food processing firms will be largely passed on to consumers through increases in produce prices. Ultimately, therefore, it is consumers to whom both the costs and benefits of the initiatives will accrue.

Related Regulations and Actions

Internal: None.
External: None.

Active Government Collaboration

The development of any subsequent revisions in food labeling will occur in cooperation with the Food Safety and Quality Service of the U.S. Department of Agriculture and the Federal Trade Commission. The agencies will initiate activities to implement food labeling revisions according to each agency's authorities and procedures, and will coordinate such action with other agencies to ensure consistency among them.

In addition, we are keeping the White House Office of Consumer Affairs advised of these activities.

Timetable

Publication of the Notice of Tentative Positions on Food Labeling (90 day comment period)—fall 1979.
Public hearing on the tentative positions—winter 1979.
Close of comment period on tentative positions—winter 1979.
Institute actions to implement food labeling revisions, i.e., publish proposals or seek or support legislation—spring 1980.
Regulatory Analysis—not required.

Available Documents

Notice of Hearing and request for comment on food labeling issues 43 FR 25296, June 9, 1978.

Transcripts of the public hearing and the written comments on the food labeling issues are available for review at the office of FDA's Hearing Clerk at the address below.

The background papers that discuss the food labeling issues in Positions and the Report of the Analysis of public comment on food labeling are available from the Office of Policy Coordination of the Food and Drug Administration at the address below.

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HEW—FDA

Prescription drug products; patient labeling requirements

Legal Authority

The Federal Food, Drug, and Cosmetic Act, §§ 502, 503, 505, 506, 507, and 701; 21 U.S.C. §§ 352, 353, 355, 356, 357, and 371. The Public Health Service Act, § 351; 42 U.S.C. § 262. 21 CFR 5.1.

Statement of Problem

The Food and Drug Administration (FDA) has conducted original research and reviewed various studies to determine how much is being done to communicate information on prescription drug products to patients. The FDA research and review suggest that health professionals do not always adequately communicate information about prescription drug products to patients. In addition, patients may not pay attention to, understand, accept, or remember information that is presented orally. The agency believés that required patient labeling leaflets will help overcome the problems that hamper the oral communication of important information about prescription drug products to patients.

Another FDA literature review has shown that many patients misuse prescription drug products by failing to adhere to the prescribed regimen; for example, a patient may space doses improperly, fail to take the drug for the period of time necessary for adequate treatment, skip doses, or take extra doses. On the average, 30 to 50 percent of patients do not follow instructions for a wide range of prescription drug products. A patient's failure to know about or to comply properly with a prescribed course of therapy may be a major cause for the therapeutic failure of the product, or may cause the patient to experience a serious adverse reaction. Patient labeling of drugs, however, appears to improve the compliance rate.

FDA-sponsored as well as independent nationwide surveys also show that broad patient support exists for patient labeling. A 1978 nationwide survey showed that consumers wanted patient labeling by a 2 to 1 margin and that this desire was consistent across all age, sex, and educational subgroups.

Alternatives Under Consideration

FDA considered several alternatives to its proposed patient labeling requirements, including: (1) establishing requirements for patient labeling on a case-by-case basis instead of requiring a general program applicable to most prescription drug products, (2) requiring that patient labeling be distributed with a new prescription, but not with refills of that prescription, (3) requiring that copies of patient labeling be placed on display in each pharmacy, but not distributed, and (4) requiring that current labeling for doctors and other health care providers for prescription drug products be distributed to patients.

The alternative of establishing requirements for patient labeling on a case-by-case basis is unacceptable, because too much time elapses between when the need is identified and when the requirement is put into effect. Further, studies of patient compliance suggest the need for patient labeling for most, if not all, prescription drug products. Although requirements established on a case-by-case basis might permit greater public review of the need for patient labeling for each drug product, this alternative would not fulfill the immediate need for a broad and workable distribution system.

The other alternatives are unacceptable because they limit consumer access to important drug information. If patient labeling were required only for new prescriptions, chronic users of some products would be denied timely information about the products. Providing patient labeling as a reference source in pharmacies would serve only the interested consumer and would provide only information that must be remembered, unless photocopying facilities were available. Also, the patient is often not the person who obtains the drug product at the pharmacy. Finally, labeling written for health care professionals may be too technical to be understood by most patients.

Summary of Benefits

Patient labeling would provide patients with information about prescription drug products (information that 64 percent of consumers surveyed favor receiving). We believe patient labeling would increase compliance with prescribed short-term drug therapy, help patients avoid harmful drug-drug and food-drug interactions, avoid serious side effects and adverse reactions, and could help patients manage serious side effects or prevent them from worsening.

FDA has identified the following benefits that could accrue because of patient labeling: (1) reduced prescription drug use, (2) fewer revisits to health care professionals, (3) fewer hospital admissions for avoidable adverse drug reactions or therapeutic failures due to noncompliance, and (4) fewer work-days lost due to adverse drug reactions that are avoidable.

In 1978, consumers spent $9 billion on prescription drug products, of which an estimated $1.9 billion was for drugs for short-term therapy. Patient labeling could affect prescription sales by improving compliance with the original therapeutic regimen, thus preventing the need for a refill or a second prescription due to the therapeutic failure of the first. It could also reduce the need for treating avoidable drug interactions with another drug.

Consumers could avoid revisiting health care professionals, at an average cost of $15 per followup visit, if success rates for the initial drug therapy improve because patients comply better with the prescribed regimen. Return visits may also be reduced if drug interactions are avoided and side effects are better understood as a result of patient labeling. Also, patients could distinguish better between potentially serious adverse drug reactions needing medical attention and adverse reactions that would disappear once the patient has adjusted to taking the drug.

Some adverse effects of prescription drug use require hospitalization of the patient. Hospital treatment of adverse drug reactions annually costs between $156 million and $520 million. Patient labeling, in helping to avoid some of these costs, will yield a substantial benefit.

Finally, improper use of prescription drug products can have effects that do not require hospitalization but may force a patient to curtail normal activities. Thus, patient labeling may produce large potential savings, for example, in the form of fewer work-days lost because of avoidable adverse drug reactions.

Summary of Costs

FDA intends to implement the patient labeling requirements gradually over a period of several years. FDA assumes that the requirements will be applied to 25 products (representing 20 percent of all prescriptions issued to consumers) in the first year and to approximately 375

products (representing 90 percent of all prescriptions issued to consumers) by the fifth year. FDA estimates that in the fifth year of implementation the total cost of the program will be $90.04 million. The cost would affect FDA, the pharmaceutical industry, pharmacies, other health care providers, and consumers. FDA estimates that its total cost for program management will be $180,000 annually.

We estimate the annual cost to the pharmaceutical industry for writing and printing patient labeling texts to range from $2.84 million in the first year to $12.78 million in the fifth year. We estimate annual costs to industry for writing patient labeling texts to range from $45,000 in the first year (when FDA would provide guidelines for patient labeling texts) to $180,000 in the fifth year. We estimate costs to industry of printing patient labeling to range from $2.8 million in the first year to $12,6 million in the fifth year. We do not expect shipping and distribution costs for many drug products to change appreciably.

We estimate costs to retail pharmacis because of patient labeling storage (equipment, space, and pharmacy modification) and clerical activities (filing and dispensing) to range from $20 million in the first year of implementation to $75 million in the fifth year. FDA expects that the following estimates of capitalized costs to retail pharmacies from patient labeling will remain constant over the first five years of implementation: $2.58 million for equipment, $870,000 for storage space, $1.38 million in pharmacy modifications to provide storage space, and $0 to $1.19 million in foregone profits.

We estimate clerical cost to retail pharmacies to range from $15.56 million in the first year to $70 million in the fifth year of implementation.

Hospital pharmacies will not have to give individual patient labeling information pieces to patients, but they will have to have information available to patients for reference. The cost to hospitals is expected to be approximately $2.25 million per year.

FDA expects that almost all of the costs of the proposed requirements will be passed on to the consumer, but almost all of the expected gains will accrue to consumers as well. Assuming a straight pass-through to consumers of FDA costs (taxes), pharmaceutical and retail pharmacy costs (prescription drug prices), and hospital pharmacy costs (hospital costs), the estimated total costs to the consumer in the fifth year of implementation are $90.04 million. Thus, the average prescription price would increase by about 1 percent, from $6.44 to $6.50, assuming that all industry costs are passed on and that they are equally distributed over all 1.4 billion prescriptions that are dispensed at the retail level.

Sectors Affected

The patient labeling requirements would apply to most prescription drug products. Accordingly, they would affect manufacturers and distributors who are responsible for the labeling of prescription drug products, dispensers of prescription drug products (for example pharmacists), and patients who receive the labeling when their prescriptions are filled. The effects of the regulations on manufacturers, distributors, and dispensers of prescription drug products are primarily economic and are discussed above under the heading "Summary of Costs." As we suggest there, the greatest effects of the regulations would be on pharmacies that would be required to store and dispense patient labeling with each prescription. As we discussed above in the section "Summary of Benefits," patients who use prescription drug products will be affected by the regulation to the extent that the required distribution of patient labeling helps them to use prescription drug products properly. The proper use of the products is expected to reduce significantly therapeutic failures and both the incidence and severity of avoidable adverse effects from prescription drug products.

Related Regulations and Actions

Internal: 21 CFR 201.305 (Patient labeling requirements for isoproterenol inhalation drug products.), 21 CFR 310.501 (patient labeling requirements for oral contraceptives), 21 CFR 310.515 (patient labeling requirements for estrogenic drug products), 21 CFR 310.502 and 801.527 (patient labeling requirements for intrauterine devices for contraception), and 21 CFR 310.516 (patient labeling requirements for progestational drug products).

External: None.

Timetable

Final Rule—summer 1980.
Final Rule effective—for a drug product 120 days after a guideline patient labeling text is established for the product.
Regulatory Analysis—final regulatory analysis available with the Final Rule.

Available Documents

NPRM—44 FR 40016, July 6, 1979.

We requested comments by October 4, 1979. Public hearings on the proposal were held on September 10, 12, and 14, 1979. We prepared a draft regulatory analysis under Executive Order 12044 when we published the proposal and placed it on file in the FDA Hearing Clerk's office. The draft regulatory analysis and transcripts of the public hearings are available from the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–65, 5600 Fishers Lane, Rockville, MD 20857.

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HEW–Health Care Financing Administration

Conditions of Participation for Skilled Nursing Facilities and Intermediate Care Facilities

Legal Authority

Title XVIII (Health Insurance for the Aged and Disabled) and Title XIX (Grants to the States for Medical Assistance Program) of the Social Security Act, 42 U.S.C. §§ 1302, 1395F, 1395K, 1395I, 1395x, 1395z, 1395bb, 1395cc, and 1395hh.

Statement of Problem

Nursing homes must meet a number of requirements in order to provide long-term care services under the Medicare and Medicaid programs, which fund services to many elderly and low-income citizens. These requirements are set out in the Social Security Act and in the HEW regulations called "Conditions of Participation for Skilled Nursing Facilities and Intermediate Care Facilities." (Skilled nursing facilities—SNF's—provide long-term care for patients who require skilled nursing on a daily inpatient basis, while intermediate care facilities—ICF's—serve patients who do not require regular skilled nursing but do need some health care on a long-term inpatient basis.)

The Social Security Act and the HEW regulations set standards for the health and safety of Medicare and Medicaid patients in SNF's and ICF's and are designed to assure that they receive quality care. State governments survey SNF's and ICF's annually, under contract with HEW, to determine if they meet the requirements of the law and regulations. Based on information the State governments collect in the surveys, the HEW regional offices

certify institutions for participation in the Medicaid and Medicare programs.

Approximately 18,000 long-term care facilities participate in Medicare and Medicaid. Medicare payments for long-term care were about $400 million for FY 1978, and Medicaid payments for long-term care totalled over $6 billion for FY 1977.

The present regulations have been in effect since 1974. The major reasons for revising the regulations are:

(1) To improve the quality of patient care by developing requirements which better measure the actual quality of the care which patients receive in SNF's and ICF's,

(2) to control the cost of long-term care, while not sacrificing the quality of care,

(3) to update the regulation to reflect new methods of delivering health care services,

(4) to strengthen requirements for the protection of patients' rights in nursing homes,

(5) to make the regulations clearer and simpler, as a part of HEW's commitment to revise all old regulations to make them more readable and helpful, and

(6) to eliminate areas of ambiguity in the current regulations which have resulted in discrepancies in enforcement.

Alternatives Under Consideration

The Department held a series of public hearings during the summer of 1978, at which a wide range of alternatives were discussed. Major issues were:

—What minimum qualifications should be established for professional personnel in SNF's and ICF's?
—Should unlicensed personnel be allowed to administer medications?
—How often should physicians be required to visit SNF patients?
—Should physician extenders (nurse practitioners and physician assistants) be permitted?
—Should facilities be required to provide or arrange for respiratory therapy?
—Should the requirement for annual surveys of SNF's and ICF's by State agencies be changed?

Summary of Benefits

We expect the revised regulations to improve the quality of patient care and increase patients' rights in nursing homes. Both nursing home personnel and patients will find the new regulations simpler to use, since they will be clearer, and diverse requirements from the old regulations will be consolidated where possible. Finally, HEW is considering changes which would reduce some types of nursing home costs by eliminating some existing procedural requirements which have not been shown to be directly related to the quality of patient care.

Summary of Costs

HEW is studying the costs of these revisions to the regulations and will fully describe the cost impact in the NPRM. We now believe that several of the revisions to the regulations that are now under review would result in savings for nursing homes which could result in lower costs for patients. These cost saving changes that are under consideration would eliminate some procedural requirements which are not directly related to the quality of patient care. In addition, revisions to the Life Safety Code requirements will affect the cost of these regulations. (See related description of Life Safety Code requirements.)

However, new requirements under consideration could result in increased costs. The major new requirement under consideration is the proposed patient assessment provisions. These proposals concern a comprehensive assessment of all patients' health needs when they enter the nursing home and a system for evaluating the patient's progress on a regular basis.

Sectors Affected

The regulations affect institutional providers, patients, and staff of SNF's and ICF's participating in the Medicare and Medicaid programs. State health agencies will also be involved in any revisions to these rules.

Related Regulations and Actions

Internal: As part of "Operation Common Sense" (the HEW-wide operation to make regulations clear, concise, and understandable to the general public), the Department intends to review and revise all standards and certification regulations which affect providers participating in the Medicare and Medicaid programs. At the present time, we are revising the HEW regulations on Conditions of Participation for Hospitals.

External: None.

Active Government Collaboration

We are working with the Federal Trade Commission, which is concerned with patient rights in nursing homes.

HEW/HCFA is also consulting with State agencies.

Timetable

NPRM—winter 1979–80.
Extended Comment Period—following the NPRM.
Final Rule—summer 1980.
Regulatory Analysis—draft with NPRM, final with Final Rule.

Available Documents

"New Directions for Skilled Nursing and Intermediate Care Facilities," (Summaries of Public Hearings), September 1978.

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HEW–HCFA

Life Safety Code in Hospitals, Skilled Nursing Facilities (SNF's) and Intermediate Care Facilities (ICF's)

Legal Authority

Title XVIII (Health Insurance for the Aged and Disabled) of the Social Security Act, 42 U.S.C. § 1302.

Statement of Problem

Hospitals and nursing homes must meet a number of requirements in order to participate in the Medicare and Medicaid programs, which finance health services for many elderly and low income families. These requirements are set out in the Social Security Act and in HEW regulations. One of the requirements is the life Safety Code (LSC) of the National Fire Prevention Association (NFPA). The LSC contains a detailed set of standards, mostly related to safety aspects of the physical plant, such as structure, fire prevention systems, and hazard alarms.

Current procedures may unnecessarily require hospitals and nursing homes to undertake large capital expenditures to correct LSC deficiencies. The result of enforcing strict compliance with each LSC requirement is that:

1. Some institutions cite nonconformance with the LSC as the basis for complete replacement of a facility. This may increase health costs and would be especially unnecessary in areas which already have more hospital or nursing home beds than needed.

2. Some major structural changes are made in obsolescent facilities with short life of service expectancies to bring them into compliance.

The LSC permits uses of alternative means of protecting patient safety which may be less costly than strict adherence to the specific standards in the LSC. In 1974, HEW asked the National Bureau of

Standards in the Department of Commerce to develop a rating system to assess a facility's life safety provisions without requiring vigorous adherence to each specific standard. The Department of Commerce approved "A System for Fire Safety Evaluation of Health Care Facilities," developed by the National Bureau of Standards, in December 1978. Under this new rating system safety provisions are assigned numerical values. Therefore two facilities with differing safety provisions could still be rated as having equivalent levels of life safety.

Alternatives Under Consideration

The major alternatives are:

1. to continue the current HEW policy of requiring hospitals and nursing homes to meet the specific standards in the
2. to permit hospitals and nursing homes to meet either the LSC or an equivalent level of safety as measured by the rating system developed by the National Bureau of Standards; or
3. to permit hospital, but not nursing homes, to use equivalent means.

Summary of Benefits

HEW is considering using the rating system developed by the National Bureau of Standards, because it could allow facilities to select less costly means to protect patient safety. This could reduce the cost of health care while maintaining the current quality.

Summary of Costs

The cost savings are potentially very significant, but the savings will vary based on the options that individual facilities select to assure patient safety. We expect the cost savings to be greatest in older facilities. HCFA is developing estimates of cost savings.

Sectors Affected

The rule would affect hospitals and nursing homes (including skilled nursing facilities and intermediate care facilities) which participate in Medicare and Medicaid. Additional sectors of the economy that these changes will interest are: manufacturers, insurance companies, and several health professional organizations.

Related Regulations and Actions

Internal: ANPRM—Intent to reconsider regulation on automatic extinguishment systems for long-term care facilities, 43 FR 57166, December 6, 1978.

External: None.

Active Government Collaboration

HEW has worked with the National Bureau of Standards in the Department of Commerce, which developed the system for rating equivalent means of achieving LSC standards. HEW is also collaborating with the Veterans Administration, which has adopted the National Bureau of Standards system for Veteran's hospitals.

Timetable

Final Notice for Hospitals—December 1979.
Final Notice for SNF's and ICF's—December 1979.
Regulatory Analysis—not required.

Available Documents

Notice with Comment Period—44 FR 37818, June 28, 1979.

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HEW—HCFA

Uniform reporting systems for health services facilities and organizations

Legal Authority

Medicare-Medicaid Anti-Fraud and Abuse Amendments of 1977 (P.L. 95-142), 42 U.S.C. § 112.

Statement of Problem

Section 19 of P.L. 95-142 requires improved financial and statistical data from institutional providers of Medicare and Medicaid services, to accurately identify costs and to aid in the control of an ever-increasing inflation rate in health care costs. It requires the establishment of a uniform reporting system.

Since the enactment of the Medicare legislation in 1965, the costs of health care have consistently increased at a rate significantly above the overall rate of inflation. Efforts to curb this increase under existing reporting provisions have been ineffective, largely because there are no means to accurately compare costs. These regulations would establish uniform reporting systems for all health services facilities and organizations including hospitals, skilled nursing facilities, intermediate care facilities, home health agencies, and health maintenance organizations that participate in the Medicare and Medicaid programs.

The law specifically requires regulations to establish a uniform system of reporting for the following types of information for each type of health services facility or organization:

1. aggregate cost of operation and aggregate volume of services;
2. cost and volume of services by type of activity;
3. rates by category of patient and class of purchaser;
4. capital assets, as defined by the Secretary, including capital funds and the value of land, facilities, and equipment, as appropriate; and
5. data on patient discharge bills.

We will implement uniform reporting requirements through several separate regulations, rather than implementing all facets of uniform reporting through one regulation. To date, we have completed substantial work on the system for hospital uniform reporting and have published an NPRM.

Alternatives Under Consideration

Within the legislative mandate certain options are available. The timing and scope of a reporting system are limited by a timetable and objectives specified in the legislation. The primary objective is to design a system that will obtain comparable cost and related data from all institutional providers participating in Medicare and Medicaid. Among other things, we intend to use this data for reimbursement purposes and to improve our capacity to detect fraud and abuse. Other factors which affect the scope of the regulation include the Department's concern with minimizing reporting burdens and eliminating placing duplicate and overlapping data requirements on the provider, while meeting the intent of the legislation.

For the regulation implementing reporting of hospital data on cost, utilization, and capital assets, the major options we chose were:

1. to merge, to the extent possible, Departmental data collection activities (e.g., Medicare and Medicaid cost reporting and hospital facilities components of the Cooperative Health Statistics Systems funded by the Public Health Service) in order to coordinate reporting requirements and minimize burdens on the hospitals furnishing the data;
2. to reduce cost reporting requirements for small facilities (less than 4,000 admissions annually), since they generally have fewer cost centers than large hospitals and less information to report;
3. to limit, to the extent possible, the level of detail required to ascertain the cost of services provided for specific cost centers, in an effort to decrease the reporting burden. For example, the system would report employee work-time on a sample basis instead of requiring detailed time reporting.

We designed these alternatives to minimize the level of detail and the cost of providing the information, while

permitting accurate comparisons of costs between hospitals furnishing the same type of service or care.

For the regulation implementing the collection of hospital bill and discharge data, the major areas of consideration are:

1. confidentiality regarding data collection on non-Federal patients and physicians,
2. method of data collecting and processing the bill and discharge data.

Summary of Benefits

Uniform reporting systems are being designed with the intent of reducing and eliminating costly multiple collection and processing of the same data. Data collected via the uniform reporting systems will be provided to any interested parties, eliminating the need for many duplicative systems.

These systems will enable the Department to obtain the uniform comparable data that are necessary for reimbursement, effective cost containment and policy analysis assessment of alternative reimbursement mechanisms, and health planning. Adequate and comparable data are not presently available to support these objectives. Attainment of these objectives will aid efforts to curb the inflationary spiral of health care costs.

Providers will receive valuable management information that they could use to assess efficiency at all levels of their operations. This would permit them to control expenditures for suppliers, services, and capital.

A uniform reporting system for home health agencies is in the early planning stage. The Department commissioned an accounting cost study on June 11, 1979 and will publish an NPRM after HCFA has reviewed the results of that study. At that time, we will make an estimate of industry and government costs for implementing the system. We expect cost savings that are derived from the bill and discharge portions of § 19 to offset the costs associated with the cost and utilization of reporting regulations.

Summary of Costs

HCFA is developing firm estimates of the cost of implementing the uniform reporting system for all health services and organizations. It has cost estimates specifically for the regulation implementing uniform reporting of costs for hospitals. For the 6,000 affected hospitals, based on the experience of States that have similar systems, HCFA estimated that the total start-up costs to the industry and government for the hospital cost reporting segment would be between $35 million and $75 million.

HCFA awarded a contract to an accounting firm to determine the actual cost and burden of implementing the hospital cost reporting system, as well as possible savings that might result from refinements in the current Federal reimbursement system for hospitals. The results of this study showed total costs of $70.2 million nationwide, for an average of about $14,000 per hospital. Following extensive public comment, HCFA has revised the requirements of its cost reporting system in an effort to further reduce the cost of the system.

Sectors Affected

Sectors of the economy affected by these regulations are hospitals, skilled nursing facilities, intermediate care facilities, home health agencies, health maintenance organizations and other types of health services facilities, and organizations that participate in the Medicare and Medicaid programs.

Related Regulations and Actions

Internal: On January 23, 1979, HEW published an NPRM for collecting data on cost, utilization, and capital assets from hospitals. Because of extensive public comment, HCFA is currently preparing a revised reporting manual, and the Department will publish a second NPRM to obtain further public comment.

HCFA is developing similar regulations for long-term care facilities, home health agencies, and health maintenance organizations. Other regulations under development pertain to discharge and bill data.

External: None.

Active Government Collaboration

None.

Timetable

NPRM: Hospital Utilization and Reporting—December 1979.
Regulatory Analysis—draft with NPRM, final with Final Rule.
NPRM: Health Maintenance Organizations and Home Health Agencies.
Regulatory Analysis—to be determined.
Costs Utilization Reporting—January 1980.
NPRM: Hospital Bill and Discharge Data—December 1980.
Regulatory Analysis—to be determined.
We are still preparing the NPRM for Long-Term Care Cost and Utilization Reporting, and we have not yet set a date.
Regulatory Analysis—to be determined.

Available Documents

NPRM—44 FR 4741–44, January 23, 1979.

"Uniform Reporting Systems for Health Services Facilities and Organizations," Systems for Hospital Uniform Reporting, HEW draft Manual, December 1978. (Copies of this manual are no longer available for public distribution. The revised manual will be available at the time we publish the second NPRM.)

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DEPARTMENT OF LABOR

Mine Safety and Health Administration

Mandatory safety standards for surface coal mines and surface area of underground coal mines

Legal Authority

The Federal Mine Safety and Health Act of 1977, § 101, 30 U.S.C. § 801.

Statement of Problem

There are approximately 89,000 miners currently working in surface coal mines and surface areas of underground mines. The Mine Safety and Health Administration statistics for 1978 reveal a fatality rate of .04 and an injury rate of 4.08 per 200,000 hours worked. This is considerably lower than the underground rates of .07 and 10.62 for fatalities and injuries, respectively. The primary causes of fatalities are hauling and machinery accidents. The Mine Safety and Health Administration has reviewed all existing safety standards for surface coal mines and comments received from industry and labor representatives, and has determined that there is a need to strengthen and clarify certain provisions. In addition, some subparts and sections of the existing standards need reorganizing in order to facilitate their use by operators and inspectors. Standards for illumination, guarding of electrical equipment, examination and testing of high voltage circuit breakers, protection of direct current circuits, protection of low and medium voltage alternating current circuits, mine maps, and locations for magazines are expanded to include additional requirements. The Mine Safety and Health Administration has also decided that some new areas,

such as protection of electric wiring and equipment and handling of energized trailings cables and portable feeder cables need to be included.

Alternatives Under Consideration

This regulation, which was first proposed in 1977, covers all of the safety requirements for surface coal mines and surface areas of underground coal mines. The Mine Safety and Health Administration will be evaluating the proposal to determine which of the specific standards it should repropose. We will make this determination within the framework of the Federal Mine Safety and Health Act of 1977 and its requirements. For example, one alternative might be to exclude requirements for supervisory training in light of the mandatory safety and health training regulations which the Mine Safety and Health Administration published on October 13, 1978.

Summary of Benefits

The Mine Safety and Health Administration expects that these improved standards will help reduce fatalities and injuries in the coal mining industry. Standards which cover improved methods of handling and maintaining equipment should provide greater protection for surface mines. Fewer injuries and fatalities will result in reductions in lost workdays, workers compensation benefits, and medical costs.

Summary of Costs

We proposed these regulations in January 1977, and at that time economic estimates revealed that it would cost approximately $44 million in the first year for the industry to comply with the proposal. The principal costs were related to additional requirements for low resistance grounding media handling of energized trailing cables and portable feeder cables, protection of direct current circuits, guarding of high voltage equipment, examination and protection of high voltage circuit breakers, protection of low and medium voltage alternating current circuits, illumination, guarding of electrical equipment, and protection of electric wiring and equipment. The 1977 estimates were as follows: (1) illumination—$20 million; (2) guarding of electrical equipment—$1.6 million; (3) protection of electric wiring and equipment—$2.2 million; (4) high voltage circuit breakers, examination—$.6 million; (5) energized trailing cables—$.9 million; (6) protection of direct current circuits—$2.0 million; (7) guarding of high voltage equipment—$3.2 million; (8) booms and masts, warning devices—$3.5 million.

The initial estimate does not take into consideration industry expansion and overall cost increases due to inflation since 1977. Industry costs to comply may well exceed $50 million. Approximately ninety percent of the costs are associated with one-time equipment purchases, and therefore they are expected to decline drastically for the second year.

Sectors Affected

Operators of surface coal mines, miners, and representatives of miners.

Related Regulations and Actions

Internal: The Mine Safety and Health Administration has regulations setting forth requirements for underground coal mines—30 CFR 75. The Mine Safety and Health Administration is working on safety and health standards for construction work on mine property—30 CFR 110.

External: None.

Active Government Collaboration

None.

Timetable

ANPRM—December 31, 1979.
Regulatory Analysis—to be issued with subsequent NPRM.

Available Documents

The earlier NPRM is a available for public review, 42 FR 2800, January 13, 1977.

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DOL-MSHA

Regulations setting forth requirements for safety and health training for mine construction workers

Legal Authority

The Federal Mine Safety and Health Act of 1977, §§ 101 and 115, 30 U.S.C. §§ 811 and 815.

Statement of Problem

Preliminary industry estimates reveal that there are approximately 75,000 employees engaged in mine construction work, and the Bureau of Labor Statistics of Department of Labor data reveal that construction is a high hazard industry. In 1977, based on data from the Occupational Health and Safety Administration (OSHA), the incidence of accidents and injuries for all workers in the private sector was 9.3 per 100 full time workers; however, it was 15.5 for construction workers. The Mine Safety and Health Administration (MSHA) has no separate accident and injury statistics, to date, for construction workers on mine property. Section 115(d) of the 1977 Federal Mine Safety and Health Act requires that the Secretary of Labor promulgate appropriate standards for safety and health training for construction workers. These regulations will require that all construction workers on mine property be appropriately trained in the safety and health hazards of their jobs.

Alternatives Under Consideration

MSHA is considering the following alternatives to be included in the draft regulation: what amount of training will be required; how often will training be required, i.e., there might be a need for refresher training; what training can be substituted for that which may be required by the regulation. MSHA believes that an important consideration in the development of the regulation will be to determine exactly what kind of training is currently being provided, so that MSHA can give appropriate credit for such training, to avoid any duplication of industry and labor training effort.

Summary of Benefits

MSHA expects that these regulations, when they are promulgated and complied with, will provide a strong framework for reducing the injuries, illnesses, and fatalities which are associated with mine construction work. Our long term goal is to measurably reduce the hazards related to construction in the mining workplace so that mine construction will no longer be viewed as high hazard work. We anticipate that the 15.5 incidence rate we mentioned previously can be reduced for construction workers on mine property, resulting in fewer lost work days and therefore economic benefits to industry.

Summary of Costs

MSHA is developing estimates for the costs of complying with these regulations. Since MSHA is only in the drafting stage with respect to this regulation, the cost estimates will depend, in large part, upon the final make-up of the regulation, including categories of training required, hours of training, etc. Costs will cover wages, per diem, costs for replacement personnel, etc.

Sectors Affected

Those this regulation will affect the most include the construction industry, building trades employees, mine operators, miners and representatives of miners as defined in 30 CFR 40.

Related Regulations and Actions

Internal: The Mine Safety and Health Administration is developing safety and health standards for construction work on mine property—30 CFR 110. The Mine Safety and Health Administration has existing mandatory safety and health training regulations for miners—30 CFR 48. The Occupational Safety and Health Administration has construction safety and health standards—29 CFR 1962. The Mine Safety and Health Administration has regulations which set forth criteria for identifying those independent contractors who will be operators within the meaning of § 3(d) of the Mine Act—30 CFR 45.

External: MSHA is currently meeting with affected labor and industry groups to get their input into this draft regulation.

Active Government Collaboration

None.

Timetable

ANPRM—February 28, 1980.
NPRM—July 31, 1980.
Regulatory Analysis—July 31, 1980, if required.

Available Documents

None.

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DOL—MSHA

Requirements for construction and maintenance of impoundments and tailings piles at metal and non-metal mines

Legal Authority

The Federal Mine Safety and Health Act of 1977, § 101, 30 U.S.C. § 811.

Statement of Problem

There are approximately 680 metal and non-metal tailings dams in the U.S. These tailings dams are composed of waste from metal and nonmetal mining processes. Based upon a recent survey, MSHA estimates that 15–20 percent of the existing structures pose some form of potential hazard which might result in loss of life or damage to the environment. Improved standards governing impoundments and waste piles at coal mines were developed and published by MSHA following the dam failure at Buffalo Creek in 1972, which resulted in many injuries and fatalities. Because of recent waste dam failures at metal and nonmetal mines and the continuous potential for loss of life, MSHA decided that there is a problem related to the construction of new and existing impounding structures and that improved standards are necessary. MSHA anticipates that these improved standards will result in a reduction of injuries at the mine site, and will minimize the chances of water and waste from the ore spilling over into the surrounding environment and creating the possibility for physical damage to the land and health damage to its occupants.

Alternatives Under Consideration

MSHA is considering the following major alternatives: (1) The manner in which new dams will be constructed, i.e., how substantial and strong they will be. The type and specificity of requirements for these structures will affect industry costs for compliance. Although structures will, of course, have to vary depending upon the nature and geography of the mine being served and the type of waste product involved, requirements which are specific and yet allow for operator flexibility could result in more consistent enforcement and greater miner safety.

(2) Whether or not there will be a delayed effective date to allow existing facilities to comply.

(3) Whether certain existing facilities will be grandfathered. It might be feasible to include a grandfather clause in the regulation which will allow certain existing facilities to meet the requirements of the standard.

(4) Whether metal and non-metal operators will have to submit plans for the construction of waste and impoundment structures. The appropriate Department of Labor Metal and Nonmetal Mine Safety and Health District Manager would approve these plans. This requirement would increase the paperwork burden on the affected industry; however, it would insure that all new facilities are constructed in the proper manner.

(5) Include certain requirements from the Department of Army's Corps of Engineers' standards related to the construction of impoundments.

(6) Allow the existing regulation to remain in its very general form, and do nothing at all. At this time, it appears that this alternative would not do anything to help solve the problem.

Summary of Benefits

Although there are no current statistics on the number of injuries that result from dam failures at metal and non-metal mines, the dam failure at the Buffalo Creek coal mine killed 125 persons and left thousands in the surrounding community homeless. Miners, people living in the surrounding communities, and the environment itself are potential beneficiaries of these regulations. Four metal and non-metal dam failures have caused damage to the surrounding public environment within the last five years. Waste water and mud were released not only onto the land, but also into the source of the local water supply. We anticipate that this regulation will reduce injuries, fatalities, and environmental damage that are associated with dam failures by setting forth more stringent requirements for waste dam construction.

Summary of Costs

MSHA is in the process of developing data on the economic effects of this proposal on the metal and non-metal mining industry. The final cost estimates will have to take into consideration vast differences in types of mines, types and amounts of waste products involved, and the geographical terrain. In addition, the extent to which existing facilities can comply with the regulation with only minor changes will affect the cost. We are developing further data to help determine the economic effects of this regulation.

Sectors Affected

This regulation will have a direct effect on operators of metal and non-metal mines, states which conduct mining activities, miners, and representatives of miners as defined in 30 CFR 40. It will also have a direct effect on people who live in close proximity to mines which have waste dams.

Related Regulations and Actions

Internal: The Mine Safety and Health Administration currently has safety standards for refuse piles at surface coal mines—30 CFR 77.214–217. The Mine Safety and Health Administration has existing Metal and Non-metal safety standards which regulate waste piles—30 CFR 55.20–10; 30 CFR 56.20–10; 30 CFR 57.20–10.

External: The Department of the Army has authority, through the Corps of Engineers, to regulate dams and their construction under P.L. 92–367, 86 Stat. 506–507. The Department of Interior,

Office of Surface Mining, has authority to regulate coal mine dams and waste piles under the Surface Mining Control and Reclamation Act of 1977, P.L. 95-87, 91 Stat. 445.

Active Government Collaboration

None.

Timetable

ANPRM—March 30, 1980.
NPRM—September 30, 1980.
Regulatory Analysis—September 30, 1980, if required.

Available Documents

None.

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DOL—MSHA

Safety and health standards for construction work at all surface mines and surface areas of underground mines

Legal Authority

The Federal Mine Safety and Health Act of 1977, §§ 101 and 101(a)(8), 30 U.S.C. § 811.

Statement of Problem

Construction work at the nation's surface mines and surface areas of underground mines constitutes approximately 10-15 percent of total national construction activity, and exposes approximately 75,000 persons per year to the safety and health hazards that are associated with construction. In 1977, based on Occupational Safety and Health Administration (OSHA) data, the incidence of accidents and injuries for all workers in the private sector was 9.3 per 100 full time workers; however, it was 15.5 for construction workers. In addition, although the Mine Safety and Health Administration (MSHA) has no separate accident and injury statistics, to date, for construction workers on mine property, we do know that of the 136 fatalities which occurred at metal and non-metal mines in 1978, eight were related to construction. MSHA is currently in the process of developing complete injury, illness, and fatality data for construction workers on mine property.

Section 101(a)(8) of the Federal Mine Safety and Health Act of 1977 requires that MSHA promulgate separate separate safety and health standards that are applicable to mine construction activity on the surface. If MSHA does not publish comprehensive regulations which address the hazards associated with all phases of construction work, protection will be lessened for this important segment of the construction industry.

Alternatives Under Consideration

MSHA is planning to circulate for public comment a pre-proposal draft which contains virtually all of the current requirements of the Occupational Safety and Health Administration that are related to construction. This alternative will cause less disruption to that portion of the industry which, prior to March 9, 1978 (the effective date of the transfer of the Mining Enforcement and Safety Administration from the Department of Interior to the Department of Labor), was subject to the jurisdiction of the Occupational Safety and Health Administration while working on surface mine property.

Prior to the effective date of the Federal Mine Safety and Health Act of 1977, all construction activity in metal and non-metal mines which was not undertaken by the operator was subject to the jurisdiction of the Occupational Safety and Health Administration. This was by far the largest portion of construction work at metal and non-metal mines. Thus, construction contractors working at metal and non-metal mines had to comply with the Occupational Safety and Health Administration's construction standards. Based upon OSHA's FY 1978 statistics, OSHA found violations during 66 percent of initial Federal inspections of construction sites. Therefore, of construction employers that OSHA inspected for the first time in FY 1978, approximately 34 percent were in compliance. All construction on coal mine property was subject to the jurisdiction of the Mining Enforcement and Safety Administration, this Agency's predecessor. The Mine Safety and Health Administration, in order to minimize the effect of these regulations on the construction industry, is planning to propose, in large part, the current construction regulations of the Occupational Safety and Health Administration. These standards will, therefore, have a minimum effect on the methods by which construction contractors do business, and will regulate no new areas.

Prior to the transfer, although MSHA had general standards for surface metal and non-metal mines, there were no specific construction standards for this segment of the industry. It is important to note, however, that this is the first phase of rulemaking and MSHA will have to consider all comments and make changes in the draft, as necessary.

Other alternatives include:

(1) Whether there should be an index which cross references OSHA and MSHA standards. This will make it easier for construction employers who work at both OSHA and MSHA properties to comply with the standard.

(2) MSHA's standards for certain hazards, particularly blasting and explosives, are different from OSHA's. In the notice accompanying the pre-proposal draft, MSHA will specifically solicit comments on the extent of future changes to these sections.

Summary of Benefits

MSHA anticipates that these construction standards will provide increased protection for construction workers at surface mines and reduce the incidence of accidents, injuries, and fatalities, and all attendant costs, to workers in this important segment of the construction industry. At this time, it is very difficult to quantify the anticipated benefits.

Summary of Costs

MSHA is developing the estimates for the costs to industry of complying with these regulations. Although these are new regulations for MSHA, they will not represent new requirements for a large segment of the construction industry as discussed above.

Sectors Affected

Affected sectors include the construction industry, building trades employees, mine operators, miners, and representatives of miners as defined in 30 CFR 40.

Related Regulations and Actions

Internal: The Mine Safety and Health Administration currently has coal mine surface construction regulations—30 CFR 77. The Occupational Safety and Health Administration has regulations which govern construction activity—29 CFR 1926. The Mine Safety and Health Administration has proposed regulations which set forth criteria for identifying those independent contractors who will be operators within the meaning of § 3(d) of the 1977 Act—30 CFR 45. MSHA is coordinating all aspects of this rulemaking with OSHA.

External: None.

Active Government Collaboration

None.

Timetable

NPRM—May 30, 1980.
Regulatory Analysis—May 30, 1980, if required.

Available Documents

The draft construction standards are available for interested persons in the Office of Standards, Regulations and Variances.

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DOL-Occupational Safety and Health Administration

Chemical warning systems (chemical labeling)

Legal Authority

Occupational Safety and Health Act of 1970, 29 U.S.C. § 655.

Statement of Problem

Approximately 25 million American workers are currently exposed to toxic chemicals where they work. A 1972 National Institute for Occupational Safety and Health (NIOSH) survey found 85,000 trade name products that are commonly used in the workplace. In 90 percent of the cases neither employer nor employee knew the identity of the chemicals in these products. The rapid proliferation of new chemicals increases the number of substances found in the workplace, and consequently increases the number of substances with which employees may be unfamiliar. Without provisions for chemical identification, workers do not know what chemicals they are using and are unaware of the potential hazards. Thus, employees are less able to properly protect themselves or seek adequate protection from their employers. Furthermore, if chemicals in the workplace are not appropriately identified, it is difficult to determine which chemicals are responsible for observed cases of occupational diseases.

Alternatives Under Consideration

The Agency is currently considering five major alternatives:

(1) Issue a regulation based essentially on the recommendations in the report of the OSHA Standards Advisory Committee on Hazardous Materials Labeling which was convened in 1974. The regulation would include provisions for virtually all hazardous or toxic chemicals for container labeling, chemical identification lists (compilations of all hazardous chemicals in a given workplace), substance data sheets (brief papers containing pertinent information on the identified hazards), and employee training. This alternative would be the most comprehensive approach and would provide the greatest assurance that the objectives of the rulemaking would be achieved.

(2) Delete employee training provisions from alternative (1) to reduce the economic impact of the regulation. This alternative wold remove an important mechanism for assuring that workers will understand the information provided by labeling and substance data sheets.

(3) Issue a regulation which would only apply to workplaces that are directly involved in the manufacture, reaction, processing, formulation or storage of chemicals. This would lessen the overall costs of the regulation by narrowing the scope of the standard to workplaces where serious exposures to toxic chemicals are most likely to occur. However, workers in other industries who are also exposed to toxic chemicals would not be afforded the opportunity this standard would provide for information on toxic chemicals.

(4) Promulgate a regulation which would only apply to chemicals of know toxicity, based on prior regulation by other Federal, private or international organizations. Again, this approach would narrow the scope of this regulation by limiting the number of chemicals to which this standard would apply. However, workers may be exposed to substances which are hazardous, but which may not have been investigated or listed by any organization. Workers would continue to be exposed to substances in this cateogry without any information on their hazards.

(5) Promulgate a regulation jointly with the Environmental Protection Agency (EPA). In order to implement the requirements of the Toxic Substances Control Act, EPA is planning to issue regulations concerning identification of hazardous or toxic substances. OSHA and EPA are exploring the possibility of issuing a joint rulemaking.

Summary of Benefits

If OSHA promulgates a regulation that provides for the proper identification of hazardous or toxic substances in the workplace, employees wil be able to determine whether their workplace exposures present a risk of impairment to their health or functional capacity. They will then be able to better safeguard themselves from exposure, and will be more likely to use respirators and protective clothing where necessary and to follow prescribed work and personal hygiene practices. Employees will also be more likely to report chemical exposures to their physicians, increasing the probability that diseases and illnesses caused by workplace exposures will be recognized. Similarly, chemical identification will enable occupational health researchers to detect chemical causes of occupational diseases. The ultimate effect will be to reduce the incidence of occupationally related disease and death.

A regulation requiring the identification of chemicals will also assure that employers aware of the chemicals that are present in their establishments. They will then be able to take appropriate action to adequately protect their workers from harmful exposures.

Summary of Costs

The economic analysis for this regulation has not yet been completed. The actual cost will depend on the scope and provisions included in the final regulation. The Agency is working closely with the Environmental Protection Agency (EPA) to avoid duplication of rulemaking and to reduce compliance costs for industries that are affected by the labeling and employee information requirements that the two agencies issue. The two agencies are considering a joint rulemaking.

Sectors Affected

The scope of the final regulation is not certain at this time, but it will be an issue for public comment and debate following publication of the proposal. OSHA anticipates that the regulation will apply to chemicals that are used in a broad range of employments, including general industry, construction, agriculture, and the maritime industry.

Related Regulations and Actions

Internal: None.

External: A hazard warning regulation authorized by the Toxic Substances Control Act of 1976 is currently under development by the EPA. The regulation would require the labeling of containers and the development and availability of material safety data sheets (MSDS) to reduce unreasonable risks of injury to human health and the environment which arise from uninformed use, exposure, and disposal of hazardous chemical sustances. EPA also has regulations requiring the labeling of pesticides. The Department of Transportation (DOT), Food and Drug Administration (FDA), and the Consumer Product Safety Commission (CPSC) all have labeling regulations. DOT's regulations pertain to the bulk shipment of hazardous goods. They have

published in the **Federal Register** a notice of proposed rulemaking (44 FR 32972, June 7, 1979) for the display of indentification numbers of hazardous materials to improve emergency response capability. FDA and CPSC regulations pertain to products for consumer consumption.

Active Government Collaboration

OSHA and EPA are cooperating in the development of this hazard warning rule. In addition, OSHA is actively participating in the Interagency Regulatory Liaison Group (IRLG) and its Labeling Task Force to assure that the provisions of this rule do not conflict with the existing regulations of other agencies.

Timetable

NPRM—early 1980.
Regulatory Analysis—early 1980.
Public Comment—following NPRM.
Final Rule—early 1981.
Final Rule effective—to be determined.

Available Documents

ANPRM—42 FR 5372, January 28, 1977.

"A Recommended Standard . . . An Identification System for Occupationally Hazadous Materials," (HEW–NIOSH, Publication Number 75–126).

Public docket of the record of rulemaking on chemical labeling (OSHA Docket H–022).

Available for review and copying at the OSHA Technical Data Center, Room S–6212, Third and Constitution Avenue, N.W., Washington, D.C. 20210.

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DOL–OSHA

Generic standard for occupational exposure to pesticides during manufacture and formulation

Legal Authority

The Occupational Safety and Health Act of 1970, 29 U.S.C. § 655.

Statement of Problem

Approximately 34,000 workers are exposed to toxic substances during the manufacture and formulation of pesticides. Pesticides are biologically active substances which are designed to kill or alter some living organism, usually designated as the target "pest." However, pesticides frequently cause health effects in whatever living organisms are exposed to them, including humans. Extensive medical evidence in the scientific literature indicates that worker exposure to pesticides results in serious health problems, including severe skin irritation, damage to the liver and kidneys, sterility, lung damage, and central nervous system disorders. In addition, some pesticides cause cancer, genetic changes, and birth defects. Several well-publicized tragedies have occurred in recent years involving the development of adverse health effects in employees who were exposed to pesticides. Investigations of these incidents indicate that there is an immediate need for regulatory action by OSHA to reduce the risk of occupational disease in exposed workers.

Alternatives Under Consideration

Mandatory standards may be necessary to protect employees working in the pesticide manufacturing and formulation industries. One alternative is to develop standards for pesticides on a substance-by-substance basis. OSHA currently has permissible exposure limits for approximately 160 substances that are used as pesticides. However, the Environmental Protection Agency (EPA) has registered nearly 1,500 pesticide active ingredients which are formulated into almost 40,000 pesticide products. Thus, pursuing this alternative would significantly delay extending protection to many employees in these operations and would require a much greater investment of government resources. The generic approach to regulation, that is, regulation of pesticides as a class of hazardous substances, provides basic protection to workers more quickly and appears to be a more manageable approach for implementation by employers.

OSHA is considering several variations of a generic standard for pesticides. The basic provisions, in all cases, address emergency situations, training, medical surveillance, hygiene practices, housekeeping, and personal protective equipment. The approaches differ primarily in the degree of specification used to describe the required control measures and the "trigger points" at which certain provisions would be required.

At present, we are evaluating three approaches. The first would base requirements for control measures solely on the degree of control that is currently used in each individual workplace. For example, the employer whose employees work in an area where peticides are manufactured in an enclosed process (one which results in minimal exposure potential for employees) would be required to provide fewer additional control measures than the employer formulating pesticides in open vats (where the potential for employee exposure is great). Only personal protective equipment and protective respirator devices would be required—no engineering controls (such as local exhaust ventilation) would be specified. All pesticides would be regulated in the same manner under this alternative, with no differentiations with respect to toxicity.

In the second alternative, various provisions would be triggered, depending on the toxicity of the pesticide. The toxicity catagorization scheme that EPA developed under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA, 7 USC § 136 *et. seq.*) would be incorporated into this approach. For example, employers that have pesticides in Toxicity Category I (highly toxic) in their workplaces would have to perform housekeeping activities more frequently than those with pesticides in Toxicity Category III (slightly toxic). The standard would also include detailed requirements for engineering control.

The third approach would be performance oriented, and would require the employer to assume responsibility for ensuring that proper control measures were selected and implemented when necessary. Rather than indicating what specific control measures would be required in each case, the standard would require the employer to perform a hazard evaluation and then determine the appropriate control measures on the basis of the hazards he found. Thus, the employer would be able to consider all relevant factors (for example, toxicity, physical state, current level of control) before implementing controls.

Although OSHA has not determined which alternative it will propose as a standard, the performance oriented, work practices approach seems to be the most appropriate for a generic standard. This type of standard relies heavily on the "good faith" efforts of employers to completely comply with the intent of the regulation, but it appears to be the most equitable way to deal with the large number of pesticides involved and the range of hazards they produce. The standard would provide protection for all employees in the pesticide industries immediately. OSHA may decide to develop substance-specific standards for the most hazardous pesticides at a later date.

Summary of Benefits

The direct benefit we expect from this action is a reduction in the incidence and prevalence of the adverse health effects that are associated with occupational exposure to pesticides. The standard will also result in indirect benefits, such as reduced costs of adverse health effects to the worker, to industry and to society. For the worker and his/her family, these costs may include loss of potential earnings because of disability or premature death, medical expenditures (including hospital costs, physicians' fees, and pharmaceuticals), and intangible costs such as pain and suffering and family bereavement. The regulation will also result in declining social costs of social security disability insurance, public assistance programs, and Medicaid and Medicare payments. Employers will reap gains in productivity as a result of reductions in employee absenteeism and turnover, and from the improved health of employees. Since workers will be healthier and have fewer job-related illnesses, workers' compensation premiums may decrease. OSHA is in the process of evaluating the alternative schemes for a regulatory analysis, which will be available when the NPRM is published in the **Federal Register.**

Summary of Costs

OSHA is currently estimating the direct and indirect costs of compliance of the alternatives and will make this date available at the time it publishes the proposal. We expect the costs to be significant for some of the alternatives under consideration.

Sectors Affected

The scope of the final standard is not certain at this time, but will be an issue for public comment and debate following the publication of the NPRM. A National Institute for Occupational Safety and Health recommendation suggested that it apply to workplaces that manufacture, formulate, mix, blend, or repackage pesticides.

Establishments which primarily produce pesticide products are classified into Standard Industrial Classification (SIC) Codes 2879 (Pesticides and Agricultural Chemicals, not elsewhere classified) and 28694 (Pesticide Raw Material). Industries in a number of other SIC codes also manufacture or formulate pesticides, although not as their primary product.

In 1976, approximately 4,600 establishments employed 34,000 production workers to produce pesticides. Approximately 400 establishments manufacturing pesticides employed 8,000 production workers, and approximately 4,200 establishments employing 26,000 workers formulated pesticides.

Many small establishments are merely registration-holders and produce pesticide raw materials or formulate pesticides seasonally on a small scale, primarily for their own use. Many of these are farmers or cooperatives operating small, simple, "backyard" facilities.

Price increases caused by compliance costs of regulating the pesticide industry will clearly affect the users of pesticides. The agricultural sector is the largest user of pesticides. But this standard would indirectly affect many diverse users: for example, pesticides are used in many workplaces to control pests.

Related Regulations and Actions

Internal: OSHA promulgated a final standard for the pesticide dibromochloropropane (DBCP) on March 17, 1978 (43 FR 11514), and for inorganic arsenic, which is found in some pesticide formulations, on May 5, 1978 (43 FR 19584). The OSHA Air Contaminant Standards, contained in 29 CFR 1910.1000 of the OSHA General Industry Standards, contain maximum permissible limits for exposure to about 160 chemicals which may be used as pesticides. All of these specific permissible exposure limits will continue to apply when the agency promulgates the generic standard for pesticides.

External: The Environmental Protection Agency, the Food and Drug Administration of the Department of Health, Education and Welfare (DHEW), and the Departments of Transportation and Agriculture have programs for regulating the use of pesticides.

Active Government Collaboration

The National Institute for Occupational Safety and Health (NIOSH of HEW) has prepared a criteria document including recommendations for controlling occupational exposure to pesticides during their manufacture and formulation. NIOSH is also preparing a control technology assessment of the pesticides industries. OSHA has been consistently working with NIOSH to capture information relevant to the development of an OSHA pesticide standard.

EPA has the primary federal responsibility for regulating the use of pesticides in the United States. OSHA has a working relationship with EPA such that EPA consistently makes available to the appropriate OSHA staff any disclosable information relevant to an OSHA pesticides standard.

The State of California's OSHA program has an active pesticides division. Active working relationships have been established to exchange information and develop a pesticides data base.

Timetable

NPRM—spring, 1980.
Regulatory Analysis—spring 1980.
Public Comment—following NPRM.
Final Rule—fall 1980.
Final Rule effective—fall 1980.

Available Documents

"Request for comments and information—Occupational Exposure to Pesticides," 43 FR 54955, November 24, 1978.,

"Criteria for a Recommended Standard . . . Occupational Exposure During the Manufacture and Formulation of Pesticides," (NIOSH–HEW, 1978).

Public docket of the record of rulemaking on the standards concerning occupational exposure to pesticides.

Available for review and copying at the OSHA Technical Data Center, Room S–6212, Third and Constitution Avenue, N.W., Washington, D.C. 20210.

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DOL—OSHA

Regulation for reducing safety and health hazards in abrasive blasting operations

Legal Authority

The Occupational Safety and Health Act of 1970, 29 U.S.C. § 655.

Statement of Problem

Approximately 80,000 abrasive blasters (those who use sand and other abrasives in blasting work) and numerous attendants and nearby personnel face health and safety hazards in their work. The primary health hazard is lung disease due to inhaling mineral dust. The most common of these diseases is silicosis, which may lead to disability or premature death. Investigators have documented over one hundred cases of silicosis, resulting in twenty-five deaths among sandblasters, in the U.S. Gulf Coast States alone since 1958. The average duration of exposure for those sandblasters who develop silicosis is ten years, compared with forty years for the average duration of exposure for all cases of silicosis. We

are at present finalizing more complete estimates of the number of cases of lung disease among abrasive blasters.

In addition to health hazards, abrasive blasters are exposed to safety hazards including vision impairment, slipping, injury from flying abrasives, fire, and explosion. In addition, abrasive blasters have asphyxiated when their air-supply systems have malfunctioned.

The National Institute of Occupational Safety and Health has recommended that silica sand be banned as an abrasive. Numerous scientists have reported on the high morbidity and mortality rates that are associated with abrasive blasting operations. Existing regulations need to be revised to effectively address these serious hazards. For these reasons, OSHA has determined that further regulatory action is needed.

Alternatives Under Consideration

The agency is considering the following regulatory approaches:

(1) Revise and expand existing regulations. Existing safety and health provisions applicable to abrasive blasting operations are found in several sections of the Code of Federal Regulations. In this alternative approach, OSHA would compile them in one section. Further, the Agency would require additional engineering controls and work practices that are tailored to this operation; increased use of personal protective equipment; and improved maintenace of blasting rooms, respirators and personal protective equipment. It would expand coverage to include new categories of workers and would require monitoring, medical surveillance, recordkeeping, and worker education and training. Finally, OSHA is considering requirements for separate, oil-free compressors to supply breathing air, as well as improved lunch and hygiene facilities for workers.

The requirements for effective respiratory protection, maintenance of respirators, and improved lunch and hygiene facilities would reduce the dust inhalation hazard. The use of separate, oil-free compressors would reduce the likelihood of asphyxiation from contaminated air. The monitoring requirements would encourage proper respiratory protection, and, in addition, would provide advance warning of equipment wear and malfunction. The requirements for medical examinations and recordkeeping would help prevent silicosis and other lung disease from development and progressing.

(2) Ban the use of sand as an abrasive, in addition to carrying out all the revisions discussed above. Sand is already banned in abrasive blasting operations in Great Britan and the Common Market countries, and the Mine Safety and Health Administration is considering a ban on its use in below ground operations.

Since dust containing silica is generated from abraded surfaces as well as by the abrasive used, banning sand will not, by itself, eliminate the silica hazard. But banning sand in conjunction with the provisions in the first alternative would be more effective than the first alternative alone in reducing the silica dust hazard. However, a ban would force the use of alternative abrasives, some of which, according to preliminary analysis, contain high levels of other toxic substances. The increased use of these substitutes may increase the prevalence of respiratory disease and cancer among abrasive blasters. Moreover, there is some indication that substitutes may not be readily available in some parts of the country and may be prohibitively expensive when they are available.

Summary of Benefits

Regulatory action in this area will decrease the number of cases of lung disease below what it would be in the absence of regulatory action. The reduction in exposure levels will produce a corresponding reduction in adverse health effects. OSHA is currently developing estimates of the expected reduction in disease. The Agency also expects regulatory action to result in fewer injuries and deaths related to abrasive blasting safety hazards.

Summary of Costs

Preliminary estimates of the incremental cost of the first alternative are listed below. The size of the range reflects variations in the stringency and timing of selected provisions of this alternative.

Type of cost	Amount ($ millions)
Installed capital	13-185
Annual capital charge	3- 44
Annual energy	.01- 8
Annual operating and maintenance	51- 78
Total annualized	54-130

OSHA estimates that the alternative of banning sand would cost an additional $228 million in annual operating and maintenance costs due to the extra cost of substitutes for silica sand. Since sand sold for blasting is less than 3 percent of the sales of sand suppliers, the incremental effect on sand suppliers of banning sand would be minor.

The implications of the upper bound cost estimates listed above for price, output and employment in the affected industries are displayed below. The final two ratios in the table estimate the effect on market structure.

	Percent change in price	Percent change in output	Net employment change (percent)	Total annualized cost to profit ratio	Installed capital cost to normal investment ratio
Alternative 1	0.0750	−0.0989	−0.0929	0.0167	0.0266
Ban Sand	0.1782	−0.2201	−0.5388	0.0396	0.0266

As we noted above, there may be indirect costs in health problems due to substitutes which may be use for sand.

These relatively small preliminary figures suggest that both alternatives are economically feasible for the industries affected. The Agency is preparing a final economic impact assessment; tentative results indicate that the effects on price, output, employment, and market structure will be even less than the above figures suggest.

Sectors Affected

The regulation will cover abrasive blasters and associated workers. The Census Bureau categorizes these workers as machine operatives (Census number 690) and construction laborers (Census number 751).

Three industries, SIC 1629 (Heavy Construction, not elsewhere classified), SIC 1721 (Painting, Paperhanging and Decorating) and SIC 3471 (Plating and Polishing), account for approximately 55 percent of the abrasive blasting operations and employ about 78 percent of the abrasive blasters.

Related Regulations and Actions

Internal: OSHA intends to develop a new standard covering the use of silica in all industries. This new standard may change the current permissible exposure level for silica and may apply to abrasive blasting operations.

External: The Mine Safety and Health Administration is also considering a change in the permissible exposure level for silica. In addition, it is considering banning its use in below ground operations.

Active Government Collaboration

None.

Timetable

NPRM—December 1979.
Regulatory Analysis—December 1979, if required.
Public Hearings—following NPRM.
Final Rule—fall 1980.
Final Rule effective—to be determined.

Available Documents

Public docket of the record of rulemaking on safety and health hazards of abrasive blasting operations (OSHA Docket H–102).

Economic and environmental impact statements will be available when a standard is proposed.

Available for review and copying at the OSHA Technical Data Center, Room S–6212, Third and Constitution Avenue, N.W., Washington, D.C. 20210.

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DOL—OSHA

Safety and health regulations for construction activities in tunnels and shafts

Legal Authority

The Occupational Safety and Health Act of 1970, 29 U.S.C. § 655.

Statement of Problem

During the five year period starting in 1971 at least six catastrophic incidents involving explosion, fire, or flooding took place at underground worksites. These disasters resulted in 48 deaths, 42 injuries, and millions of dollars in property damage, and the toll could have been greater except for a particularly fortunate set of circumstances at the time of the accidents. In addition, many workers in underground operations are subject to other life threatening hazards on an almost daily basis. To reduce the incidence of future catastrophes, the Occupational Safety and Health Administration (OSHA) is revising its workplace construction standards for underground operations to cover hazards that are not currently regulated.

Currently, billions of dollars worth of underground construction projects are underway or scheduled. These include subway systems in five major cities and numerous water and sewer lines and utility networks. OSHA estimates that up to 350,000 workers per year may be involved in situations that present repeated opportunities for major disasters. Tunnels and shafts for mining operations are regulated by MSHA.

OSHA promulgated safety and health regulations for tunneling operations on April 17, 1971. During the ensuing years of enforcement, interested parties have identified a number of problem areas. For example, some rules were claimed to be overly stringent. Under the current standard, fire-resistant fluids are required to be used in underground hydraulic systems. Equipment manufacturers and employers claim that the use of such fluids considerably reduces the lifespan of certain machinery and that alternative methods of protection, such as fire suppression systems, should be allowed. Conversely, others have suggested more specific rules to deal with potentially explosive gas atmospheres in tunnels and the improvement of hoisting equipment to prevent the recurrence of past catastrophes.

In addition, some of the current rules need updating and clarification. As a result, the proposed standard will rely on more current information to prohibit those work conditions which needlessly contribute to the most serious accidents.

Alternatives Under Consideration

One alternative to the proposed regulation is to maintain the current OSHA standard for underground operations. However, as we described above, this standard is outdated or unclear in several instances, and limited in coverage in others. OSHA will identify other alternatives to the proposed standard in the process of analyzing supporting data for a regulatory analysis, which will be available in ealry 1980. OSHA will evaluate each provision with an orientation toward performance standards.

Summary of Benefits

The benefit from a revised regulation will be reduction in the fatalities, injuries, and losses we cited in "Statement of Problem." OSHA will undertake a study to provide better estimates of the frequency and severity of these incidents and the expected changes in these rates that will result from the enactment of a revised standard. Fewer accidents will reduce lost wages, medical expenses, and property damage and will increase productivity as a result of reduced production downtime. In addition, less restrictive safety requirements for certain machine operations may substantially increase productivity without jeopardizing worker safety.

Summary of Costs

To thoroughly evaluate the feasibility of the proposed standard OSHA will estimate the costs of each provision. OSHA will include these data in a regulatory analysis if the Agency determines that this action has a major impact by Department of Labor criteria, which is a compliance cost of $100 million for all affected industries or a significant disruption of the labor force.

Sectors Affected

The industrial sectors that the proposed standard will primarily affect are the tunneling and the drilled shaft industries. Many of these operations are included under the following Standard Industrial Classification codes: 1611 (highway and street construction, except elevated highways), 1623 (water, sewer, pipeline, communication, and power line construction), 1629 (heavy construction, not elsewhere classified), and 1794 (excavating and foundation work). The construction firms will initially bear any new compliance costs, whereas their employees will benefit from safer working conditions. However, a revised regulation will also affect other sectors. For example, the standards will affect taxpayers to the extent that government construction projects become more or less expensive. They will affect consumers if transportation or private utility charges increase as the costs are passed on. The data OSHA collects for the preparation of the regulatory analysis will provide a detailed description of these effects.

Related Regulations and Actions

Internal: The Mine Safety and Health Administration (MSHA) has promulgated regulations for metal and non-metal mining activities, including tunnel and shaft construction.

External: The American National Standards Institute, Inc. (ANSI) has undertaken the development of a voluntary standard for the construction of tunnels, shafts, and caissons. Also, a number of states operating their own safety and health plans under an agreement with OSHA have tunneling regulations. Some states mirror the OSHA regulations and others, such as California and Michigan, have developed their own regulations, which OSHA considers to be as effective as the Federal regulations.

Active Government Collaboration

The proposal will include the health and safety requirements for design, permissibility, and suitability for mobile diesel-powered transportation equipment (Schedule 31) which the Bureau of Mines, Department of Interior developed. Also, OSHA will propose self-rescuer requirements approved by the Mine Safety and Health Administration (MSHA) of DOL and the National Institute for Occupational Safety and Health (NIOSH). Coordination with MSHA will continue regarding regulations that cover similar hazards.

Timetable

NPRM—early 1980.
Regulatory Analysis—early 1980, if required.
Public Comment—following NPRM.
Informal Hearing—following NPRM.
Final Rule—fall 1980.

Available Documents

Transcript of public meetings held by the OSHA Construction Safety and Health Advisory Committee.

Transcript of public hearing held on June 26, 1974.

Previous NPRM—39 FR 10216, March 18, 1974.

Written comments received relative to the previous proposal.

These documents are available for review and copying at the OSHA Technical Data Center, Room S–6212, Third and Constitution Avenue, N.W. Washington, D.C. 20210.

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DOL—OSHA

Safety standard for walking and working surfaces in general industry

Legal Authority

The Occupational Safety and Health Act of 1970, 29 U.S.C. § 655.

Statement of Problem

Occupational injuries resulting from accidents associated with unsafe walking and working surfaces account for 20 to 25 percent of all occupational injuries in general industry and construction. The National Safety Council estimates that the cost of injuries and fatalities resulting from these hazards may reach $5 billion annually. The present OSHA standards for walking and working surfaces are obsolete. Many provisions have been replaced by updated voluntary standards; other provisions have been held invalid by court decisions, while still others have been modified by OSHA program directives or variances in an attempt to deal with problems of interpretation. There is a need to replace these OSHA specification oriented standards with clearly stated performance oriented standards. Also, specific hazardous items that are not currently covered need to be included.

OSHA bases this proposed action on over five years of data collection, including responses to a 1976 ANPRM and a major effort to make revisions of standards consistent with model building codes used in cities and states and voluntary standards such as those of the American National Standards Institute (ANSI). OSHA has closely coordinated its activities with professional and trade organizations and representatives of industry and labor.

Alternatives Under Consideration

The first alternative, a comprehensive revision of the existing standards, would incorporate performance-oriented standards, language simplification, and additional coverage for hazards that are not currently regulated. The performance-oriented standards would permit and encourage more flexibility in controlling hazards. It is likely that greater flexibility would lead to more effective protection at decreased expense. As part of the first alternative the Agency would include an appendix as a part of the standards document to aid employers and employees in complying with the performance-oriented standards by demonstrating alternative methods of compliance.

Alternative two is a phased effort to remedy major problems in the existing standards, rather than a comprehensive revision. Under this alternative the Agency would not address many gaps and shortcomings in the current standards. This alternative would not include an appendix.

Alternative three is to leave the present standards as they are.

The advantage of alternative one is that it would address the most important problems of the existing standards. It would fully use the research work, the support studies, and the outside assistance that has been provided to OSHA. It would advance regulatory policy objectives to permit more flexible and cost-effective compliance methods, reduce inconsistency among several regulatory standards and codes, and would simplify regulatory language. However, alternative one may have a major economic effect, because it would cover a greater number of hazards than does the present standard. Moreover, it would involve a greater number of interested parties in rulemaking procedures, because of a wider range of issues. It would also require OSHA to provide retraining of field staff for enforcement of the new, revised standards.

Alternative two may cost the affected employers less and it may simplify the rulemaking process. However, it would not address many important hazards which are presently causing worker injuries. In addition, it would not advance OSHA's stated regulatory policy to promulgate more performance oriented standards.

Alternative three would greatly hinder OSHA's enforcement and consultation efforts. Certain hazard areas would remain totally unregulated. The Agency would increasingly suffer loss of cooperation with many organizations and individuals who have contributed significantly to the development of proposed revisions. Eventually, OSHA might have to expend considerable resources in redoing or updating the research data and injury studies which are now available. In addition, there would be no immediate hope of addressing hazards that may account for up to one fourth of all occupational injuries.

Adoption of any of the three alternatives would have some effect on all workplaces that are covered by OSHA, except for those in construction and the maritime and agricultural industries, which are covered by other standards. Under alternatives one and two OSHA would stagger the effective dates for implementation to enhance voluntary compliance and to minimize potential economic effects, as well as to provide time for OSHA to implement an enforcement strategy.

Summary of Benefits

The primary benefit of improved standards for walking and working surfaces is to reduce injuries, deaths, and the associated costs, as stated above in the section, "Statement of Problem." There is some potential for reducing these costs through regulatory action, since several fatality/catastrophe studies indicate that the majority of accidents results from improper operating and maintenance procedures such as overloaded scaffolds, unsafe or non-existent guardrails, no safety harness, and so forth. If clearer and more cost-effective standards gain wider acceptance and compliance so that accidents are reduced by 10 percent, annual productivity losses alone could be reduced by $500 million.

These estimates are compounded by uncertainties; nonetheless, it is a given that occupational injuries contribute immediately and directly to losses in national productivity while at the same time contributing additional inflationary pressure to the hospitalization and medical services sectors.

The regulatory action might also provide benefits for users and suppliers of products such as guardrails, ladders, safety harnesses, and so forth, in the form of economies of scale and increased demand. Flexible standards for such products would permit greater

cost-effectiveness than plant-by-plant user design and fabrication. Compatibility with model codes and professional design criteria, coupled with greater flexibility for technological innovation and cost-effectiveness by manufacturers and users alike, would create additional incentives for hazard reduction. The present specification standards prescribe solutions which inhibit innovation and which contain built-in obsolescence.

OSHA would implement schedules to minimize obsolescence of equipment and facilities that are now in place. The Agency is preparing an economic impact assessment to evaluate and determine how to minimize economic effects and to assess advantages and disadvantages which may result from the proposed revision.

Summary of Cost

The cost of alternative one, which is the comprehensive revision using performance-oriented standards, may exceed $100 million. These costs primarily affect the private sector and include every employer who is covered by the general industry standards of OSHA. OSHA is conducting an economic analysis to determine the effect on employees, employers, industry, and manufacturer groups. However, due to the variety of covered hazards throughout general industry, OSHA has not yet determined whether the costs will exceed the criteria for a major action, which are $100 million compliance cost for all affected industries, or significant work force disruption.

Sectors Affected

The improved standards will directly benefit employees who use ladders, safety belts, scaffolds, ramps, stairs, etc. Employers will benefit from the flexibility for compliance that the performance standards provide. The expected reduced injury experience and workmen's compensation cost and any increases in compliance costs will affect almost all sectors. This proposal will not directly affect construction, maritime, and agricultural employers.

Related Regulations and Actions

Internal: Following this action, OSHA will revise its present standards for walking and working surfaces in the construction and maritime industries. The agricultural standards do not need revision at this time.

External: Publications by The American Society for Testing and Materials, The American National Standards Institute, The American Society of Civil Engineers, and the National Fire Protection Association contain, or soon will contain, related voluntary standards for many of the products and installations that this proposal addresses. OSHA has shared its research efforts with all of the affected standards development groups. In addition, the Consumer Product Safety Commission has been working on a standard for ladder construction and is coordinating with OSHA.

Active Government Collaboration

The Consumer Product Safety Commission and OSHA have been interacting to establish satisfactory ladder performance standards.

Timetable

NPRM—spring 1980.
Regulatory Analysis—accompanying NPRM, if required.
Public Comment—following NPRM.
Public Hearings—in at least three cities.
Final Rule—to be determined.
Final Rule effective—to be determined.

Available Documents

ANPRM—41 FR 17102, April 23, 1976.
Comments and transcripts from town meetings . . . OSHA Public Reading Room S6212, U.S. Department of Labor, Washington, D.C. 20210.

These documents are available for review and copying at the OSHA Technical Data Center, Room S6212, Third and Constitution Avenue, N.W., Washington, D.C. 20210.

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DOL—OSHA

Standard for occupational exposures to hexavalent chromium

Legal Authority

Occupational Safety and Health Act of 1970, 29 U.S.C. § 655.

Statement of Problem

Approximately 250,000 workers are currently exposed to potentially harmful levels of chromium in its hexavalent state (valence is a number indicating the capacity of an atom and certain groups of atoms to hold others in combination). Eight-hour time-weighted average (TWA) sampling results indicate that over one thousand workers are exposed to airborne levels of fifty micrograms per cubic meter ($\mu g/m^3$) or greater, and over 50 percent of all exposed workers are exposed to concentrations in excess of 10 $\mu g/m^3$.

The National Institute for Occupational Safety and Health (NIOSH) and other sources have provided OSHA with data which indicate that while OSHA presently limits exposures to hexavalent chromium to 100 $\mu g/m^3$, a specific, comprehensive regulation of this toxic substance is necessary. Workers risk developing a wide variety of adverse health effects that are attributable to exposure to hexavalent chromium. There is evidence of dermatological effects (including skin ulceration and allergic contact dermatitis), respiratory effects (including perforation of the nasal membrane, nasal discharge, irritation of the throat, and respiratory spasms), and systemic effects (including liver damage, kidney abnormalities, erosion and discoloration of the teeth, perforation of the eardrum, and abdominal pain). In addition, OSHA is investigating the epidemiologic evidence in workers and experimental results in animals which suggest that certain hexavalent chromiun compounds have the potential to induce cancer.

OSHA is developing a proposal to regulate occupational exposure to hexavalent chromium and possibly other chromium compounds, as determined by available health data. The performance regulation would set a permissible exposure limit (PEL) for hexavalent chromium, and affected industries would have the opportunity to implement measures to comply with this new PEL for their operations in a cost-effective manner. The regulation may also require the employer to perform medical surveillance of exposed exployees, periodic monitoring of the workplace environment, and employee training and education. Failure to act expeditiously will prolong the occurrence of the preventable incidence of diseases, disability, and mortality associated with hexavalent chromium exposures.

Alternatives Under Consideration.

The Agency will consider a range of alternative performance PEL's, including: (1) 10 $\mu g/m^3$ TWA with a 25 $\mu g/m^3$ ceiling above which no employee may be exposed, (2) 1 $\mu g/m^3$ TWA with a 10 $\mu g/m^3$ ceiling, and (3) lowest technologically feasible TWA with no ceiling or with an appropriate ceiling (such as 10, 25, or 50 $\mu g/m^3$). Other provisions requiring engineering controls, work practices, and hygiene facilities may supplement the PEL. The Agency has asked for public comment on possible alternatives for limiting

workers' exposures to hexavalent chromium.

Studies indicate that at least some chromium compounds in the hexavalent state are cancer-causing agents. Some scientists argue that all hexavalent chromium compounds should be presumed to be carcinogenic and regulated as such. Others believe that carcinogenic and noncarcinogenic forms of hexavalent chromium can be identified and that OSHA should develop separate standards. OSHA will consider the merits of each of these regulatory options.

Still another approach is to establish regulations for hexavalent chromium on the basis of the feasibility of compliance for different industries. Specific requirements of the standard would differ according to the feasibility of various control measures in different industries or processes where the potential for exposure exists.

Summary of Benefits

The direct benefit we expect from controlling exposure to hexavalent chromium is the reduction in incidence and prevalence of the health effects we cited in "Statement of Problem." One indirect benefit will be a reduction in the private and social costs of these occupationally-related health effects. Hospital costs, physician services, pain and suffering, disability benefits, and premature death constitute the bulk of these costs. These costs are borne by private individuals, third-party payors (such as health insurance and worker's compensation insurance companies), and society at large. Employers may realize gains in productivity, since healthier workers exhibit lower rates of turnover, less absenteeism, and improved on-the-job performance. In addition, affected industries are likely to develop technological innovations which may improve production processes in general.

Summary of Costs

The chart below compares initial estimates of the direct costs of compliance with the various PEL's. The total annualized cost estimate is the sum of the annual operating costs and the annualized capital costs. Annualized capital costs were calculated with a standard capital recovery formula using an 18 percent discount rate and varying estimates of equipment life.

Preliminary Cost Estimates

[In millions]

Alternative	Capital	Annual operating	Total annualized
(1)	$104	$63	$85
(2)	196	120	160
(3)	194	63	103

Analysis to date indicates that the chromate pigment production and use (paints, dyes, inks) industries will incur major compliance costs. Since there are competitive substitutes in this market, the demand for pigments containing chromium will likely decline. For other pigment applications, metal finishing uses, and manufacture of stainless steel, there are no available substitutes for chromium. In these cases, preliminary analysis indicates that compliance costs will be passed on to consumers. Negligible price changes are projected for upstream chromate production, catalyst production, and textile mills using chromate pigment dyes.

Some change in the number and size distribution of firms is likely to occur in pigment production, water treatment compound formulation, and chrome alloy welding. OSHA will also examine the proposed regulation's effects on employment and international trade.

Sectors Affected

OSHA has identified the following Standard Industrial Classifications as being potentially affected by the promulgation of a hexavalent chromium regulation: chromates and bichromates (2819), chrome pigments (2816), printing ink (2893), paints (2851), painting of metal products (3479), plating compounds (2899), chromium plating (3471), dyes (2844, 2899, 2865), catalysts (2819), water treating compounds (2899), welding (3356), and primary chromium refining (3339). Potential exposures also exist in traffic paint application, abrasive blasting operations, and the manufacture of plastics colorants, special chemical formulations, and wood treatment products.

Potential exposure to hexavalent chromium is widespread in industries across the nation. OSHA is compiling additional information on the demographic and health status of workers who will benefit directly from this regulatory action.

Related Regulations and Actions

Internal: The OSHA Air contaminants Standards found at 29 CFR 1910.1000, Table Z–2, of the Agency's General Industry Standards, specify a maximum PEL of one milligram per ten cubic meters of air as chromic acid and chromates. This is the equivalent of 100 $\mu g/m^3$ and is calculated as an eight-hour TWA. Table Z–1 specifies a ceiling exposure value of 0.1 milligram per cubic meter with a notation to avoid skin contact for tert-Butyl chromate as chromium trioxide.

External: The Environmental Protection Agency (EPA) has issued the following regulations for the control of chromium pollution: (1) .05 mg/liter in drinking water, (2) 4 mg/liter effluent guideline in wood preserving, and (3) 1 mg/liter (daily maximum) and 0.5 mg/liter (30 day average) in the manufacture of chromium metal and ferroalloys, and 0.1 mg/liter (daily maximum) and 0.5 mg/liter (30 day average) as hexavalent chromium. In addition, EPA has proposed the following regulations: (1) 0.5 mg/liter in leachate from hazardous wastes, and (2) 4.2 mg/liter (daily maximum) and 1.6 mg/liter (30 day average) in electroplating effluents.

Active Government Collaboration

Information sharing with the National Institute for Occupational Safety and Health (NIOSH) and the Environmental Protection Agency (EPA).

Timetable

NPRM—spring 1980.
Regulatory Analysis—spring 1980, if required.
Final Rule—spring 1981.
Final Rule effective—to be determined.

Available Documents

ANPRM—41 FR 18869, May 7, 1976.

"Criteria for a Recommended Standard . . . Occupational Exposure to Chromium (VI)," (NIOSH–HEW, 1975).

"Criteria for a Recommended Standard . . . Occupational Exposure to Chromic Acid," (NIOSH–HEW, 1973).

Public docket of the record of rulemaking on the occupational exposure to chromium standard.

These documents are available for review and copying at the OSHA Technical Data Center, Room S6212, Third and Constitution Avenue, N.W., Washington, D.C. 20210.

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Flammability standards for crewmember uniforms

Legal Authority

Department of Transportation Act, § 6(c), 49 U.S.C. § 1655(c). Federal Avaiation Act of 1958, as amended, §§ 313(a) and 601, 49 U.S.C. §§ 1354(a), 1421, and 1424. 14 CFR 121 and 135.

Statement of Problem

The Federal Aviation Administration (FAA) has found that many uniform items worn by flight crewmembers are highly flammable when exposed to fire and other sources of ignition. Tests performed by the National Bureau of Standards of the Department of Commerce under contract to FAA established that fabrics presently used in making uniforms for crewmembers would not resist the effects of flame and heat flux in survivable cabin fires and could prevent crewmembers from assisting passengers in such situations. Among other actions, the FAA is considering establishing standards of flammability and resistance to heat flux for materials used in crewmember uniforms.

Alternatives Under Consideration

Possible alternatives to establishing flammability standards for crewmembers are:

(1) Do not require uniforms worn by crewmembers to meet any flammability standard. Although current uniform materials provide maximum comfort, range of styling, and cleanability, at present they are constructed of conventional fabric that may be ignited or may provide inadequate protection from radiant heat in survivable cabin fires. Without protective clothing, crewmembers may be incapable of performing necessary functions in certain emergencies.

(2) Require crewmember to put on special fireman-type garments in case of a fire. This option was fully explored and reported in FAA Report No. FAA–RD–77–18. Although the garment provides maximum protection from flame and radiant heat, it is very expensive and difficult to put on.

(3) Require crewmember uniforms to meet a standard similar to the current children's sleepwear standard. This is a performance standard that requires materials used for children's sleepwear to resist ignition when exposed to flame and to self-extinguish rapidly. Materials which satisfy the children's sleepwear standard must be flame-resistant, but need not protect the wearer from radiant heat transferred through clothing.

(4) Require crewmember uniforms to meet an ignition-resistance and self-extinguishment test as well as a standard designed to protect the wearer from injury from the transfer of radiant heat through clothing. We currently regard this as the most desirable alternative, since crewmembers must be adequately protected from both flame and radiant heat injury if they are to perform their duties adequately in an emergency.

Currently, technology in the textile industry permits the establishment of a standard that protects wearers from both flame and radiant heat. Most fabrics can be treated to increase their protective qualities. In addition, fire-retardant wool and cotton are available in a wide range of colors and weights. These fire-retardant fabrics are woven of both natural and synthetic fire-retardant fibers to maximize wearability and protection. Synthetic fabrics such as Nomex are available in a variety of weights. Although these synthetics provide the greatest protection to the wearer, their range is somewhat limited because of problems with colorfastness. In the past, Nomex has been used primarily by fire and police agencies, and color choice was not a problem. If demand for more variety increases, a wider range of colors may be developed.

Although certain fabrics, such as polyester, have limited fire-retardant qualities, other fabrics of similar weight and purpose may be substituted. Fire-retardant fabrics are available that are comparable to conventional fabrics with respect to durability, color choice, style and tailoring capability, and range of fabric weight. The fire retardant properties of some fabrics can be retained through the useful life of the garment. For other fabrics, it could last through at least 50 wash/cleaning cycles.

Summary of Benefits

The benefits we expect from the proposed flamability standards would be increased safety for crewmembers and passengers. Flight crews would be safer in case of fire, which would increase safety for the traveling public.

Summary of Costs

The cost per uniform would increase, causing an economic effect for user or purchaser. No cost information is available at this time. We will include it in the Regulatory Analysis.

Sectors Affected

The U.S. textile and clothing industry would be affected by the economic impact of producing new materials and clothing made from new materials. The air carrier industry would bear the cost, possibly through increased airfare, which would directly affect the paying passenger.

Related Regulations and Actions

Internal: Parts 121 and 135 of the Federal Aviation Regulations and FAA Report Nos. FAA–RD–75–176 and FAA–RD–77–18.

External: Federal Rule, Flammability Standard for Children's Sleepwear, 16 CFR 1616.5(a)(b)(c)(i)(ii). State and local governments have established clothing standards for some hazardous professions such as those for firemen.

Active Government Collaboration

The National Transportation Safety Board's comments on ANPRM 75–13 recommended that the scope be expanded to include clothing of all crewmembers, to give them the same protection as flight attendants. The National Bureau of Standards developed the technical basis for the flammability standard.

Timetable

The FAA is proposing standards to be listed in appendices to 14 CFR 121 and 135. The following are action and future action dates:

NPRM—February 1980.
Final Rule—pending.
Regulatory Analysis—being prepared.
Public Hearings—none scheduled.
Comments Period—90 to 120 days after we issue the NPRM.
Effective Date of Regulation—36 months after we issue the amendment.

Available Documents

ANPRM 75–13, issued March 13, 1975, is available from the Federal Aviation Administration, Office of the Chief Counsel, Attention: Rule Docket (AGC–24), Docket No. 14451, Federal Aviation Administration, 800 Independence Avenue, S.W., Washington, D.C. 20591.

You can get copies of FAA reports entitled "Development of a Proposed Flammability Standard for Commercial Transport Flight Attendant Uniforms," Report No. FAA–RD–75–176, and "Development of a Fire Protective Overgarment for Use by Air Carrier Flight Attendants," Report No. FAA–RD–77–18, from the National Technical Information Service, Springfield, Virginia 22161.

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DOT-Federal Highway Administration

Hours of service of drivers

Legal Authority

The Motor Carrier Act of 1935 (Part II of the Interstate Commerce Act), 49 U.S.C. § 304.

Department of Transportation Act, 3, 49 U.S.C 1655.

Statement of Problem

The Federal Highway Administration (FHWA) is considering revising the regulations that limit the driving hours and prescribe rest periods for drivers of vehicles engaged in interstate or foreign commerce. It is taking this action in response to: (1) numerous requests from public interest groups, labor organizations, motor carriers, and individual drivers; (2) research studies showing driver fatigue to be a cause in commerical motor vehicle accidents; and (3) a 1974 decision of a Federal District Court involving a suit brought by PROD Inc., an interest group representing some commercial truck drivers who sought judicial review of FHWA's failure to initiate rulemaking proceedings on the hours of service regulations. The suit was dismissed by the court to allow FHWA to begin rulemaking. The dismissal allowed PROD to have the suit reinstated in 18 months if FHWA had failed to initiate rulemaking.

The objective of this regulation is to increase the overall safety of the nation's highways through the revision of current regulations governing the hours of service for drivers of commerical trucks and buses engaged in interstate or foreign commerce.

The FHWA currently limits, by regulation, the hours of service for drivers, as part of its overall responsibility for the safe operation of motor carriers. Research studies dating from the mid-1930's have indicated that fatigue causes narrowing of vision and inattention, which make drivers miss signs and signals and result in highway accidents. In 1978, more than 34,000 commercial motor vehicle accidents were reported to the Bureau of Motor Carrier Safety; many of these were single-vehicle and other accidents that involved running off of the road without apparent cause. The FHWA suspects that fatigue was a factor in may of these accidents.

Alternatives Under Consideration

Some of the alternatives to current regulations which FHWA is studying include longer off-duty periods for drivers between driving and/or work assignments and mandatory rest periods during long driving assignments. The FHWA is also considering simplifying the methods drivers use to record hours of service, in order to reduce the paperwork burden on both the driver and the motor carrier companies. In addition, the FHWA is considering requirements related to the following: (1) maximum weekly work hours, (2) maximum on-duty time, (3) minimum off-duty time, (4) driving hours or mileage limitations, (5) elimination of intermittent off-duty periods which extend the overall length of the work day, (6) mandatory meal periods, and (7) special provisions for night driving assignments.

Summary of Benefits

The FHWA believes that revisions to regulations on the hours of service for drivers would help reduce driver fatigue and ensure alertness, thereby eliminating the risk of fatigue-related accidents. This, in turn, would increase the overall safety of the nation's highways.

The FHWA expects that the revised regulation would have economic benefits, because there would be fewer fatalities and injuries and less property damage caused by highway accidents. In addition, motor carriers' operating expenses would be reduced because of fewer accidents, lower insurance premiums, and reduced compensation payments. The FHWA does not have an estimate of the savings that could result from these regulations. As we have stated, many factors impair drivers' alertness. The FHWA cannot distinguish those accidents which would be prevented by changing these regulations from those which would be prevented by taking other actions.

Summary of Costs

The FHWA expects that the costs resulting from these regulations may be high. Revising the hours of service regulations to restrict the hours that a driver may work could cause increased payroll expenses for motor carriers. This could lead to increases in other operating expenses of motor carriers, resulting in increased costs to passengers and shippers for truck and bus transportaion and, eventually, for goods consumed. The initial rough estimate of increases in expenses to motor carriers exceeds $100 million annually. This estimate, however, does not consider any offsetting benefits such as reduced vehicle downtime, minimized delays in cargo delivery, and lower insurance premiums that could result from fewer accidents.

Sectors Affected

This regulation would affect that portion of the truck and bus industry engaged in the interstate commercial transportation of property and passengers. Secondary sectors that would be affected include consumers of goods transported by truck and, to a lesser extent, passengers and tour groups that normally travel by bus.

Related Regulations and Actions

Internal: Current FHWA regulations restrict hours of service of drivers (40 CFR 395).

External: None.

Active Government Collaboration

None.

Timetable

NPRM—May 1980.
Final Rule—November 1980.

Available Documents

ANPRM—41 FR 6275, February 13, 1976.

Second ANPRM—43 FR 21905, May 22, 1978.

Sixteen reports or professional journal articles are referenced in the second ANPRM, 43 FR 21905, May 22, 1978.

"PROD, Inc., et al. v. Brinegar," Civil Action 2098-73, U.S. District Court, District of Columbia (May 20, 1974). This is a decision in which the District Court dismissed, without prejudice to renew in 18 months, a suit brought against the Department of Transportation (DOT) by PROD, Inc., a group representing professional drivers. The suit sought judicial review of the FHWA's failure to institute rulemaking proceedings on "hours of service."

"Effects of Hours of Service, Regularity of Schedules, and Cargo Loading on Truck and Bus Driver Fatigue," October 1978, available through the National Technical Information Service, Springfield, Virginia 22161 (DOT HS-803799).

In addition, written comments, transcripts of hearings on hours of service, and the initial Draft Regulatory Analysis are in public docket ML-70-1 and are available for review through the agency contact.

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DOT-FHWA

Minimum cab space dimensions

Legal Authority

The Motor Carrier Act of 1935 (Part II of the Interstate Commerce Act), 49 U.S.C. § 304.

Department of Transportation Act, 49 U.S.C. § 1655.

Statement of Problem

All States and the District of Columbia impose restrictions on total vehicle length for trucks. Most of these restrictions range from 55 to 65 feet; 75 feet is the maximum length allowed by any State. However, there are no regulations for the minimum size of the cab portion of trucks. Thus, drivers of heavy commercial vehicles must sometimes drive trucks with cab dimensions which cause discomfort, thereby increasing fatigue and the likelihood of an accident. The extent of this problem is unknown.

Preliminary investigations suggest that the older truck cabs whose dimensions may cause problems are being phased out. However, reports from drivers' organizations have stated that vehicle manufacturers, in response to customer requests, are manufacturing new trucks with smaller cab dimensions to permit lengthening the cargo carrying portion of the vehicle while staying within the State-imposed overall length limits. Reducing the size of the cab could make the driver more uncomfortable, and the engine less accessible for inspection. It also can place excessive weight on the steering axle, making the truck harder to steer and overloading the front tires, which can cause flats. Some studies have linked highway accidents with these conditions.

Alternatives Under Consideration

If there is in fact a serious safety problem, a possible alternative to rulemaking is to propose voluntary model advisory standards for minimum cab space dimensions. The National Highway Safety Advisory Committee Report of March 1977 recommended this approach. Within the rulemaking process, the Federal Highway Administration (FHWA) is considering several alternatives. One is to exempt certain types or weight classes of vehicles from the regulations. Another is to restrict the manufacturers from placing the cab over the engine. A third alternative considers the safety of different length cabs matched with different length trailers.

Summary of Benefits

The benefit of this regulatory action would be to reduce wheel and axle overloading and protect the driver's work place, thereby reducing the risk of accidents to all highway users. FHWA does not know at this time what dollar savings to expect as a result of reduced accident involvement or avoidance. The percentage of accidents that would be avoided through regulatory action is unknown, but the risk would be reduced.

Summary of Costs

These regulations may necessitate substantial redesign of some truck cabs. Initially, the manufacturers would bear the financial burden of accomplishing this redesign and retooling. This would lead to an increase in the cost of trucks to users. Unless the States change the allowable overall length of a tractor/semitrailer combination, the increased cab space would reduce available cargo space. This could result in smaller loads and the need for additional vehicles and drivers to ship the same amount of goods. All of these factors could increase shipping costs and eventually result in consumer price increases on all items carried by truck. Specific estimates of the costs are not available at this time.

Sectors Affected

The initial impact would be on the manufacturers of cargo carrying vehicles. In addition, all industries involved in interstate commercial transportation of property would be affected, because these regulations may reduce the available cargo space. Indirectly, consumers will be affected as the increased costs are passed along in the form of higher prices.

Related Regulations and Actions

Internal: None.

External: Fifty States and the District of Columbia have regulations limiting overall vehicle length.

Active Government Collaboration

None.

Timetable

NPRM—May 1980.

Draft Regulatory Analysis—May 1980.

Available Documents

ANPRM—43 FR 6273, February 14, 1978.

"Driver Profile and Body (Anthropometric) Data on Interstate Truck Driver," April 1977, available through the National Technical Information Service, Springfield, Virginia 22161 (PB273514/AS).

"A Study of Heat, Noise, and Vibration in Relation to Driver Performance and Physiological Status," October 1974, available through the National Technical Information Service, Springfield, Virginia 22161 (PB238829).

"Cause and Control of Commercial Vehicle Accidents Involving Front Tire Failure," August 1975, available through the National Technical Information Service, Springfield, Virginia 22161 (PB245863).

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DOT—Federal Railroad Administration

Alerting lights display—locomotives

Legal Authority

Federal Railroad Safety Act of 1970, § 202(a), 45 U.S.C. § 431(a); Locomotive Inspection Act, 45 U.S.C. § 22 *et seq.*

Statement of Problem

Each year hundreds of persons are killed and thousands are injured in accidents at rail-highway grade crossings (the intersections of railroad tracks and highways at the same level). The National Grade Crossing Inventory maintained by the Department of Transportation (DOT) indicates the following number of grade crossings: 219,082 public; 142,338 private; and 3,601 pedestrian. During the 10-year period from 1967 to 1976, there was an annual average of 1,328 fatalities and 3,680 injuries resulting from accidents of all types at rail-highway grade crossings. In 1977, the most current year for which data has been analyzed, there was a total of 12,299 grade crossing accidents of all types resulting in 944 fatalities and 4,649 injuries. The majority of accidents, injuries, and fatalities occurred at public crossings.

To reduce the number of these accidents, the Federal Railroad Administration (FRA) of DOT is proposing to require railroad locomotives to display highly conspicuous alerting lights at public rail-highway grade crossings. The lights would provide additional warning to motorists who are approaching public grade crossings.

Alternatives Under Consideration

One alternative to requiring the display of alerting lights at public grade crossings is to rely on voluntary action by the railroads to install and display alerting lights on railroad locomotives. In an attempt to stimulate such voluntary action, FRA would use existing studies and data indicating that highly conspicuous alerting lights reduce accidents. There are drawbacks to this alternative. First, many railroads probably would not install alerting lights. Many railroads question the effectiveness of the lights and others do not want to commit the necessary funds. If motorists are to associate alerting lights with the presence of a locomotive, the lighting system must be uniform. Second, lights with differing characteristics (color, location, flash rate, and intensity) might be installed on the locomotives. Again, uniformity of the lights used would improve the effectiveness of the system for motorists.

FRA also considered two other alternatives to determine the relative cost-effectiveness of alerting lights. One alternative is to install active warning systems (lights, bells, and gates) at all public rail-highway grade crossings; the other is to eliminate all public crossings by separating public highways from rail lines (by overpasses and underpasses). These alternatives were less cost-effective than alerting lights and prohibitively expensive—approximately $4 billion for active warning systems and $200 billion for grade separation.

Summary of Benefits

A study done for the FRA, "Analysis for NPRM—Strobe Lights on Locomotives" (from here on referred to as the Study), estimated that 124 fatalities, 566 injuries, and 1,414 accidents would be avoided each year if an alerting lights system using xenon strobe lights were employed. The Study estimated the total annual benefit to be $65 million, produced by the anticipated accident reduction. The net present value benefit, including all societal benefits, was estimated to be $432.6 million (with present value calculations based on a 20-year project evaluation and a 10 percent discount rate). The net present value benefit is the estimated dollar savings for the full 20-year period, after subtracting the costs involved, and calculating a discount to reflect the current value of future cost savings. The Study used actual and estimated cost figures for valuation of fatalities, injuries, property damage, lost utilization of the rail line, and other costs. It used a societal cost of $315,900 per fatality, based on a 1975 study for the National Highway Traffic Safety Administration.

Summary of Costs

The initial cost of installing alerting lights would be approximately $21 million over a three-year period. This would be substantially offset by the anticipated reduction in costs related to grade crossing accidents. In the short-term, costs might exceed benefits. According to the Study, however, the estimated present value cost of application and subsequent maintenance of an alerting lights system using xenon strobe lights is $432.3 million (based on a 20-year evaluation), while the economic impact is estimated to be a benefit of $61.4 million to the railroads.

If the short-term costs due to the capital expense of installing alerting lights exceed the short-term benefits, the financial condition of the railroad industry could necessitate recovering these costs through rate increases. (See, "A Prospectus for Change in the Freight Railroad Industry," a preliminary report by the Secretary of Transportation, October 1978.)

Sectors Affected

The proposed rule would affect three groups. It would affect the driving public because of the anticipated reduction in rail-highway grade crossing accidents, injuries, and fatalities. It would also affect the railroad industry through accident reduction and because the industry would absorb the initial cost of installing alerting lights. It may affect shippers and the general public if the short-term costs to railroads exceed the short-term benefits, because this might result in a rate increase. Since the cost of installing alerting lights is only $21 million over a three-year period, the affect on rates would not be large.

Related Regulations and Actions

Internal: FRA requires that all grades crossing accidents be reported (49 CFR 225). FRA publishes each year a "Rail-Highway Grade Crossing Accident/Incident Bulletin." In addition, DOT has published and periodically updates the National Grade Crossing Inventory. Railroad locomotives are required by 49 CFR 230.231 to have a headlight. In addition, the Federal Highway Administration has authority under 23 U.S.C. § 130 to fund the construction costs of projects that eliminate hazards at rail-highway grade crossings.

External: None.

Active Government Colloboration

None.

Timetable

Final Rule—January 1980.

Available Documents

NPRM—44 FR 34982, June 18, 1979.

ANPRM—44 FR 9324, March 7, 1978.

Draft Regulatory Analysis.

"A Prospectus for Change in the Freight Railroad Industry," a preliminary report by the Secretary of Transportation, October 1978.

Analysis for NPRM—"Strobe Lights on Locomotives," Input Output Computer Services, Inc., May 26, 1978.

DOT Transportation Systems Center Study—"Grade Crossing Resource Allocation for Strobe Lights and Conventional Warning Systems," November 16, 1978.

Documents available from agency contact.

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DOT-Coast Guard

Construction and equipment for exiting self-propelled vessels carrying bulk liquefied gases

Legal Authority

The Port and Tanker Safety Act of 1978, P.L. 95-474, § 5, 92 Stat. 1480 (1978).

Statement of Problem

Existing U.S. ships for carrying liquefied gas, which are called gas ships, were designed and constructed in accordance with current Coast Guard standards. The U.S. standards were developed by the Coast Guard as the need for ships capable of carrying extremely cold liquefied gas developed. However, there has never been an internationally accepted set of design, equipment, and construction standards, and virtually every nation uses its own unique standards. This has created problems, as not all countries recognize each other's standards. To alleviate this situation, the international community has agreed upon a uniform set of standards for gas ships, developed by the International Maritime Consultative Organization (IMCO). This is known as the Existing Gas Ship Code. The Coast Guard needs to evaluate the impact the IMCO Existing Gas Ship Code will have on the U.S. fleet, so we have issued an ANPRM for public comment.

Alternatives Under Consideration

The Coast Guard has issued an ANPRM to gather information for future rulemaking. At this time, the Coast Guard is analyzing basic information on the estimated amount of equipment that would be required, the purchase price of such equipment, the availability of the equipment, the time needed for deliverly and installation, and projected costs. As a result of the comments received in response to the ANPRM, the Coast Guard is considering a number of alternatives, including withdrawing the proposal.

Summary of Benefits

The Coast Guard expects that the proposed regulation would ensure the safe transportation of bulk liquefied gases aboard existing vessels entering the United States by upgrading the minimum standards for their equipment, material, and construction. Although there have been no catastrophic accidents involving this type of vessel, routine Coast Guard inspection of existing ships has shown that, in terms of safety, some approaches to vessel construction and equipment are superior to others. In addition, the Coast Guard expects that having internationally uniform rules would aid the industry by eliminating confusing conflicts between various standards accepted in different parts of the world.

Summary of Costs

Through an ANPRM issued in July 1977, the Coast Guard is examining the economic effect of implementing the IMCO Existing Gas Ship Code. Final estimates will not be available until we complete the regulatory analysis. One of the primary purposes of the ANPRM is to provide the information necessary to assess accurately the costs of the regulation. The Coast Guard will attempt to find the most cost-effective method of implementing the international requirements.

Sectors Affected

The regulation may impose higher costs on the owners and operators of ships carrying bulk liquefied gas. They may pass these costs on to consumers of liquefied gas.

Related Regulations and Actions

Internal: The Coast Guard recently published proposed rules for new self-propelled vessels carrying bulk liquefied gases, which is based on the existing IMCO Gas Code for new ships. The current regulations for these vessels are scattered over various parts of the Code of Federal Regulations. The proposed new gas ship regulations are expected to have the same benefits for new construction as the regulations discussed in this entry would have for existing ships. Both sets of regulations would create unified and consolidated requirements for gas ships.

External: IMCO Existing Gas Ship Code.

Active Government Collaboration

None.

Timetable

NPRM—June 1980.

This project has been delayed because the Tanker Safety and Pollution Prevention (TSPP) Regulations discussed elsewhere in this calendar have priority over the limited resources available for drafting.

Available Documents

ANPRM—42 FR 33353, June 30, 1977.

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ENVIRONMENTAL PROTECTION AGENCY

Office of Air, Noise, and Radiation

Environmental Standard for Inactive Uranium Mill Tailings

Legal Authority

Uranium Mill Tailings Radiation Control Act of 1978, § 206, 42 U.S.C. § 2022.

Statement of Problem

The soils and rocks which make up the earth's crust contain radioactive uranium and thorium isotopes (radionuclides). Almost all human activities which involve removing and processing materials from the earth's crust can result in the release of some of these radioactive materials into the atmosphere. These releases can become potentially hazardous when:

1. the activity involves handling materials that contain concentrations of these radionuclides significantly above the average concentrations in soil.
2. these radionuclides are concentrated during processing to a level significantly above the average concentrations in soil, or
3. the radioactive material is redistributed from its place in nature into a pathway where humans can be exposed to it.

Uranium mining operations involve removing large quantities of ore containing uranium and its radioactive decay products in concentrations up to 1000 times greater than are normally found in the natural terrestrial environment. After mining, the ores are shipped to uranium mills for separation of the uranium from the other materials in the ore. After the mill crushes and grinds the ore, the uranium is dissolved, precipitated, dried, and packaged into "yellow cake" (U_3O_8). The residues of the process, normally in the form of a wet sand, are discharged to a disposal area where the liquids are evaporated or partially recycled.

The tailings disposal area consists of a pond and a dry beach area. The size of each component depends on the amount of water that is recycled, the rate of evaporation, and the amount of raw ore being milled. In areas of high evaporation, large dry beach areas are exposed. Radioactive emissions from these areas result from wind erosion of the tailings and diffusion of radioactive radon gas out of the tailings. In addition, radioisotopes and other toxic substances may seep into groundwater.

The release of radon gas from piles of uranium mill tailings exposes people in the immediate vicinity of the tailings site to radioactivity and, to a lesser extent, exposes more distant populations. Windblown radioactive particulates from tailings sites and direct gamma radiation constitute secondary sources of radiation exposure. If the tailings are uncontrolled, the Environmental Protection Agency (EPA) estimates that approximately 250 premature deaths per century could occur in the population of the North American continent from radiation-induced lung cancer resulting from emissions from these sources. These effects would be divided approximately equally between people who live within five miles of the inactive tailings piles and those in the rest of the North American continent. Health effects from potential contamination of groundwater resources are not included in this estimate. The radioactive component in the tailings will remain hazardous for hundreds of thousands of years.

The uranium mill tailings at 22 inactive sites occupy approximately 1030 acres of land, mostly in rural areas (see Sectors Affected). Because of the potential hazard of the tailings, the Uranium Mill Tailings Radiation Control Act of 1978 (UMTRCA) requires EPA to promulgate standards of general application for protecting the public health and safety and the environment from the radiological and

nonradiological hazards associated with residual radioactive materials at these inactive sites.

If Federal and State governments take action to control releases from these tailings, the Agency estimates that the above potential health effects can be prevented, at least for periods approaching 1000 years.

Alternatives Under Consideration

EPA's standards for uranium mill tailings will be standards of general application. They define environmental radiation conditions which must be achieved, without specifying the means of accomplishment. We are developing the standards based on currently available knowledge of the potential harmful effects of uranium mill tailings, and the technology and costs of avoiding them. With regard to the form and content of the standards, we are considering the following alternatives:

1. *Disposal Standards.*

EPA is considering an entire range of options from no control to virtually complete control of releases of radioactivity and of nonradioactive toxic substances from tailings. We find that means of providing long-term control of radon releases are available. We are examining the health benefits and costs of controlling these releases to alternative levels which are (a) significantly above the radon release rates characteristic of undisturbed land areas, (b) within the normal range of release from undisturbed lands, or (c) significantly below average rates from such lands.

We are also considering whether we should prohibit releases of toxic substances from tailings to groundwater or should limit them to levels which preserve its quality for potential uses, including drinking and agriculture. We have concluded that the combined effect of any reasonable level of control of radon releases to the air and of groundwater releases will sufficiently control all other hazards.

2. *Cleanup Standards for Contaminated Open Land.*

We are considering alternative standards for cleanup of contaminated open land as follows:

a. Standards which would reduce residual radiation levels to local natural background levels.

b. Standards which would limit the residual radioactivity to levels which may be above local background, but still within the range of values observed in nature.

c. Standards which limit residual radiation to levels significantly above normal background.

We are examining the health benefits and costs of cleaning land to determine the most reasonable cleanup level.

3. *Cleanup Standards for Buildings.*

Tailings have sometimes been used as construction materials for buildings. This can cause elevated radioactivity indoors and increased risk of lung cancer from breathing radioactive particles in the air. In developing remedial action standards for this condition, we are considering earlier recommendations by the U.S. Surgeon General for a similar situation at Grand Junction, Colorado and guidance provided by EPA to the State of Florida regarding indoor radioactivity. We are considering alternative standards for remedial action which take account of this earlier guidance and which reflect current assessments of the health effects of indoor radioactivity. The standards will take the form of "action levels," i.e., specifications which, if exceeded, will require remedial action. These action levels may be set in terms of the total indoor radioactivity concentrations or as an increment above average natural background levels.

Summary of Benefits

This regulation will provide standards of general application for a cleanup and disposal program for uranium mill tailings which will prevent up to approximately 250 premature deaths from lung cancer per hundred years.

Summary of Costs

The uranium mill tailings piles that these regulations would affect are at inactive sites. UMTRCA provides for the Federal Government, in cooperation with the affected States and Indian Tribes, to conduct a program to assess and remedy the hazards at such sites. When appropriate, the tailings may be reprocessed to extract residual uranium and other minerals, so long as this does not interfere with remedial actions.

By extrapolation from a preliminary estimate that the Department of Energy (DOE) provided to Congress, EPA estimates that it is possible but not likely that the cost of meeting these standards will approach $100 million in some years, depending on the schedule to accomplish the remedial action and the sites selected for restoration. However, since the disposal program for the abandoned mill tailings piles will be undertaken at public expense by the Federal Government and the affected States, the regulation will not affect the uranium industry.

Sectors Affected

Inactive uranium mill tailings sites which are designated by DOE for remedial actions under UMTRCA are located in the States of Arizona, Colorado, Idaho, New Mexico, Oregon, Texas, Utah, and Wyoming. There is also a designated site of a former radium plant located in Pennsylvania. People, including members of Indian Tribes, residing in these States, and to a lesser extent the entire population of the North American continent, would be protected from exposure to radioactivity from these materials. Federal and State governments will bear the costs of disposal. We forecast no additional public cost.

Related Regulations and Actions

Internal:

1. Radiation protection guidance for remedial actions on residences on Florida phosphate lands.
2. Draft proposed standard for high-level radioactive waste (in development).
3. Proposed standards for treatment, storage, and disposal of hazardous wastes under the Resource Conservation and Recovery Act.
4. Draft Clean Air Act Standards for radioactive materials (in development).
5. Proposed Environmental Protection Criteria for Radioactive Wastes and applicable Federal Radiation Protection Guidance.
6. Clean Water Act regulations.
7. National Interim Primary Drinking Water standards.
8. EPA Air Carcinogen Policy.
9. Resource Conservation Recovery Act.

External:

1. Department of Energy draft clean-up criteria for similar sites not covered by this Act.
2. Nuclear Regulatory Commission draft regulations for active and new uranium mills.
3. U.S. Surgeon General's Guidelines for remedial actions regarding tailings in Grand Junction, Colorado.

Active Government Collaboration

EPA is formally coordinating the development of these standards with DOE and the Nuclear Regulatory Commission (NRC). DOE is required to implement the EPA standard with the concurrence of NRC and in conjunction with the States that are affected.

DOE is also required to establish priorities for implementing the standards, in accordance with guidance which EPA has already provided.

Timetable

NPRM—March 1980.
Final Rule—August 1980.
Regulatory Analysis—EPA will not develop a regulatory analysis,

because the cost of implementing the standard will be borne by Federal and State governments.

EPA plans to conduct public hearings on the NPRM, but has not established a date or location for the hearings at this time. The public will have at least a 60-day comment period before the Agency issues the final rules.

Available Documents

From the Congress—Pub. L. 95–604 Uranium Mill Tailings Radiation Control Act (UMTRCA).

House Report No. 95–2480, Pt. I, Committee on Interior and Insular Affairs.

House Report No 95–1480, Pt. II, Committee on Interstate and Foreign Commerce.

From DOE—Phase II, Title I, Engineering Assessment of Inactive Uranium Mill Tailings (for various sites) by Ford, Bacon and Davis, Utah Inc.

From EPA/ORP–OANR–460—401 M Street, S.W., Washington, D.C. 20460; **Federal Register** notice, 44 FR 33433, June 11, 1979, "EPA Development of Standards for Uranium Mill Tailings and Uranium Report on Mining Wastes—Call for Information and Data."

From EPA/ORP–OANR–460—401 M Street, S.W., Washington, D.C. 20460; **Federal Register** notice, 44 FR 38664–38670, July 2, 1979, "EPA Indoor Radiation Exposure Due to Radium-226 in Florida Phosphate Lands—Radiation Protection Recommendations and Request for Comment."

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EPA–OANR

Policy and Procedures for Identifying, Assessing, and Regulating Airborne Substances Posing a Risk of Cancer

Legal Authority

The Clean Air Act, as amended, §§ 111, 112, and 301(a), 42 U.S.C. §§ 7411, 7412, and 7601(a).

Statement of Problem

Cancer is currently the second leading cause of death in the United States. One American in four is expected to contract some form of cancer in his or her lifetime, and one in five is expected to die from the disease. The most recent statistics show a continued increase in the total incidence of cancer, resulting principally from increases in lung cancer.

Studies of human cancer rates and their worldwide geographical variations, and observations of incidence rates in migrant populations have revealed that factors in the human environment are probably responsible for a large proportion of cancers. "Environmental factors" must be understood in the broad sense to include chemical exposures from smoking, diet, occupation, drinking water, and air pollution; various forms of radiation, including sunlight; and some forms of sever physical irritation. Although the uncertainties are great, estimates by the World Health Organizations, other prominent institutions, and individual experts have suggested that these factors may cause 60 to 90 percent of all human cancers.

Although airborne carcinogens may induce cancer at a number of areas in the body, lung cancer is thought to be the principal form of cancer related to air pollution. While cigarette smoking is probably the most important cause of lung cancer in the United States, many scientists believe that various air pollutants increase the risk of cancer from smoking and other carcinogenic insults. Available estimates also indicate that occupational exposures are responsible for a significant portion of the incidence of lung cancer in the United States.

A preliminary examination by the Environmental Protection Agency (EPA) of chemical production, industries producing radioactive materials, and air sampling results has identified over 50 known or potential chemical carcinogens and numerous radioactive materials which may be emitted into the atmosphere. Many of these substances are synthetic organic chemicals that have been in commercial use only since the 1930's. Since cancer induced by exposures to small amounts of airborne carcinogens may not appear for 15 to 40 years after exposure, it is still too early to detect the full effects of these chemicals on human health. Thus, it is both prudent and, in view of the large number of people potentially affected, important to reduce or contain emissions of known or suspected atmospheric carcinogens in order to prevent future problems before they actually are observed.

We have, since 1971, listed three airborne carcinogens (asbestos, vinyl chloride, benzene) as hazardous pollutants under § 112, "National Emission Standards for Hazardous Air Pollutants," of the Clean Air Act. As required by § 112, we have developed and are continuing to develop emission standards for significant sources of these pollutants. In addition, we are evaluating a number of other potentially carcinogenic substances to determine whether action under § 112 is appropriate. We have found our actions on airborne carcinogens to be hampered by the lack of a policy, developed with public participation, that would guide our use of § 112 to control airborne carcinogens.

Specifically, publicly-stated, legally binding policies and regulatory mechanisms are needed for: (1) determining the carcinogenicity and carcinogenic risks of air pollutants for regulatory purposes, (2) establishing priorities for evaluating the need for and implementing additional regulatory action, (3) specifying the degree of source control required in general under § 112 and how we will determine that level of control in setting individual standards, and (4) providing more extensive public involvement in the Agency's decisionmaking on the regulation of airborne carcinogens.

Alternatives Under Consideration

We describe a number of alternatives in the proposal document. Beyond that, the principal alternative is to have no formal policy. Under this alternative, EPA would continue with a case-by-case approach for regulating airborne carcinogens under § 112. This strategy would allow the Agency maximum regulatory flexibility, but would not give either the general public or the regulated industry sufficient information to enable them to participate fully in the rulemaking process. In addition, the alternative of no policy would not resolve the difficulties which EPA has encountered in the listing of airborne carcinogens and in the subsequent development of emission regulations. It also does not recognize the need for procedures to insure that available resources are allocated to the most important or tractable problems on a priority basis.

Under the policy, we will list under § 112 those airborne substances identified as high probability human carcinogens which present a significant carcinogenic risk to public health as a result of air emissions from one or more categories of stationary sources. Where applicable, we will propose generic standards concurrently with the listing, to expedite reductions in emissions which can be achieved through good housekeeping practices in the manufacturing, handling, or use of hazardous materials. We will use risk assessments to determine priorities for futher regulation of significant source

categories and in the evaluation of residual risk.

At a minimum, the policy requires new and existing sources which present or would present significant risks to apply "best available technology" (BAT) to control emissions of listed airborne carcinogens. BAT for new sources represents the most advanced level of control adequately demonstrated, considering economic, energy, and environmental effects. For existing sources, the determination of BAT also considers the impacts and technological problems associated with the retrofitting of control equipment. Controls more stringent than BAT may be imposed if the risk remaining after the application of BAT is unreasonable, or, for new sources, if the criteria for risk avoidance associated with plant siting cannot be met.

Summary of Benefits

The proposed policy will significantly improve EPA's regulatory effort in identifying and controlling airborne carcinogens. Proposing generic standards for certain categories or sources concurrent with listing under § 112 will provide for significant reduction in emissions, pending the development of final § 112 standards. A mechanism for establishing regulatory priorities will insure that we address the most important or tractable problems first. The policy also provides for increased public understanding of and participation in EPA's actions and allows EPA to give earlier notice of its findings and regulatory intent to State and local regulatory authorities and to industries.

Summary of Costs

We intend the proposed rule only to guide the Agency in identifying and controlling airborne carcinogens. In its present form, we cannot assess its regulatory effects quantitatively. This policy will, however, provide a basis for impact assessments in subsequent regulatory actions that are taken in accord with its provisions.

Sectors Affected

Generic and emission standards that we develop for sources of airborne carcinogens under the proposed policy will reduce cancer risks for large segments of the U.S. population exposed to these substances in the ambient air. The greatest benefits will be to individuals who live in the immediate vicinity of characteristic source types.

Preliminary analyses have identified a number of source types which may emit carcinogenic substances into the atmosphere. Most of these types fall into one of the following six broad groups: (1) mining, smelting, refining, manufacture and end-use of minerals and other inorganic chemicals; (2) combustion; (3) petroleum refining, distribution, and storage; (4) synthetic organic chemical industries and end-use applications and waste disposal; (5) mining, processing, use and disposal of radioactive substances and radioactive by-products; and (6) non-carcinogenic emissions which are chemically transformed into carcinogens in the atmosphere.

While low levels of potentially carcinogenic substances have been detected in many parts of the country, the areas of greatest concern are densely populated urban centers and areas with a high concentration of chemical manufacturing industries. In the latter case, geographic areas that are affected include the Gulf Coast (Louisiana and Texas), the Kanawha Valley (West Virginia), and Northern New Jersey.

The primary responsibility for implementing the policy will fall on the Office of Air, Noise, and Radiation, EPA. State and local air pollution agencies will have the opportunity to participate in the process at all stages. Some States may request delegation of authority in the area of new requirements for siting sources.

Related Regulations and Actions

Other offices within EPA are also in the process of developing programs to control carcinogens. These include the Office of Pesticides and Toxic Substances, the Office of Water and Waste Management, the Office of the Pesticide Programs, and the Office of Mobile Source Air Pollution Control. A program is also underway to develop an agency-wide cancer policy.

Related external efforts include the development of a national cancer policy by the member agencies of the United States Regulatory Council, the recent report by the Risk Assessment Work Group of the Interagency Regulatory Liaison Group (IRLG) on the identification of carcinogens and the quantitative assessment of risks; a staff paper by the White House Office of Science and Technology Policy on the identification, characterization, and control of potential human carcinogens; and a report to the President by the Interagency Toxic Substances Strategy Committee.

Other regulatory agencies that are involved in this area include the Occupational Safety and Health Administration, the Food and Drug Administration, and the Consumer Product Safety Commission. Non-governmental groups who have expressed interest in or made recommendations on the control of carcinogens include the Environmental Defense Fund, the American Industrial Health Council, and the Natural Resources Defense Council.

Active Government Collaboration

In addition to the public meeting that EPA held in March 1978, the Agency has presented testimony at the public hearings held after the Occupational Safety and Health Administration proposed its carcinogen policy. We have also provided information briefings for the Interagency Regulatory Liaison Group and members of the President's Council on Environmental Quality and the Council on Wage and Price Stability, Congressional staff, and interested State air pollution agencies.

Timetable

Public Hearings—December 1980.
Final Rule—June 1980.

Available Documents

"Policy and Procedures for Identifying, Assessing, and Regulating Airborne Substances Posing a Risk of Cancer"—NPRM October 10, 1979, 44 FR 58642.

"National Emission Standards for Hazardous Air Pollutants—Generic Standards"—ANPRM October 10, 1979, 44 FR 58662.

"Summary of Responses and Proposals—Testimony and Written Submissions"—U.S. EPA Public Hearings on Regulation of Carcinogenic Air Pollutants, Washington, D.C., March 23, 1978.

These documents as well as others referenced in the proposed policy are available in a public rulemaking docket number OAQPS 79-14. The docket is open for public inspection between 8:00 a.m. and 4:00 p.m. Monday through Friday at: Central Docket Section, Room 2903B, Waterside Mall, 401 M Street, S.W., Washington, D.C. 20460.

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EPA-Office of Pesticides and Toxic Substances

Pesticide Registration Guidelines

Legal Authority

Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. §§ 136a(c)(2)(A), 136f, 136w (1978).

Statement of Problem

With certain limited exceptions, the Environmental Protection Agency (EPA) must register all pesticides before manufacturers and formulators can legally distribute and sell them in the United States. In addition, the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) expessly requires that currently registered pesticides be reregistered expeditiously; in may cases, the registrants of the pesticides will have to submit health and safety data that meets Guidelines requirements, because they had not previously submitted data or had submitted inadequate data.

EPA's Guidelines specify the health and safety data that registrants of different types of pesticide products must submit and the testing methods to be used in developing these data. We will issue separate subparts of the Guidelines for the different kinds of data required.

Prospective registrants (primarily manufacturers and formulators) are responsible for performing the testing and submitting results to the Agency. EPA uses the data in determining whether a pesticide will perform its intended function without causing unreasonable adverse effects on human health and the environment.

Alternatives Under Consideration

EPA is not considering alternatives to publication of the Guidelines. The Agency is Analyzing public comments on the portions already proposed (See "Available Documents") and is considering alternative ways of modifying the data and testing requirements.

Summary of Benefits

The Guidelines will give prospective registrants the benefit of knowing precisely what kinds of data the Agency requires (though there are provisions for waiving some requirements under some circumstances). Manufacturers and formulators therefore will be able to plan their research and development programs with greater certainty. The Guidelines also can be expected to result in improvement in the quality of data available for EPA's decisionmaking on pesticide registrations.

Summary of Costs

EPA estimates that is will cost registrants approximately $700 million over the next ten years to meet the Guidelines requirements as they are currently proposed. This estimate reflects the cost to manufacturers and formulators of providing additional data to support reregistation of the major pesticides currently registered for agricultural uses and the cost of providing data to support registration of new pesticides. The estimate applies to those portions of the Guidelines that we have already published as proposed rules. (See "Available Documents.")

The projected cost represents expenditures for conducting laboratory testing, and we expect it to contribute to the growth of the toxicological testing industry. While registrants will initially bear the cost, we expect that the cost will be passed on to pesticide users, resulting in relatively small price increases. EPA does not expect any significant effect on employment in the pesticide industry, or any other nationally significant economic effects, although producers of some pesticides of small economic significance may withdraw them from the market.

Sectors Affected

The Guidelines will affect the manufacturing sector, principally chemical manufacturing, and the food and agriculture sector (which is the major user of pesticides).

Related Regulations and Actions

Internal: EPA also is developing testing standards for chemical substances and mixtures under the Toxic Substances Control Act (TSCA). As far as possible, EPA will make the pesticide testing methods prescribed by the Guidelines consistent with the TSCA testing standards. The Good Laboratory Practice Standards being developed under TSCA and FIFRA, which prescribe uniform standards of performance for toxicological testing, will also be consistent with the Guidelines.

External: Under the aegis of the Interagency Regulatory Liaison Group (IRLG), EPA, the Food and Drug Administration, the Occupational Safety and Health Administration, and the Consumer Product Safety Commission are jointly developing guidelines describing test methods that will meet all four agencies' needs.

Active Government Collaboration

Agencies that we have consulted include the members of the Interagency Regulatory Liaison Group (IRLG), the National Cancer Institute, and the Department of Agriculture.

Timetable

Those portions of the Guidelines already published as NPRM (see below) are scheduled to be issued as final rules between November 1979 and November 1980. Additional portions dealing with label development, applicability of data requirements, and reentry data requirements are scheduled to be published as NPRM between December 1979 and June 1980.

Available Documents

We have published the following portions of the Guidelines as NPRM:

Subpart B—Introduction, 43 FR 29696, July 10, 1978.

Subpart C—Registration Procedures (interim final), 40 FR 41788, September 9, 1975.

Subpart D—Chemistry Requirements, 43 FR 29696, July 10, 1978.

Subpart E—Hazard Evaluation: Wildlife and Aquatic Organisms, 43 FR 29696, July 10, 1978.

Subpart F—Hazard Evaluation: Humans and Domestic Animals, 43 FR 37336, August 22, 1978.

Also available is: "Economic Impact Analysis of Guidelines for Registering Pesticides in the U.S.," 43 FR 39644, September 6, 1978.

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EPA-OPTS

Rules and notice forms for premanufacture notification of new chemical substances

Legal Authority

Toxic Substances Control Act (TSCA), § 5, 15 U.S.C., § 2604.

Statement of Problem

To prevent public health risks and environmental contamination before potentially toxic substances are widely used and dispersed, Congress included a section on premanufacture notification in the Toxic Substances Control Act (TSCA). This section requires a manufacturer to notify the Environmental Protection Agency (EPA) of his intent to manufacture or import a new chemical substance, and to submit information concerning that substance which the Agency can use to assess the risks associated with its manufacture,

processing, distribution in commerce, use, or disposal. On the basis of this assessment and an evaluation of economic considerations and other relevant factors, EPA will make decisions concerning the reasonableness of any risk, and will take appropriate action to obtain more information or data, to regulate production or use, or to require reporting once the substance is in commerce. If EPA does not regulate the substance during the premanufacture notification period, the manufacturer may begin production (subject to regulation under any other laws).

To implement the notification process, EPA proposed a set of premanufacture notification rules and forms for public comment on January 10, 1979. In September, EPA reproposed the forms and certain portions of the rule. The rules, when final, will clarify for manufacturers (including importers) of new chemcial substances their statutory obligations to provide information on the substances, which information they must supply and which is optional, and the Agency's procedures for reviewing the information. The forms will provide a detailed specification of the information they must submit and the formats in which they should supply the information. The manufacturers are responsible for assembling the information. EPA must decide, generally within 90 days of receiving the information, whether the substance in question presents an unreasonable risk to human health or the environment, and if so, what action to take.

Alternatives Under Consideration

There are several significant issues to be resolved in this rulemaking. Among them are the scope of information to be required and the level of detail; when premanufacture notifications are to be submitted to EPA; policies regarding the confidentiality of the information submitted; the extent to which the submitter must contact prospective customers to obtain relevant data; and whether and how EPA may declare notifications deficient or invalid. Based on the public comments on the rules and forms we published as an NPRM (See "Available Documents") and on a revised, shortened form we also published as an NPRM (See "Available Documents"), the Agency is considering various alternative ways of resolving these and other significant policy issues. In general, the Agency's objective is to strike a reasonable balance between its needs for information to permit evaluation of new chemicals and the chemical industry's legitimate interests in developing and manufacturing new chemicals and protecting proprietary data.

Summary of Benefits

The premanufacture review process will benefit public health and the environment by preventing the production, use, or disposal of new chemicals which present unreasonable risks. By preventing potential hazards at an early stage, EPA can minimize economic dislocation compared to the economic dislocation that regulation could cause after a chemical is in full production and use. For example, adverse employment effects and the obsolescence of plant equipment will be substantially reduced by early regulation. Preventing toxic chemicals from entering the environment also will decrease lost work days and hospitalization costs that result from worker exposure to toxic chemicals.

Summary of Costs

EPA is conducting an in-depth study of the premanufacture notification requirements in order to determine with a greater degree of confidence the nature of the costs and economic effects of this rulemaking. This economic study will assess the primary costs and effects of the notice form and the secondary effects of the rulemaking. These secondary effects will include the effect on research and development programs; industry sales, growth and profitability; and the structure of the chemical industry. EPA will use the results of this study in making final decisions on how to implement the premanufacture notification program.

Sectors Affected

Premanufacture notification rules and forms will have their primary effects upon the manufacturing sector, and principally upon chemical manufacturers and importers. Under TSCA, manufacturers are distinguished from processors; the latter may be requested to provide information to EPA, either directly or through the primary manufacturers, but are under no legal obligation to do so.

Related Regulations and Actions

None.

Active Government Collaboration

Other Federal agencies that have involved in this rulemaking include the Consumer Product Safety Commission, the Occupational Safety and Health Administration, the Food and Drug Administration, the Department of Transportation, and the Bureau of the Census.

Timetable

Final Rule—March 1980.

Available Documents

NPRM for Premanufacture Notification Requirements and Review Procedures—44 FR 2242, January 10, 1979.

Discussion of Premanufacture Testing Policy and Technical Issues—44 FR 16240, March 16, 1979.

Interim Policy Statement—44 28558, May 15, 1979.

NPRM for Rules and Other Issues—44 FR 59764, October 16, 1979.

These documents are available from the Agency contact listed below.

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EPA—OPTS

Rules restricting the commercial and industrial use of asbestos fibers

Legal Authority

Toxic Substances Control Act, 15 U.S.C. § 2605

Statement of Problem

The Environmental Protection Agency (EPA) is concerned that many uses of asbestos may present an unreasonable human health risk. Exposure to asbestos fibers has been shown to contribute to increased risk of lung damage (asbestosis) and cancer of several anatomic sites in humans.

Asbestos is a generic name for several naturally occurring mineral fibers. Since the beginning of the century, approximately 30 million tons of asbestos fibers have been used in the United States to produce thousands of commercial and industrial products. The inventory of asbestos products is growing, since new products introduced into commerce represent about 750,000 tons of asbestos per year. Some fibers used in these products are inevitably released as a result of fiber processing, product manufacturing, distribution in commerce, product use, and disposal. Much of this asbestos remains in the biosphere as a ubiquitous pollutant because of the fibers' mobility and resistance to chemical and physical decomposition. Humans may be exposed to these fibers from these direct and indirect sources.

Various Federal and State authorities control certain exposures to asbestos. However, because of limited mandates (i.e., focused on specific populations or

exposure sources), technical difficulties (e.g., available fiber measurement techniques), and other analytical constraints, these authorities are not able to deal with the total asbestos problem. As a result, many population segments remain exposed to, and inadequately protected from, both direct and diffuse sources of asbestos.

Under the Toxic Substances Control Act (TSCA), EPA expects to promulgate rules which will reduce and prevent human health risk from sources which are difficult to control through media-specific (e.g., air, drinking water) or source-specific (e.g., mining) regulation authorized under other Federal statutes.

Alternatives Under Consideration

EPA is planning to promulgate rules to control the commercial and industrial use of asbestos under TSCA. The principal alternatives we are considering are: (1) not developing rules, (2) promulgating additional rules under other Federal authorities, and (3) promulgating information gathering rules and deferring a decision on rules for control until we have evaluated the information that is submitted.

With respect to promulgation of rules under TSCA, EPA is considering three alternative approaches.

First, the Agency might promulgate prohibitions on the manufacture, processing, and use of specific asbestos-containing products or product categories.

One disadvantage of this approach stems from the demand for asbestos fiber, which reportedly exeeds current supplies. If this situation persists, fibers orginally destined for a banned product might be transferred to increase production of unrestricted products. Such a transfer could offset the reduction in asbestos use anticipated under the product use ban. The situation would only change after a large number of asbestos-containing products and uses were banned.

Another disadvantage of the specific product restriction approach is that it could generate voluminous exemption requests. Although well defined exemption criteria could minimize the number of requests, the demand on EPA resources could be significant. Despite these drawbacks, this option should still enable EPA to reduce and prevent the unreasonable risks that are associated with many asbestos products.

Under the second approach, EPA could promulgate regulations setting limits on the amount of asbestos mined in the United States and imported annually. Alternatively, the regulation could restrict the amount of asbestos processed annually in the United States. The net risk reduction and prevention from either alternative should be about the same. In selecting between them, EPA would consider such factors as economic impacts and the resources necessary for enforcement.

In essence, the second approach would establish a ceiling on the amount of asbestos used in the United States. This approach would allow industry to determine which products and uses to eliminate. EPA would still be assured of reduction in asbestos use and environmental build-up. The disadvantage of this approach is that there is no guarantee of eliminating products which present a particularly high risk. For example, if a product with easily released fibers commands a relatively high price, it might remain in the marketplace much longer than if it was regulated specifically.

Under the third approach, the Agency might select a combination of the preceding approaches to take maximum advantage of their desirable features. The key differences between the two approaches are (1) whether EPA or industry determines which products to eliminate, and (2) whether specific products or the overall quantity of asbestos fibers are regulated. One example of a combined approach might be reducing the initially established ceiling limit annually by 5 to 20 percent until an appropriate level is reached where all remaining fiber use is essential. In conjunction with the production/import rule, EPA might also ban a few selected products to ensure speedy elimination of items or uses presenting particularly significant risks.

All regulations the Agency develops under any of these approaches will be designed to minimize adverse effects on the asbestos industry and asbestos users. To this end, the development of implementation schedules will allow for reasonable transitions to substitutes and orderly phase-out of asbestos processing equipment.

Summary of Benefits

At this stage of development of the regulation it is impossible to estimate benefits in quantitative terms; however the regulation should decrease the incidence of asbestosis and lung cancer in the United States, thus decreasng the number of worker days lost due to worker sickness, increasing space available in hospitals, and decreasing costs due to morbidity and hastened mortality.

Producers of materials which can be substituted for asbestos may experience increases in demand for their products, therefore they may benefit from EPA regulation of asbestos.

Summary of Costs

Because we have not yet completed the analysis of economic effects, cost estimates are not available. However, should the use of asbestos fibers be restricted, industries which mine and mill asbestos and conduct primary processing would probably lose income. Some employment loss may occur in these industries. Other industries which use asbestos may incur increased costs because of the need to use more expensive substitute products and materials.

Sectors Affected

The sectors affected would vary greatly depending on the type of regulatory controls that we choose. Because EPA has not yet decided what the proposed rule will be, it is too early to estimate which markets, populations, regions, or levels of government a regulation on asbestos use would affect most. However, all regulations would probably affect domestic mines, mills, and primary processors of asbestos.

Related Regulations and Actions

EPA and the Consumers Product Safety Commission (CPSC) both published ANPRM's on October 17, 1979 in the **Federal Register** (44 FR 60056). These ANPRM's were prefaced by a joint statement of cooperation signed by the Administrator of the Environmental Protection Agency and the CPSC Chairman. The statement indicated how the two agencies will cooperate and direct their regulatory efforts to minimize reporting requirements and other burdens on industry and to improve overall public health.

Internal: EPA has established National Emission Standards for Hazardous Air Pollutants (NESHAP) for several asbestos sources under the Clean Air Act, 42 U.S.C. § 7401 *et. seq.*, (These standards included certain work practice requirements which the United States Supreme Court In Adamo v. Train, 98 S. Ct. 566 (1978), found to be valid.) Congress amended the Clean Air Act in 1977 and 1978 to provide EPA with the authority to prescribe and enforce such work practice standards. Therefore, EPA will again promulgate these standards and is considering additional asbestos air emission standards. EPA is developing effluent guidelines regulating wastewater discharges of asbestos under the Federal Water Pollution Control Act, 33 U.S.C. § 1251 *et seq.*, as amended in 1972 and 1977. It is also considering additional regulation of asbestos in drinking water under the Safe Drinking Water Act, 42 U.S.C. § 3006 *et seq.*

The Agency is investigating the development of a rule to require surveys to determine whether asbestos hazards are present in public schools because of deteriorating insulation. The Agency will also consider requiring appropriate corrective measures where it finds hazards. We have published an ANPRM in the **Federal Register** describing this action (44 FR 54676). Other existing sources that the Agency may control in the future include public buildings where asbestos was used as an insulation or decorative material and merchant ships where asbestos is widely used as insulation.

In support of the investigation of asbestos products and uses, EPA expects to issue a reporting rule under § 8(a) of TSCA to gather economic and exposure information. The Agency also anticipates a rule under § 8(d) of TSCA to require industry to submit unpublished health and safety studies relating to asbestos. Finally, EPA will consider the need for supplementary regulation under other Federal laws that EPA and other Federal agencies adminster.

External: A number of rules for controlling exposure to asbestos have been promulgated under several Federal laws.

The Occupational Safety and Health Administration (OSHA) and the Mining Safety and Health Administration (MSHA) regulate workplace exposures; the Department of Transportation (DOT) regulates the commercial transport of asbestos; the Food and Drug Administration (FDA) regulates the use of asbestos by the food and drug industries; and the Consumer Product Safety Commission (CPSC) regulates consumer products containing asbestos.

Active Government Collaboration

To maximize the effectiveness of this proposed rule, EPA is coordinating with several agencies, both directly and through the Interagency Regulatory Liaison Group (IRLG). These agencies include the Food and Drug Administration, Consumer Product Safety Commission, Department of Agriculture, Mine Safety and Health Administration, and Occupational Safety and Health Administration.

Timetable

ANPRM—spring 1980.
Public Comment—90 days following ANPRM.
Public Hearings—during public comment period.
Final Rule—late 1980.
Final Rule effective—early 1980's, possibly staggered, depending on the scope of the rule.

EPA will probably be required to prepare a regulatory analysis. However, regardless of whether it is actually required, an analysis of this type will generally be prepared as part of the technical support document for any rules we develop.

Available Documents

ANPRM for Asbestos-Containing Materials in School Buildings—44 FR 54676, September 20, 1979. Commercial and Industrial Use of Asbestos Fibers will be announced in the **Federal Register**. ANPRM for Commercial and Industrial Use of Asbestos Fibers, 44 FR 60056, October 17, 1979.

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EPA—OPTS
Standards and rules for testing of chemical substances and mixtures

Legal Authority

Toxic Substances Control Act (TSCA), 15 U.S.C. § 2603.

Statement of Problem

Section 4 of TSCA gives the Environmental Protection Agency (EPA) the authority to require manufacturers and/or processors to test the chemicals they manufacture or process for possible adverse effects on human health or the environment. Adequate test data are currently available for very few of the more than 45,000 chemical substances in commerce (as defined by TSCA), yet the potential risks of this multitude of chemicals generally cannot be estimated without this type of data.

To implement § 4, we are in the process of developing, proposing, and promulgating test standards and test rules. A test standard is a description of the methodology and analysis to be used in testing for an effect. A test rule is a regulation requiring specific chemicals to be tested for certain effects by the appropriate test standards.

For the most part, chemicals included in test rules will come from the semi-annual recommendations made by the Interagency Testing Committee (ITC). The ITC was established by § 4(e) of TSCA to recommend chemicals to EPA for priority consideration for testing by industry under § 4(a).

Section 4(e) mandates eight organizations to provide a single ITC member each. These organizations are: EPA, Occupational Safety and Health Administration, Council on Environmental Quality, National Institute for Occupational Safety and Health, National Institute of Environmental Health Sciences, National Cancer Institute, National Science Foundation, and Department of Commerce. The ITC uses a systematic process to identify chemicals and categories of chemicals with the highest priority for testing and recommends specific types of testing (e.g., carcinogenicity, chronic toxicity, environmental effects) and testing methods (e.g., epidemiology) for each chemical or category it identifies. Within twelve months of receiving recommendations from the ITC, we must either initiate rulemaking to require the testing the ITC recommended or publish reasons for not doing so. In addition, the Natural Resources Defense Council has sued us for alleged failure to respond adequately within the statutory time frame for the 18 chemicals/groups that the first two ITC reports designated.

Alternatives Under Consideration

We could rely on testing that the chemical industry performs voluntarily, but there is no assurance that they would test the chemical substances and mixtures that are potentially the most hazardous, or that such testing would be adequate to provide the kinds of information we need to assess risk. In addition, we have no assurance that they would do the testing as expeditiously as possible.

Another alternative is to conduct testing in governmental facilities or under contract to the government. We will take this approach where it would be inappropriate or infeasible to require testing by the chemical industry, but exclusive reliance on this approach would be in direct conflict with TSCA, which states that the development of data on health and environmental effects "should be the responsibility of those who manufacture and those who process chemical substances and mixtures."

In developing testing standards, we will consider alternative methodologies, taking into account their relative scientific validity and efficacy, as well as relative costs. Where possible we will develop hierarchical testing schemes in which we will consider the results of relatively inexpensive short-term tests, together with other relevant factors, such as potential exposure, in determining whether long-term testing is necessary.

In selecting chemicals to be tested, we will consider the likelihood of adverse effects, the extent of human and/or environmental exposure, economic

effects, and the availability of qualified personnel and facilities.

Summary of Benefits

We expect that testing standards and rules will identify the possible human and environmental hazards of many of the chemical substances and mixtures now in use and will increase the number of new chemicals that undergo adequate testing before they are introduced. Given adequate knowledge of potential adverse effects, we will be able to make better decisions on the need to control human and environmental exposure to chemical substances and mixtures. The result should be greater protection of the public against risks associated with chemicals.

Summary of Costs

We are still in the initial stages of developing a testing program under TSCA. Thus far, we have issued no testing rules. It therefore is too early to make any quantitative estimates of economic effects. EPA recognizes that testing, especially lifetime testing in laboratory animals, can be expensive and time-consuming. We will develop estimates of economic effects, including the effects on prices and profitability of chemicals, and on innovation in the chemical industry, and make them available when we propose the testing rules.

Sectors Affected

Testing standards and rules will affect the manufacturing sector, principally chemical manufacturers. Under TSCA, chemical manufacturing includes importing. Also, the Act distinguishes between chemical manufacturers and processors and specifies that both are subject to the requirements for testing. Whether we will require manufacturers and/or processors to test the effects of a specific chemical will depend on the stage of the "life cycle" of that chemical for which testing is needed.

Related Regulations and Actions

Internal: We have proposed Pesticide Registration Guidelines specifying testing requirements for pesticides. These guidelines and the TSCA testing standards are conceptually the same and will be as consistent as possible. We are also developing testing standards for the registration of fuels and fuel additives and for the control of hazardous wastes; they will be as consistent as possible with the TSCA testing standards.

External: The Food and Drug Administration (FDA) issued Good Laboratory Practice (GLP) standards for testing drug toxicity; the proposed TSCA GLP standards are consistent with FDA's. Under the aegis of the Interagency Regulatory Liaison Group, EPA, FDA, the Occupational Safety and Health Administration, and the Consumer Product Safety Commission are jointly developing guidelines describing test methods that will meet all four agencies' needs.

Active Government Collaboration

Other Federal agencies that have been or will be consulted include the Food and Drug Administration, Consumer Product Safety Commission, Occupational Safety and Health Administration, Nationl Cancer Institute, and National Institute of Environmental Health Sciences.

Timetable

NPRM—January 1980.
NPRM—June 1980.
NPRM—October 1980.

These NPRM's will each concern a different set of chemicals.

Available Documents

Proposed Health Effects Test Standards for Toxic Substances Control Act Test Rules, 44 FR 27334, May 9, 1979. A Support Document which provides the scientific bases for the test standards and discussions related to economic and confidentiality issues is available upon request from the Industry Assistance Office, Office of Pesticides and Toxic Substances, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460.

Proposed Health Effects Test Standards for Toxic Substances Control Act Test Rules, 44 FR 44054, July 26, 1979.

The Interagency Testing Committee established under TSCA has issued four reports making recommendations on chemicals to be covered by TSCA testing rules:

Initial Report: 42 FR 55026, October 12, 1977.

Second Report: 43 FR 16684, April 19, 1978.

Third Report: 43 FR 50630, October 30, 1978.

Fourth Report: 44 FR 31866, June 1, 1979.

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EPA—Office of Water and Waste Management

EPA control of organic chemicals in drinking water

Legal Authority

The Safe Drinking Water Act as amended § 1412, 42 U.S.C. § 300(f) *et seq.*

Statement of Problem

Measures toward the control of organic chemicals in drinking water are proceeding through two related approaches:

I. Control of Trihalomethanes in Drinking Water—Final Rule, November 1979.

II. Treatment Technique Requirement for the Control of Synthetic Organic Chemicals—to be reproposed, early 1980.

Synthetic organic chemicals are industrially-derived chemicals which enter sources of drinking water as a result of industrial discharges, spills, and urban and rural rainwater run-off (non-point sources). Some of these organic chemicals are either known or suspected carcinogens. The list of synthetic organic chemical contaminants that have been found at least once in drinking water has grown to over 900. Because of the technical infeasibility of controlling every synthetic organic contaminant individually by setting a Maximum Contaminant Level (MCL), EPA has determined that control of a broad spectrum of organic chemicals by a treatment technique (granular activated carbon) is appropriate. The intent of these regulations is to improve the quality of drinking water at the tap and reduce the health risk to the public from long-term exposures to synthetic organic chemicals in drinking water. This proposal will amend EPA's National Interim Primary Drinking Water Regulations, or equivalent regulations adopted by the States, which apply to all public water systems in the United States.

Alternatives Under Consideration

The alternatives being considered include requirements for community water systems to install granular activated carbon treatment (GAC) or its equivalent if they serve more than 10,000 people and use sources of drinking water which are vulnerable to contamination by synthetic organic chemicals. The reproposed regulations will consider changes in the application of the GAC technology, in that the GAC

requirement could be achieved by replacing sand with GAC in existing filter beds, and we will specify the frequency of reactivation (removal of adsorbed organic chemicals from the GAC) of the GAC in the regulations. Frequencies for reactivation of the GAC under consideration are six months to one year.

Since the proposal, we have re-evaluated criteria for determining which public water systems are vulnerable to contamination by synthetic organic chemicals, and the reproposed regulations may specify rivers or stream segments that we consider to be subject to contamination by synthetic organic chemicals. We would choose these water sources based on an evaluation of the number and type of industrial/municipal discharges upstream of drinking water intakes, an estimate of the transportation of industrial and agricultural chemicals on the waterway, and the potential contamination by non-point sources.

Summary of Benefits

The treatment technique for the control of synthetic organic contaminants as reproposed will provide protection to a larger population at a lower per capita cost than would the original proposal. The technique provides broad spectrum protection from synthetic orgainc contaminants and could be implemented two to three years earlier than the original proposal.

Summary of Costs

We estimate the total national capital costs of implementing this proposal to be $333 million in 1980 dollars over three years. We project that local water rates will increase by about $5 per year per family of three in the approximately 150 metropolitan communities that will have to install GAC facilities. Installing GAC treatment systems will cause considerable growth in construction, analytical services, and consulting engineering industries. The demand for trained operators for water plants, analytical chemists, and sanitary engineers will increase in proportion to the number of water systems which install new treatment facilities.

Sectors Affected

The proposed regulations will affect local and state governments and public water systems, including both municipal and privately-owned systems. It will also affect manufacturers of GAC, manufacturers of the furnaces used to reactivate spent carbon, analytical laboratories, and laboratory equipment manufacturers.

Related Regulations and Actions

Internal: All EPA regulations that affect control of chemical contamination of water would be indirectly related, including: Effluent Guidelines, National Pollution Discharge Elimination System, and Water Quality Criteria.

External: State programs would expand to deal with decisions on variances and exemptions from the regulations, and to provide technical assistance to public water systems making changes in their treatment processes.

Active Government Collaboration

Supporting documentation for the health basis of the proposed regulation requires information-sharing with the National Cancer Institute, National Institute of Environmental Health Sciences, Consumer Products Safety Commission, Occupational Safety and Health Administration, and the Food and Drug Administration. Also, we have gained data supporting development of vulnerability criteria through cooperation with the U.S. Coast Guard, U.S. Department of Transportation, and the U.S. Department of Commerce.

Timetable

Reproposed NPRM—early 1980.
Final Rule—late 1980.

Available Documents

ANPRM—41 FR 28991, July 14, 1976
"Drinking Water and Health," National Academy of Sciences, 1977.
"National Organics Reconnaissance Survey," EPA, Municipal Environmental Research Laboratory, 1975.
"National Organics Monitoring Survey," EPA, Office of Drinking Water.
"Statement of Basis and Purpose for an Amendment to the National Interim Primary Drinking Water Regulations on a Treatment Technique for Synthetic Organic Chemicals," EPA, Office of Drinking Water, 1977.
"Economic Analysis of Proposed Regulations on Organic Contaminants in Drinking Water," EPA, Office of Drinking Water, 1977.
"Draft Interim Treatment Guide for the Control of Synthetic Organic Contaminants in Drinking Water Using Granular Activated Carbon," EPA, Municipal Environmental Research Laboratory, 1978.
"Revised Economic Impact Analysis of Proposed Regulations on Organic Contaminants in Drinking Water," EPA, Office of Drinking Water, 1978.
"Operational Aspects of Granular Activated Carbon Absorption Treatment," EPA Municpal Environmental Research Laboratory, 1978.
NPPM—43 FR 5766, February 9, 1978.
National Academy of Sciences Study on Granular Activated Carbon, 1979.

Agency Contact

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EPA-OWWM

Hazardous waste regulations: core regulations to control hazardous solid waste from generation to final disposal

Legal Authority

Resource Conservation and Recovery Act of 1976, as amended, § 3001, § 3002 and § 3004, 42 U.S.C. § 6921, § 6922, and § 6924.

Statement of Problem

The Environmental Protection Agency estimates that more than 34.4 million metric tons of hazardous waste are generated annually in the United States. Hazardous waste includes toxic chemicals, pesticides, acids, caustics, flammables and explosives. Of this hazardous waste, EPA estimates that 90 percent is managed by practices that will not meet the proposed new Federal standards. A variety of health and environmental damages result from improper management practices. The most frequent are direct contact with toxic waste, fire and explosions, groundwater contamination by leachate, surface water contamination through runoff or overflow, air pollution by open burning, evaporation and wind erosion, and poisoning through the food chain. The amount of hazardous waste will increase by 30 percent in the next decade, primarily because other environmental laws have curtailed emissions into the air, waterways, and oceans.

EPA has information on more than 400 cases of damage to human health or the environment due to improper hazardous waste management. One such case, Love Canal in Niagara Falls, New York, resulted in the evacuation of 239 local families at relocation costs of approximately $10 million, projected cleanup costs of over $30 million, and health problems, including possible increases in birth defects, miscarriages, and hepatic and respiratory disorders. With as many as 30,000 hazardous waste disposal sites posing potential public health and environmental threats, hundreds of millions of dollars in

damages and remedial costs could result if the problem is left unattended.

Alternatives Under Consideration

A number of alternatives were studied prior to proposed rulemaking and, as a result of public comment and new information, during development of the final regulations. We are considering a number of significant changes to the regulations that may require reproposal or partial reproposal of major portions of the § 3001 and 3004 rules. EPA will discuss, in detail, in the preamble to the final rules, the alternatives considered and the reasons for their selection or rejection.

The proposed regulations provide two mechanisms for determining if a waste is hazardous: (1) a set of characteristics; and (2) a list of specific wastes. The proposed regulations include four (ignitable, corrosive, reactive, and toxic) of eight characteristics originally considered. Because test methods are not fully developed or validated for the other four characteristics (radioactive, infectious, phytotoxic, and teratogenic and mutagenic), these characteristics were excluded.

The proposed regulations exclude hazardous waste generated by households, farmers, retail establishments, and persons who generate less than 100 kilograms per month. This exclusion is based on the assumption that small amounts of hazardous waste will be disposed of in land disposal facilities approved under Subtitle D of the Resource Conservation and Recovery Act and, therefore, will not pose a hazard to human health or the environment. Increasing or decreasing the size of the small generator exemption is receiving consideration before promulgation of the regulations.

In addition to defining more or less waste as hazardous and determining the appropriate level for a small generator exemption from regulation, the overall scope of the regulations is affected by defining more or fewer waste as "special wastes." The special waste category, as proposed, defers most treatment, storage, and disposal standards for certain wastes of high volume but low hazard. Wastes produced by utilities, mining, oil and gas drilling, and cement kiln operations are currently classified as special wastes for which the proposed control technologies in the regulations are considered impractical. Each of the special wastes will be studied separately prior to proposal of technical standards.

Varying the criteria and increasing or decreasing the number of designated special wastes remain as regulatory choices. In addition, candidate special wastes may be altered as the result of proposed Congressional amendments to the pending RCRA reauthorization bills. Amendments offered to the House version of the bill would exclude oil and gas drilling muds and brines from coverage by the RCRA Subtitle C regulations pending Congressional review of EPA's requlatory recommendations after additional studies. A proposed amendment in the Senate would not allow any new Federal regulation of these wastes for at least 24 months and only then with a Congressional resolution approving the regulation of oil and gas drilling muds and brines.

Time-phasing the implementation of the regulations could help reduce the potential burden on environmentally acceptable disposal sites. Disposal capacity is currently limited and generators may be unable to find adequate disposal facilities. Public opposition to siting may delay the development of additional landfill capacity. The phasing approach could help assure that the most serious environment problems are addressed first if a degree of hazard approach is used. All alternatives under consideration are designed to make efficient use of limited disposal capacity.

Delineating degrees of hazard is difficult, and was not reflected in the proposed waste classification regulations. A risk-oriented hazard system for regulations affecting treatment, storage, and disposal facilities could tailor design and operating standards to correspond to the character and hazard of the wastes. However, the risk of a particular waste in a particular location depends as much on the management situation as on the inherent hazard of the waste. Myriad combinations of wastes, site-specific designs, and operating conditions make regulation based on the approach extremely difficult and presumptive. The regulations, as proposed, reflect the similar management needs of most hazardous wastes. They establish standards for each of the several methods of disposing, treating, and storing hazardous waste (landfilling, application to the land, treatment in surface impoundments such as holding or aeration ponds, and incineration), that do not vary according to the waste.

The proposed treatment, storage, and disposal standards are applicable to all facilities that handle hazardous wastes. Phased facility permitting and notes and variances included in the proposed regulations offer alternatives for accommodating difficulties associated with retrofitting existing facilities.

A Congressional amendment to the RCRA reauthorization bill may exempt all or existing surface impoundments from regulatory control if certain environmental safeguards are demonstrated. Such conditioned exemption could be extended to other existing disposal facilities or siting requirements could be temporarily waived or changed to ease the regulation's burden on existing facilities.

Another choice is to design alternative standards for future facilities, currently operating facilities, and facilities under construction. This would improve facilities in existence or close to start-up. There would be more rigorous standards for facilities on which work has not started.

EPA is considering potentially significant changes to the RCRA 3004 technical standards. One option is to promulgate the full set of technical, financial, and administrative requirements contained in the proposed regulations for treaters, storers, and disposers of hazardous waste. EPA will, at a minimum, finalize the "interim status standards" under § 3004. Under interim status standards owners and operators of treatment, storage, and disposal facilities would have to begin properly storing wastes and meeting administrative standards for security, recordkeeping, reporting, visual inspection, training of personnel, contingency plans, closure, and financial responsibility.

The proposed technical standards for hazardous waste facilities are based primarily on design and operating standards intended to achieve complete containment or destruction of the waste. These are backed up by ambient air, water, and groundwater performance requirements in the event the specified designs do not achieve expected levels of health and environmental protection. Alternatives to this combined approach include ambient standards for air and water quality and other relevant parameters, performance standards, and a system based on EPA's application of "Best Engineering Judgment" for permitting individual treatment, storage, and disposal facilities. If this latter approach were adopted by EPA, either prior to or as an alternative to design and operating standards, judgment factors, a decision model, and/or design and operating guidance would be needed to facilitate application of Best Engineering Judgment to each permit case.

The paperwork and reporting requirements of Subtitle C of RCRA include recordkeeping to identify the

source, quantities, constituents, and disposition of hazardous wastes; a manifest system for generators, transporters, and facility owners or operators to track movement of hazardous waste; and reporting to EPA by generators on quantities and disposition of their hazardous waste and also by treatment, storage, and disposal facilities indicating compliance with the manifest system. EPA is attempting to minimize the paperwork burden on public and private sectors while still satisfying the information needs of the hazardous waste program. Alternative requirements regarding the amount and specificity of information; the retention period for records; the frequency of reporting; the number of copies and recipients; consolidation of the manifest with the Department of Transportation's hazardous materials shipping paper and bill of lading; and multiple-purpose manifest forms are under examination in order to prepare the least burdensome package.

Summary of Benefits

By issuing these regulations, the EPA is creating a framework for the control of hazardous wastes which would otherwise contaminate groundwater, surface waters, and soils, poison humans and animals, and cause air pollution, fires, and explosions. These regulations will require proper hazardous waste management that will reduce the incidence of damage to human health and the environment and save hundreds of millions of dollars in the costs associated with clean-up, emergency response, and health and environmental damages.

Comprehensive regulatory controls over the generation, movement, storage, and treatment of hazardous wastes may also help reduce opposition to the siting of hazardous waste management facilities. Overcoming the barrier of local opposition will allow siting of management facilities at environmentally secure sites and further reduce the possibility of damages to health and the environment.

The three proposed hazardous waste regulations are part of a series of seven required by Subtitle C of the Resource Conservation and Recovery Act of 1976 (RCRA) to initiate a national hazardous waste management program.

RCRA required that EPA promulgate the hazardous waste regulations within 18 months of enactment of the law (by April, 1978). EPA did not meet this deadline because of the enormous complexity of the task. After environmental organizations and the State of Illinois sued EPA in late 1978 for failure to promulgate the regulations by the dates specified in RCRA, the U.S. District Court approved EPA's proposed schedule for development of the Subtitle C regulations by December, 1979. However, the number of public comments received, the amount of supporting data and documentation needed, and the complexity of the technical and policy issues are forcing some delay beyond the December date.

Summary of Costs

The estimated annual costs attributed to the RCRA Section 3001, 3002, and 3004 proposed regulations are $3 million, $16 million, and $570 million, respectively. The costs of these three regulations will comprise the majority of the costs for the set of seven RCRA hazardous waste regulations. The total annual incremental cost of compliance with the proposed hazardous waste regulations is estimated at $630 million (in 1977 dollars). Of the $630 million, $120 million is associated with post-closure liability requirements, $260 million is attributable to building and operating waste management facilities, and $14 million is associated with recordkeeping and reporting. Monitoring and testing, administration, training, and contingency planning account for the remaining $236 million. The total cost represents approximately ½ of one percent of the annual value of the affected industries' production. The affected industrial segments will probably pass on the increased costs to the public, resulting in a nominal increase in prices of selected consumer items.

Industries which presently dispose of hazardous waste at their own facilities may begin to ship their waste to off-site facilities rather than incur the costs of upgrading their disposal facilities to comply with the regulations. This is likely to cause a short-run shortage of disposal capacity, which will increase demand for new sites. This capacity shortage and rigorous standards for facilities may result in a nominal increase in the cost of disposal.

The governmental costs associated with the implementation and maintenance of the hazardous waste management program are estimated at $20 to $35 million per annum. We currently estimate that 37–41 states and territories will assume the program while EPA operates a Federal program in the remaining 15–18.

Sectors Affected

Although these regulations affect most industries throughout the country, the manufacturing industries most affected by the proposed regulations are textile mill products, inorganic chemicals, plastics, pharmaceuticals, paints, organic chemicals, explosives, pesticides, petroleum refining and rerefining, rubber products, leather tanning and finishing, metal smelting and refinishing, electroplating and metal finishing, special machinery manufacturing, electronic components, and batteries. Eight sectors are likely to experience some plant closures and job losses. These sectors include electroplating, wool fabric dyeing and finishing, mercury cell chlorine, leather finishing, mercury smelting and refining, and secondary copper, secondary lead and secondary aluminum smelting.

The regulations will also affect the public and private hazardous waste management industry. In all, some 380,000 generators, transporters, treaters, storers and disposers of hazardous wastes will be brought into the regulatory program.

Because the states of Texas, Ohio, Pennsylvania, Louisiana, Michigan, Indiana, Illinois, Tennessee, West Virginia, and California generate 65 percent of all hazardous waste produced Nationally, these states will probably be affected to a greater degree than others.

Related Regulations and Actions

Internal: Proposed hazardous waste rules linked with the three described in this calendar in creating the RCRA Subtitle C regulatory framework are:

(1) Standards Applicable to Transporters of Hazardous Waste, 43 FR 18506–18512, April 28, 1978 (proposed rule).

(2) Preliminary Notification of Hazardous Waste Activities, 43 FR 29908–29916, July 11, 1978 (proposed rule).

(3) Proposed Consolidated Permit Regulations, 44 FR 34244–34344 and Draft Consolidated Permit Application Form, 44 FR 34346–34392, June 14, 1979 (proposed rule and draft applications forms, respectively).

(4) Hazardous Waste Guidelines and Regulations, 44 FR 49402–49404, August 22, 1979 (supplemental proposed rule).

Rules regarding disposal of polychlorinated biphenyls (PCB's) were issued under the Toxic Substances Control Act, § 6(e), (15 U.S.C. § 2605). The Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. 135 *et seq.*) authorizes regulation of the disposal of pesticides and pesticide containers. The Marine Protection, Research and Sanctuaries Act (33 U.S.C. 1401 *et seq.*) controls incineration or dumping of hazardous waste at sea.

External: The Department of Transportation has developed hazardous materials transportation regulations (49 CFR Parts 171–173, 178–

179) controlling containerization and labeling of waste by generators using transporters engaged in interstate or foreign commerce. Proposed amendments to these regulations, to incorporate EPA's proposed rule, Standards Applicable to Transporters of Hazardous Waste, were published, 43 FR 22626–22634, May 25, 1978.

Active Government Collaboration

Department of Defense, Occupational Safety and Health Administration, Department of Energy, Food and Drug Administration, Soil Conservation Service, Water Resources Council, the Center for Disease Control of the Department of Health, Education and Welfare, Department of Transportation and Interstate Commerce Commission cooperated with EPA during development of the proposed regulations.

Timetable

Final Rules—Standards Applicable to Generators of Hazardous Waste (RCRA § 3002)—February 1980
Criteria for Identifying and Listing Hazardous Waste (RCRA § 3001)—April 1980;
Interim Status Standards Applicable to Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal facilities (RCRA § 3004)–April 1980.
Technical Standards Applicable to Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities will occur at a later date not yet specified.
Final Rules effective—Regulations for identification and listing of hazardous waste will be effective upon promulgation. Regulations affecting hazardous waste generators and owners or operators of hazardous waste treatment, storage, and disposal facilities will be effective six months after promulgation.

Available Documents

NPRM, 43 FR 58946–59208, December 18, 1978.

Supplemental Proposed Rule, 44 FR 49402–49404, August 22, 1979.

The EPA Office of Solid Waste Docket (Room 2439, EPA, 401 M Street, S.W., Washington, D.C.) maintains the following documents for public review:

Draft background documents
Draft Resource Requirements Summary
Draft Regulatory Analysis
Public Comments
Summaries of ex parte contacts
Public Hearing transcripts
Studies and reports on hazardous wastes and hazardous waste management.

Copies of the following documents are also available from Mr. Edward Cox, Solid Waste Information Office, 26 West St. Clair, Cincinnati, Ohio 45260:

Draft Environmental Impact Analysis
Draft Integrated Impact Assessment of Hazardous Waste Management Regulations
Studies and reports on hazardous wastes and hazardous waste management.

Agency Contacts

Criteria for Identifying and Listing Hazardous Waste (RCRA § 3001)/ Mr. Gary Dietric, Environmental Protection Agency, Office of Solid Waste, WH–562, Washington, D.C. 20460 (202) 755–9177
Standards Applicable to Generators of Hazardous Waste (RCRA § 3002), Mr. Harry Trask, Environmental Protection Agency, Office of Solid Waste, WH–563, Washington, D.C. 20460 (202) 755–9150
Standards Applicable to Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities (RCRA § 3004), Mr. John Lehman, Environmental Protection Agency, Office of Solid Waste, WH–565, Washington, D.C. 20460 (202) 755–9185

CONSUMER PRODUCT SAFETY COMMISSION

Consumer products containing asbestos

Legal Authority

Consumer Product Safety Act, 15 U.S.C. § 2051, *et seq.*

Federal Hazardous Substances Act, 15 U.S.C. § 1261, *et seq.*

Statement of Problem

The Consumer Product Safety Commission (CPSC) is concerned that the presence of asbestos in consumer products, under certain conditions, may present a risk of cancer and respiratory disease to consumers. On the basis of present information it appears that consumer products containing asbestos fibers can pose a health hazard if the asbestos fibers are released into the air, and therefore are available for inhalation by consumers and people in the household.

CPSC therefore issued an ANPRM in October. The primary purpose of the ANPRM is to begin a formal investigation by CPSC of the use of asbestos in consumer products by identifying consumer products containing asbestos. Another purpose of this ANPRM is to discuss how CPSC will act to protect the public from exposure to asbestos fibers in consumer products, by a ban, by requiring labeling of consumer products containing asbestos, through encouraging some form of voluntary action by industry, or otherwise.

There is a large body of scientific evidence both from animal testing and from studies of health effects to people exposed to asbestos in occupational settings. Studies have demonstrated increased incidence of asbestos-related diseases, including lung cancer and mesothelioma (cancer of the pleura—the membranes surrounding the lung) among people who are exposed to asbestos occupationally and in places other than their occupation, as well as in individuals with only brief or intermittent "bystander" exposures. In addition, autopsy studies of lung tissues of residents in urban areas in many parts of the world indicate that the population as a whole is being exposed to asbestos from the general environment and that, once inhaled, asbestos fibers may remain lodged in the lungs for life.

Asbestos released from consumer products poses several problems in the household. First, young children and infants are exposed. This is of particular concern to the Commission. Second, asbestos fibers that consumer products release into the living space can remain there over long periods of time and may be subject to repeated cycles of settling and resuspension. The presence of asbestos fibers can thus pose an ongoing inhalation risk in the household. Third, unlike the workplace, where engineering control systems and protective clothing are available to minimize worker's exposure to asbestos, the home provides household members with little or no protection from exposure to asbestos fibers released from consumer products.

We do not know exactly how many asbestos-containing products are available; however, we estimate that hundreds of different types of consumer products contain asbestos in some form. Many consumer products, for example, contain asbestos paper as a thermal or electical insulating barrier. Asbestos is also commonly used in household building products to provide strength and stability. As a result of information indicating that certain hairdryers released asbestos fibers during use, we had tests conducted by the National Institute for Occupational Safety and Health (NIOSH) of the Department of Health, Education, and Welfare. The

results showed that some hairdryers released asbestos fibers into the air stream under ordinary conditions of use. Fibers that hairdryers emit impinge directly on the user's head under ordinary conditions of use; thus, any fibers the hairdryers emit are potenially inhalable.

As a result of negotiations between the Commission's staff and firms which share approximately 90 percent of the consumer hairdryer market, the firms agreed to cease production and distribution of hairdryers containing asbestos and to offer consumers some form of repair, replacement, or refund.

By issuing this ANPRM we expect to determine whether the information we have on consumer products containing asbestos is complete and what additional information is necessary to make regulatory decisions. When the information on consumer products which contain asbestos is complete, we will be able to determine whether to ban a product, require labeling, take some form of voluntary action, or take no action at all. We intend to apply the following criteria in selecting products for priority attention in this investigation:

—number of units of the product estimated by the Commission to be in use by consumers;

—the form and location of the asbestos in the product;

—the frequency, manner, and location in the consumer's environment of product use, including factors such as the useful life of the product and presence of heat and/or moisture and the likelihood of abrasion during use or foreseeable misuse;

—the likely availability and feasibility of substitutes for asbestos in the product;

—the relative ease of data collection and analysis by the Commission and the reporting burden on industry;

—the degree of potential overlap of CPSC reporting requirements with the information gathering efforts of other regulatory agencies, particularly the Environmental Protection Agency.

Failure to take action at this time will prolong consumer exposure to an unknown number of products that may be emitting asbestos fibers and may permit these fibers to become a part of the household ambient air and make removal of the fibers virtually impossible.

Alternatives Under Consideration

The ANPRM outlines the possible statutory tools for regulating asbestos in consumer products. For example:

—consumer product safety standards—establish requirements for performance, composition, contents, design, construction, finish, or packaging of a product;

—information—require labeling of the product with warnings or instructions for use;

—ban—ban certain products as hazardous products or substances under the Federal Hazardous Substances Act;

—notification/recall—if the product presents a substantial product hazard we may require the manufacturer, distributor, or retailer to notify the public and either repair or replace the product or refund the purchase price.

If we discover a product containing asbestos which presents an "imminent hazard" to the public, we may act against such a product on an emergency basis, either independent of or pending completion of a rulemaking proceeding. In addition to these tools, we may also elect to develop voluntary action or to permit market forces to work by educating consumers about the dangers of exposure to asbestos fibers so they will demand products which do not emit asbestos fibers.

Another alternative is that the heightened public awareness of the dangers of exposure to asbestos fibers may cause consumers to demand asbestos-free products.

Another alternative would be to defer to the Environmental Protection Agency in their effort to control exposure to asbestos. In the short run, we could identify products that might present a hazard and develop the necessary remedy. But in the longer run, the most effective solution to the problem might be regulations to ban the unnecessary use of asbestos in all products.

Summary of Benefits

The benefits we expect from this proceeding are directly related to the primary goal of the chronic hazards program: the reduction of consumer exposure to chronically toxic substances. In the "Statement of Problem," we mention the unique nature of the consumer risk—that the product may release asbestos fibers during its use and the fibers may remain in the household air. Data show that these fibers, once inhaled, may remain in the lung and the pleura of consumers throughout their lifetimes. The primary benefit of the information we wish to collect, therefore, would be to identify products that release asbestos fibers, so that we could reduce or eliminate the consumer's exposure. The diseases that result from exposure to asbestos fibers—cancer, mesothelioma, and asbestosis (a lung condition caused by inhalation of asbestos dust)—are life threatening, cause incalculable pain and suffering, and involve enormous medical expenses. The information we obtain from responses to the ANPRM will help us to determine the reduction in exposure and estimate the benefits to be derived from regulation to remove nonessential asbestos from consumer products.

Summary of Costs

The public would voluntarily supply the information requested by the ANPRM. The information we obtain as a result of this ANPRM on the number of consumer products, their use, the value of the products, and the costs of recall—should this step become necessary—may enable us to estimate the costs of any further action.

Sectors Affected

The ANPRM will be addressed to manufacturers (including importers) and private labelers of certain categories of consumer products, as well as to the general public. Because of the broad range of products that contain asbestos, firms in major sectors such as manufacturing, construction, wholesale trade, retail trade, and services are likely to respond.

Related Regulations and Actions

Internal: In 1977, the Consumer Product Safety Commission banned the manufacture and sale of patching compounds containing asbestos and of artificial gas-fired fireplaces emberizing (giving the appearance of a live coal) materials that contained asbestos (16 CFR 1304, 1305).

External: Several agencies regulate exposure to asbestos fibers. The Occupational Safety and Health Administration of the Department of Labor limits worker exposure to airborne asbestos fibers to two fibers, longer than five micrometers, per cubic centimeter of air (8-hour time weighted average) (29 CFR 1910).

The Environmental Protection Agency's national emission standard for hazardous air pollutants regulates demolition and renovation operations involving friable asbestos materials and prohibits spray application of these materials if they contain more than one percent asbestos (40 CFR 61).

The Department of Transportation regulates the transportation of asbestos and the packaging of asbestos for transportation (49 CFR 172–177).

The Food and Drug Administration, in 1972, banned asbestos-containing garments for general use (21 CFR 191).

Active Government Collaboration

We have worked closely with the Environmental Protection Agency to

assure that our efforts to investigate uses of asbestos and the work to create regulations will be coordinated, compatible, and nonduplicative. EPA simultaneously published an ANPRM in October which describes that Agency's effort systematically to gather information on groups of asbestos products and to evaluate risk form these products based on the "life cycle" concept. In the life cycle analysis, the Agency examines cumulative risk from exposure to asbestos from primary processing through end use and disposal. The CPSC ANPRM describes an approach to the investigation of possible health risks that may be associated with the use of asbestos in a number of consumer products.

Through close cooperation in our regulatory endeavors, EPA and CPSC hope to achieve the following three objectives. This first is to significantly reduce, through complementary actions, unreasonable human health risk from exposure to asbestos. The second is to reduce potential reporting burdens on industry by coordinating information gathering under each respective statutory authority. We plan to share all available data while maintaining the confidentiality of business information in accordance with applicable law. Third, to avoid inconsistent or needlessly burdensome regulations, we will develop regulatory actions that may result from these investigations in close consultations with each other.

Timetable

General and Special Orders to Industry—early 1980.

Regulatory Analysis—The Commission, as an independent agency, is not required to prepare a regulatory analysis as defined under Executive Order 12044. However, the Commission prepares essentially the same information in its rulemaking proceedings.

Available Documents

CPSC—Consumer Products Containing Asbestos; Advance Notice of Proposed Rulemaking—44 FR 60057, October 17, 1979.

Agency Contact

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CPSC

Omnidirectional Citizens Band base station antenna standard

Legal Authority

Consumer Product Safety Act §§ 7 and 14, 15 U.S.C. §§ 2056 and 2063.

Statement of Problem

The Consumer Product Safety Commission (CPSC) staff estimates that approximately 220 persons in 1975, 275 persons in 1976, and 220 persons in 1977 were electrocuted in incidents involving communications antennas. The vast majority of these deaths occurred when the antennas were being put up or taken down and in the process contacted electric power lines. Typically, these incidents occur when the antenna contacts the power line while the antenna is being transported to the erection site or when it falls into a power line because it gets out of the control of the people who are putting it up or taking it down. The Commission estimates that over 70 percent of the antennas involved in these acccidents are Citizens Band (CB) base station (other than mobile) antennas.

The Commission on June 29, 1978 issued a rule under § 27(e) of the Consumer Product Safety Act which requires manufacturers and importers of (1) outdoor Citizens Band (CB) base station antennas, (2) outdoor television antennas, and (3) antennas supporting structures to provide purchasers with (a) instructions on how to avoid the hazard of contacting electric power lines with the antenna or supporting structure while putting it up or taking it down, (b) labels on the antennas and supporting structures warning of this hazard and referring the reader to the instructions, and (c) statements on the packaging or parts container and at the beginning of the instructions warning of this hazard and referring the reader to the instructions. We intend this rule to help prevent injuries and death from electric shock because of contact with electric power lines when people put up or take down antennas or antenna supporting structures. The Commission reasoned that if consumers know of the danger and how to avoid it they will be able to take the necessary steps to protect themselves.

While the Commission believes that the information and labeling rule will reduce the deaths that occur because of the contact of television and CB base station antennas with electric power lines, the Commission also believes that a standard which would insure that the antenna would not transmit a harmful amount of electricity to the installer if the antenna did contact a power line may address the risk of electrocution more effectively and thereby cause a greater reduction in deaths.

Alternatives Under Consideration

Possible alternatives to pursuing a mandatory standard at this time include delaying further action until we measure the § 27(e) information and labeling rule's ability to reduce deaths and injuries. The Commission estimates that it could take from one to two years to assess the rule's effectiveness because of the time it takes to influence the product mix (number of complying products) in the market place.

Another alternative is a voluntary approach through the Electronics Industry Association (EIA). The EIA recently formed an ad hoc committee to develop a voluntary standard for CB and TV antennas. While the voluntary approach would require the least amount of CPSC resources to develop a standard, it is unclear what would be the level of industry conformance with the voluntary standard, and therefore we do not know what percent of the known antenna-related deaths we could prevent.

Under the Consumer Product Safety Act, a proposed consumer product safety standard may generally be developed in the following ways: (1) The Commission may solicit offers from people or organizations outside the Commission to develop a recommended standard. People submitting such offers are referred to as "offerors" and the development of recommended standards in this matter is called the "offeror process," (2) the Commission may invite people or organizations outside the Commission to submit to the Commission an existing standard which it could propose as a consumer product safety standard; (3) the Commission may publish an existing standard as a proposed consumer product safety standard; or (4) the Commission may develop the standard itself.

In the case of the electrocution hazard associated with CB base station antennas, the Commission is not aware that any Federal department or agency or other qualified agency, organization, or institution has issued, adopted, or proposed any standard that would adequately reduce the risk and that the Commission could publish as a proposed standard. The Commission has determined that it would be more expeditious to develop this standard itself than for interested parties outside the Commission to develop the standard. The Commission started the proceeding by publishing a Notice of

Proceeding in the **Federal Register** in September, 1979.

Summary of Benefits

The benefits from this proceeding are related to the injury and death information we cited in "Statement of Problem." The staff estimates that the standard could prevent about 64 percent of the deaths associated with outdoor communications antennas (all outdoor antennas) in that it will cover omni-directional (reception and transmission essentially uniform in all directions) antennas only.

In addition to the reduction in deaths associated with the standard, we anticipate that the § 27(e) rule will reduce other deaths: (a) those associated with antennas manufactured between October 1978, the effective date of the rule, and the date when the new standard will take effect; and (b) those deaths associated with antennas that the standard does not cover.

Certain provisions of the standard may also benefit consumers in the form of improved performance and increased useful life of the product.

Summary of Costs

The CPSC staff estimates that the average price of CB antennas will probably increase as a result of the standard; however, we do not yet know the relative cost effect of the standard on prices of antennas, since the costs are dependent upon the requirements.

We anticipate that manufacturers may meet the standard by coating or covering the antenna with a non-conductive material, or by constructing antennas of a non-conductive material, depending on the required strength, electrical resistance, and performance life. One type of non-conducitive material that industry representatives have suggested is fiberglass.

Based on information available at this time, price increases ranging up to about 25 percent might occur, depending on the means manufacturers use to comply with the standard. Certain producers may leave the CB antenna market if they cannot develop the capability to produce insulation at a reasonable cost.

Sectors Affected

The standard would affect manufacturers, distributors, and private labelers (who manufacture items for sale by a firm other than the manufacturer and under the firm's name) of CB base station omni-directional antennas. The standard may subsequently affect additional firms involved with directional antennas if studies now underway determine that it is feasible to include the additional products.

The standard may also affect suppliers of insulating materials (e.g., fiberglass).

Related Regulations and Actions

Internal: § 27(e) Rule for CB Base Station and TV Antennas (16 CFR 1402).

External: Electronics Industry Association (EIA) development of a Voluntary Standard for CB Antennas.

Active Government Collaboration

We encourage Federal and State governments to participate in developing the standard.

Timetable

NPRM—April 30, 1981.
Final Rule—October 30, 1981.
Regulatory Analysis—The Commission, as an independent agency, is not required to prepare a regulatory analysis as defined under Executive Order 12044. However, the Commission prepares essentially the same information in its rulemaking proceedings.

Public Meeting Dates—

November 1, 1979, Washington, D.C.
Februrary 28, 1980, (Tent.), Washington, D.C.
June 30, 1980 (Tent.), Washington, D.C.
October 31, 1980 (Tent.), Washington, D.C.

Available Documents

"CPSC Staff Briefing Packages" dated January 23, 1979 and August 1, 1979 are available from the Office of the Secretary, U.S. Consumer Product Safety Commission, Washington, D.C. 20207.

Omnidirectional Citizens Band Base Station Antennas—Proceeding to Develop a Consumer Product Safety Standard by the Commission—September 14, 1979 44 FR 53676.

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CPSC

Upholstered furniture cigarette flammability standard

Legal Authority

Flammable Fabrics Act, § 4, 15 U.S.C. § 1193.

Statement of Problem

The staff of the Consumer Product Safety Commission (CPSC) estimates that 45,000 upholstered furniture fires occur each year in residences in the United States; 33,000 of these fires are associated with cigarettes. Current estimates indicate that 3,200 injuries and 800 deaths occur annually because of these fires. At a minimum, 1,700 of the injuries and 500 of the deaths involve the hazard of cigarette ignition of residential upholstered furniture. Among other actions, the Commission is considering a flammability standard for upholstered furniture to reduce the number of injuries and deaths.

The Commission staff estimates that property damage resulting from cigarette ignition of upholstered furniture runs $25 million annually. The human losses are a minimum of 1,700 injuries and 500 deaths. These losses are difficult to express in economic terms, especially since the Commission does not endorse monetary estimates of the value of human life. However, for illustrative purposes only, the CPSC staff has used a figure of $1 million per life. This figure is probably a conservative expression of value, but is within the range of estimates that are associated with studies of the "statistical value of life." The cost of lives lost, therefore, could be about $500 million. The staff has also estimated $16 million for injuries exclusive of pain and suffering. A rough estimate of the annual losses associated with cigarette ignition of upholstered furniture, thus, is $541 million.

Alternatives Under Consideration

One major alternative to promulgating a mandatory performance standard is working with the Upholstered Furniture Action Council on its voluntary program. The Commission also is considering reducing the scope of the standard by excluding some classes of furniture, such as business, institutional, and children's furniture. The staff is not actively considering a mandatory design standard, since an alternative performance standard is preferable and appears to be feasible.

The mandatory performance standard that the Commission is considering contains requirements that are significantly less costly than requirements in previous proposals which the Commission drafted. Under the current draft proposed standard, firms would test upholstery fabrics and place them into one of four classes—A through D—on the basis of their resistance to ignition from cigarettes burned on the fabric. Fabric manufacturers would label fabrics according to these classes to show their flammability classification.

Furniture manufacturers would determine furniture constuctions suitable for use with the fabric classes

by testing mockups of the furniture to demonstrate their resistance to cigarette ignition. The standard would require annual testing. The standard would permit manufacturers to use only the combinations of fabric and filling materials that did not ignite when the applicable mockup was tested.

The major alterntive to the mandatory standard is voluntary action by the industry. The Upholstered Furniture Action Council's (UFAC) recommended voluntary practices program encourages the classification of fabrics into two categories according to fiber content or performance in a cigarette ignition test that UFAC developed. For furniture containing Class I fabrics, the program provides for eliminating welt cord (heavy yarn enclosed by fabric around the edges of furniture cushions) that is ignition prone and eliminating untreated cotton beneath the decking fabric (the material on which a loose seat cushion rests) and in immediate contact with the covering of inside vertical walls. The construction provisions for furniture using Class I and II fabrics are the same, except that manufacturers of furniture using Class II fabrics must prevent contact between conventional polyurethane foam cushions and horizontal seating surfaces. The UFAC voluntary program provides test methods to determine acceptable filling materials for use in furniture.

Summary of Benefits

The benefits we expect from this proceeding are related to the injury and loss statistics we cite in "Statement of Problem." The staff estimates that the standard could prevent about 430 deaths, 1,462 injuries, and $22 million in property damage, which constitute 86 percent of the losses. The Commission staff estimates that the annual benefits (calculated as discussed in "Statement of Problem") could be about $470 million when all upholstered furniture is manufactured in compliance with the standard.

Other benefits that may be related to the cigarette ignition standard are a reduction in losses associated with pain and suffereing from burn injuries, a possible reduction in losses due to ignition sources other than cigarettes, and a possible increase in the durability of upholstered furniture fabrics as thermoplastics replace cellulosic fibers.

Summary of Costs

The CPSC staff estimates that the annual retail cost increase to the consuming public as a result of the mandatory standard which it is considering would range from $114 million to $174 million.

The staff estimates that the average manufacturing cost increases would range from $1.75 to $2.65 per piece ($3.50 to $5.30 retail price increase) for chairs and from $3.30 to $5.00 per piece ($6.60 to $10.00 retail price increase) for sofas.

The CPSC staff estimates that the possible increases in manufacturing cost that result from the standard would range from about $57 million to $87 million in the first year that all provisions of the standard are in effect. This projected increase consists of anticipated costs of $8 million to $9 million for furniture mockup testing; $18 million to $33 million for use of filling material with greater resistance to cigarette ignition; $12 million to $17 million for smolder-resistant backcoating of 50 percent of the Class D fabrics, which are the least smolder-resistant fabrics that the fabric classification test reveals; $8 million to $11 million for the use of foil barriers on 10 percent of the furniture pieces that are covered with Class D fabrics; and $3 million to $5 million for required recordkeeping.

Consumers may find fewer types of upholstery fabrics available. We expect heavier fabrics, such as damasks, jacquards, and velvets that are made from cotton and rayon to require more extensive and costly treatment under the standard. CPSC staff expects the early response to be a shift by the furniture industry away from these fabrics to fabrics made from thermosplastic fibers, such as nylon, polyester, or olefin. We estimate that the furniture industry may not use 10 to 14 percent of currently available fabrics under the standard.

Sectors Affected

The standard we are considering would affect three primary industrial sectors: (1) upholstered furniture manufacturers, (2) material suppliers, and (3) distributors, wholesalers, and retailers.

The Commission staff expects that the standard would result in relatively greater cost increases for the smaller furniture and fabric producers than for larger producers. The smaller producers would be expected to face higher furniture mockup testing costs as a percentage of sales. These costs may represent about 2 percent of the total value of shipments for firms with less than $250,000 in annual sales. Firms with about $2 million in annual sales are expected to face costs for mockup testing totaling .3 percent of their value of shipments. Firms with annual sales of about $7 million can expect to have mockup testing costs of only .1 percent of their value of shipments. This disparate effect on smaller firms may be made worse to the extent that these firms produce furniture covered with fabric supplied by the customer, which is more likely to be Class D fabric. The requirement for Class D mockup tests would substantially increase the price of such special order items. The Commission believes that smaller furniture manufacturers are more likely than larger ones to produce furniture with a customer's own material.

Small fabric producers, like small furniture producers, can expect to face higher testing costs as a percentage of sales than larger fabric producers. In addition, these firms are more likely to produce cotton or other cellulosic fabrics that we expect to decline in demand as an early response to the standard. Conversion to greater use of thermoplastic fibers by these firms may be difficult. Capital costs of altering machinery may be necessary. Furthermore, these changes would place these firms in more direct competition with the larger firms that now produce thermoplastic fabrics.

Changes in filling materials used under the standard may affect suppliers of polyester fiberfill and urethane foam cushioning who are likely to find increased demand for their products. Others, such as producers of cotton batting, are likely to face a reduction in demand by the furniture industry. The extent of the reduction in demand for certain filling materials, as well as for cellulosic fabrics, will largely depend on the result of research now underway into smolder-retardant treatment methods for materials which are flammable.

Related Regulations and Actions

Internal: None.

External: The State of California has flammability regulations, parts of which the CPSC standard would preempt. Other States may have similar regulations.

Active Government Collaboration

The National Bureau of Standards of the Department of Commerce developed the technical basis for the standard.

Timetable

NPRM—late 1979.
Public Comment—following NPRM.
Final Rule—fall 1980.
Final Rule effective—fall 1981.

Regulatory Analysis—The Commission, as an independent agency, is not required to prepare a regulatory analysis as defined under Executive Order 12044. However, the Commission prepares essentially the same information in

its rulemaking proceedings.

Available Documents

"CPSC Staff Briefing Packages," dated November 15, 1978 and September 27, 1979 and other applicable material related to upholstered furniture flammability are available from the Office of the Secretary, U.S. Consumer Product Safety Commission, Washington, D.C. 20207.

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NUCLEAR REGULATORY COMMISSION

Decommissioning and site reclamation of uranium and thorium mills

Legal Authority

Uranium Mill Tailings Radiation Control Act of 1978, P.L. 95-604, 92 Stat. 3021 (1978).

Statement of Problem

The purpose of this regulation is to minimize the potential for public exposure to radioactive materials from uranium mill tailings. The milling of ores for the extraction of uranium or thorium generates large volumes of sand-like residues generally called tailings, which contain small quantities of naturally occurring radioactive materials. Milling activities also result in the radioactive contimination of mill buildings, equipment, and sites, from the naturally occurring radioactive materials in the ores. After a mill closes, it is important to the public health and safety that the tailings generated during the milling operations be stabilized and controlled to prevent radioactive materials from entering the environment, and that mill buildings, equipment, and site be cleaned to remove any residual contamination that may have resulted from the milling operations. This regulation will clearly specify Nuclear Regulatory Commission (NRC) requirements for the cleaning and restoration of mill sites after a mill closes. These actions are commonly referred to as decommissioning and reclamation. The regulation will also specify financial surety arrangements to ensure that funds are available to cover cleaning and restoration activities.

Alternatives Under Consideration

The NRC is evaluating several alternatives in a generic environmental impact statement on uranium milling pursuant to the National Environmental Policy Act of 1969, as amended. Technical alternatives for controlling tailings include below-grade storage, disposal in open pit mines, various types of coverings, and different milling processes. Alternative financial arrangements include surety bonds, cash deposits, certificates of deposit, and letters of credit.

Summary of Benefits

The benefits from the regulation are not quantifiable in terms of dollar amounts, since the radioactive materials involved would persist for hundreds of years if cleaning and restoration were not undertaken. The regulation will result, however, in a reduction of potential exposures to the public of radiation to essentially the levels that existed before the milling operations, as well as giving further guidance to licensees and the public regarding NRC thinking in this area.

Summary of Costs

The minimum estimated one-time cost for each mill to comply with this regulation is approximately $5-6 million, regardless of which technical alternative it chooses. For a total of 64 mills, the minimum estimated aggregate cost would be $320-384 million. However, costs are highly site-specific and involve many variables, such as size of mill, ore grade, geology, topography, hydrology, etc. Costs ranging from $8-12 millions per mill, if required, would represent overall costs of less than 1 percent of the price of the uranium the mills produce and 0.1 percent of the mills' electricity costs.

Sectors Affected

This regulation would affect all holders of licenses involving uranium and thorium milling. This includes 21 presently operating mills and an additional 43 uranium mills that are projected to be built by the year 2000, based on an annual nuclear generating capacity of 380 gigawatts of electricity in the year 2000.

Related Regulations and Actions

Internal: Regulations specifying requirements for the cleanup of other types of nuclear facilities at the end of their operating life.

External: The Uranium Mill Tailings Radiation Control Act of 1978 requires the Environmental Protection Agency (EPA) to establish standards of general application for the protection of public health and safety and the environment from radiological and nonradiological hazards that are associated with mill tailings. The NRC has the responsibility for implementing and enforcing the EPA standards.

The Department of Energy has authority under the Uranium Mill Tailings Radiation Control Act of 1978 to undertake remedial action at certain inactive mill sites.

Various States have an agreement with NRC to assume certain regulatory responsibilities for some uranium mill sites.

Active Government Collaboration

The NRC has active liaison with the Environmental Protection Agency and the Department of Energy.

Timetable

"Final Generic Environmental Impact Statement on Uranium Milling"—April 1980.
Final Rule—April 1980.
Regulatory Analysis—not required but similar material available in NPRM.

Available Documents

"Draft Generic Environmental Impact Statement on Uranium Milling"—April 1979.
NPRM—August 1979.
Public Hearing—September 1979.
Notice of Intent to Prepare Generic Environmental Impact Statement on Uranium Milling—41 FR 22430, June 3, 1976.
Available in the NRC Public Document Room at 1717 H Street, N.W., Washington, D.C.

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NRC

Decommissioning of nuclear facilities

Legal Authority

Atomic Energy Act of 1955, as amended, § 161, 42 U.S.C. § 2201.

Statement of Problem

Decommissioning is the removal or isolation of the radioactive contaminants from a nuclear facility so that it can be released for unrestricted use. The purpose of this regulation is to specify Nuclear Regulatory Commission (NRC) requirements for planning and implementing decommissioning in order to reduce potential radiation hazards to both the public and workers at a facility after the end of its useful life. The regulation will clearly specify NRC requirements for the method, cleanup criteria, schedule, and financial assurance of decommissioning actions.

Alternatives Under Consideration

The present regulatory approach leaves the choice of decommissioning method, schedule, and financial procedures to the licensee within a loose framework of regulatory criteria. Under the proposed regulatory approach, the regulation will carefully specify these.

NRC is considering two major alternatives for the method of decommissioning. One is the removal of radioactive constituents by the licensee, allowing unrestricted use of the facility and site. The other is the permanent isolation of the radioactive components on the site, where small portions of the site will have temporary limited access for public use (depending on radioactive decay times). For facility components that have long-lived radioactive materials (i.e., significant activity for 100 years or more), the latter method is unacceptable, because their isolation cannot be adequately guaranteed. The regulation may provide for delays of varying lengths before decommissioning to allow for reduction of radiation exposure and decommissioning costs.

The regulation will also consider various methods of paying for decommissioning. While it is generally acknowledged that those who benefit (the users of the power) should pay, the manner and timing of such payment is unclear. Requiring funds before NRC issues a license, while a facility is in operation, at the end of its life, or a combination of these are all viable alternatives.

Summary of Benefits

At the present time, NRC can characterize the benefits of the regulations only in a qualitative way. Systematic and encompassing regulations identified as part of licensing requirements will ensure that decommissioning is accomplished safely. This will result in reducing the potential radiation hazards to both the public and occupational workers. Moreover, it will eliminate potential financial burdens on the public that might otherwise occur at the time of decommissioning.

The following are examples of regulatory particulars that are designed to provide the desired benefits: (1) Clearly specified decommissioning requirements simplify planning and conduct of decommissioning activities and reduce the need for remedial actions to clean up sites that are found to have been inadequately decommissioned. (2) NRC design requirements for new facilities that are directed toward facilitating eventual decommissioning can mitigate occupational radiation exposures associated with decommissioning, as well as reduce radiation exposures that are associated with routine facility operations.

Summary of Costs

The estimated cost of decommissioning a single nuclear power reactor is approximately $40 million. There are 70 such reactors now operating, and almost twice that many are under construction or being planned. None of the currently operating reactors is in need of decommissioning in the near future. Although this action would not change the existing responsibility of licensees to decommission, it could require immediate collections from electricity customers to accumulate decommissioning funds. These collections could amount to $2 million per year for each reactor, or a total amount of $140 million per year. While the added cost to the consumer would depend on many factors, we estimate this cost to be relatively insignificant and on the order of a tenth of a mill (1/100 of a cent) per kilowatt-hour of electricity used. If NRC requires advanced collection or surety bonding, rather than collection over the anticipated operating life of the facility, the economic impact will be to further increase the cost of the electricity that nuclear reactors produce. It is not likely that the change in the cost of electricity will affect the existence of any reactor-owning company. It is possible that additional financial assurance costs could drive smaller nuclear fuel cycle licensees such as fuel fabricators or uranium mill operators out of the nuclear business.

The cost of decommissioning and financial assurance for the more than 20,000 material licensees (e.g., radiopharmaceutical suppliers, industrial radio-isotope users) is not well established at this time.

Sectors Affected

Those affected are all holders of NRC licenses or State licenses for which a State has an agreement with NRC to assume certain regulatory responsibilities for nuclear materials and facilities. This includes approximately 70 current nuclear power plants and more than 20,000 holders of material licenses (i.e., radiopharmaceutical suppliers, industrial radioisotope users, etc.).

Related Regulations and Actions

Internal: NRC action regarding radioactive waste disposal.

External: Environmental Protection Agency: The EPA standard for low level radioactive residues in the environment.

Federal Energy Regulatory Commission: FERC requirements for accounting methods and treatment of decommissioning costs by electrical wholesalers.

Internal Revenue Service: IRS rulings on tax treatment of funds collected for future decommissioning actions.

State Public Utility Commission: Requirements for accumulation of funds for decommissioning.

State Legislatures: Passage of laws requiring bonds or other surety for nuclear decommissioning.

Active Government Collaboration

We are carrying on active liaison as part of this program with the States, Environmental Protection Agency, the Federal Energy Regulatory Commission, and the Internal Revenue Service.

Timetable

Environmental Impact Statement—January 1980.
Policy Statement—September 1980.
NPRM—February 1981.

Available Documents

NUREG–0436, Rev. 1, "Plan for Reevaluation of NRC Policy of Decommissioning of Nuclear Facilities," dated December 1978.

NUREG–0278, "Technology, Safety and Cost of Decommissioning of Reference Nuclear Fuel Reprocessing Plant," dated October 1977.

NUREG/CR–0130, "Technology, Safety and Costs of Decommissioning a Reference Pressurized Water Reactor Power Station," dated June 1978.

NUREG/CR–0130 (Addendum), "Technology, Safety and Costs of Decommissioning a Reference Pressurized Water Reactor Power Station," dated August 1979.

NUREG/CR–0131, "Decommissioning of Nuclear Facilities—An Annotated Bibliography," dated October 1978.

NUREG/CR–0129, "Technology, Safety and Costs of Decommissioning a Reference Small Mixed Oxide Fuel Fabrication Plant," dated February 1979.

NUREG/CR–0671, "Decommissioning Nuclear Facilities: A Review and Analysis of Current Regulations," dated August 1979.

Available in the NRC Public Document Room at 1717 H Street, N.W., Washington, D.C.

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NRC

Disposal of high level radioactive waste in geologic repositories

Legal Authority

Energy Reorganization Act of 1974, § 202(3) and (4), U.S.C. § 5842.

Statement of Problem

The Energy Reorganization Act of 1974 gives the Department of Energy (DOE) the responsibility for building and operating facilities for the disposal of high level radioactive waste (HLW) that is generated by either the government or the commercial nuclear industry. The Energy Reorganization Act also gives the Nuclear Regulatory Commission (NRC) licensing and regulatory authority over such DOE facilities. (Generally, the NRC does not have licensing or regulatory authority over DOE facilities or DOE activities).

The intent of this regulation is to provide information to DOE and other interested parties on how the NRC plans to exercise its authority over DOE facilities to be used for the disposal of HLW in prepared cavities deep in the earth. (This method of waste disposal is commonly termed "geologic disposal," and the facility itself is called a "geologic repository.") Specially, the regulation spells out the procedures DOE should follow in applying for an NRC license for geologic disposal of HLW and the procedures NRC should follow in reviewing that application, and it states the technical criteria the NRC will use in evaluating that application, approving or disapproving a license, and inspecting the placement of the waste within the geologic repository. Specific topics addressed include the suitability of a site, the design of a repository, and the closure of a repository.

Alternatives Under Consideration

This regulation addresses only geologic disposal of HLW. The NRC had considered promulgating a broad regulation to cover other methods which have been suggested for the disposal of HLW, such as placing the wastes on the ocean floor (seabed emplacement), or within a polar ice cap (icesheet disposal). However, neither of these methods appears to be within NRC's jurisdiction, and other potential methods (e.g. transmutation—alternation of the waste to decrease its radioactiviy) do not appear to be technically developed yet to the point that rulemaking would be warranted.

The NRC had also considered whether to proceed with rulemaking at this time or to rely on its existing body of regulations in discharging its licensing responsibilities over the disposal of HLW. The NRC has decided to proceed with rulemaking, because reliance on existing regulations would either give proper perspective to the unique problem of geologic disposal of HLW, nor provide the guidance to both the DOE and the public which NRC believes to be necessary to an efficient and publicily accessible licensing process. The need to proceed now is highlighted by the fact that DOE has indicated that it intends to apply for a geologic disposal license in the near future.

Summary of Benefits

There is great concern on behalf of the public, State governments, and the Congress that a "safe" method be found for the disposal of HLW. A rulemaking action at this time tends to add confidence that geologic disposal is a safe, feasible method. The sort of regulation we are proposing will result in further confidence, by providing an opportunity for public review and comment during the construction, operation, and closure of the repository. Another benefit is that the regulation will serve as a base from which DOE can plan and develop such a facility, hence saving both time and expense in the licensing process.

Summary of Costs

Estimated construction and operation costs for a geologic repository range from one billion dollars to five billion dollars. Estimates of the impact on the cost of electricity production vary over a wide range, but we do not expect the cost to exceed one mill ($0.001) per kilowatt hour. As may as four repositories may be required to accommodate the HLW that the government and commerciald interests generate by the end of the century.

The only direct costs related to this regulation are the "resources that NRC expends to develop, support, and issue it." The bulk of this will be costs for technical assistance contracts.

Sectors Affected

Industry would be able to dispose of its high level radioactive waste permanently in a DOE repository licensed under this regulation. State and local government would be able to participate in the licensing process under the provisions of this regulation. This regulation would require a finding of reasonable assurance that the high level radioactive waste could be disposed of in such a manner as to protect the public health and safety and the environment.

Related Regulations and Actions

Internal: This action is related to an NRC program to classify radioactive waste according to the degree of hazard it presents.

External: This action is related to the Environmental Protection Agency's criteria and standards for the disposal of HLW.

Active Government Collaboration

There is active liaison with the Environmental Protection Agency, the United States Geological Survey, and the Department of Energy.

Timetable

ANPRM—December 1979.
NPRM—December 1979.
Final Rule—June 1980.
Regulatory Analysis—not required but similar material available in NPRM.

Available Documents

Commission Paper—SECY 79–366 (and agenda).

Policy Statement—"Licensing Procedures for Geologic Repositories for High-Level Radioactive Wastes" (43 FR 53869, November 17, 1978).

NUREG–0279—"Determination of Performance Criteria for High-Level Solidified Nuclear Waste," July 1977.

NUREG–0465—"A Classification System for Radioactive Waste Disposal—What Waste Goes Where?" June 1978.

Available in the NRC Public Document Room at 1717 H Street, N.W., Washington, D.C.

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Chapter 4—Human Resources

DOJ–BOP

Non-Discrimination Towards Inmates 68310

DOJ–CRD

Regulations prohibiting discrimination solely on the basis of handicap in Federally assisted programs ... 68310

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EEOC

Recordkeeping regulations, extending the length of time certain records, already required to be kept should be retained 68316

GSA-NARS

Freedom of information Act requests for national security classified information in the National Archives 68317

VA

Nondiscrimination on the basis of handicap in programs and activities receiving or benefitting from Federal financial assistance 68318

DEPARTMENT OF JUSTICE

Federal Bureau of Prisons

Non-discrimination towards inmates

Legal Authority

18 U.S.C. §§ 4001, 4042. 28 CFR 0.95(c)–.96(t).

Statement of Problem

The Bureau of Prisons of the Department of Justice is responsible for some 25,000 inmates confined in over 40 Federal correctional institutions. Within each institution there is a mixture of persons of different races, religions, nationalities, and political beliefs; some institutions house both male and female prisoners. In order to assure inmates' rights and to maintain security and the orderly operation of each institution, it is important that discrimination not exist in the management of the inmate population.

The Bureau of Prisons is presently seeking to have its facilities accredited by the American Correctional Association's Commission on Accreditation for Corrections. The ACA, a private, national organization, exerts a positive influence on the shaping of national correctional policy and promotes the professional development of persons working within all aspects of corrections. The Commission's accreditation standards provide Bureau institutions with nationally recognized standards against which to measure the Bureau's own standards and operations. This accreditation calls for prison administrations to maintain comprehensive written policies and procedures by which the institutions operate, including a written statement of policy on non-discrimination. While the Bureau of Prisons has a longstanding policy of non-discrimination and an internal program statement on integration and equal opportunity, we are promulgating a rule in order to reflect more comprehensively the Bureau's posture on discrimination and to comply more fully with the accreditation requirements.

Alternatives Under Consideration

An alternative to the promulgation of a written policy specifying non-discrimination towards inmates is to continue the status quo. Since the Bureau is applying for accreditation for its institutions, and since written policies and procedures are necessary for accreditation, the alternative of taking no action is not acceptable.

The Bureau plans to include within its directive a requirement that inmates may not be discriminated against on the basis of race, religion, nationality, sex, or political belief. The Warden of each institution is to review and, as necessary, is to establish local procedures to ensure that work, housing, program assignments, and administrative decisions are non-discriminatory and that inmates are provided equal opportunities to participate in all institutional activities.

The Bureau of Prisons provides procedures by which an inmate may express a complaint regarding any type of discrimination. These procedures include attempts at informal resolution through counselling, and the use of the more formal inmate complaint procedure, the Administrative Remedy Procedure.

Summary of Benefits

The major benefit is to the individual inmate, who is assured through a formal program statement an equal opportunity to participate in all institution programs. Implementation of the regulations will enhance, indirectly, the morale of inmates and staff within the institution. The demonstration and fulfillment of this commitment of non-discrimination towards inmates will enhance the orderly operation of institutions.

Summary of Costs

The Bureau's policy of non-discrimination towards inmates is long-standing, and we expect no additional costs.

Sectors Affected

The implementation of written policies and procedures to ensure non-discrimination towards inmates has a direct effect on each Bureau institution, and on the Bureau of Prisons' efforts to achieve accreditation. Indirectly, the written policy and procedure providing for inmates to receive equal opportunities to participate in all institutional programs will favorably affect inmates confined within the Bureau's institutions.

Related Regulations and Actions

Internal: Bureau of Prisons, February, 1966 Program Statement on "Integration."
External: None.

Active Government Collaboration

None.

Timetable

NPRM—late 1979.
Public Comment—60 days after NPRM.
Final Rule—spring 1980.
Final Rule effective—spring 1980.
Regulatory Analysis—not required.

Available Documents

Bureau of Prisons Program Statement 1040.1, "Integration", dated February 7, 1966. Available by writing to:
Director
Federal Bureau of Prisons
U.S. Department of Justice
320 First Street, N.W.
Washington, D.C. 20534
The envelope should be marked "FOI request".

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DOJ—Civil Rights Division

Regulations prohibiting discrimination solely on the basis of handicap in federally assisted programs

Legal Authority

The Rehabilitation Act of 1973, § 504, 29 U.S.C. § 794. Executive Order 11914, 41 FR 17871, Oct. 31, 1976. HEW Guidelines on Rehabilitation, 45 CFR 85.

Statement of Problem

A substantial number of people in the United States are denied full participation in major activities such as employment because of discrimination based on their handicaps. Recognizing this fact, the Congress passed § 504 of the Rehabilitation Act of 1973, which prohibits discrimination solely on the basis of handicap in all programs and activities that receive Federal financial assistance. Federal agencies that provide such assistance must develop and publish regulations in furtherance of the broad remedial purpose of § 504.

Alternatives Under Consideration

Executive Order 11914 requires all Federal departmental regulations that

implement § 504 to be consistent with those that the Department of Health, Education and Welfare (HEW) issues. Accordingly, there are no alternatives to the standards which HEW has published (43 FR 2132) in terms of scope, timing or substantive requirements obligating recipients of Federal assistance from the Department of Justice. However, within that context, the Department has attempted to take the least burdensome approaches to achieving the objectives of § 504. For example, the Department's proposed § 504 regulations require employers with 50 or more employees who receive Department assistance of more than $25,000 to provide for recordkeeping and notice procedures and grievance mechanisms. This standard makes the proposed Department of Justice regulations consistent with the Law Enforcement Assistance Administration's Equal Employment Opportunity Guidelines (28 CFR 43.302(d)) for the development, by recipients of Federal assistance through the Department, of an equal employment opportunity program with respect to race and sex. Accordingly, we rejected other, more inclusive criteria, e.g., 15 or more employees and no minimum amount of financial assistance through the Department of Justice.

Further, while recipients are encouraged to provide communications to their applicants, employees, and beneficiaries in the appropriate medium (e.g., braille, tapes), the regulations require only that recipients communicate effectively with those who have impaired vision and hearing (§ 42.503(e) of proposed regulations). Other options that the Department is considering are included in the Supplementary Information section of the proposed rulemaking (44 FR 54957–60, September 21, 1979).

Summary of Benefits

The regulations will establish standards to assure nondiscrimination based on handicap in programs and activities that receive Federal financial assistance from the Department of Justice. They will define and prohibit acts of discrimination against qualified handicapped persons in employment and as beneficiaries of programs and activities that receive assistance from the Department. Programs and activities that the regulation would cover would include those administered by State and local units of the criminal justice system who receive Federal assistance in the form of grants and Federal assistance contracts from the Law Enforcement Assistance Administration (e.g., police departments, prisons, courts), or training from the Federal Bureau of Investigation or other agencies within the Department of Justice. The proposed regulations state that procurement contracts and contracts of guaranty are not to be considered Federal assistance.

The elimination of discrimination against the handicapped in Federally assisted programs and activities will further advance the national policy against such invidious discrimination, will assure that the benefits of Federally assisted programs and activities will be extended to the qualified handicapped, and will preclude the discriminatory exclusion of the handicapped as employees in programs and activities that receive Federal financial assistance.

Summary of Costs

It is difficult to project the cost of compliance. Two aspects of § 504 may increase the expenditures of recipients administering Federally assisted programs. The first requires that recipients make a reasonable accommodation for the known physical or mental limitations of an otherwise qualified handicapped applicant or employee. A reasonable accommodation might involve job restructuring, modified work schedules, or acquisition or modification of equipment or devices. What constitutes a reasonable accommodation must be decided on a case-by-case basis.

The second aspect requires that programs and activities that receive Federal assistance be prohibited from excluding qualified handicapped people from Federally assisted programs because a recipient's facilities are inaccessible or unusable. Structural changes to existing facilities may be unnecessary where other less costly or burdensome methods are equally effective. Facilities constructed after final rulemaking must, however, be designed and constructed to make them accessible to and usable by the handicapped. We cannot provide precise estimates of compliance costs at this stage, although at present it appears that the compliance cost of the regulation will not result in major economic consequences within the meaning of Executive Order 12044. We are presently considering the appropriateness of a regulatory analysis and have invited public comment on this issue.

Sectors Affected

This regulation would affect approximately 9,000 units of State and local governments that are involved in law enforcement and related activities, and approximately 1,000 private entities—such as juvenile homes, educational institutions, public interest groups, and so forth—that participate in activities related to the nation's criminal justice system.

Related Regulations and Actions

Internal: DOJ regulations under title VI of the Civil Rights Act of 1964, 28 CFR 42.201 *et seq.*

External: HEW § 504 Regulations, 42 FR 22676, May 4, 1977.

Active Government Collaboration

By virtue of Executive Order 11914 the President has delegated the coordination of government-wide enforcement of § 504 to the Department of Health, Education, and Welfare and has directed that Federal agency regulations under § 504 be consistent with the standards and procedures that the Secretary of HEW has established.

Timetable

Public Comment—period ends December 21, 1979.
Public Hearing—November 27, 1979.
Final Rule—May 1980.

Available Documents

NPRM—44 FR 54950, September 21, 1979.

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DOJ—Immigration and Naturalization Service

Replacement of alien registration receipt cards—requirement for single fingerprint and personal appearance

Legal Authority

The Immigration and Nationality Act of 1952, as amended, §§ 103, 262, and 264, 8 U.S.C. §§ 1103, 1302, and 1304.

Statement of Problem

Section 262 of the Immigration and Nationality Act, 8 U.S.C. § 1302, which is administered by the Immigration and Naturalization Service (INS), requires every alien in the United States to register, and it also requires that aliens who are fourteen years of age or older be fingerprinted. Section 264 of the Act, 8 U.S.C. § 1304, gives the Attorney General authority to prepare forms for alien registration. The alien registration receipt card, INS Form I–151 or I–551, is the form which aliens who have been registered and fingerprinted under the Act must carry.

Current INS regulations, 8 CFR 264.1(c), set forth the procedures for replacement of alien registration receipt cards. These regulations are geared to the Form I–151, the traditional alien registration document, which is not machine-readable. Applicants for replacement of a lost or destroyed I–151 must submit a completed fingerprint card, Form FD–258, and may be required, as a matter of discretion, to appear in person before an immigration officer to be examined under oath concerning his eligibility for the issuance of Form I–151.

The Service is currently replacing the I–151 as evidence of alien registration with a new, machine-readable I–151, known as the ADIT card. In connection with the issuance of ADIT cards, the INS has been requiring most aliens receiving ADIT cards to appear personally before an INS officer and to have their signature and a single fingerprint collected to appear on the new ADIT card.

The INS proposed rule would amend existing regulations to place these new requirements for the gathering of information for the ADIT card in the regulation relating to replacement of lost alien registration receipt cards. The two principal issues we are considering in connection with this proposed rule are: (1) whether the single fingerprint required for placement on the ADIT card should be collected from children under 14; and (2) whether applicants for replacement cards should be required to appear personally at INS offices to complete the application process.

Fraudulent use of alien registration documents is a growing problem for the United States. It includes the widespread use of counterfeit and altered Alien Registration Receipt Cards, as well as the use of valid cards by imposters to gain fraudulently benefits under the Immigration and Nationality Act. In an effort to counteract this problem, the Service has developed a sophisticated, machine-readable Alien Registration Receipt Card, which is highly resistant to counterfeiting and altering. Imposter use of the new cards is also made more difficult by the fingerprint of the lawful card holder that appears on the card. By comparing the fingerprint on the card to the fingerprint of the person presenting the card, an officer can readily determine if that individual is in fact the lawful card holder. The fingerprint is especially useful in the case of infants and young children. While their facial features change significantly over time, their unique fingerprint patterns do not.

The personal appearance requirement to collect the fingerprint is necessary to ensure the quality of the fingerprint taken and also to insure that the card will be issued to the individual named in the application.

Alternatives Under Consideration

One alternative to this proposal is that no fingerprint be collected for replacement applicants under a certain age. This would, however, undermine the imposter resistance of the Alien Registration Receipt Cards for that population. Without the fingerprint on the card, determining the true identity of the card holder will be more difficult and time-consuming.

Another alternative would be to dispense with the personal appearance requirement for applicants for replacement cards and eliminate the signature and fingerprint on those cards. But personal appearance for a replacement card imposes no greater burden on card applicants than does the regular personal appearance for driver's license renewals. In addition, eliminating the requirement for a personal appearance would further reduce the card's resistance to use by an imposter.

Summary of Benefits

The Service anticipates that the proposed rule would not only increase the detection of fraudulent use of Alien Registration Receipt Cards, but also facilitate the bona fide use of such cards by aliens lawfully admitted to the United States.

Summary of Costs

Although we cannot anticipate how these changes will affect costs, the current cost to process an application to replace an Alien Registration Receipt Card is $13.86. In FY 1979, the Service will process approximately 194,000 such applications at an approximate cost to the agency of $2,689,000. The agency charges a fee of $10.00 to file most applications for replacement. The total cost to the public in FY 79 for this service was approximately $1,940,000, and the net cost to the Government is approximately $750,000.

Sectors Affected

This rule will affect permanent resident aliens who seek replacement of evidence of their alien registration.

Related Regulations and Actions

Internal: 8 CFR 103.7(b); Fee Schedule.
External: None.

Active Government Collaboration

None.

Timetable

NPRM—November, 1979.
Public Comment—60 days following NPRM.
Final Rule—May 1980.
Regulatory Analysis—not required.
Final Rule effective—June 1980.

Available Documents

None.

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DOJ—Law Enforcement Assistance Administration

Equal Service Program Guidelines

Legal Authority

Crime Control Act, 42 U.S.C. § 3751.

Statement of Problem

The Law Enforcement Assistance Administration (LEAA) awards grants to support improvements in all parts of the criminal justice system—police, corrections, courts, probation, parole, prosecution, defense, and juvenile justice agencies.

The nondiscrimination provision of the Crime Control Act, 42 U.S.C. § 3766(c), states that no person may be "excluded from participation in, . . . denied the benefits of, . . . subjected to discrimination under or denied employment in connection with" any LEAA-supported program or activity on the basis of race, color, religion, national origin, or sex. As amended in 1976, the Act requires LEAA to take rapid action to end assistance to recipients who practice such discrimination.

The LEAA Office of Civil Rights Compliance (OCRC) investigates complaints of discrimination and, even in the absence of a complaint, conducts "compliance reviews" of its recipients. OCRC has received an increasing number of complaints alleging discrimination in the services that criminal justice agencies provide to minority groups and women. OCRC has also sought to focus more compliance reviews on recipients' efforts to serve their communities equitably. Investigation of the "services" issue may range from a police department's failure to respond to calls for assistance from a minority neighborhood to a department of corrections' failure to provide the same "halfway house" facilities for women that it does for men. In attempting to investigate these

complaints and conduct these reviews, however, OCRC has found that recipients do not maintain the information necessary to permit LEAA to make a determination of compliance or noncompliance. As a result, LEAA cannot fully implement the nondiscrimination provision in the services area.

Alternatives Under Consideration

There are three alternative methods of addressing the problem. LEAA could:

1. establish a guideline broad enough to inform each category of criminal justice recipient, i.e., police agency, court, corrections department, etc., of the type of information LEAA would need to review to determine compliance with 42 U.S.C. § 3766(c);

2. implement an ad hoc method of collecting information tailored to each recipient that would be established after LEAA initiated its complaint investigation, or compliance review, of the recipient;

3. make a decision not to investigate complaints of discrimination in services, or to close all such investigations for "insufficient data."

Options two and three would do little to assist LEAA in eliminating discrimination in services from the criminal justice system. Option two would also be too time-consuming and impractical to administer for a staff as small as OCRC's. The possibility of obtaining the information from another Federal agency that already requires it is not a feasible alternative, because no other agency collects the type of data LEAA needs to review.

Option one is the only alternative that would effectively assist LEAA in implementing the nondiscrimination provision of the Crime Control Act. Administered properly, it would assure LEAA that the information it needed to evaluate a complaint of discrimination would be available for review, and would enable the recipient to quickly and effectively rebut a false charge. The guideline will also be a useful self-examination tool for criminal justice agencies seeking to voluntarily curb discrimination that they might not have previously recognized.

Summary of Benefits

The proposed guideline will:

1. greatly improve LEAA's ability to assure that recipients of its funds are not in violation of the nondiscrimination provision of the Crime Control Act,

2. help protect individuals from being subjected to discrimination in violation of the Crime Control Act,

3. reduce the time needed to conduct complaint investigations and compliance reviews,

4. help LEAA recipients defend themselves against baseless charges of discrimination, and

5. give recipients the information they need to voluntarily end discrimination they might not have previously known they were practicing.

Summary of Costs

LEAA recipients may incur some indirect personnel costs in developing a mechanism to collect the required data. Those costs should dimish considerably after they have established the mechanism. Because most agencies already collect the data the guidelines would require, it should not be unduly burdensome to them.

Sectors Affected

The guideline would affect primarily the criminal justice system throughout the nation. Included in its scope would be police departments (and similar law enforcement agencies such as sheriff's departments, highway patrol, etc.), correctional institutions, criminal courts, juvenile justice agencies, probation and parole agencies, prosecutors, and courts, and public defenders who receive LEAA assistance. It would also indirectly affect people who may be discriminated against by those agencies.

Related Regulations and Actions

Internal: None.

External: LEAA has previously published Nondiscrimination Regulations at 28 CFR 42.201 *et seq.*, and Equal Employment Opportunity Program (EEOP) Guidelines at 28 CFR 42.301 *et seq.* The proposed guideline would seek to collect services information in much the same way that the EEOP Guidelines collect employment information. LEAA will revise the EEOP Guidelines for comment at the same time it proposes the Equal Service Program Guidelines. The anticipated revisions in the EEOP Guidelines will reflect an attempt to streamline and clarify the scope of those requirements.

LEAA will also revise the existing Nondiscrimination Regulations for comment at the same time, for the purpose of defining more precisely what discrimination in services is prohibited.

Active Government Collaboration

LEAA will request the views of the Civil Rights Division of the Department of Justice, and give them serious consideration.

Timetable

NPRM—November 1979.
Public Comment—until January 1980.
Final Rule—February 1980.
Final Rule effective—upon publication as final.
Regulatory Analysis—not required.

Available Documents

ANPRM—44 FR 53179, September 13, 1979.

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DEPARTMENT OF LABOR

Employment Standards Administration

Proposed amendment to the Sex Discrimination Guidelines (41 CFR 60-20) governing insurance and other employee benefit plans

Legal Authority

Executive Order 11246, 30 FR 12319, September 28, 1965, as amended by Executive Order 11375, 32 FR 14303, October 17, 1967.

Statement of Problem

Executive Order 11246 prohibits employment discrimination on the basis of race, color, religion, sex, or national origin against any person employed by or seeking employment with Federal contractors or under Federally-assisted construction contracts and establishes affirmative action obligations for Federal contractors and subcontractors. E.O. 11375 added sex as a prohibited basis for employment discrimination and included sex among the bases for requiring affirmative action under E.O. 11246. The sex discrimination guidelines for compliance by Federal contractors with the equal employment opportunity requirements of Executive Order 11246 are in 41 CFR 60-20. They contain a section (41 CFR 60-20.3(c)), which says that with respect to employers' contributions for insurance, pensions, welfare programs, and other similar fringe benefits, the guidelines are not violated where employer contributions for such programs are equal for men and women *or* where the resulting benefits are equal. On August 25, 1978, the Department of Labor published in the Federal Register proposals to revise both this regulation and the Department's Interpretative Bulletin concerning the Equal Pay Act (for which jurisdiction was transferred to the Equal Employment Opportunity Commission

(EEOC), effective July 1, 1979). The proposals would make clear that any differentials in employee benefits would not be lawful even if unequal employer contributions resulting from sex-based actuarial distinctions—for example, because on the average women's longevity is greater than men's—are necessary to ensure equal benefits. Also, it would not be permissible to require sex-based differentials in employees' contributions to achieve equal benefits. In order to achieve consistency among regulations concerning the equal employment opportunity obligations of employers under Title VII of the Civil Rights Act of 1964, the Equal Pay Act, and E.O. 11246, as amended, modification of this regulation will be necessary. In light of an April 25, 1978 U.S. Supreme Court decision in the case of *Los Angeles, Department of Water and Power* v. *Manhart*, 435 U.S. 702, it is not realistic to expect that "the equal contributions or equal benefits" rule, in its present form may continue. In the *Manhart* decision, the Supreme Court rules that a city employer's requirement that female employees make larger contributions to its pension fund than male employees because of the longer life expectancy of women as a class discriminated against the individual female in violation of Title VII of the Civil Rights Act of 1964. The Court also ruled that retroactive monetary recovery was inappropriate, because this was the first litigation challenging differences in pension fund contributions based on valid actuarial tables, which fund administrators might have assumed justified the differential; the resulting prohibition against sex-differentiated employee contributions constituted a marked departure from past practice and drastic changes in legal rules can have grave consequences on pension funds.

Alternatives Under Consideration

The major areas of scrutiny, given the possibility of revising or clarifying the original proposal, include: (1) whether and how the provision in the Equal Pay Act which prohibits any reduction in the wage rate of any employee in order to comply with that law applies to resolution of the equal benefits issue; (2) the applicability of the proposal to each of the numerous types of fringe benefit plans (e.g., defined benefit pension plans, defined contribution pension plans, health insurance, life insurance, etc.); (3) its applicability to the various options under retirement benefit plans (e.g. straight-life, joint and survivor, early retirement, etc.); and (4) the effective date of the amendments, including the issue of retroactivity and its effect on accrued or vested benefits.

We will develop alternative approaches to this issue in consultation with other interested agencies.

Summary of Benefits

Insofar as the Equal Pay Act precludes compliance from being achieved by means of rate reductions for employees of the higher paid sex where sex-based differentials exist, elimination of the equal cost allowance can be expected to result in increased fringe benefits for female employees—particularly in the area of retirement benefits. Male employees' fringe benefits would also be affected in terms of increased periodic payments to their surviving spouses where such employees choose a joint and survivor pension benefit option that provides the surviving spouse with a continuing payment.

Summary of Costs

Employee benefit costs of Federal contractors will be affected by new regulations implementing the *Manhart* decision. We will develop cost estimates in relation to the identification of legally feasible options.

Sectors Affected

Modification of this portion of the Department of Labor Office of Contract Compliance Programs Sex Discrimination Guidelines (41 CFR 60–20.3(c)) will apply to Federal contractors and federally-assisted construction contractors.

Related Regulations or Actions

Internal: None.

External: In relation to its assumption of jurisdiction for administering and enforcing the Equal Pay Act, the EEOC has made an interim decision not to adopt as its interpretation of the Equal Pay Act the interpretations which the Department of Labor used in administering that Act (29 CFR 800). The EEOC is studying the question of how to properly interpret the Equal Pay Act in relation to Title VII of the Civil Rights Act, under which it has regulations that also address the subject of equal benefits.

Active Government Collaboration

In order to achieve consistency among the Federal regulations concerning the equal employment opportunity obligations of employers under Title VII of the Civil Rights Act, the Equal Pay Act, and Executive Order 11246, as amended, active consultation by the Department of Labor with the Equal Employment Opportunity Commission will be necessary. The Department of Justice and the U.S. Office of Civil Rights also have an interest in this matter.

Timetable

The timetable on finalizing this section of the Office of Federal Contract Compliance Programs Sex Discrimination Guidelines is contingent on EEOC's progress in addressing the complexities involved in articulating appropriate treatment of the equal benefits issue in relation to standards regarding prohibited wage rate discrimination under the Equal Pay Act and Title VII of the Civil Rights Act.

Available Documents

Office of Federal Contract Compliance Programs Sex Discrimination Guidelines—41 CFR 60–20.

NPRM—43 FR 38057, August 25, 1978.

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DOL—Employment and Training Administration

Nondiscrimination on the basis of handicap in federally assisted programs

Legal Authority

The Rehabilitation Act of 1973, § 504, 29 U.S.C. § 794.

Executive Order 11914, 41 FR 17871, Oct. 31, 1976.

HEW Guidelines on Rehabilitation, 3 CFR 308.53.

Statement of Problem

The proposed regulations require that all recipients of Federal financial assistance from the Department of Labor ensure that their federally assisted programs and activities are operated without discrimination on the basis of physical handicap. The "recipient" is to operate each program so that when viewed in its entirety, it is readily accessible to the handicapped. In the Fiscal Year 1978, Comprehensive Employment and Training Act (CETA) programs served 178,500 handicapped people, which accounted for 4.3 percent of all participants. United States Employment Services officers served 15.5 million people during this same year, 5 percent of whom were handicapped. Presumably most, if not all, of these people either are not

hindered by architectural barriers or are working or training in facilities that are already physically accessible to them. However, there are undoubtedly a number of people with severe physical handicaps who are not currently using employment and training services because of architectural barriers, but who would avail themselves of these services if they were offered in more accessible facilities. We estimate that an additional 105,000 handicapped individuals potentially could benefit from more accessible employment and training facilities.

The proposed regulations mandate capital expenditures for both the public and private sector. Government agencies which must meet the added cost burden of regulations have few options open to them other than realigning current capital spending plans. Many small employers in private industry may be relucant to participate in employment training programs because of the potential costs. This would result in the loss of new training opportunities.

Alternatives Under Consideration

Possible alternatives to providing accessiblity to handicapped people are:

(1) That selected sites be made accessible for all programs;

(2) That selected sites be made accessible but not for all programs.

The first alternative would meet the requirements of "program accessibility" in the proposed regulations, since the primary recipient of Federal finanical assistance has the obligation to comply with the legislative mandate.

For programs that are operated by primary recipients, such as CETA On-The-Job training, Job Corps, and Private Sector Initiative, prime sponsors have the responsibility for assuring that programs, when viewed in their entirety, are accessible to handicapped people. Thus, small recipients (or small employers) would be considered to be in compliance with this requirement even if each individual site was not accessible.

In the case of Job Corps, it is inaccurate to consider each individual center as a separate program or recipient of Federal financial assistance. Congress, when it established the Job Corps in 1964, stated that it was a national program with program operating authority centralized at the Federal level. This being the case, Job Corps can comply with the requirements of § 504 by designating regional centers that will serve both handicapped individuals who need specialized services and nonhandicapped individuals.

The second alternative suggests that in Private Sector Initiative Programs and On-The-Job training programs that were established under the Comprehensive Employment and Training Act Amendments of 1978, the phrase "when viewed in its entirety" be applied to specific occupations in these programs. Training need not necessarily be available at each site within each occupation. But each prime sponsor has the responsibility to assure that "viewed in its entirety" specific occupations are accessible.

Summary of Benefits

Preliminary estimates show that an additional 105,000 handicapped individuals potentially could benefit from more accessible employment and training facilities. This estimate is based on an updated 1974 Survey of Disabled and Nondisabled Adults. This survey included the severely and partially disabled, handicapped who use the following aids—wheelchairs, braces, crutches, and artificial limbs—and who are able to go out of doors without help. The survey shows in addition to 40,000 unemployed, about 115,000 severely disabled and 25,000 partially disabled people are not in the labor force. It is estimated that 40,000 severely disabled and all of the partially disabled may be employable and thus benefit from CETA programs. Thus, we estimate that there will be about 105,000 additional handicapped people who could benefit from more accessible employment and training facilities.

We recognize that some people with severe physical handicaps may not be able to use employment and training facilities even when they are accessible, and that other potential beneficiaries may opt for updated Veterans Administration and Vocational Rehabilitation Administration alternatives which provide specialized rehabilitation services in addition to skill training.

Summary of Costs

Overall, preliminary estimates are that the capital costs of making employment and training programs accessible under the proposed regulations (alternative 2) would amount to $128 million.

Under a more restrictive interpretation of program accessibility in the Private Sector Initiative Program (PSIP) and the On-The-Job (OJT) training program, total costs could be as high as $280 million (alternative 1). In this context, this could mean that selected sites must provide "program accessibility" for PSIP, OJT, and Job Corps, possibly in every occupational grouping. While a thorough analysis of accessibility costs would require an architectural survey of all existing facilities, we developed a maximum cost figure by estimating the number of intake centers based on the type and size of prime sponsors, and the number of work and training sites based on the number of participants. All applicants must have access to CETA Intake Centers. A reasonable assumption is that not all of these intake centers are in compliance; therefore, some will need only minor modifications and others more extensive modifications. Most sponsors would have at least one CETA Intake Center. We estimate the total number of such centers to be 1,036.

The total number of intake centers and training sites was reduced by the percent of facilities estimated to be currently in compliance with the proposed regulations. The following table presents a summary of capital costs, disaggregated by program activities.

Capital Costs by Program Activity (Alternative 2):	
1 State Employment Security Agencies (SESA)	$6,000,000
2 Comprehensive Employment and Training Act (CETA) Intake Centers	
Minor modifications	$388,000
Major modifications	$5,633,000
CETA Employment and Training Facilities:	
3 Classroom Training	$4,900,000
4 Public Service Employment and Work Experience	$55,338,000
5 Youth Programs	$28,531,000
6 On-the-Job Training	$12,060,000
Private Sector Initiative program	$15,000,000
Total	$127,850,000

Additional costs under a more restrictive interpretation (alternative 1): "that selected sites be made accessible for all programs" provides for the most extensive modification in all program areas. This means that programs must be made accessible to handicapped people at selected Job Corps Centers and selected job sites for OJT and PSIP programs. It may also mean fewer training opportunities, since small employers (small recipients) may elect not to participate in the CETA program because of the exorbitant cost of making each site accessible. We estimate these costs at:

OJT	$42,937
PSIP	$53,437,000
PSE and WE	$55,337,000
Total	$151,711,000
Total (Alternative 1)	$279,561,000

Sectors Affected

The population that this regulation will affect consists of people participating or wishing to participate in programs funded by the Department of Labor who are handicapped as defined

in the Rehabilitation Act of 1973. Handicapped people are, by and large, concentrated in larger industrial States.

There are more than 450 prime sponsors, or recipients of Federal funds who administer the Comprehensive Employment and Training programs. A prime sponsor may be a State, a unit of general local government which has a population of 100,000 or more, or a consortium of units of local government. We estimate the number of training sites provided by these prime sponsors to be 315,000. Recipients under CETA are people, organizations, or units of government who receive Federal funding to administer their programs.

Related Regulations and Actions

Internal: Department of Labor (DOL)—Comprehensive Employment and Training Act Regulations (20 CFR 675, 676, 677, 678, and 679).

DOL—Affirmative Action Obligation of Contractors and Subcontractors for Handicapped Workers (41 CFR 60–741).

DOL—Executive Order 11758, which in part delegated authority to the Secretary of Labor for implementing § 503 (a) and (c) of the Rehabilitation Act of 1973.

DOL—Regulation issued pursuant to § 503 of the Rehabilitation Act of 1973 (41 CFR 60–741).

External: Health, Education and Welfare (HEW)—Regulations (45 CFR 84) issued by DHEW covering its own grant programs.

HEW—Executive Order 11914, which requires DHEW to coordinate the Government-wide enforcement of § 504 of the Rehabilitation Act.

HEW—Federal Agency Coordination Guidelines (45 CFR 85).

The Architectural and Transportation Barriers Compliance Board (ATBCB) was established under § 502 of the Rehabilitation Act of 1973, P.L. 93–112, 87 Stat. 391, § 502(d), 29 U.S.C. § 72(d), which provides that the ATBCB shall hold hearings and issue orders it deems necessary to ensure compliance with the standards of building and facilities issued under the Architectural Barriers Act of 1968.

Timetable

NPRM—November 1979.
Public Comment—two weeks following NPRM.
Final Rule—December 1979.
Final Rule effective—spring 1980.
Regulatory Analysis—November 1979.

Available Documents

NPRM—Publication in November Register; date not available at time of publication.

Agency Contact

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EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Recordkeeping regulations, extending the length of time certain records, already required to be kept, should be retained

Legal Authority

Title VII of the Civil Rights Act of 1964, as amended by the Equal Employment Opportunity Act of 1972, § 709(c), 42 U.S.C. Sec. 2000e–8(c).

Statement of Problem

Employers, labor organizations, State and local governments, and educational institutions presently collect and maintain equal employment opportunity data on an annual basis only. The Equal Employment Opportunity Commission (EEOC), therefore, is unable to identify persons who have been discriminated against if the discrimination took place more than a year prior to the report and investigation of the act. Under the proposed recordkeeping regulations, the EEOC's reporting requirement will require that institutions preserve employment applications for at least two years or until the end of a Commission action or court proceeding.

Alternatives Under Consideration

There are no alternatives under consideration. This is a revision of existing regulations to further EEOC's enforcement capabilities and to create uniform recordkeeping requirements. At present, the Commission is using a non-regulatory approach. In some instances the Commission, as a result of court actions, publishes "ads" in newspapers or uses other search methods to identify people who may have been discriminated against. None of the present approaches is completely satisfactory, and the Commission believes that requiring certain records to be kept for a longer period is a more efficient method to aid in identifying people who have been the victims of discrimination.

Summary of Benefits

Extending the length of time for maintaining data on employment applications will benefit the Commission and the victims of discrimination by allowing the Commission to secure specific and more adequate redress for the victims of discriminatory hiring or referral practices, especially in cases involving employment systems which exclude women and minorities.

Summary of Costs

The Commission believes the compliance cost of these regulations will be minimal. This opinion is based on the following rationale:

1. The vast majority of medium-sized and large employers that these regulations cover have personnel departments or offices where people make formal written application for work or submit resumes in response to Help-Wanted Advertisements. In most cases, this data is already kept on file for a certain period. The requirements to maintain data on applicants for a longer time should, therefore, not require any business to increase the personnel who process application data.

2. Since private employers and labor unions covered by Sec. 709(c) of Title VII of the Civil Rights Act of 1964, as amended, are currently required to maintain applications and other records for a period of six months, the requirements of these regulations to maintain those records for an additional 18 months will not impose an additional significant burden upon those private employers and labor unions.

3. State and local governments, public elementary and secondary schools, and all private and public institutions of higher education keep equal employment opportunity (EEO) information for three years. Our proposed regulations require them to do this for only two years. Our current regulations already require these employers to maintain for two years the applications and resumes submitted by prospective employees. This will remain unchanged.

Sectors Affected

These regulations apply to specified employers, labor organizations, State and local governments, and educational institutions, as follows:

1. employers whose workforce is 100 employees or more,

2. joint labor-management committees which control apprenticeship programs that have five or more apprentices enrolled in the program at any time during August and September of the reporting year and represent at least one labor organization sponsor that is covered by Title VII of the Civil Rights Act of 1964,

3. labor organizations that have 100 or more members at any time during the twelve months preceding the due date of the report and are "local unions" (as that term is commonly understood) or independent or unaffiliated unions,

4. State and local governments and every political jurisdiction with 15 or more employees,

5. public and private elementary and secondary school systems and districts with 15 or more employees,

6. institutions of higher education, whether public or private, with 15 or more employees.

Related Regulations and Actions

Internal: Existing EEOC regulations involving reporting and recordkeeping; employer information report and recordkeeping; apprenticeship information report and recordkeeping; State and local governments' information report and recordkeeping; elementary-secondary school systems, districts, and individual schools' recordkeeping; higher education information report and recordkeeping. (All in 29 CFR 1602.)

External: We submit our reporting forms for approval to the Office of Management and Budget annually. Most EEO reporting forms are designated to be used jointly with other Federal agencies (e.g. the EEO–1 report form is a joint form with the Department of Labor's Office of Federal Contract Compliance Programs (OFCCP) and the EEO–5 report form is a joint form with the Department of Health, Education and Welfare's Office for Civil Rights and the National Center For Education Statistics).

Active Government Collaboration

The Commission held public hearings on the proposed regulations on September 21, 1978. Prior to the public hearing EEOC met with OFCCP to discuss the proposed regulations. The Commission received and is considering comments from the United States Civil Service Commission and OFCCP. The Commission also sent copies of the proposed regulation to all State and local Fair Employment Practices agencies for comment.

Timetable

Final Rule—Spring 1980.
Regulatory Analysis—not required.

Available Documents

29 CFR 1602, "EEOC Reporting and Recordkeeping."

NPRM—43 FR 32280, July 25, 1978.

"EEOC Report on the Determination of Non-Requirement for Regulatory Analysis of Amendments to 29 CFR 1602."

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GENERAL SERVICES ADMINISTRATION

National Archives and Records Service

Freedom of Information Act requests for national security classified information in the National Archives

Legal Authority

Freedom of Information Act, 5 U.S.C. § 552, Executive Order 12065, 43 FR 28949, June 28, 1978.

Statement of Problem

Researchers and other persons seeking access to records of Federal agencies under the Freedom of Information Act direct their requests to the agency which has custody of the records. The National Archives and Records Service (NARS) of the General Services Administration (GSA) acts as custodian of non-current records of Federal agencies, including records classified for reasons of national security. People requesting access to classified information held by NARS also submit to NARS requests for declassification of the information. For records more than 30 years old, NARS is authorized to declassify the information. If a request is for classified records less than 30 years old, NARS forwards the request for declassification to the agency with declassification authority (usually the originating agency), and that agency decides whether to declassify the requested information. The Freedom of Information Act requires NARS to notify the requestor of a denial of access, while NARS' current regulations can be interpreted to allow agencies with declassification authority to inform requestors directly of denials of declassification. As a result, NARS is sometimes not notified of the other agency's declassification decision, while at other times the requestor may receive duplicate notices from the other agency and from NARS.

Alternatives Under Consideration

The proposed regulation changes the current procedure so that agencies with declassification authority would notify NARS of decisions about declassification and NARS would in turn notify the requestor. Our alternative would be to keep the current procedure.

Summary of Benefits

If NARS changes the regulation, people requesting access to national security classified information will maintain direct contact with the agency which has physical custody of the records and will receive notices only from that agency. We expect that this "single point of contact" approach will be less confusing to persons requesting information.

Summary of Costs

The proposed regulation has no direct costs. It may cause slight indirect cost savings to other government agencies by reducing duplication of notices of denial. NARS estimates that it receives between one hundred and two hundred requests per year for classified information. Not all of these requests lead to duplicate notices. NARS does not know the cost to other agencies of sending notices.

Sectors Affected

The regulation has a direct effect on people requesting access to national Security classified information under the Freedom of Information Act.

Related Regulations and Actions

None.

Active Government Collaboration

None.

Timetable

NPRM—late 1979.
Public Comment—60 days following NPRM.
Final Rule—March 1980.
Regulatory Analysis—not required.

Available Documents

Public Use of Archives and FRC Records, 41 CFR 105–61.

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VETERANS ADMINISTRATION

Nondiscrimination on the basis of handicap in programs and activities receiving or benefiting from Federal financial assistance

Legal Authority

The Rehabilitation Act of 1973, § 504, 29 U.S.C. § 794. Executive Order No. 11914, 41 FR 17871, April 29, 1976. HEW Guidelines on Rehabilitation, 3 CFR 308.53.

Statement of Problem

The proposed regulations will define and prohibit acts of discrimination against qualified handicapped people in employment and in the operation of programs and activities receiving assistance from the Veterans Administration. The nondiscrimination requirements will extend to the entire range of the medical care, rehabilitation, education, housing, and other programs of the Veterans Administration. If the Veterans Administration finds incidents of discrimination it may seek to resolve them by requesting voluntary compliance, by terminating financial assistance, or by other means that may be available under appropriate law.

Alternatives Under Consideration

This regulation will implement the requirements of the Rehabilitation Act, Executive Order No. 11914, and HEW Guidelines on Rehabilitation. These requirements provide no alternative for consideration.

Summary of Benefits

This regulation will help clarify and protect the rights of the handicapped in employment and in the operation of programs and activities receiving assistance from the Veterans Administration.

Summary of Costs

We believe that the cost to the VA of complying with this regulation will be minimal. The greatest cost to recipients of VA funds may be involved in making structural changes to buildings in order to allow access for the handicapped. In those cases we expect to follow the guidelines established by the Department of Health, Education and Welfare.

Sectors Affected

This regulation will affect all programs and activities receiving funds from the Veterans Administration, either directly or through their participants. These may include institutions receiving VA grants for education or research; educational institutions whose students receive VA educational benefits; financial institutions participating in VA home, farm and business loan programs; and employees and institutions participating in VA employment and training programs.

Related Regulations or Actions

Internal: None.

External: Department of Health, Education, and Welfare, "Nondiscrimination on Basis of Handicap, Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 3 CFR 308.53.

Active Government Collaboration

VA's regulations will be similar to those issued by HEW, except as necessary to meet specific VA organizational, procedural, or program requirements. We expect to divide the enforcement responsibility between the VA and HEW to eliminate duplication. This would parallel the delegations of responsibility with regard to Title VI of the Civil Rights Act of 1964, where HEW is responsible for institutions of higher learning, public schools, hospitals, and other health facilities, and the VA is responsible for proprietary schools (privately owned schools).

Timetable

Final Rule—February 1980. The Veterans Administration expected to publish the final rule in February 1979, but the subject of this regulation was affected by related legislation and court decisions. HEW, who has the lead responsibility in this area, is revising its guidelines. Depending on the extent of this revision, the Veterans Administration will publish either the final rule or a new NPRM.

Regulatory Analysis—not required.

Available Documents

NPRM—43 FR 19166, May 3, 1978.

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Chapter 5—Trade and Commerce

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USDA-AMS
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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

Proposed Federal milk order for the Southwestern Idaho-Eastern Oregon marketing area (Boise, Idaho)

Legal Authority

Agricultural Marketing Agreement Act of 1937, as amended, 7 U.S.C. § 601 *et seq.*

Statement of Problem

Under the Agricultural Marketing Agreement Act, the U.S. Department of Agriculture (USDA) is vested with authority to issue milk marketing orders designed to stabilize marketing conditions in cases where disorderly marketing conditions exist.

In September of 1978, three dairy cooperative associations in the Boise, Idaho area proposed that USDA undertake the process of instituting a milk marketing order for that area. Their proposal entailed a complete order to regulate the handling of milk in 18 southwestern Idaho and 5 eastern Oregon counties. The purpose of such an order would be the establishment of stable and orderly marketing conditions for producers and the assurance for consumers of an adequate supply of fluid milk at reasonable prices.

The USDA in turn invited alternative proposals to that suggested by the three dairy cooperative associations. Subsequently, a public hearing was announced (in October of 1978) and held over the period December 5–8, 1978 in Boise to consider testimony regarding reasons for establishing an order and its specific provisions.

The recommended decision, based on the hearing evidence and published in the **Federal Register** on August 16, 1978, stated that dairy farmers supplying the marketing area under consideration were not experiencing disorderly

marketing conditions (e.g., handlers cutting producer prices, certain producers closing their market, and a disproportionate sharing among producers of the market's surplus milk) to an extent warranting Federal intervention in the region. Thus the recommended decision was to not issue an order—not to regulate.

Significant objections to the recommended decision were received by USDA and the time for filing exceptions to the decision was extended to October 31, 1979. The Department is currently carefully considering those objections prior to arriving at a final decision regarding issuing an order.

The detailed findings and conclusions of the Department are stated in the recommended decision which was published in the **Federal Register** (Part III) of August 16, 1979 (44 FR 48128).

Alternatives Under Consideration

(1) Issuing a milk marketing order for the Boise, Idaho area to establish, by regulation, formula prices for milk by class of use.

(2) Relying on existing marketing arrangements (i.e., not issuing an order).

The Department considers proposals initiated by milk producers, normally through their cooperative associations, and/or by other parties, rather than initiating proposals of its own.

Three cooperative associations representing producers proposed the Boise, Idaho order. Their proposal represented a complete order to regulate the handling of milk in 18 southwestern Idaho and 5 eastern Oregon counties. It included definitions for determining which plants would be pool plants, (i.e., fully regulated plants). A pool distributing plant would be one that disposed of 50 percent or more of its total milk receipts on routes, with 10 percent or more of the distribution in the marketing area. A pool supply plant would be one that transferred 50 percent or more of its Grade A milk receipts from dairy farmers to pool distributing plants. Plants that distributed less than the standards proposed would not be fully regulated, but they would be affected by provisions relating to partially regulated plants. The class prices applied to the classified use plan would include a Class I milk price computed at the level of the Minnesota-Wisconsin price for the second preceding month plus $1.75 per hundredweight. The Class II price would be the Minnesota-Wisconsin price for the month plus 10 cents per hundredweight. The Class III price would be the Minnesota-Wisconsin price for the month. The Minnesota-Wisconsin price is a price computed each month by the Economics, Statistics and Cooperatives Service of the USDA. It represents an average of the prices paid for milk at unregulated manufacturing plants for Grade B milk in the two states.

As stated in the Agricultural Marketing Agreement Act (7 U.S.C. § 601 *et seq.*), the declared purpose of the Act is "to establish and maintain such orderly marketing conditions . . . as will establish . . . [prices which] are reasonable in view of the price of feeds, the available supplies of feeds, and other economic conditions, [and which will] insure a sufficient quantity of pure and wholesome milk, and be in the public interest."

Summary of Benefits

The benefits of an order would be stable and orderly marketing conditions for producers in some Oregon and Idaho counties, improvements in returns to producers in accord with the statutory standards, and the assurance for consumers of an adequate supply of milk at reasonable prices.

Summary of Costs

The costs associated with these benefits are administrative assessments (not more than 5¢ per hundredweight—perhaps $10,000 per month) against the regulated processors, which are billed to the handlers, to cover the expenses of USDA administering and operating the marketing order.

The Department, in arriving at its tentative determination not to issue a milk order, indicating the following:

Even with a Class I differential of $1.50, which the record suggested might be appropriate, which probably would represent no increase in the cost of Class I milk for the market, any increase in weighted average returns to producers likely would be minimal. It would not be appropriate to establish a federal milk order, with attendant costs, when marketing conditions for producers would not be improved substantially.

Sectors Affected

If established, the regulations would apply directly to the fluid milk handlers and processors for the benefit of local dairy producers. Consumers would be indirectly affected by changes in prices occurring under the pricing formula in the order and probably pass-through of administrative costs associated with operating the marketing order. Distant dairy producers might be affected indirectly to the extent that market regulation in this area affected the stability of the total milk supply. Some distant producers might be directly affected if they marketed milk in the regulated area.

Under marketing orders, all producers tend to share more equally in the market than they would in the absence of regulation. However, cooperative marketing arrangements among farmers may accomplish the same objective in the absence of regulation.

Related Regulations and Actions

Internal: There are 47 Federal milk orders in operation. In 1978, 119,398 producers delivered 78 billion pounds of milk to 1,187 milk handlers. Forty-one billion pounds, or 53 percent of the deliveries were used in Class I—packaged for fluid milk consumption, on which marketing orders focus. The milk deliveries represented two-thirds of all milk marketed by the nation's dairy farmers.

External: Agencies of State governments define, by sanitary handling conditions and product description, that milk which can qualify as Grade A or suitable for fluid consumption. (All Class I milk must be Grade A).

Active Government Collaboration

None.

Timetable

A final decision may be issued sometime in December 1979. A regulatory analysis will be prepared as part of the final decision.

Available Documents

Notice of Hearing issued October 19, 1978, published in the **Federal Register**—43 FR 49704, October 24, 1978.

Corrections (procedural): 43 FR 50187, October 27, 1978, and 43 FR 52496, November 13, 1978.

The record of the hearing, held in December of 1978, in Boise, Idaho, and of public comments received prior to October 31, 1979, are on file with the Hearing Clerk, U.S. Department of Agriculture under Docket No. AO–380.

Recommended Decision "Milk in the Southwestern Idaho-Eastern Oregon Marketing Area; Recommended Decision and Opportunity to File Written Exceptions on Proposed Marketing Agreement and Order" issued August 13, 1979; published in 44 FR 48128, August 16, 1979.

Extension of Time for Filing Written Exceptions to the Recommended Decision, issued September 14, 1979, published in 44 FR 54303, September 19, 1979. The public had until October 31, 1979 to submit written comments on the recommended decision.

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USDA-AMS

Amendments to Federal Seed Act regulations

Legal Authority

Federal Seed Act of 1939, 7 U.S.C. § 1551 *et seq.*

Statement of Problem

The Federal Seed Act (FSA) is designed to protect farmers and other consumers who buy seed that is sold across State lines or is imported. The Act requires labeling of all such seed, prohibits false labeling and advertising, and prohibits importation of uncleaned seed, seed with low germinating levels, and seed containing noxious-weed seeds. The U.S. Department of Agriculture (USDA) and State governments cooperate in enforcing the Act. USDA is now reviewing and revising existing regulations used to administer the Federal Seed Act. USDA will repromulgate these regulations, as amended, so as to provide up-to-date rules for testing seed, improve standards for certified seed, change rules for sampling new and different containers, and clarify definitions and other provisions in light of current marketing practices.

Specific problem areas are:

(1) Handling complaints promptly. USDA investigates and takes action on complaints of alleged violations of the Federal Seed Act, mostly from State seed regulatory agencies that cooperate with USDA. Slow action draws criticism from State agencies and the seed dealers being regulated.

(2) Enforcing seed laws uniformly. Variability of State programs and unequal cooperation by State agencies results in unequal administration of the Federal law.

(3) Sampling of imported seeds. Customs agents sample the seed at the ports of entry and forward the samples to USDA seed laboratories. USDA tests the samples and admits or rejects the seed. Failure to sample, misidentification of samples of seed, or delays in sampling affect the efficiency of the program.

(4) Regulating labeling of seed varieties. The Act requires labeling and prohibits false labeling. With some seeds, it is impossible to identify the variety by seed charactristics; it is necessary to subject them to special biochemical tests or grow them in field plots to differentiate varieties. Some seedsmen question the methods used and the interpretations of their results.

Alternatives Under Consideration

USDA held public meetings in September in Memphis and Denver, and invited all interested parties to express their views on the effect this Act has on their business practices. When USDA has evaluated this new information, it should provide guidance for possible alternative strategies.

They are:

(1) No change in the regulations. The current regulations explain the requirements of the Act, add definitions, specify kinds of seed that are subject to the Act, prescribe rules for sampling and testing, and set forth standards for certain purposes. Possible advantages of this alternative are consistency (status quo), avoidance of controversy, and no cost to change.

(2) Amend the regulations to make possible improvements in the current system. USDA expects many changes to have the support of all affected parties. Others will be controversial in that not everyone will agree on what changes ought to be made. Hearings will air controversial issues and will, hopefully, shed light on suitable solutions. The regulations need to be updated to adopt new technology in packaging, testing, and marketing. Technical bodies of the State agencies have recommended to USDA changes in the technical rules for testing and standards for certified seed. Some of the contemplated amendments would change the Federal regulations to agree more closely with State requirements. Other changes would become models for changes in State regulations. Most interested parties urge uniform regulations.

(3) Amend authorizing legislation to change the mandate for regulations, such as: delete certain sections of the law completely; change the approach from "truth-in-labeling" to grades or permits; or require compulsory inspection before marketing. The current system is a truth-in-labeling and spot-check-inspection system. It is not perfect. Cost-benefit analysis may justify the current inspection system. The freedom to produce and distribute seeds without inspection or constraint simplifies the distribution system and minimizes the regulatory burden. On the other hand, the current system may not suffice to protect consumers from faulty seed which may cause crop losses. A farmer's crop may be lost before the fault in the seed is detected. Premarket inspection and a pedigree system might reduce errors.

Summary of Benefits

Revised regulations would improve compliance because improving the wording of the regulations would minimize misunderstandings. USDA would be able to handle complaints more promptly and avoid the problems of currently drawn-out proceedings, and thus improve relations with the State agencies and seed dealers at all marketing levels. The cooperative agreements with the States would be more effective under improved regulations, which would help overcome unequal enforcement in the States. Adoption of new rules for sampling and testing seed and changes in standards for certified seed would promote uniformity in seed regulations and the administration of seed law. Also, changing lists of noxious-weed seed for imported seed to agree with regulations under the Federal Noxious Weed Act (administered by Animal and Plant Health Inspection Service—APHIS) would facilitate cooperation between the two agencies, APHIS and AMS, for the inspection of imported seeds and commodities infested with weed seed. It may be possible and advantageous to relieve Customs officials of the burden of sampling imported seed.

Summary of Costs

The Federal Seed Act appropriation USDA requested for FY 1980 is about $1.4 million. USDA will incur only minor administrative costs by improving the wording of the regulations. However, the Department may need additional Federal funds for seed inspection and testing, ranging from about $300,000 to $5 million annually, depending on the type of testing or inspection it uses to assure truthful labeling. If seed inspection is improved in States that are not cooperating, then Federal cost increase will be minimal, but if Federal inspection is necessary in States that are inactive, the costs will be high. We do not know what States spend now or what increased costs the States would have if activity were changed. The seed dealers are now required to label seed, and the changes that can be made in the regulations without basic statutory change should not create a significant change in costs to seed dealers. USDA contemplates no changes that would create a cost burden to the industry. Pass-through costs to consumers for the amendments contemplated would be minimal, because there would be minimal additional burden or cost to seedsmen. Transferring the sampling of imported seeds from Customs to USDA

responsibility probably would not result in a shift of funds from Customs to USDA, because sampling seed comprises only a small portion of Customs inspectors' time and cost. No significant increase in cost to USDA is anticipated.

Sectors Affected

The changes under consideration would affect all segments of the seed industry either directly or indirectly. They would directly affect State regulatory services, State seed certifying agencies, seed growers, shippers in interstate commerce, importers of seeds, and USDA. They would indirectly affect farmers, gardeners, and consumers. The changes may not affect small businesses any differently than big businesses, because all seedsmen must test and label seed according to the regulations and the cost of adhering to the law is proportionate to the volume of seed handled.

Related Regulations and Actions

Internal: USDA has referred a bill to amend the Federal Seed Act to the Congress, but the bill has not been actually introduced. It may be withdrawn by USDA, however, pending completion of a detailed study of the program by a university professor. The contemplated amendments to the regulations would not be contrary to the proposed amendments to the Act that USDA is considering. They are intended to clarify wording, update certain provisions, and delete provisions that are obsolete or unnecessary.

The Plant Variety Protection Act (7 U.S.C. § 2321 *et seq.*) that this Agency administers interacts with the FSA in certain instances regarding determination of variety status and prohibition of selling certain protected varieties unless the seed is certified.

Seed imports that are subject to the Federal Seed Act are inspected by AMS under that Act for noxious weeds. Imports of all other commodities must be inspected for certain weed species under the Federal Noxious Weed Act (7 U.S.C. § 2321 *et seq.*), which APHIS administers. AMS has held informal discussions with APHIS regarding cooperative inspection of imported seed and identification of weed seeds in other commodities.

External: State seed laws and regulations are similar to but not required to conform with the Federal Seed Act.

Active Government Collaboration

AMS has already worked with State regulatory agencies in developing ideas for the proposed amendments and will continue to develop a coordinated set of regulations. AMS has also been in communication with the Bureau of Customs, Department of the Treasury in connection with import sampling matters.

Timetable

USDA has recently requested initiation of a study to evaluate the Federal Seed Act. If the Department decides to amend the regulations, the following estimated dates are applicable:

NPRM—summer 1980.
Public Comment—following NPRM.
Public Hearing—following NPRM.
Final Rule for changing the regulations—fall 1980.
Regulatory Analysis—will be prepared as part of the rulemaking process.
Final Rule effective—January 1981.

Available Documents

Available from the Agency Contract below.

Backgrounder: "Public meetings on the Federal Seed Act," August 1979.

Federal Seed Act and regulations.

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USDA-Food Safety and Quality Service

Proposed net weight regulations

Legal Authority

Federal Meat Inspection Act, 21 U.S.C. § 453(h)(5) *et seq.*

Poultry Products Inspection Act, 21 U.S.C. § 343(e) *et seq.*

Statement of Problem

The present Federal regulations concerning net weight for meat and poultry products permit "reasonable variations" in weight caused by the loss or gain of moisture during distribution. In October 1977, the State of California filed a petition with the United States Department of Agriculture (USDA) requesting new regulations which would permit States and municipalities to enforce strict standards at the time of consumer purchase. Officials of 47 other States, several farm organizations, and consumer groups co-signed the petition.

According to the petition, the Supreme Court decision in Rath Packing Company v. M. H. Becker, et al. in March 1977 had left States without adequate authority to enforce their own net weight regulations. The Court had held that States and municipalities were preempted from enforcing standards that were stricter than Federal regulations, which are based on "reasonable variations." Since the term "reasonable variations" does not provide a quantifiable standard, the petition contended that States and municipalities were, in effect, precluded from enforcing net weights at retail.

In addition, consumers have complained that net weight statements on packages of meat and poultry do not provide accurate information on the amount of usable product in the package. Present USDA regulations now require that net weight statements be accurate only at the time they leave the plant and not at the time food is purchased by consumers. The present regulation also counts free liquid as part of the net weight. (Free liquid is liquid that has seeped out of a product into the package but has not been absorbed by the packaging material). As a result of moisture loss and free liquid, consumers have frequently complained that they have no way of knowing how much usable product they are getting for their money.

In response to the California petition and consumer complaints, the Food Safety and Quality Service (FSQS) published proposed Federal net weight regulations on December 2, 1977. The principle features of the proposal were as follows:

- Free liquids, as well as liquids, fats and solids absorbed by packaging material, would be excluded from a product's net weight. Thus, net weight would be based on a drained weight system, as opposed to a wet tare or dry tare. (Tare is the quantity subtracted from gross weight to determine net weight). Under a wet tare, net weight equals package and contents minus the weight of the packaging material and liquids absorbed by the packaging material. (Free liquid is included in the net weight). Under a dry tare, net weight equals package and contents minus the weight of the dry packaging material (again, free liquid is included).
- The present allowance for moisture loss due to evaporation during distribution would be eliminated. The average weight for products from the same lot would be required to equal or exceed the labeled net weight. Single packages, however, would be permitted actual weights below the labeled weight by a specified amount.
- Federal net weight standards would be established for bulk shipments or wholesale-sized packages.

• An FSQS approved quality control program for net weight would be required at most Federally inspected meat and poultry plants.

After the proposal appeared in the **Federal Register**, USDA received over 3,000 comments, indicating widespread disagreement concerning the need for the new regulations and their economic impact. Since the closing of the comment period, FSQS has commissioned two economic studies. The first, "Analysis of Proposed Regulations on Net Weight Labeling" (October 1978), was carried out by the Consumer Federation of America.

The second of these, "Assessment of Proposed Net Weight Labeling Regulation," conducted by USDA's Economics, Statistics, and Cooperatives Service (ESCS), was made available for comment on August 31, 1979. The comment period closed on October 30, 1979.

Alternatives Under Consideration

The comments on the ESCS study will have a significant bearing on the available alternatives. FSQS now appears to have four alternatives:

(1) Retain the present regulations. This appears to be the least likely course, simply because of the clearly expressed views of the States in favor of new regulations that will give them an enforceable standard at retail.

(2) Publish the December 2, 1977 proposal as a final regulation, with only nonsubstantive changes. This, too, does not appear to be a strong possibility. Over the past year, USDA officials have held a series of meetings with Food and Drug Administration (FDA) officials to develop a consistent Federal approach on net weight regulations for all food. (FDA has authority over all food except meat and poultry). The agreements that have been reached in these meetings would involve substantive changes in USDA's December 1977 proposal and, therefore, would make it necessary to repropose rather than going ahead with final regulations.

(3) Publish a new proposal that would incorporate the agreements reached with FDA, but that would leave most other portions of the December 1977 proposal unchanged.

(4) Publish a new proposal that incorporates the agreements reached with FDA, as well as other changes designed to reduce the costs to industry and keep enforcement costs to States and localities to a minimum. (For example, the drained weight system might be changed to a wet tare or dry tare system). This appears now to be the most likely alternative. It would make use of the ESCS findings on the economic impact of the December 1977 proposal.

Summary of Benefits

According to the ESCS study, there would be three benefits to establishing a more objective (or quantifiable) Federal net weight standard.

First, consumers would benefit from more accurate net weights at retail. In buying a chicken, ground beef, or bacon, a consumer will almost always look at the price per pound. Without accurate information on the weight of the product, however, shoppers cannot make accurate price comparisons. With an objective standard, enforceable at retail, consumers would be in a better position to make price comparisons.

Second, there would be more accurate information on meat and poultry products at all points in the distribution and marketing chain. For example, the buyers of bulk-packed products would have a clearer standard for checking the weights of shipments they receive. Such a standard would be helpful, particularly to small volume buyers who may now be reluctant to adjust invoices to correct for underweight shipments.

Third, because States and municipalities would have more enforceable standard at retail, the risk of deliberate fraud would be reduced. Although ESCS' study found no evidence of consistent or flagrant short-weighting of meat and poultry products now in the marketplace, State officials have stated that it could occur unless there is an enforceable Federal standard in place.

Summary of Costs

The ESCS study predicts that the labeled price per pound for some products would increase under the December 1977 proposal, but that there would be no real cost increase for consumers, because they would be receiving more usable product at the higher price. Similarly, producers would have to include more product in packages to compensate for the stricter standard, and thus would incur additional costs per package. However, these costs would be offset by the increase in the labeled price per pound. Thus, a stricter standard, by itself, would result in no additional real costs to either industry or consumers.

The quality control requirements would result in additional personnel (operating) costs of $57 to $114 million to industry, according to the ESCS study. Capital cost to industry would be less than $2 million, according to the study. Under alternative (4), the quality control portion of the proposal would not be included.

The additional costs of the 1977 proposal (alternative #2) to State and local governments would be about $500,000. Most of these costs would be in new equipment to enforce a drained weight system. If the proposal were changed to a wet tare or dry tare system under alternative (4), almost all of the additional costs to State and local governments could be avoided.

Sectors Affected

The entire distribution and marketing chain for meat and poultry would be affected by the proposed regulations. Most producers would be affected more than retailers, since they would have to take into account weight over a longer period of time (between packaging at the plant and consumer purchase, or between packaging at the plant and repackaging by a wholesaler or retailer). The producers of some products would be more affected than the producers of other. For example, some sausage products lose more moisture during distribution than, say, vacuum-packed bacon, and, therefore, the producers would have to do more "overpacking" at the plant. The effect of the regulation would also depend on the type of packaging material used, and may result in a trend towards hermetically sealed packages.

The regulation's effect on the industry will also vary with the type of tare that it requires. Under a drained weight system, alternatives (2) and (3), products that lose a significant amount of moisture through seepage into the package, such as corned beef briskets, will have a higher labeled price per pound than they do at present, simply because the free liquid will no longer be included in the net weight.

The regulation will also affect State and local governments. The costs of enforcing a new net weight regulation would be higher, but far more so under alternatives (2) and (3) than under alternative (4). USDA estimates costs under alternatives (2) and (3) at approximately $450,000 for equipment, along with some additional labor costs. Alternatives (2), (3), and (4) would significantly enhance the ability of State and local weights and measures officials to enforce net weight standands.

Related Regulations and Actions

Internal: Proposed Rule for Voluntary Meat and Poultry Plant Quality Control System—44 FR 53526, September 14, 1979.

External: Food and Drug Administration, 21 CFR 501.105q. Federal Trade Commission, 16 CFR 500.22.

Active Government Collaboration

FSQS and FDA have held a series of meetings over the past year to develop, as far as possible, a common approach to net weight regulations. In late 1977 and early 1978, the two agencies held several public hearings on the issue of net weights.

In 1975, USDA, FDA, FTC, and the National Bureau of Standards formed an interagency net weight committee. The committee has met intermittently since then.

In the past 2 years, FSQS officials have consulted regularly with State and local weights and measures officials and State Departments of Agriculture.

Timetable

Reproposal or Final Rule—December 1979.

Public Comment—period ends March 1980.

Final Rule—May 1980.

Regulatory Analysis—will be performed as part of the rulemaking process.

Available Documents

Notice of availability of ESCS study—44 FR 51275, August 31, 1979. Comment period on ESCS study closed October 30, 1979.

Net Weight Regulations for Meat and Poultry Products, 9 CFR 317.2(h)(2), 9 CFR 381.121(e)(6).

Proposed Regulations for Meat and Poultry Products—42 FR 61279, December 2, 1977.

Consumer Federation of America, "Analysis of Proposed Regulations on Net Weight Labeling," October 1978.

General Accounting Office, "Proposed Changes in Meat and Poultry Net Weight Labeling Regulations Based on Insufficient Data," CED–79–28, December 20, 1978.

Economics, Statistics, and Cooperatives Service, USDA, "Assessment of Proposed Net Weight Labeling Regulation," August 1978.

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DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Advertising regulations under the Federal Alcohol Administration Act

Legal Authority

Federal Alcohol Administration Act, § 5, 27 U.S.C. § 205(f).

Statement of Problem

The Bureau of Alcohol, Tobacco and Firearms (ATF) is responsible for ensuring that advertisements for alcoholic beverages contain certain information about the product and that the advertisements are not false or misleading. While the current advertising regulations have remained basically unchanged since ATF adopted them in the mid-1930s, advertising techniques and practices and consumer education and awareness have changed significantly in the past 40 years. Over the years, ATF has issued a number of rulings interpreting the regulations in light of the changing advertising practices and growing consumer awareness. In many cases, inappropriate regulations and varied interpretations of these regulations have caused confusion for both the advertiser and the consumer.

ATF reviews approximately 8,000 advertisements for alcoholic beverages each year, usually after the advertiser is ready to release the advertisement to the media. However, since review by ATF is not mandatory, some advertisements are released without ATF review.

Furthermore, because of the confusion over certain regulations, some advertisements violate these regulations and are recalled or rejected, costing the industry and ATF money and effort. A monetary estimate of the costs which industry and ATF incur because of recalled and rejected advertisements is unavailable.

From the consumer's perspective, many advertisements which conform to ATF regulations seem to be false or misleading. This is due to the changing perceptions of consumers toward certain products. For instance, the term "light" used with a malt beverage traditionally referred to the color of the product. Now the term "light" has a completely different meaning to most consumers of malt beverages.

For those reasons, ATF is reviewing the advertising regulations for possible updating and revision. Among the areas under review are:

(a) The use of prominent persons in alcoholic beverage advertisements;

(b) The use of subliminal advertising techniques;

(c) The use of the word "Natural" in advertisements to imply that the product is natural;

(d) The current interpretation of false or misleading advertisements;

(e) The use of curative or therapeutic references in advertisements;

(f) Comparative advertisements;

(g) An interpretation of disparagement (for instance, should statements about a competitor's product which are true but nonetheless disparaging be allowed in advertisements?);

(h) The use of "taste tests" in alcoholic beverage advertisements; and

(i) The use of the term "light" on malt beverages.

If ATF fails to address these issues, the problem of false and misleading advertising will continue.

Alternatives Under Consideration

ATF is not presently reviewing any specific alternatives, since we are still analyzing the comments on the ANPRM (43 FR 51808, November 21, 1978). The Federal Alcohol Administration (FAA) Act requires the Treasury Department to regulate the advertisement of alcoholic beverages. But the Treasury Department may deregulate in certain areas within the framework of the FAA Act and may rely on self-regulation by the industry. On the other hand, ATF has received in response to the ANPRM approximately 8,900 comments from the public at large who wanted, in general, greater restrictions placed on alcoholic beverage advertising.

By clarifying and consolidating regulations, policies, interpretation, and rulings on advertising into a single comprehensive package, ATF hopes to liberalize the regulations in certain areas (for example, if ATF allows the use of truthful comparative advertising, the consumer might gain more information about various alcoholic beverage products and be able to make a more informed selection). ATF hopes also to restrict certain advertising practices which the public finds objectionable (for example, many respondents objected to the possible use of subliminal stimuli in alcoholic beverage advertising).

ATF will uniformly apply the adopted regulations to all alcoholic beverage advertising.

Summary of Benefits

These regulations will directly benefit producers, distributors, advertisers, and consumers of distilled spirits, wine, and malt beverges. Because these regulations will clarify ATF's position on advertising, they will help reduce the

recall and rejection of advertisements, thus saving the industry money, while protecting the industry's right to advertise its products and reinforcing the consumer's right to expect clear and truthful advertisements.

Certain State governments may also benefit from a revision of the regulations, since many States adopt Federal advertising regulations. The FAA Act only affects advertising that involves interstate commerce. Many States simply adopt any Federal regulations on alcoholic beverage advertising to cover any interstate situation. In addition, Federal advertising regulations concerning malt beverages apply only in States which have passed similar legislation.

Summary of Costs

At the present time, there is no specific estimate of the costs of this project. In general, costs to producers should not increase, since these regulations affect only advertising content and not methods of advertising. Consolidating interpretive notices and issuing comprehensive and definitive regulations should result in savings to the industry.

Revising the regulations should not increase costs to Goverment. The Government may benefit, since it currently spends much effort in explaining confusing regulations and rulings.

Sectors Affected

Principally, the regulations will affect producers and distributors who advertise, advertisers, and consumers of wine, distilled spirits, and malt beverages. They will not affect any one geographical area more than another. They will affect small businesses which advertise the same as large businesses which advertise.

Related Regulations and Actions

Internal: ATF is considering requiring ingredient labeling for alcoholic beverages. ATF also has contracted a study with Michigan State University to study the effects of alcoholic beverage advertising on the drinking habits of young people. A report is expected by December 1979.

External: The Federal Trade Commission (FTC) is responsible for regulating the advertisement of wine with less than seven percent alcohol by volume and the advertisement of non-alcoholic beverages.

Active Government Collaboration

The FTC and ATF are collaborating on this project. ATF will also solicit comments on proposed regulations from other Federal agencies and State and local governments.

Timetable

NPRM—December 1, 1979.
Public Hearings—will be held if ATF decides they are warranted.
Regulatory Analysis—ATF will not prepare.

Available Documents

ANPRM—Notice No. 313, 43 FR 51808, November 21, 1978.

A notice extending the comment period—Notice No. 313, 44 FR 2603, January 12, 1979.

Copies of the documents and comments may be inspected at the ATF Reading Room, Room 4408, Federal Building, 12th and Pennsylvania Avenue, NW., Washington, D.C., during normal business hours.

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TREAS-ATF

Partial ingredient labeling of wine, distilled spirits, and malt beverages

Legal Authority

Federal Alcohol Administration Act, § 5, 27 U.S.C. § 205.

Statement of Problem

Unlike labels on other foods and beverage products, labels on alcoholic beverage containers do not identify the ingredients or additives contained in the product. Consumers, especially those who have certain allergies, desire this information. Regulations for ingredient labeling on alcoholic beverage containers would ensure that the Bureau of Alcohol, Tobacco and Firearms (ATF) does not require something on a label that is likely to mislead the consumer and that will not result in increased cost to the consumer without corresponding benefits.

In September 1972, the Center for Science in the Public Interest, Washington, D.C., petitioned ATF to require bottlers of wine, distilled spirits, and malt beverages to list all ingredients on the labels of bottles or packages of these alcoholic beverages. The petitioner offered guidelines that were similar to those that the Food, Drug and Cosmetic Act enforces and that the Food and Drug Administration (FDA) administers. The petitioner contended that consumers do not have readily available information regarding ingredients or additives and that consumers have a right to know what materials are in foods and beverages in order to make informed choices in purchasing them.

While ATF has geared its regulation of the alcoholic beverage industry to protecting consumers from deception or unsafe ingredients, ingredient labeling obviously would expand the scope of available information.

If AFT requires ingredient labeling, individuals who are aware of specific ingredients or types of ingredients they medically cannot ingest or do not wish to ingest would know what they should not or do not wish to drink.

Alternatives Under Consideration

In reviewing the alternatives for ingredient labeling and discussing them with other agencies, ATF has considered the following options:

(1) Full ingredient labeling;

(2) Partial ingredient labeling allowing the use of common terms to describe the basic ingredients (such as grains or fruits) but with a requirement to list all additives used;

(3) Partial ingredient labeling allowing the bottler to list the range of possible essential components (those necessary to develop the character of the product, such as corn or rye for distilled spirits, or grapes for wine, or barley for malt beverages) in agriculturally identifiable terms but with a requirement to list all additives used;

(4) Partial ingredient labeling with the requirement to list only the additives used;

(5) No ingredient labeling in any form.

Summary of Benefits

Regulations on ingredient labeling of alcoholic beverages will give the consumer a uniform method of identifying those ingredients which may cause medical problems. The regulations will also expand the consumer protection program of ATF and make the requirements for ingredient labeling on alcoholic beverages uniform with the requirements of the food industry.

Summary of Costs

With the information provided by the comments we received from the general public and the affected industry in response to the NPRM, ATF will prepare a regulatory analysis. Moreover, ATF will strive to minimize the cost to the industry of implementing ingredient labeling requirements, if we adopt them, because any additional cost to the alcoholic beverage industry may be passed on to the consumer.

Sectors Affected

Principally, this regulation will affect consumers, foreign manufacturers, domestic importers, and manufacturers of wine, distilled spirits, and malt beverages.

Related Regulations and Actions

Internal: ATF provides advertising guidelines for marketing alcoholic beverages and is currently reviewing the advertising regulations.

External: The Food and Drug Administration is responsible for ingredient labeling on nonalcoholic commodities.

Active Government Collaboration

ATF worked closely with the Food and Drug Administration in developing ingredient labeling requirements and plans to consult FDA in developing a regulatory analysis.

Timetable

Regulatory Analysis—January 1980.

Public Hearings—will be held if warranted.

Final Rule—spring 1980 (if proposed, the Final Rule would be phased-in over a multi-year period).

Available Documents

Withdrawal notice—Notice No. 285, 40 FR 52613, November 11, 1975.

NPRM—Notice No. 314, 44 FR 6740, February 2, 1979.

Extension of comment period—Notice 314, 44 FR 14577, June 4, 1979.

Fact Sheet on Proposed ATF Ingredient Labeling, January 30, 1979.

ATF News Release, ATF Proposed Ingredient Labels on Alcoholic Beverages, No. FY–79–17, February 1, 1979.

These documents are available for public inspection at the ATF Public Reading Room, Room 4408, 1200 Pennsylvania, N.W., Washington, D.C., during normal business hours.

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TREAS—ATF

Revision of the distilled spirits tax system

Legal Authority

Distilled Spirits Tax Revision Act of 1979 (Title VIII, Trade Agreements Act of 1979), P.L. 96–39, § 801, 93 Stat. 273.

Statement of Problem

Under the Internal Revenue Code of 1954, the Secretary of the Treasury has strict control over liquors for beverage purposes and alcohol for industrial purposes, from the beginning of the production process to the point of removal from bonded premises (the portion of the distilled spirits plant where spirits on which the tax has not been paid or determined are stored). The Secretary has maintained control through a rigid system requiring permits, on-site supervision, and restriction of operations to separate premises or designated areas. However, in recent years, Treasury's Bureau of Alcohol, Tobacco and Firearms (ATF) has recognized the need for modernizing this system of control and has sought legislative amendments to make possible an all-in-bond system for taxing and controlling distilled spirits. Under the all-in-bond system, all distilled spirits operations will be conducted on the bonded premises of a distilled spirits plant.

The Distilled Spirits Tax Revision Act of 1979 changes the tax system to eliminate disparities in taxation between domestic and imported spirits. The Act also gives the Secretary of the Treasury authority to discontinue assignment of Government officers at distilled spirits plants. Finally, in order to promote increased efficiency of Government and industry operations, the Act permits many other simplifications in the regulation of the distilled spirits industry.

ATF will issue interim regulations before the Distilled Spirits Tax Revision Act of 1979 goes into effect on January 1, 1980.

At the same time that ATF implements the new tax system, ATF will adopt other regulatory simplifications (for example, reducing Government forms and requirements for qualification to produce alcoholic beverages).

Alternatives Under Consideration

Since these regulations are required to implement a statute, there is no practical alternative to issuing them. However, because these regulations completely change the ways the distilled spirits industry will operate and be regulated, ATF will issue them in the form of interim rules with provision for public comment. Based on the public comments it receives, ATF will issue a Final Rule. By the time ATF issues it, the Final Rule will have benefited from the practical experience of both the industry and the Government under the interim regulations.

Summary of Benefits

Direct benefits accruing to industry members include savings due to simplification of their methods of industry operation and required recordkeeping. With respect to operations, greater flexibility on the use of premises and equipment will be possible, because all operations will be conducted on bonded premises. In addition, eliminating the requirement for Government officers to directly supervise certain operations or to be present to allow proprietors access to bonded areas will allow for more efficient scheduling of plant operations. It will be possible, too, to replace many required Government forms by allowing proprietors to use commercial records.

Under the new system, proprietors will determine the amount of tax due to the Government before removing spirits from the plant. Under existing regulations, ATF officers determine the tax when bulk spirits are withdrawn from bonded premises to non-bonded processing and bottling facilities. By postponing the tax determination until removal of the finished products, the new system should greatly simplify the records systems necessary for proprietors to document their tax liability.

Distilled spirits taxes are paid on the basis of semimonthly return periods. Under the present system, qualified proprietors may defer actual payment of tax for up to 30 days. The new law provides for an additional deferral period of 15 days. This increased deferral period will be phased in over three years.

The Government will realize manpower savings due to the elimination of on-site supervision of distilled spirits plants by ATF officers and the more simplified methods of tax collection, records, and reporting requirements.

Summary of Costs

Proprietors of distilled spirits plants should generally experience some increase in costs during the first year of the new system. Training employees, adopting security measures to replace those that were formerly provided by the Government, and revising internal control and recordkeeping systems will entail a one-time cost.

The Government also will bear administrative costs of implementing the new system. Specific costs include those for developing the new regulations and procedures and for providing assistance to the industry in converting to the new system.

Sectors Affected

With respect to proprietors of distilled spirits plants, the costs and benefits resulting from the new regulations would apply in proportion to the size and complexity of their operations and current compliance costs. Any differences may likely occur because of the type of operations that are presently conducted and the specific products that are manufactured. For example, a small plant producing and bottling only bourbon whisky would be affected in the same manner as a much larger plant with a similar operation, but quite differently from another small plant which processed and bottled various liqueurs, cordials, and imported spirits.

These regulations should not affect wholesalers and retailers of distilled spirits products. Importers and exporters will indirectly benefit from simplified procedures under these regulations, but changes on the effective tax and duty rates and possible increased trade opportunities arising from the other titles of the Trade Agreements Act of 1979 will have a more direct effect.

The wine industry and manufacturers of alcoholic flavorings used in spirits will probably feel some effects of the new distilled spirits tax system. While the regulations will provide ways for wineries and flavoring manufacturers to continue their existing relationships with distilled spirits plants, the statutory changes in the tax system may lead to changes in product mix or in the formulation of existing products which would affect their sales to the distilled spirits industry. Wineries are also affected by the elimination of "standard wine premises". Under present law, winery proprietors cannot manufacture and bottle wine products (for example, wine products made with artificial flavors) other than "standard" wines on winery premises. These wine products were manufactured and bottled at distilled spirits plants only, using wines on which the tax was paid. Effective January 1, 1980, winery proprietors may manufacture and bottle these wine products.

Related Regulations and Actions

Internal: The principal regulations that this statutory change affects are the following: 27 CFR 201—Distilled Spirits Plants; 27 CFR 240—Wine; 27 CFR 231—Taxpaid Wine Bottling Houses; 27 CFR 250—Liquors and Articles from Puerto Rico and the Virgin Islands; 27 CFR 251—Importation of Distilled Spirits, Wine and Beer; 27 CFR 252—Exportation of Liquors; 27 CFR 186—Guaging Manual; 27 CFR 170—Miscellaneous Regulations Relating to Liquors; 27 CFR 211—Distribution and Use of Denatured Alcohol and Rum; 27 CFR 213—Distribution and Use of Tax-free Alcohol; 27 CFR 194—Liquor Dealers; 27 CFR 197—Drawback on Distilled Spirits Used in Manufacturing Nonbeverage Products; and 27 CFR 5—Labeling and Advertising of Distilled Spirits.

We are incorporating the following regulation projects now under development into this general revision:

Alternate Premises between Distilled Spirits Plants and Bonded Wine Cellars (27 CFR 201 and 240);

Formulas for Rectified Products (27 CFR 170, 201, 250, and 252);

Strip Stamps and Alternate Devices (NPRM published November 7, 1978, 43 FR 51808, 27 CFR 194, 201, 250, 251 and 252);

Export Storage Facilities at Distilled Spirits Plants (27 CFR 201);

Samples of Distilled Spirits (27 CFR 201); and

Distilled Spirits Meters (27 CFR 201).

External: The statutory changes also affect the regulations the U.S. Customs Service administers (19 CFR).

Active Government Collaboration

Certain aspects of the regulatory changes will affect procedures of the U.S. Customs Service and the Internal Revenue Service (IRS). Some distilled spirits plants currently receive imported bulk spirits under an immediate delivery procedure whereby ATF officers act as Customs officers. Elimination of assignment of ATF officers would preclude the use of this procedure in the future. ATF is coordinating its plans for withdrawal of ATF officers with the U.S. Customs Service.

The repeal of the rectification tax (an additional tax applicable to certain mixed or processed products) eliminates the need for the collection of the rectifier's occupational tax by IRS. ATF will coordinate this matter in the event that taxpayers erroneously pay the rectification tax after repeal.

Timetable

Interim Final Rule—November 1979.
Public Comment—90 days from date of interim Final Rule.
Final Rule effective—January 1, 1980.
Regulatory Analysis—ATF will not prepare.

Available Documents

ANPRM—Notice No. 326, 44 FR 41833, July 18, 1979.

Public comments in response to ANPRM.

Pub. L. 96-39, Trade Agreements Act of 1979.

Committee Reports—U.S. Senate, Committee on Finance (S. 1376); U.S. House of Representatives, Ways and Means Committee (H.R. 4537).

These documents are available for public inspection at the ATF Reading Room, Room 4408, Federal Building, 12th and Pennsylvania Avenue, N.W., Washington, D.C., during normal business hours.

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TREAS-ATF

Unlawful trade practices under the Federal Alcohol Administration Act

Legal Authority

Federal Alcohol Administration Act, § 5, 27 U.S.C. § 205.

Statement of Problem

The Federal Alcohol Administration (FAA) Act prohibits certain unfair trade practices within the alcoholic beverage industry. Among these practices are unfair labeling and advertising of alcoholic beverages, bribery of wholesale or retail employees or officials by suppliers, creation of "tied-house" relationships between suppliers and retailers (furnishing services or things of value to induce the retailer to buy that supplier's products); consignment sales; and conditional sales in which the seller (supplier) maintains a security interest in the alcoholic beverages at the retailer's premises. The FAA Act also provides for some exceptions from these general prohibitions.

The FAA Act became law in 1935. Since then, Treasury has issued regulations relating to items or legal inducements that a wholesaler or supplier may furnish to a retailer. Other provisions of the FAA Act concerning trade practices have not been codified by regulations in the Code of Federal Regulations, although the Treasury Department has enforced those provisions. Since 1935, the Bureau of Alcohol, Tobacco and Firearms (ATF) has issued rulings and industry circulars in order to interpret the provisions of the FAA Act on unlawful trade practices. These interpretative documents have generally addressed one specific problem or a circumstance which required clarification.

ATF has reviewed past circulars, rulings, and its present interpretation of

the unlawful trade practice provisions of the FAA Act. Some conclusions of this review were:

(1) ATF policy with respect to legal inducements such as free goods and services (and exemptions) was based largely on hearings and public comments during the late 1930s; for example, inflation has increased costs many times since the 1930s, but the maximum costs permitted for items supplied by suppliers to retailers such as clocks, signs, or calendars has remained almost unchanged in the regulations.

(2) ATF had never formally stated all possible reasons for the legitimate return of alcoholic beverages by a retailer to a supplier; confusion exists among suppliers and wholesalers whether some returns are permitted, such as returns from a retailer engaged in business only part of a year or returns from a retailer of products for which there is only a seasonal demand.

(3) Industry practices had changed greatly since the 1930s, and certain practices such as stocking and rotation of beer and wines by a supplier at a retailer's premises, had now become commonplace. However, regulations have never recognized these practices as legitimate.

(4) Industry members were seeking guidelines on permissible activities, such as their participation in activities sponsored by retail liquor dealers. Since regulations do not address this issue, it is difficult to determine what activities are recognized as legitimate.

(5) Rules specifying unlawful trade practices had never been written in an easy-to-use reference; instead, there were many separate rulings and circulars covering the same subject. In order to research the position of ATF on a trade practice, it may be necessary to examine many rulings, letters, and circulars dating as far back as 1936. Moreover, many of these documents are difficult for the general public to find.

As a result of this review, ATF has decided to issue regulations clarifying and implementing all of the unlawful trade practice provisions.

By issuing these regulations, ATF wishes to modernize and update its interpretation of the FAA Act and liberalize requirements for the alcoholic beverage industry as much as is consistent with the intent of the FAA Act. ATF will also allow for full public participation in the development of new rules and will combine all outstanding rulings and circulars into a single codified source of rules relating to unlawful trade practices.

Alternatives Under Consideration

Alternatives to issuing these regulations would be to issue no new regulations or to issue ATF rulings which would consolidate outstanding rulings and circulars. ATF believes that new regulations present the best alternative, because they will clarify all of the trade practice issues which have caused confusion in the past and will present a single, unified source of rules relating to unlawful trade practices.

Summary of Benefits

These regulations benefit both industry and Government. The new regulations, resulting from re-examination of rules, some of which are over 40 years old, will modernize and liberalize the requirements. As a result of this re-examination and of dropping some restrictions, there will be less Government regulation in some areas, such as stocking and rotating alcoholic beverages at the retailer's premises. ATF expects that these regulations will promote further competition among suppliers and wholesalers of alcoholic beverages by increasing the types of services which they may offer to retailers, and by encouraging the development of new merchandising techniques for alcoholic beverages. These regulations are intended to protect the three-tier system of producers, wholesalers, and retailers, and prevent monopolistic control over the retail sale of alcoholic beverages through supplier/wholesaler ownership or prevent influence over retail liquor dealers. Under the FAA Act, ATF does not have jurisdiction over any pricing arrangements for alcoholic beverages, but the FAA Act is intended to encourage competition in the distribution of these beverages which may tend toward lower prices.

A second major benefit will be the codification of many rulings and circulars into one clear source of rules which industry and Government may use.

Summary of Costs

ATF does not believe specific costs, either to industry or to the Government, will result from these regulations. ATF does not expect to bear increased administrative costs. These regulations should not have an effect on retail prices of alcoholic beverages.

Sectors Affected

These regulations will affect the entire alcoholic beverage industry—producers, wholesalers, importers, retail liquor dealers, and bottlers of distilled spirits, wines, and beer. In addition, these regulations will affect those states which conduct wholesale or retail liquor sales through State stores or warehouses.

These regulations will increase competition among producers, bottlers, wholesalers, and importers of alcoholic beverages.

Related Regulations and Actions

Internal: None.

External: Regulations on prohibited trade practices that ATF issued under the FAA Act and which relate to beer apply *only* in states which have adopted similar laws or regulations regarding trade practices.

Active Government Collaboration

ATF has provided each State liquor control board with copies of this NPRM (44 FR 45298, August 1, 1979). ATF will receive State input during public hearings and from written comments to the NPRM.

Timetable

Written comments on NPRM—due on or before December 17, 1979.
Final Rule—spring 1980.
Regulatory Analysis—ATF will not prepare.

Available Documents

ANPRM—Notice No. 315, 42 FR 27116, December 30, 1977.

NPRM—Notice No. 327, 44 FR 45298, August 1, 1979.

Transcripts of five public hearings—September and October 1979.

These documents may be inspected at the ATF Reading Room, Room 4408, Federal Building, 12th & Pennsylvania Avenue, N.W., Washington, D.C., during normal business hours.

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FEDERAL TRADE COMMISSION

The entries for children's advertising, credit practices, mobile homes, and standards and certification describe rulemaking proceedings that are currently in progress. The views expressed in these entries are those of the rulemaking staff, based upon information now available. These views should not be regarded as a final staff position, nor should they be attributed to the Commission itself, which will address the issues presented after it reviews the entire record.

The entry for Blue Shield and certain other open-panel medical prepayment plans describes an investigation that might lead to a rulemaking proceeding. The views expressed here are those of the investigative staff, based upon information now available. These views should not be regarded as a final staff position, nor should they be attributed to the Commission itself, which will consider whether a rulemaking proceeding should be undertaken after it reviews the results of the investigation.

FTC

Medical Participation in Control of Blue Shield and Certain Other Open-Panel Medical Prepayment Plans

Legal Authority

Federal Trade Commission Act, §§ 5, 6, 15 U.S.C. §§ 45 and 46.

Statement of Problem

Blue Shield and other open-panel medical prepayment plans pay for or deliver care to patients principally through physicians who practice on a fee-for-service basis. Generally speaking, open–panel plans are those which will pay all or virtually all physicians practicing in the area that is served by the plan for covered services they provide to the plan's subscribers. These characteristics distinguish them from other plans where care is delivered through physicians who are employed by the plans or who are paid a fixed fee for providing all or a portion of a person's medical care.

Blue Shield plans make up the largest system of open-panel medical prepayment plans in the nation. The 70 Blue Shield plans operating in the United States today cover about 40 percent of the population of the nation and control or administer payment of about a quarter of all funds paid for the services of physicians. There also exist a number of somewhat different open-panel plans—principally medical service bureaus, foundations for medical care, and open-panel health maintenance organizations ("HMOs") that appear to function much like Blue Sheild plans in that they pay for services provided by physicians who compete with each other. Together, these latter plans cover a small but rapidly growing portion of the population of the nation.

The staff of the Federal Trade Commission (FTC) has submitted a report to the Commission which asserts that groups made up of physicians who compete with each other in serving patients covered by a prepayment plan, such as state and local medical societies, participate in the control of many Blue Shield and other open-panel prepayment plans. In particular, the report points out that these groups have often selected a majority or smaller proportion of the members of plans' boards of directors. The report also asserts that numerous members of such boards are physicians whose services are paid for by the plan. The report details that as of 1978, for example, medical societies and other physician groups formally participated in the selection of some members of the board of directors of 47 of the 70 Blue Shield plans and selected a majority of the boards of directors of 32 plans. Thirty-one plans had physician majorities on their boards, and virtually all plans had physician-dominated committees that made decisions about payments and coverages.

This staff report concerning medical control of prepayment plans raises several issues in light of the rapid escalation of the cost of health care. If the medical profession controls Blue Shield and other open-panel medical prepayment plans, might this be part of the reason physicians' fees are so high and are rising so fast? Does a plan controlled by the medical profession have less incentive than a plan not controlled by the medical profession to seek to keep down physicians' fees and to pay the fees of non-physician providers of health care? In public policy terms, is such control a conflict of interest? In antitrust terms, is such control a restraint of trade?

Similar concerns have been voiced by a number of economists and others who have examined the health care industry. Several states have recently taken action through their legislatures or the courts to reduce or eliminate medical control of prepayment plans. In 1978, the Subcommittee on Oversight and Investigations of the House Committee on Interstate and Foreign Commerce held hearings on Blue Shield's impact on rising health care costs. One of its recommendations was that the FTC consider promulgating a rule to prohibit physicians and physician organizations from dominating Blue Shield plans.

The FTC staff report advances the proposal that when a plan's board members are selected by a medical society or other physician organization, those members may not act independently in the interests of the plan or its subscribers. In documents the staff cited, for example, medical societies referred to Blue Shield as the "economic arm of the medical profession," and it has been asserted that the price Blue Shield pays to physicians "responds to the will of the medical profession."

When physicians or physician groups elect members of plans' boards of directors, the staff asserts that they may be able to control or influence economically significant decisions that the plans make. These decisions concern how much to pay physicians, which physicians or other health professionals to pay for covered services, what cost-containment mechanisms to employ, and other matters that affect competition in the professional health services sector of the nation's economy.

The Commission's staff has concluded that there is reason to believe that control or participation in the control of open-panel medical prepayment plans by physician organizations, and, in some circumstances, by individual physicians, impairs competition among physicians and between physician and non-physician providers of health care services and thus may be an unfair method of competition in violation of § 5 of the Federal Trade Commission Act.

Alternatives Under Consideration

The staff has recommended that the Commission initiate a rulemaking proceeding to consider the legality of such medical participation in control of open-panel medical prepayment plans. To provide a focus for that proceeding, the staff has recommended that the Commission issue a proposed rule that would prohibit medical societies and other organizations made up of physicians who compete with each other from directly or indirectly participating in the control of any open-panel medical prepayment plan, or in the selection of any member of the board of directors of any open-panel medical prepayment plan. The proposed rule also would bar persons from serving on the governing body of an open-panel plan as representatives of physician organizations, and it would prohibit plans from permitting such representatives to serve on their governing bodies. Another provision of the rule as the staff proposed it would prohibit physicians who compete in providing services paid for by a plan from comprising more than 25 percent of the plan's board of directors. This last provision would expire in five years. The Commission is in the process of considering whether to accept, reject or modify these staff recommendations.

If the Commission decides to begin a rulemaking proceeding, all sectors of the public will have an opportunity to comment on the form the rule should take, and on its possible effects on the plans and their subscribers, on medical groups, and on the public at large. The rule which the Commission may propose raises a number of issues which the staff would carefully consider in the proceeding. The first of these is which

open-panel plans the rule should cover. The staff has asked whether the rule should apply only to plans which will pay more than 50 percent of the physicians practicing in their areas for services they provide to subscribers. The staff feels that there is reason to believe that plans which will reimburse relatively few physicians may encourage competition in the physician service market, even if physician groups control them. However, the Commission would consider whether such a limitation is appropriate; possible alternatives include using a higher or lower percentage figure, applying the rule to all open-panel plans, only to the Blue Shield plans, or only to plans that cover more than a specified percentage of the population of their service areas.

A second issue the staff raised concerns the appropriate treatment of organizations of participating physicians—those physicians who have entered into contracts with the plan that govern the conditions under which they will be paid for services they render to plan subscribers. The rule the staff proposed treats such organizations in the same way as medical societies and other types of physician organizations, prohibiting them from selecting any member of a plan's board of directors. The Commission would consider whether involvement of such groups in board selection is likely to cause anticompetitive behavior, or whether they should be permitted some role in the selection of the plan's governing bodies.

The Commission would also carefully consider the degree of medical participation in control which the rule would prohibit. The staff's proposed rule would prevent medical organizations from having any part in selecting board members. Alternative rules might permit medical organizations to select a small number of board members, or to nominate or approve members that others select.

The Commission also would consider whether the rule should prohibit more than a stated percentage of board membership by physicians who compete with other physicians in providing services the plan pays for even though they are not selected by medical groups. The staff proposal would limit such physicians to 25 percent of board membership. Alternatives include using a higher or lower percentage limitation and having no provision of this nature at all. Such a provision could also be restricted to plans which, within a stated period of time, had boards of directors whose composition violated the other provisions of the rule.

The Commission may also consider alternatives to issuing any rule. Rather than addressing the impact of medical control of prepayment plans on an industrywide basis, the Commission could issue complaints against selected plans or physician groups that have relationships of the type that the proposed rule would prohibit. The Commission could also decide that it need take no action at all. In recent years a number of Blue Shield plans have moved toward greater public representation on their boards of directors, and some states have required plans to reduce or eliminate medical influence over selection. Thus, in these cases the Commission could conclude that the public interest does not require it to intervene at this time.

Summary of Benefits

By breaking the structural ties between physician organizations and open-panel medical prepayment plans, the proposed rule seeks to terminate what appears to the staff to be an antitrust violation. It also may promote competition in the health service sector by permitting open-panel plans to make their payment, benefit, and coverage decisions in an independent manner. Increased competition may help to hold down health care costs by (1) increasing the incentives of open-panel plans to hold down the level of physicians' fees and to provide appropriate coverage for the services of non-physicians, (2) encouraging commerical insurers to seek to hold down the costs of health care services, and (3) providing an environment in which alternative health care delivery systems, including closed-panel health maintenance organizations and independent open-panel plans, have a full opportunity to compete.

Although the cost savings that would result from the rule cannot be calculated at this time, the FTC's staff believes they would be substantial. While the Bureau of Economics has not yet published a report on this subject, preliminary results of a study now underway indicate that medical participation in the control of Blue Shield plans leads to significantly higher reimbursement levels.

Summary of Costs

One type of direct cost which could be imposed by the proposed rule would be the administrative costs involved in changing the way affected plans would be governed. The staff has not yet attempted to estimate the amount of these costs. It is possible that the rule may impose some indirect costs, in that medical societies may react to the rule in ways which may possibly interrupt the ability of some plans to offer paid-in-full coverage to subscribers, or to implement certain kinds of cost-containment programs. It is also possible that the rule, by preventing medical societies from establishing and operating prepayment plans which are open to participation by all physicians in the community, may reduce the number of such plans which are formed. The actual costs will depend on the final form of any action taken by the Commission.

Sectors Affected

The rule proposed by the staff would apply to all plans that operate, administer or underwrite a prepayment of financing mechanism for medical services, including Blue Shield plans, commercial and mutual insurance companies, and other types of open-panel medical prepayment plans. The staff is not aware of any insurance companies that now violate the proposed rule. A number of other plans now in operation also appear to comply with the rule as proposed. The proposed rule would not preempt State laws, and thus would not affect plans which are required by law to have boards of directors which do not comply with the rule. However, the Commission would consider whether it should preempt laws that conflict with any rule it might adopt. State regulation of the insurance industry would not be affected.

All sectors of the health care financing industry would be affected by the increased competition which the elimination of medical control of plans is expected to generate. Physicians and other health care providers may also be faced with a more competitive market for their services. This increased competition may benefit consumers by reducing the rate of increase in health care costs.

Related Regulations and Actions

Internal: The Commission has an ongoing program of investigation of competitive restraints in the health care sector.

External: A number of states have laws governing the composition of plans' boards of directors. Those laws would not be affected by the proposed rule. In some States, such as Pennsylvania, these laws have been amended to reduce medical participation in the control of Blue Shield plans. In other states, including Ohio and Indiana, court suits or administrative actions have been undertaken for the same purpose. Other states, including New York and Virginia, have recently studied the relationship between plans and medical societies.

The Department of Health, Education and Welfare has published a notice of intent to issue a regulation prohibiting doctors, hospital administrators, and others with financial interests in the health care industry from dominating the governing body of any carrier or intermediary that participates in the Medicare program or any fiscal agent that participates in the Medicaid program. The National Health Plan legislation recently proposed by the Executive Branch would also impose restrictions on the proportion of the boards of directors of plans administering that program which may be physicians or selected by physicians.

Active Government Collaboration

The staff of the Bureau of Competiton has consulted with numerous other Federal and State agencies in the course of preparing its report. The staff expects to continue to solicit the views of both Federal agencies and the States in the course of any rulemaking proceeding and to consider these views in the course of preparing its recommendations to the Commission.

Timetable

NPRM—winter 1979–1980.
Written comments and public hearings (if held)—1980.
Final report—1980–1981.

Available Documents

A staff report on "Medical Participation in Control of Blue Shield and Certain Other Open-Panel Medical Prepayment Plans," dated April 1979, is available from Room 130, Public Reference Room, Federal Trade Commission, 6th Street and Pennsylvania Avenue, N.W., Washington, D.C. 20580.

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FTC

Mobile home sales and service trade regulation rule

Legal Authority

Federal Trade Commission Act, §§ 5 and 18, 15 U.S.C. §§ 45 and 57(a).

Statement of Problem

Mobile homes are a major segment of the low-cost housing market. Approximately 275,000 new mobile homes are sold annually. Most mobile home manufacturers offer a one-year written warranty with their homes. Manufacturer warranties typically cover defects in the material and workmanship of the home. Many consumers discover defects in their new mobile homes, including water leaks, malfunctioning plumbing, buckled frames, and improper installation. Some problems, e.g., malfunctioning plumbing, electricity and heat, may threaten the safety of the homeowner and may render the mobile home uninhabitable.

Although they are obligated under the warranty to repair defects, some manufacturers and dealers have in a significant number of instances failed to provide warranty service to the consumer. Some consumers who sought warranty repairs were either refused service or service was delayed beyond a reasonable time. Moreover, in some instances, when repairs were made, they were not done correctly.

These problems tend to indicate that mobile home manufacturers may not have an adequate warranty performance system. First, although dealers perform much of the warranty work, some manufacturers do not select their dealers on the basis of service capabilities. Second, sometimes disputes between manufacturers and dealers over who is responsible for particular repairs delay warranty service. Third, some warrantors fail to have sufficient parts, service personnel, and equipment to fulfill consumer requests for repairs. Finally, some warrantors do not properly record and log consumer complaints and are unable to determine if repairs have been done. Because they do not have an adequate warranty performance system, manufacturers and dealers are not able to provide prompt and competent warranty repairs for mobile homeowners.

The proposed rule seeks to set time standards for warranty repairs, and would require pre-occupancy and follow-up inspections of the home. Also, it would require that those who offer warranties on mobile homes have available the necessary equipment, personnel, parts and supplies, and recordkeeping systems to fullfill their warranty obligations. Manufacturers also would be required to evaluate the service capability of, and enter into written agreements with, dealers and others who perform warranty repairs. The rule sets forth basic requirements for an effective warranty performance program.

Alternatives Under Consideration

The Commission staff is evaluating the need for each of the provisions of the proposed rule, based upon a review of written comments it received and testimony presented at hearings it held on the rule. For example, staff is assessing whether or not it should eliminate the requirement for a second on-site inspection of the mobile home. This would reduce compliance costs by approximately $100 per home, but might also allow installation problems to go undetected until major repairs were required and the warranty period had expired.

The Commission staff is also considering alternatives to the proposed rule that would rely more directly upon market forces to improve industry warranty performance. One such provision would establish deadlines for repair and require inspections before mobile homes are delivered to consumers, but leave most other aspects of the warranty performance system to the discretion of manufacturers and dealers. Staff is also exploring ways to provide consumers with increased information about industry warranty performance to enhance competition among sellers.

Summary of Benefits

The proposed rule is intended to ensure that mobile homeowners receive prompt and competent warranty service. While this can be achieved through improved warranty performance systems, we also expect that the rule will induce manufacturers to improve the quality of mobile homes so as to reduce the need for warranty service.

Survey data on the rulemaking record indicate that, in certain sections of the country, up to 40 percent of mobile homeowners appear to have been unsuccessful in having repairs completed under warranty. Thus, significant numbers of owners had to either pay for those repairs themselves or suffer inconvenience.

Industry compliance with the proposed rule may substantially reduce consumer repair expenditures and depreciation on the home during the warranty period. Moreover, consumers also may benefit significantly in subsequent years by inspections that provide early detection of potentially serious installation problems. Since such defects could lead to basic structural and systems failures, the proposed rule might improve the useful life of mobile homes significantly.

Second, the proposed rule may operate to induce warrantors to reduce customer claims by correcting the underlying causes of injury. For example, mobile home manufacturers and dealers may be able to reduce their potential compliance costs under the proposed rule by improving production quality control and ensuring that dealers have the equipment and skills to install

homes properly and correct problems quickly and competently.

Summary of Costs

Industry compliance costs can generally be assigned to one of two categories: (1) administrative and other overhead costs, and (2) additional repairs to mobile homes. Estimates of these costs are based in part upon an analysis of the records of four mobile home manufacturers who have been operating since 1975 under consent orders similar in terms to those of the proposed rule. (A consent order is an agreement between the Commission and a company in which the company agrees to change certain of its business practices. The agreement is not an admission of wrongdoing by the company.)

We estimate that, depending upon company size, from one to four professional workyears at the corporate headquarters level will be required to administer the warranty performance system and resolve disputes among consumers, dealers and the manufacturer. This represents a maximum per-home cost of about $5.00 to $15.00 for large manufacturers and $15.00 to $25.00 dollars for smaller producers, assuming that no corporate officials now work on warranty matters. Since most companies currently assign at least some corporate personnel to their warranty programs, the net cost increase should be substantially below these estimates.

The cost to manufacturers of evaluating capabilities of dealer repair service and entering into written contracts should be concentrated in the first year of compliance and therefore should not affect prices in the long-run. The cost of evaluating dealers should vary from roughly $2.00 to $15.00 per home. Responses from the companies currently under Commission order indicate that legal costs for drafting the written service contracts should not exceed about $2.00 per home for the average-sized manufacturer.

Based upon the experiences of the consent order companies, the required customer questionnaires should cost no more than $8.00 per home to print, distribute, and tabulate. Adding this figure to the other cost components we discussed above brings the total administrative compliance costs of the proposed rule to a maximum of $50.00 per home.

Analysis of data from the companies under the consent order indicates that each of the required pre-occupancy inspections of mobile homes costs these manufacturers about $50.00. Each of the reinspections costs them approximately $100. These estimates include reimbursements to dealers for travel and all inspection expenses, including releveling and minor repairs. This figure does not cover major repairs or general increases in warranty expenditures resulting from more diligent attention to customer complaints. It is difficult to estimate the magnitude of these increases in warranty costs, since the rule presumably could tend to motivate producers to lower the incidence of defective homes. Specifically, manufacturers can be expected to introduce quality control improvements whenever the cost is justified by expected future savings in warranty expenditures. In addition, the two required on-site inspections should permit dealers to spot and correct installation problems before costly structural problems result.

Sectors Affected

The proposed rule is intended to improve warranty service for the approximately 265,000 families who buy mobile homes each year. The proposed rule will affect the business practices of some 220 mobile home manufacturers (Standard Industrial Classification 2451) and approximately 10,000 independent mobile home dealers. We will ease overhead costs for smaller companies by exempting firms that produce fewer than 5,000 units annually from some of the administrative requirements of the rule. Furthermore, since the total number of inspections will depend directly upon the number of homes sold, large and small manufacturers will spend approximately the same amount per home to meet the inspection requirements of the proposed rule.

The proposed rule should not alter the competitive structure of the industry significantly. The Commission has investigated whether or not the proposed rule will encourage manufacturers to integrate vertically into retailing or enter into exclusive franchising arrangements with dealers. The rulemaking record indicates that even the largest manufacturers would find the capital costs of developing a national dealer network prohibitive. The record also documents that dealers would not find exclusive franchises viable. Since consumers generally do not select mobile homes on the basis of brand reputation, dealers currently compete for sales by offering the widest possible selection of homes in varying price ranges, sizes and floorplans. Exclusive dealing would necessarily limit the variety of homes that could be offered without giving dealers any compensating benefits.

Related Regulations and Actions

Internal: Four mobile home companies are presently required under Commission consent orders to establish effective warranty performance systems. Other cases have been brought against mobile home companies allegedly in violation of the warranty disclosure and labeling requirements of the Magnuson-Moss Act, § 101, *et seq.*, 15 U.S.C. § 2301 *et seq.*

External: The Department of Housing and Urban Development regulates the production of the mobile home at the factory under the National Mobile Home Construction and Safety Standards Act of 1974 (Title VI), 42 U.S.C. § 5401, *et seq.*

Some states require warranties in the sale of new mobile homes. A number of states license and bond mobile home dealers and manufacturers.

Active Government Collaboration

The Department of Housing and Urban Development and representatives from eleven State attorneys general offices participated in the rulemaking proceedings.

Timetable

Publication of staff report and proposed Final Rule—winter 1980.
Public Comment—spring 1980.
Commission Consideration—fall 1980.

Available Documents

NPRM—40 FR 2334, May 29, 1975.
Final Notice—42 FR 26398, May 23, 1977.

The record of this proceeding is publicly available at the Office of Legal and Public Records Section, Room 130, Federal Trade Commission, 6th Street and Pennsylvania Avenue, N.W., Washington, D.C. 20580.

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FTC

Proposed Trade Regulation Rule (TRR) on standards and certification (43 FR 57269, December 7, 1978)

Legal Authority

Federal Trade Commission Act, §§ 5 and 18, 15 U.S.C. §§ 45 and 57(a).

Statement of Problem

There are more than 20,000 private standards in existence that set requirements for products ranging from nuts and bolts to computers. These

product standards are set by trade associations, technical and professional societies, product testing laboratories, and other private sector groups. Generally, these standards provide significant benefits, such as lowering the cost of communications between buyers and sellers, improving the transfer of technology, encouraging efficiencies in design, production, and inventory, and assuring such things as the safety, fitness, and energy efficiency of products. However, substantial injury to consumers and competitors can occur when standards development or certification activities block the use of superior or lower-cost technology, prevent businesses from competing in profitable industries, establish inadequate or excessive product safety levels, inflate product prices, or deceive consumers about the quality of a product.

Complaints filed with the Federal Trade Commission (FTC) and testimony at rulemaking hearings show that injuries to consumers and competitors can occur for a number of reasons. For example, the procedures that some private standards-setting and certifying organizations use may be inadequate to prevent the process from being dominated by the interest of the producer at the expense of consumers and smaller businesses. Injury may also occur when certain private standards development and certification organizations fail to provide for an adequate examination of the potentially adverse market effects of their actions, or for fair consideration of all the interests that their activities affect. In addition, injury may occur when such organizations fail to respond to challenges to their standards in a fair and timely manner, for example, when they do not update standards in response to technological change.

The proposed rule is intended to reduce the incidence and severity of injuries to consumers and competitors that result from private standards development and certification activities. The proposed rule would require procedural safeguards to ensure that affected people have an opportunity for participation in the development or revision of standards. These procedural safeguards include a requirement that developers and certifiers of standards use procedures to permit aggrieved parties to challenge deceptive or arbitrarily restrictive standards. Finally, the rule provides that scope, intended use, and information on the product's hazards be given to users of standards and certifications.

Alternatives Under Consideration

Based on the record that is developing in the FTC rulemaking proceeding on standards which is now in progress, several alternatives are under consideration. The first set of alternatives includes several extensions or limitations on the proposed scope of coverage of the trade regulation rule (TRR). Those under consideration include: exclusion of smaller standard organizations from coverage; inclusion of only mandatory standards, for example, only those private standards that will be incorporated without further review into governmental regulations or procurement documents; exclusion of standards that are used primarily by manufacturers as a means of specifying materials or components to be used in production; inclusion of only consumer product standards; and exclusion of standards developed primarily by buyer (rather than producer) groups.

The second set of alternatives under consideration would result in changes to the structure of the proposed TRR. Possible changes include: extending the notice, participation rights, appeals, and other due process protections to require balanced participation by all affected interests in standards development; imposing higher burdens of proof on standards organizations or certifiers to justify the reasonableness of their actions when they are challenged; requiring standards organizations to pay the expenses of small business and consumer interests which could not otherwise participate in the process of developing standards; and making the decisions of private standards appeals boards binding on the standards organizations. Alternatives also include imposing on standards developers either routine procedural safeguards, or a self-regulated complaint mechanism to enable aggrieved parties to challenge restrictive or deceptive standards on a case-by-case basis. The present proposal would require both procedural safeguards and a complaint mechanism.

A third set of alternatives under consideration relates to approaches that would increase the flexibility that organizations would have in meeting the TRR compliance obligations. One of these alternatives would be to set out in general terms the enforcement objectives to be met (e.g., providing greater opportunities for effective participation in standards development by all affected parties) without specifying the precise means of compliance. A related alternative would be to set out one means of compliance, but permit alternative approaches that assure the same level of protections in the standards process. Another alternative, in lieu of a TRR, would involve issuing an industry guide or statement of enforcement policy, in conjunction with enforcement on a case-by-case basis. In the latter case, we are reviewing other governmental reform efforts to determine whether their effects on consumer or competitive problems in private standards would reduce the need for direct FTC action. We are also exploring in the rulemaking process the effectiveness of recent industry attempts at self-regulation.

Summary of Benefits

Quantification of the benefits of a trade regulation rule on standards and certification is not feasible at this time because the Commission is still in the process of receiving information on the scope of the problem and the appropriateness of a range of possible remedies. Moreover, as is often the case, certain benefits which would derive from a rule, such as improvements in the availability of some types of information, may not be susceptible to quantitative measurement even though they are substantial. The difficulty of quantitative measurement is increased by the lack of any calculation of the aggregate beneficial or adverse impact of present standards development and certification activity.

We are receiving information on the adverse effects of specific standards and the potential benefits of the proposed rule in specific instances during the rulemaking proceedings. Entries in the rulemaking record explore a variety of situations which the rule may improve, such as the reduction of delays in standards revisions for residential energy devices which may reduce the amount of wasted energy, and the reduction of foot candle requirements in lighting standards which may reduce the costs of energy and lighting fixtures. After the proceeding is completed, analysis of these and additional case studies may suggest the type and potential magnitude of benefits to be derived from improving the operation of the private standards system.

The objectives of this TRR include elimination or reduction of the acts or practices involved in standards development and certification that lead to consumer and competitive injury. If a rule achieved this, it would result in a number of benefits. Entry into markets where entry is predicated on conformance to a standard or on certification would be facilitated. This would improve competition, which in turn would result in benefits to consumers, such as lower prices, an

improved selection of products, and more rapid innovation. However, this beneficial effect on consumer prices may be partially offset if any of the new costs of standard setting imposed by the rule are shared with consumers.

The rule would also encourage an increase in the supply of useful information through standards. More diverse interests would be permitted to participate in the development of standards. This participation may encourage a more complete and accurate consideration of the costs and benefits of standards and a more equitable allocation of these costs and benefits. Potentially, users of standards could become more aware of the meaning and usefulness of a particular standard or certification. Given better information, users of standards and certifications, including users of the product subject to the standards, would be able to make more informed choices based on quality and price.

Summary of Costs

The specific direct and indirect costs of FTC action to eliminate unfair or deceptive acts and practices are not quantifiable at this time because we are considering a number of alternate remedies and we have not closed the rulemaking record. In addition, as is the case with certain benefits of the proposed rule, there are a number of effects that may be impossible to quantify. However, it is possible to generalize at this time about potential costs and distribution of costs of the proposed rule and of some of the alternatives.

The proposed rule could increase the direct costs of producing a standard. Any standards developer that has to revise its procedures to comply with the rule would bear the costs of transition. Standards developers that did not already provide the aspects of due process that the proposed rule would require would have the ongoing costs of providing the additional notice, participation rights, complaint and appeals mechanisms, and recordkeeping that would be necessary. These costs would presumably be passed on to members of standards development organizations in the form of dues and to the users of standards in the form of higher purchase prices for the standards documents, and might be reflected in the prices consumers paid for products. However, it should be noted that these costs should not be counted at each point in the chain of use, since that would result in over-estimates of the final cost. The actual costs of any regulation will depend on the final form of the regulation as well as on the present practices of those covered by such a regulation.

The proposed rule may also add indirectly to the cost of standards development. A great deal of the present cost of standards development is borne by private groups or individuals who participate because of their perception of their individual benefits from doing so. To the extent that the rule changes the benefits which individuals derive from participation, it would affect the mix of participation. Individuals would have to reevaluate the cost and benefit of their participation. It is not possible at this time to conclude whether the amount of such participation would be greater or lesser as a result of the rule. An indirect effect of the proposed rule might be to reduce the number of standards produced as a result of the increased cost of standards development. A loss of socially beneficial standards might occur in such a case. Finally, the proposed rule may change the structure of the standards development industry if it reduces the number of small-scale standards developers because of the higher costs of standards development.

The cost of certification might be affected in several ways. To the extent that more information is required with certification there may be additional costs of printing. If information is required that does not already exist, there would be costs associated with obtaining that information. A requirement that a certifier take some action when it learns of misuse of its certification would add costs to the extent that the action required differs from present practice. There may also be increased effects on certification related to recordkeeping and appeals. An increase in certification costs would result in higher charges for certification services. This would presumably result in higher prices of certified products or reduction in the use of certification.

Sectors Affected

Consumers of products involving standards or certifications would be affected by a trade regulation rule which seeks to eliminate injurious and unlawful practices found in product standards development or certification activities. A rule would directly affect over 400 non-governmental standards development and certification organizations that provide the technical foundation for transactions involving complex goods. The impact on an organization that provides this intermediate service in commerce could range from insignificant to substantial, depending on the shape of any regulation and the present practices of the organization. Manufacturers could be directly affected when using standards and certifications in marketing products. Manufacturers and consumers could be affected by any changes in the complaint and appeals processes of standards developers and certifiers that would increase the availability of effective challenges to standards or certification activities. Manufacturers and consumers would also be indirectly affected by any change caused by a rule on the amount and quality of information. Finally, the great number of governmental officials at all levels who rely in whole or part on privately developed standards and certifications for procurement or regulation would be affected by any change in the amount and quality of information provided by standards and certifications, and by any change in the availability and cost of products covered by standards or certifications.

Related Regulations and Actions

Internal: None.

External: The Office of Management and Budget (OMB) has proposed a circular which would establish government-wide policy for Federal employee participation in private standards activities. Only organizations following specified due process criteria in their standards development activities would be eligible for Federal employee participation. The circular would advise Federal agencies of any OMB findings of adverse competitive effects that result from product standards that are used as a basis for government procurement or regulation.

The Tokyo Round trade agreements to reduce tariff and nontariff barriers to trade have now been implemented in the United States by legislation (regulations will follow). One of these, the Code of Conduct for Preventing Technical Barriers to Trade ("Standards Code") places obligations on the U.S. to reduce barriers to trade that are created by Federal, State, local government, and private sector standards. Commission staff are having discussions with representatives of the President's Office of the Special Representative for Trade to assure coordination and policy consistency in the Standards Code and FTC enforcement efforts.

Active Government Collaboration

Representatives of several offices of the Federal government, including the Food and Drug Administration, the Department of Justice, the White House Office of Consumer Affairs, and the National Institute for Occupational Safety and Health, as well as several state and local officials, have submitted

comments during the rulemaking proceedings. FTC staff has made numerous presentations relating to the proposed rule to the Department of Commerce-sponsored Interagency Committee on Standards Policy and its subcommittees.

Timetable

Rebuttal Submissions to the Record—on or before Dec. 1, 1979.
Staff Report—Summer 1980.
Presiding Officer's Report—approximately 60 days after Staff Report.
Post-record comments—approximately 60 days after Presiding Officer's Report.
Commission Consideration—1981.

Available Documents

NPRM—43 FR 57269, December 7, 1978.

FTC Staff Report on Standards and Certification available at Room 130, Federal Trade Commission, 6th and Pennsylvania Ave., N.W., Washington, D.C. 20580.

Public record documents relied on by staff in preparing the Staff Report, available at Room 288, Federal Trade Commission.

Rulemaking record and public record of the rulemaking hearings held May 21 through September 21, 1979 available at Room 130, Federal Trade Commission.

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FTC
Rulemaking on children's advertising

Legal Authority

Federal Trade Commission Act, §§ 5 and 18, 15 U.S.C. §§ 45 and 57(a).

Statement of Problem

In response to petitions filed in 1977 by Action for Children's Television and the Center for Science in the Public Interest, the staff of the Federal Trade Commission's (FTC) Bureau of Consumer Protection began a factual and legal inquiry into television advertising directed at children. In February 1978, a staff report was made public which concluded that the important legal and public policy issues raised by the petitions warranted a full inquiry into the need for the FTC to adopt a rule concerning children's advertising. On April 27, 1978 the Commission published an NPRM.

The objective of the rulemaking proceeding is to determine whether television advertising directed at children is unfair or deceptive within the meaning of § 5 of the Federal Trade Commission Act, and, if so, what remedies are appropriate. The inquiry addresses two main issues: (1) whether television advertising directed to children who are too young to understand its selling purpose, or otherwise comprehend or evaluate it, is unfair or deceptive; and (2) whether the television advertising of sugared products directed to children is unfair or deceptive.

Television advertising directed to children is a pervasive phenomenon in children's lives. In 1977, the average American child ages 2 through 11 watched over 25 hours of television per week, or more than 1,300 hours per year, more time than many children spend in the classroom.

In that same time span, the child would have seen over 20,000 television commercials—as many as half of which appear to be specifically directed to children. Television is considered an important marketing device by those industries which advertise to children: approximately one-half billion dollars per year is spent on television advertising directed to children. The majority of this advertising is for sugared products, fast-food restaurants, and toys.

Television advertising may be unfair and deceptive to young children because they have not yet developed the defenses which enable adult consumers to evaluate an advertising message before deciding to purchase a product or service. Furthermore, television advertising directed to children appears to use techniques designed particularly to increase the commercial's impact and influence upon the child, including such techniques as fantasy and hero figures presenting products, authoritative voices stressing the products' qualities, sophisticated camera angles, and skillful editing.

Television food advertising directed to children consists largely of advertisements for sugared food products, such as candies and presweetened cereals. Studies indicate that children request, purchase, and consume the food products that this advertising promotes. These advertisements may be deceptive or unfair to urge them to consume foods which contain sugar without informing them of the nutritional and dental implications of such foods.

There is a general consensus among dental health experts that frequent consumption of foods which contain sugar is associated with the current high incidence of caries (tooth decay) among children. Tooth decay is a serious health problem among children.

In addition to the adverse consequences to dental health, the excessive consumption of foods containing sugar may adversely affect the nutritional quality of a child's diet. Most experts believe that sugar provides no nutritional benefit other than calories. Deriving a high portion of one's calories from sugar dilutes the nutritional adequacy of a diet. Many experts believe that young children's nutrient needs for growth are proportionally higher than adults. A diet containing a high portion of calories from sugar is also likely to contribute to obesity.

Alternatives Under Consideration

As we stated in the NPRM, the FTC is soliciting comment on what remedies are appropriate. Among others, such remedies might include the following:

(a) Eliminate all televised advertising for any product which is directed to, or seen by, audiences composed of a significant proportion of children who are too young to understand the selling purpose of or otherwise comprehend or evaluate the advertising;

(b) Eliminate televised advertising for sugared food products directed to, or seen by, audiences composed of a significant proportion of older children; the consumption of these products poses the most serious dental health risks;

(c) Require televised advertising for sugared food products not included in paragraph (b), which is directed to, or seen by, audiences composed of a significant proportion of older children, to be balanced by nutritional and/or health disclosures funded by advertisers;

(d) Require placement of affirmative disclosures in the body of advertisements directed to children for sugared food products which pose serious dental health risks;

(e) Limit particular advertising messages used and/or techniques used to advertise to very young children, or to advertise sugared food products which pose serious dental health risks to children;

(f) Limit the number and frequency of advertisements directed to very young children, and/or limit the number and frequency of all advertisements directed to children for sugared food products which pose serious dental health risks.

Summary of Benefits

It is not feasible at this time for the FTC to quantify the benefits of a rule on children's advertising, because the Commission is still in the process of receiving information about the scope of

the problem and what remedies are appropriate. Moreover, certain benefits which would result from any rule (e.g., diminishing "deception" in ads directed toward young children) cannot be measured quantitatively. Finally, the extent of the benefits will be related to long-term response of the market (e.g., industry and consumers) to any selected remedy. More particularly, benefits would be affected by whether advertisers shifted to alternative media or products and whether consumers shifted their patterns of consumption. Assuming that the Commission determines that advertising directed at children is unfair or deceptive, the benefits that would result would come from the elimination of that deception or unfairness.

As we discussed above, the techniques used in advertising directed at children, taken together with the limitations of young children, may led to a misperception of the attributes of advertised products, thereby creating a discrepancy between the child's expectations for an actual experience with the product. Moreover, if young children overvalue television advertising as an authoritative source of information, they may discount or ignore other information. The objectives of regulation might include reducing the prevalence of these problems and changing the quality and/or quantity of consumer information available to young children.

With respect to the advertising of sugared food, providing nutrition and dental health information, reducing the stimulation to consume sugar-containing foods, and/or suggesting more healthful meal and snack food choices, may result in: (a) increased nutrition and better dental health attitutes among children, (b) a reduction in the amount and frequency of consumption of advertised sugared products, in particular, and sugar-containing foods, in general, and/or (c) substitutions of more nutritious food products in place of those food products which pose serious dental health hazards and which are of limited nutritional value. The proposed rule could thus result in the improvement of children's dental health and nutritional wellbeing. This, in turn, could result in a reduction in dental and health care costs.

Summary of Costs

As we set forth above, the FTC is still in the process of receiving information about the scope of the problem and what remedies are appropriate. The amount of currently available television advertising that a rule would affect and, therefore, the cost of the regulation, will vary with the remedial approach we ultimately take. The amount of commercial advertising time on television that the rule affects will also be determined by the scope of a given remedy. For example, if advertising directed to children is defined as advertising appearing in programs or at times in which at least 50 percent of the audience is composed of children between two and eleven, then less currently available commercial time will be affected than if a "30 percent of the audience" definition is used. Thus, we can make no specific estimates of the cost of regulation at this time.

However, the following discussion will examine the possible economic effect of a rule on various sectors of the economy by considering the distribution of effects among these sectors. Two points are important. First, such an approach may suggest an overestimate of the cost, since there may be a double counting of costs at various points on the distribution chain. For example, if a remedy causes any increase in production or marketing costs of a product with a resulting increase in the retail price of the product, we state this as a cost to the manufacturer, the retailer, and the consumer. Secondly, by highlighting short-run costs, the analysis may overstate the long-run response of the market to any rule. Such long-term responses may include shifting advertisements to times or programming that the rule does not affect, using alternative advertising media; changing product preference, e.g., from presweetened cereals to non-presweetened cereals; or shifting sponsorship for children's programming.

Assuming that a rule would in some way restrict advertising directed to children, it would directly affect the advertisers who must comply with it. These advertisers could include manufacturers of presweetened cereals, candy and other sugared foods; manufacturers and retailers of toys; and fast-food outlets. A direct effect may be a decrease in currently available advertising time for such products. Indirect effects may include an increase in media costs and a decrease in the total sales of the products that the rule affects. Assuming that these indirect effects occur, there may also be an effect on the profits of manufacturers and retailers. Increased production or distribution costs may also translate into higher retail prices to consumers.

Such a rule could also have an economic effect on television broadcasters, including stations, cable operators, and networks. This could include a decrease in demand for advertising time on children's programs due to restrictions on advertising to children. The direct effect may be a loss of some advertising revenues. An indirect effect to the consumer may be changes in the quantity and quality of programming.

However, as we discussed above, any short-run adverse economic effect on broadcasters, advertisers, or other groups the rule affects may well be offset by long-term market adjustments.

We cannot assess the cost of compliance with and enforcement of the rule at this time. These costs will depend upon the particular remedial approach that the Commission chooses.

Sectors Affected

(A) *Consumers:*

A rule which eliminates any deceptive or unfair practices found in television advertising directed to children would affect both children and their parents. By eliminating such deception and unfairness, a rule could reduce the possible harm to children that is associated with this advertising. By improving the source of product information the rule would promote more efficient allocation of family resources. Moreover, insofar as it promotes a reduction in dental and other health care problems and their attendant costs, the rule will benefit parents and children.

(B) *Industry:*

The regulation will directly affect those firms which would otherwise advertise at times that the regulation covers, or whose products are covered by the regulation. It may also indirectly affect the commercial television broadcast industry, including the three major networks, network affiliates, independent broadcasters, and cable operators. In addition, the regulation may affect the producers of children's programming and advertising if it alters the demand for that programming or advertising.

Related Regulations and Actions

Internal: None

External: The Federal Communications Commission has recently re-opened its 1974 inquiry into children's programming and advertising. The United States Department of Agriculture has recently proposed regulations that limit the sale of highly sugared products and other snack items which compete with foods served as components of the school lunch.

Active Government Collaboration

Representatives from several offices of the Department of Health, Education and Welfare, including the Food and

Drug Administration, the Office of the Assistant Secretary for Health, and the National Institutes for Dental Research, submitted comments during the legislative hearing phase of the proceeding that emphasize the need for regulation in this area.

Timetable

Commission designates issues for second-phase adjudicative hearings—winter 1979–1980.

Adjudicative hearings—approximately two months later.

Staff Report—approximately three months after close of hearings.

Presiding Officer's Report—approximately two months after Staff Report is issued.

Post-record comment period—approximately 30 days after the Presiding Officer's Report is issued.

Commission Consideration—1981.

Available Documents

NPRM 43 FR 17967, April 27, 1979.

FTC Staff Report on Children's Advertising. The entire rulemaking record is available for inspection by the public in Room 130 of the main building of the FTC, 6th and Pennsylvania Avenue, N.W., Washington, D.C. 20580.

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FTC

Trade regulation rule concerning credit practices

Legal Authority

Federal Trade Commission Act, §§ 5 and 18, 15 U.S.C. §§ 45 and 57(a).

Statement of Problem

Most Americans make use of consumer credit at some time in their lives. At any given time about half of all households are making payments on installment debt. Many of them encounter financial or other problems which cause them to become delinquent in their payments. Only rarely is such delinquency intentional. Studies show that the leading causes are such unplanned events as unemployment, illness, and circumstances in which the consumer is overburdened with debt obligations.

When debtors default they become subject to a variety of legal "remedies" that creditors use to collect money. Many creditor remedies are appropriate collection devices. Certain others, however, inflict unjury on debtors that may be disproportionate to the gain to creditors. The injury includes not only dollar losses, but also nonpecuniary harm such as emotional distress, loss of privacy, and disruption of family relationships. The disproportionate nature of the injury may mean that many consumers may be obtaining credit on terms that they would not choose in a market in which more complete information about credit terms was available.

The right of creditors to use remedies derives largely from provisions included in credit contracts. Credit contracts are standardized form documents prepared by creditors. There is generally no bargaining over terms between debtor and creditor.

Most consumers cannot shop for credit terms because they lack the specialized legal knowledge necessary to understand and evaluate remedy terms in contracts. Furthermore, creditors usually do not compete with each other with more favorable remedy terms of contracts, and therefore in a given market consumers will find little variation in such terms. All these factors indicate that market forces have not produced an optimum balance of creditor and debtor rights in credit contracts.

Specific contractual and other creditor remedies which may cause injury to consumers and which are in widespread use include the following:

(1) *Confession of judgment*—The debtor signs a form which authorizes the creditor to obtain a court judgment against him without notice to the consumer and without any opportunity for the consumer to appear and defend himself. The debtor thus loses due process rights such as the ability to contest disputed claims.

(2) *Waivers of state property exemptions*—The debtor waives the right, granted by State law, to keep certain minimal property if a court judgment is obtained against him. In many states, a court will not honor the waiver; however, some creditors nonetheless have used this waiver to threaten debtors with loss of all their goods.

(3) *Wage assignments*—The debtor authorizes the creditor to seize a portion of his wages without first obtaining a court judgment. The debtor loses the ability to contest disputed claims. Moreover, some debtors are subject to disciplinary action or firing by employers who do not like to divide employee wages between a creditor and an employee because of the accounting costs this imposes.

(4) *Blanket security interests in household goods*—These security interests give the creditor the right to take all of the debtor's household goods in the event of default. Because in many instances such goods may have little resale value, it appears that creditors use security interests primarily to threaten the debtor.

(5) *Cross-collateral security interests*—These security interests allow a merchant to take all goods that a consumer has purchased from that merchant over an extended period of time in the event of the consumer's failure to pay for a single purchase.

(6) *Deficiencies*—Following the repossession and sale of collateral, the creditor can sue the debtor for a deficiency, i.e., the difference between the sale price of the product and the amount the consumer owes. In many instances, the sale prices of repossessed collateral are very low, resulting in large deficiencies.

(7) *Attorney's fee provisions*—The provisions require the debtor to pay the creditor's attorney's fees. They thus tend to inhibit debtors from defending themselves against payment of disputed debts. In a significant number of instances, attorney's fees assessed by courts are larger than actual court costs.

(8) *Late charges*—Late charges are penalty fees that the creditor assesses when the debtor fails to pay an installment on time. Sometimes they are "pyramided," i.e., a creditor allocates payments in such a way that a single late or missed payment may result in the debtor being assessed a late fee on all subsequent installments.

(9) *Third party contacts*—Creditors make a significant number of contacts for debt collection with third parties, such as relatives, neighbors, or the debtor's employer. Such contacts may tend to invade privacy and may harm the employment relationship and lead to job loss.

(10) *Cosigners*—Creditors sometimes have the debtor obtain one or more cosigners who agree to pay the debt if the principal debtor does not. Cosigners frequently do not understand that the obligation they undertake is substantial.

Alternatives Under Consideration

The rule that the Commission initially proposed on April 11, 1975, would ban a number of the above creditor remedies and restrict the use of others. It would prohibit or limit: confessions of judgment, waivers of state property exemptions, wage assignments, nonpurchase money security interests in household goods, and attorney's fee

provisions. Creditors would have to promise in the contract not to make third party contacts except to locate the debtor or his property. The Commission would permit cross-collateral security only if creditors released collateral from the security agreement as the consumer paid for it in the order it was purchased by the consumer. Creditors could collect deficiencies only if they credited the debtor with the fair market retail value of the collateral. Late fees would be limited. Cosigners would have to be given a notice explaining their obligation and a three-day "cooling off" period to evaluate that obligation. Creditors would also be required to give cosigners copies of relevant documents, to notify cosigners in the event of default by the principal, and to make serious efforts to collect from the principal before seeking payment from the cosigner.

Following publication of the NPRM, members of the public (including many members of the credit industry which would be affected by the rule) have suggested numerous modifications, alternatives, exceptions, and deletions to virtually every provision of the proposed rule. The Commission will consider these alternatives and will decide what form of rule, if any, it ultimately should promulgate.

Summary of Benefits

Although at the present time the Commission does not know what form of rule, if any, it will adopt, it is possible to predict the type of benefits which would result if it promulgates certain provisions of the proposed rule. For example, several provisions of the proposed rule would, if adopted, produce dollar benefits for consumers by eliminating requirements to pay excessive deficiencies and late fees. If the final rule eliminates collection methods which result in injury to the employment relationship, it would benefit consumers by protecting their employment security. Eliminating practices by which creditors evade due process requirements would increase the fairness with which creditors treat consumers and would improve consumers' ability to protect themselves against fraud.

An important qualitative benefit of any final rule should simply be fairer treatment of people suffering from financial difficulties. Practices the proposed rule addresses now result in such individuals being threatened unfairly with the loss of all their possessions, loss of their jobs, and harassment of their friends and relatives.

Quantitative information relevant to an assessment of current injury to consumers is available for a number of provisions of the proposed rule. For example, evidence in the rulemaking record indicates that over 60,000 consumers have wage assignments filed with their employers each year. One source estimates that use or threatened use of wage assignments results in loss of employment 10 percent to 20 percent of the time, at least for low income consumers. Next, well over ten million consumers are subject to contracts containing blanket security interests in household goods. Creditors sometimes make an implicit or explicit threat to repossess when such borrowers become seriously delinquent. We estimate, using the rulemaking record, that creditors make threats to repossess to at least several hundred thousand borrowers each year. Finally, over 750,000 automobiles are repossessed each year. In most cases where an auto is repossessed it is sold at less than its wholesale value and the consumers continue to owe the creditor money. The amount owed totals over $400 million. The provision of the proposed rule relating to deficiency judgments, if adopted, may significantly reduce this amount.

Summary of Costs

Costs of any rule to consumers may potentially take two forms: increases in the price of consumer credit and reductions in availability of credit to certain consumers.

The rulemaking record contains empirical economic evidence based on data in states with credit laws similar to the proposed rule. These economic studies and other information on the record provide an imprecise estimate of the effect a rule would have on the cost of credit. This evidence suggests that adopting the rule in its originally proposed form may cause no more than a very small increase in the annual percentage rate of loans made by finance companies in states with no existing regulation.

Testimony by State officials, some creditors, and others who have experience in states with laws similar to the proposed rule indicates that prohibitions on the covered creditors' remedies have not had discernible impact on either the cost or availability of credit in those states.

In the staff's opinion, an examination of the reasons for consumer default reinforces conclusions based on economic studies and testimony. Evidence on the record demonstrates that most delinquency results from debtors' inability to pay rather than their unwillingness to repay.

The main costs of creditors' compliance with any rule should be those associated with revising contract forms and instructional materials that they give their employees. They will have to do these tasks only once. Creditors can spread the costs over all subsequent transactions; costs will therefore be low on a per transaction basis. While the rule restrains creditor remedies, the evidence suggests that such restraints will not prevent creditors from collecting debts.

Sectors Affected

The primary beneficiaries of any rule would be users of consumer credit who have difficulty repaying their debts. The rule will not prevent debtors from being compelled, when necessary, to pay legitimate debts, since it seeks to limit only unjustified injury of consumers during the debt collection process.

The costs of any rule will fall on the consumer credit markets. A rule is likely to affect large creditors and small creditors in similar ways. However, there is reason to believe that any rule will have (1) less effect on small creditors because of their personal relationship with their customers and therefore more limited reliance on the practices in question, and (2) greater effect on finance companies.

A rule will not impose any direct requirements on State and local governments. However, the cosigner proposals requiring disclosure would preempt several State laws.

Related Regulations and Actions

Internal: None.

External: If the Commission decides to adopt the proposed rule, the Federal Reserve Board is required by § 18 of the FTC Act to consider adopting a substantially similar rule for banks.

Most states have laws similar to one or more provisions of the proposed rule. A small number of states—including Connecticut, Iowa, and Wisconsin—have laws similar to most provisions of the rule, though they differ in detail.

Active Government Collaboration

Federal, State, and local government agencies participated in the rulemaking proceeding. Representatives of over half of the states testified at hearings, along with a number of local government officials. A number of the staff of the Federal Reserve Board also testified. The Commission received written comments from additional government agencies including, among others, the Department of Defense, the National

Credit Union Administration, and several State and local agencies.

Timetable

Publication of Staff Report—winter 1980.

Public Comment—spring 1980.

Commission Consideration—summer 1980.

Available Documents

40 FR 16347, April 11, 1975.

Final Notice Concerning Proposed Trade Regulation Rule, 42 FR 32259, June 24, 1977.

Report of the Presiding Officer—August 1978.

Copies of these documents can be obtained from the Office of Legal and Public Records, Room 130, Federal Trade Commission, 6th Street and Pennsylvania Avenue, N.W., Washington, D.C. 20580.

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Chapter 6—Transportation and Communication

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DEPARTMENT OF COMMERCE

Maritime Administration

Operating-differential subsidy for bulk cargo vessels engaged in worldwide service; essential service requirement (46 CFR 252.21)

Legal Authority

Merchant Marine Act, 1936, as amended §§ 204(b), 601(a) and, 211(b), 46 U.S.C. §§ 1114(b), 1171(a), 1173(a), and 1121(b).

Statement of Problem

The Maritime Administration (Marad) provides operating-differential subsidy (ODS) payments to American ship operators engaged in the foreign trades of the United States for which subsidy is paid. The ODS program seeks to equalize the disparity in operating costs between costs between American ships and their foreign counterparts. In October 1970, bulk cargo vessels engaged in the essential foreign trades became eligible for ODS payments. "Essential" trades refer to those bulk cargo carrying services that have been determined by the Secretary of Commerce to be vital to the promotion, development, expansion, and maintenance of the foreign commerce of the United States and to the national defense requirements, and thus should be provided by United States-flag vessels. Bulk cargo vessels generally provide on-demand services and seldom operate on a scheduled basis over given routes. Because of the nature of their operations, these vessels are frequently referred to as tramp carriers. Because these carriers must be able to go where cargo is available, the "essential foreign trade" for tramp bulk carriers includes foreign-to-foreign point shipments as well as shipments to and from the United States. Marad wrote into the existing tramp bulk carrier regulations a contractual requirement that they carry a certain percent of their cargo to and from U.S. ports in order to ensure that the subsidized bulk operations promoted the foreign trade of the U.S. The original provisions of this program authorized ODS payments according to the following agreement: Bulk carriers that carried less than 30 percent of their cargo in the U.S. foreign trade would not receive any subsidy; bulk carriers that carried 30 percent or more but less than 40 percent of their cargo in the U.S. foreign trade would receive 40 percent of the total allowable subsidy payments; those carriers that carried 40–50 percent of their cargo would receive 70 percent of the subsidy payments, and those carriers that carried more than 50 percent of their cargo in this trade would receive 100 percent of the subsidy payments. This criterion was published on September 22, 1975 (46 CFR 252.21).

Effective December 31, 1977, Marad temporarily suspended enforcement of the U.S. trade percentage restriction to evaluate the continued need for this requirement. It has extended this waiver twice.

Experience since this suspension has shown that subsidized tramp bulk operators tend to carry a high percentage of their cargo to and from U.S. ports, even without the contractual obligation to do so. The percentage of total ton-miles in foreign-to-foreign trades for long-term ODS bulk carrier operators has shown a modest increase since this requirement was temporarily suspended: 1976 (15.4 percent), 1977 (14.3 percent), 1978 (19.4 percent).

The continued existence of this contractual restriction constrains the operations of U.S.-flag bulk carriers and thus places U.S. operators at a competitive disadvantage. In order to be competitive, U.S. bulk ship operators must be able to carry their cargo from any point of origin to its commercial destination. The proposed amendment to the regulation would permanently eliminate any geographic operating restriction in existing ODS contracts for bulk carriers.

Alternatives Under Consideration

Possible alternatives to permanently abolishing the U.S. trade percentage restriction include (1) reinstituting the original restriction, and (2) reinstituting the restriction, but perhaps lowering the restriction somewhere below the current minimums.

Marad feels that eliminating the U.S. trade restriction altogether is the preferable option. The other two alternatives would continue to limit the ability of U.S. operators to compete with foreign-flag operators.

The major issue in the proposed modification of the regulation is to balance the interests of the U.S.

Government in making sure that subsidy funds are used to promote the foreign commerce of the U.S. against the impact and cost of geographic restrictions that limit the ability of U.S.-flag operators to compete with foreign-flag operators.

Since subsidized tramp bulk operators have been carrying a large percentage of their cargo to and from U.S. ports without being required to do so by contract, the U.S. Government can expect that subsidy funds will continue to be used to promote the foreign commerce of the U.S. upon elimination of the trade restriction. The proposed amendment to this regulation is in essence an effort toward "deregulation". This measure is in keeping with Marad's continuing efforts to reduce the complexity of ODS requirements and increase the flexibility of subsidized operators. Reinstituting U.S. trade restrictions will serve only to limit the flexibility and competitiveness of U.S. bulk operators, and, in turn, increase their reliance on subsidy payments.

Summary of Benefits

The proposed amendment to this regulation is expected to benefit U.S. bulk cargo operators by increasing their flexibility with regard to foreign-to-foreign trade participation and increasing their competitiveness with foreign-flag operators. In addition, the elimination of this trading restriction would result in savings to the subsidized operators and modest savings to the Government, since it would eliminate the administrative expenses incurred in monitoring the participation level of each subsidized operation.

Summary of Costs

With respect to subsidy payments to U.S. bulk cargo operators, we do not expect the proposed elimination of the trading restriction to generate any additional costs to the U.S. Government. We do not expect the dollar amount of subsidy payments to U.S. bulk cargo operators to change if we eliminate the U.S. trade restriction. While this restriction has been temporarily suspended, bulk operators in general have carried a large portion of their total cargo within the U.S.-foreign commerce. Bulk cargo operators would continue to seek as much U.S. import-export cargo as possible. Elimination of costly crew repatriation costs, the convenience of U.S. maintenance, and the availability of parts in the U.S. repair facilities are significant economic incentives for these operators.

However, there is a relative indirect cost associated with the proposed regulation. To the extent that U.S. bulk cargo operators participate in foreign-to-foreign trade, there is a greater outflow of U.S. dollars to foreign ports than would occur if the U.S. operator engaged instead in the U.S.-foreign trade.

However, the overall impact of this regulation will be positive. These foreign-to-foreign operations do generate revenue for U.S.-flag operators which they would not realize if U.S.-flag carriers were unemployed due to the U.S.-foreign trade constraint. The Marad staff believes that the proposed amendment will result in a steady demand for U.S. bulk carrier services which will ensure steady employment and revenue for U.S. bulk carrier operators. Even though the outflow of U.S. dollars would be greater, it would be more favorable to allow U.S.-flag bulk carrier operators to engage, unrestricted, in foreign-to-foreign trade where their chances of employment are greatest than to limit their foreign-to-foreign trade and risk unemployment of the vessels. When subsidized operators are unable to procure any employment that satisfies the provisions of the regulation their vessels are inactive, because the cost of not using the vessels is less than the cost of operating the vessels without subsidy. There is a substantial reduction in employment opportunities for U.S. seagoing personnel under these circumstances.

Sectors Affected

The proposed amendment to the regulation under consideration will directly affect U.S.-flag bulk carrier operators. These operators would be more flexible and would become more competitive with foreign operators with the permanent elimination of the essential service requirement. There would be increased employment opportunities for these operators.

The proposed amendment may indirectly affect U.S. shipyards, since U.S.-flag bulk carrier operators would become more competitive and have greater employment potential. This boost to the U.S. bulk cargo shipping trade may result in an increase in new orders or reconstruction for bulk carriers.

Related Regulations and Actions

None.

Active Government Collaboration

None.

Timetable

Final Rule—November 1979.

Available Documents

The following documents may be obtained from the Maritime Administration, Office of Subsidy Contracts, Washington, D.C. 20230:

Modification of the trading restrictions contained in the regulations governing the payment of operating-differential subsidy (ODS) to bulk operators, 46 CFR 252, and the respective ODS agreements.

Memorandum for Maritime Subsidy Board/Assistant Secretary of Commerce for Maritime Affairs, March 3, 1978.

U.S.-flag subsidized bulk operators—foreign-to-foreign trading restrictions; Memorandum for Maritime Subsidy Board/Assistant Secretary of Commerce for Maritime Affairs, October 1978.

Public comments on proposed regulations relating to the essential service requirements imposed upon bulk vessel operators, July 1979.

Regulatory Analysis—November 1979.

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DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Certification of vehicle size and weight enforcement

Legal Authority

Federal-aid Highway Amendments of 1974, §§ 106, and 107, 23 U.S.C. §§ 127 and 141. Surface Transportation Assistance Act of 1978, P.L. 95–599, §§ 161, and 123, 92 Stat. 2689.

Statement of Problem

The need for highway maintenance, which is the responsibility of the States, is increasing much more rapidly than the Federal Highway Administration (FHWA) and the States anticipated it would when the highways were constructed. Inflation has sent maintenance costs soaring and reduced the amount of work that the States can accomplish with the money available. This has created an undesirable backlog of deferred maintenance for many States. Accelerating pavement deterioration, which is partially due to increasing amounts of vehicular traffic, particularly heavy trucks, also increases maintenance needs. On many sections of the Interstate and other highway segments current traffic volumes have exceeded the volumes the roads were designed to accommodate.

While legally loaded trucks contribute to the inevitable process of pavement deterioration, this fact is accounted for in pavement design. Regular operation

of trucks with loads above the current legal limits, some of them operating legally under special permits, or operation above the weight limits in effect during pavement design also greatly accelerate the rate of pavement deterioration. The latter case would be a factor in those States that opted to increase their axle and gross weight limits as a result of the Federal-Aid Highway Amendments of 1974. All of this forces maintenance work or reconstruction sooner than was originally planned, administratively and financially.

The objective of the proposed regulation is to cause each State to document the effectiveness of its vehicle size and weight laws.

Alternatives Under Consideration

The FHWA considered three alternatives in developing the NPRM that was published in the **Federal Register** on March 14, 1979. They were to:

(1) rescind present regulations which require the submission of substantial data on enforcement and require only a statement by the State that the laws were enforced;

(2) adopt a purely quantitative approach to evaluate enforcement in each State in terms of the number of weighings, arrests, etc., (actually only an expansion of present regulations);

(3) use an "action plan" approach. Each State would develop annually a size and weight enforcement program geared to its own requirements, which the FHWA would approve. At the end of each year, each State would submit quantitative information to certify its enforcement of the program.

The NPRM described the "action plan" approach. Under this approach, FHWA would require each State to submit for review and acceptance a truck size and weight enforcement plan for the next year. In addition, the actual certification must be submitted to FHWA by January 1 of each year. It would provide the quantitative information upon which FHWA would base the annual program assessment.

The program would specify, among other things, the number of personnel necessary for size and weight enforcement, the use of fixed and portable scales for weighing trucks, methods for handling excessive loads to bring them within legal limits, and the way to handle repeat offenders. Once the FHWA approved the State's program, it would become the norm by which the agency would evaluate the State's activity for that year to determine whether the State was enforcing vehicle size and weight laws adequately. The Surface Transportation Assistance Act of 1978 provides for a penalty of 10 percent of the highway funds apportioned to a State if the State fails to enforce size and weight laws adequately.

The comment period on the NPRM closed June 12, 1979. The next step is to prepare a final rule. In view of the language of 23 U.S.C. § 141, which requires the Secretary to assess the adequacy of each State's enforcement effort, we are considering alternatives 2 and 3 (described above), or some combination of them, in preparing the final rule.

Summary of Benefits

The primary benefit of this regulation would be to reduce the number of illegally overweight vehicles, thus lengthening the lives of pavements and bridge structures, maintaining the safe condition of the highways, and saving repair and maintenance funds.

Summary of Costs

The direct cost to each State for implementing the proposed regulation would vary, depending on its present enforcement program. States with extensive programs to enforce size and weight laws would probably incur only the modest costs of additional reporting requirements. However, States with limited enforcement programs would incur some substantial costs through increases in personnel and equipment.

At this time, FHWA has no direct cost estimates for any State. However, those States that would have to spend the most to upgrade their programs could do so incrementally over several years, rather than incurring a one-time, lump sum expenditure.

Sectors Affected

This regulation would affect State governments, operators of cargo carrying trucks, and the general driving public. State governments would be directly affected in two ways. First, they probably would have to expand their truck size and weight enforcement activities at some cost, which would vary by State. Second, they would benefit from the savings in highway maintenance costs that would accrue from reducing the number of overweight vehicles on the highway system.

Related Regulations and Actions

Internal: The Department recently completed an inventory of systems of penalties for violations of State vehicle weight laws, rules, and regulations, as well as systems in the States for issuing special permits authorizing a vehicle to exceed the applicable weight limitation. A final report to Congress will be ready by January 1, 1980.

The Department is also conducting a congressionally mandated study covering vehicle sizes and weights and their effect on road construction, reconstruction, and maintenance; the relationship of highway design, construction practices, and maintenance costs in States with weight laws above the Federal maximum; the adequacy of current standards for highway and bridge design regarding present and future transportation needs; and the need for and desirability of uniformity in maximum truck size and weight limits throughout the United States. The Department is to complete and report on this study no later than January 15, 1981.

External: GAO Report, "Excessive Truck Weight: An Expensive Burden We Can No Longer Support," July 16, 1979.

Active Government Collaboration

None.

Timetable

Final Rule—December 1979.

Available Documents

ANPRM—43 FR 2643, January 18, 1978, FHWA Docket No. 77–21.

NPRM—44 FR 15638, March 14, 1979, FHWA Docket No. 77–21, Notice 2.

Current size and weight regulations, 23 CFR 658.9.

Draft Regulatory Analysis available from Agency Contact.

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DOT—FHWA

Design standards for highways—geometric design standards for resurfacing, restoration, and rehabilitation (RRR) of streets and highways other than freeways

Legal Authority

Federal-Aid Highway Act of 1976, § 106, 23 U.S.C. § 104(b)(5). Surface Transportation Assistance Act of 1978, § 116, 23 U.S.C. § 119.

Statement of Problem

The 1976 and 1978 Highway Acts provided for a Federal-aid program to assist the States in resurfacing, restoration,and rehabilitation (RRR) of streets and highways. Under current procedures, RRR work must meet the standards contained in regulations for

new construction. The intent of this action is to amend existing regulations in order to establish separate RRR procedures to carry out this program. Many highways in need of RRR work have deteriorated and do not meet current traffic demands or the design standards that are currently required by the Federal Highway Administration (FHWA) regulations for new construction for safety features such as banking of curves, roadway and bridge width, and horizontal clearances of obstructions. In light of this, the FHWA is considering a number of alternatives for implementing the RRR program.

Alternatives Under Consideration

We explored major alternatives through the publication of an ANPRM on August 25, 1977. The three alternatives we discussed in the ANPRM were: (1) continue FHWA design approval operations within the provisions of the current regulations (23 CFR 625) by granting exceptions to existing design standards on an individual project basis for RRR projects; (2) incorporate, by reference, the American Association of State Highway and Transportation Officials' (AASHTO) "Geometric Design Guide for Resurfacing, Restoration, and Rehabilitation (RRR) of Highways and Streets" as the acceptable criteria for Federal-aid RRR work; and (3) develop, with State officials, individual RRR standards for each State by using the AASHTO "RRR Guide" and other guides. After reviewing the ANPRM comments on all three alternatives, a FHWA task force formulated new recommendations. The task force rejected all three proposals, and the FHWA withdrew the ANPRM.

The FHWA then recommended a new set of geometric design standards for RRR projects, which it published as a NPRM in August 1978. The NPRM elicited more than 100 comments. The FHWA subsequently established an internal working group to review these comments and to identify and evaluate alternatives for implementing the RRR program.

Summary of Benefits

The primary benefits of this program would be to prolong the life of the existing highway system and enhance highway safety features. These highways would otherwise continue to deteriorate to the point of structural failure, requiring a much larger expenditure for reconstruction. Other anticipated benefits include reducing costs related to vehicle operation and future highway repair, lowering energy consumption, and increasing the comfort, convenience, and safety of drivers.

Summary of Costs

The FHWA is preparing an analysis of the impact of the major alternatives. A full analysis will be available when we publish the next rulemaking action. Using estimates of the funding levels that Congress might provide, the analysis will discuss the impacts of various levels of design standards.

Sectors Affected

This regulation would affect all State and local governments, suppliers, and contractors concerned with highway design, construction, and maintenance.

Related Regulations and Actions

Internal: FHWA has regulations establishing geometric design standards for highway construction projects (23 CFR 625).

External: None.

Active Government Collaboration

None.

Timetable

Unknown—Evaluation of alternative actions is still under way.

Available Documents

ANPRM—42 FR 42876, August 25, 1977, FHWA Docket 77–4.

Withdrawal of ANPRM—43 FR 2734, January 19, 1978.

NPRM—43 FR 37556, August 23, 1978, FHWA Docket 78–10.

Notice regarding status of proposed rulemaking—44 FR 29921, May 23, 1979.

Draft Regulatory Analysis of the proposed regulations.

Documents Available from Agency Contact.

Agency Contact

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DOT–FHWA

Interstate Maintenance Guidelines

Legal Authority

Surface Transportation Assistance Act of 1978, § 116(d), 23 U.S.C. § 109(m).

Statement of Problem

The level of maintenance for some portions of the Interstate Highway System needs to be increased. This is due, in part, to the age of the Interstate System, because older highways require a more concentrated, continuous maintenance effort than new highways. It is also due, in part, to the fact that some State highway agencies are being forced to defer certain maintenance activities because of reduced highway revenues. The Congress recognized the need for ensuring that the condition of the Interstate system is maintained at the level for which it was originally designed by requiring, in the Surface Transportation Assistance Act (STAA) of 1978, that the Federal Highway Administration (FHWA) establish Interstate Maintenance Guidelines. This requirement, established by § 116(d) of STAA, furthers the State's basic responsibility for Federal-aid highway maintenance as set forth in 23 U.S.C. § 116. The guidelines proposed in this regulation would impose overall procedures. These guidelines would form the basis for requiring States to develop maintenance programs for the Interstate System.

Alternatives Under Consideration

We considered two major alternatives: Alternative A would establish guidelines that are generally written descriptions of the completed highway maintenance work on the critical roadway and bridge elements, such as roadway surfaces, shoulders, traffic control devices, etc. Alternative B would establish guidelines that set quantitative and qualitative minimum standards for highway maintenance, particularly those that influence highway safety.

Alternative A would give the States maximum flexibility to develop and implement a program that conforms with the maintenance guidelines. The inherent flexibility of the guidelines would minimize any possible economic and political impact on the States. Those States currently performing marginally satisfactory maintenance would be required to raise their performance level to meet the new minimum guidelines. In actuality, few States would be adversely affected. We anticipate that the minor budget adjustment required to meet the guidelines would not have a significant effect on other groups within the States which are competing for limited budget funds. The regulation would impose little or no additional cost on the States or FHWA for compliance and reporting requirements. Most States' current reporting practices for maintenance activities would satisfy the proposed requirements.

Alternative B requires strict conformity with quantitative measurement standards. Undoubtedly, this alternative would require many States to devote additional resources to their maintenance efforts to ensure

continuous systemwide conformity. This alternative would have a significant economic effect on the State highway agencies, which would need additional funding to finance the higher maintenance level. The cost to the FHWA and the States for reporting and monitoring would increase as much as 25 to 50 percent because of the level of detail Alternative B requires.

We proposed alternative A in the NPRM for the following reasons:

(1) It conforms closely with FHWA's general philosophy, which is to provide maximum flexibility and general guidance and let the States develop their own specific guidelines in light of local conditions.

(2) It would provide FHWA division offices with the tools to ensure that the States adequately maintain the Interstate System.

(3) It is the least burdensome of the alternatives, because it requires less detailed reporting and monitoring for FHWA and the States.

(4) The FHWA has determined that little useful data are available for developing guidelines that are quantitative measurements.

Summary of Benefits

Specific data are not available on the benefits that would result from the implementation of the Interstate Maintenance Guidelines. The FHWA believes that the general public would benefit by realizing a savings in vehicle operating and repair costs as a result of a better maintained Interstate System. Moreover, a better maintained Interstate System would be safer.

However, each of these statements is based on the premise that the overall quality of maintenance would improve once the guidelines were issued. But it must be recognized that better maintenance is not a mandated condition of either the legislation or the guidelines. Instead, it is one of the inherent benefits of an improved maintenance management system. We do not anticipate any significant benefits in those States that are currently performing fully satisfactory highway maintenance.

Summary of Costs

The anticipated direct and indirect costs for implementing the Interstate Maintenance Guidelines are also difficult to determine. Those States that are currently performing fully satisfactory maintenance would not incur cost increases. However, States that are currently performing marginally satisfactory maintenance would incur additional costs to meet the minimum guidelines. Estimates of these costs are unavailable at this time.

Sectors Affected

The regulation would affect the driving public through savings in vehicle operating and repair costs and through tax increases to fund higher levels of maintenance.

As the Interstate System is completed, both the highway construction industry and the construction equipment industry would be required to modify their operations and equipment to perform additional highway maintenance work.

Geographically, urban areas and the Eastern seaboard would be more significantly affected because of their concentration of Interstate Highways.

Related Regulations and Actions

Internal: "The Federal-Aid Highway Program Manual" (FHPM) Volume 6, Chapter 4, Section 3, Subsection 1, Maintenance Inspection and Reporting prescribes policies and Procedures for fulfilling FHWA's responsibilities for inspection and reporting on maintenance on completed inspection projects.

"The Federal Highway Administration Maintenance Review Manual," January 1979.

External: "The American Association of State Highway and Transportation Officials (AASHTO) Maintenance Manual," 1976.

Active Government Collaboration

None.

Timetable

Final Rule—January 1980.

Available Documents

ANPRM—44 FR 69, January 2, 1979.
NPRM—44 FR 468882, August 9, 1979.

We have prepared a draft regulatory analysis, and it is available as part of FHWA Docket No. 78–43, Notice 2.

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Withdrawal of interstate segments and substitution of alternative transportation projects

Legal Authority

Federal-Aid Highway Act of 1973, 23 U.S.C. §§ 103 (e)(2) and (e)(4).

Federal-Aid Highway Act of 1976, 23 U.S.C. §§ 103 (e)(2) and (e)(4).

Surface Transportation Assistance Act of 1978, 23 U.S.C. §§ 103 (e)(2) and (e)(4).

National Mass Transportation Assistance Act of 1974, 49 U.S.C. §§ 1602, 1603, and 1604.

Statement of Problem

A number of segments of the Interstate Highway System are involved in serious controversy and/or litigation due to opposition to their construction from environmental groups, community action groups, or others seeking alternative transportation methods. Recognizing that opposition to such projects could preclude their construction and that transportation needs are changing, Congress, in 1973, enacted legislation to permit State and local governments to withdraw the proposed Interstate routes from their transportation programs and receive Federal funds for substitute alternative transportation projects. These projects include mass transit construction, equipment purchases for mass transit, or construction of primary, secondary, urban, or Interstate System roads. The FHWA issued regulations implementing the initial substitution provisions in 1974. The regulation currently under development reflects amendments enacted in the 1976 and 1978 laws, which revise Federal funding shares, limit eligible projects, and impose substitution deadlines, among other provisions. The regulation also provides additional guidance for the States on how to proceed with withdrawal and substitution actions.

Alternatives Under Consideration

Under the statutory provisions, there are no alternatives to this approach.

Summary of Benefits

The benefits of the substitution program would be to increase transportation choices and to permit the shifting of resources from Interstate construction to other transportation projects.

Summary of Costs

As a result of the proposed rule, State and local governments may decide not to build segments of Interstate highways worth billions of dollars and may receive similar amounts of Federal funds for alternative transportation projects. FHWA has made more than $5 billion in Federal funds available for public mass transit projects or alternate highway projects, since the substitution program was enacted.

Sectors Affected

This regulation would affect State highway agencies, transportation planning groups, and transit operators in specific urban areas who choose to take advantage of these provisions.

Related Regulations and Actions

Internal: Current FHWA regulations require States and local governments to develop transportation plans for urban areas (23 CFR 450). Other FHWA regulations prescribe requirements and standards for the disposition and use of property acquired by States with Federal-aid highway funds in connection with projects that they modify or terminate (23 CFR 480).

External: None.

Active Government Collaboration

FHWA and the Urban Mass Transportation Administration are preparing the regulations jointly within the Department of Transportation.

Timetable

NPRM—December 1979.
Final Rule—June 1980.

Available Documents

We issued regulations on June 12, 1974 (39 FR 20663), which provided rules for initial implementation of 23 U.S.C. § 103(e)(4) and 23 CFR 476.

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CIVIL AERONAUTICS BOARD

Air carrier fitness

Legal Authority

The Federal Aviation Act of 1958, § 401, 49 U.S.C. § 1371; particularly § 401(r) as amended by the Airline Deregulation Act of 1978, P. L. 95-504, § 22(d), 92 Stat. 1722.

Statement of Problem

In amending the Federal Aviation Act with the Airline Deregulation Act of 1978, Congress retained the requirement that air carriers demonstrate that they are fit, willing, and able to conduct air transportation service and comply with the law. The Congress emphasized the importance of this "fitness" requirement by amending the declaration of policy in the Federal Aviation Act to stress the need for reliable and safe air carrier operations, and by adding a new requirement directing the Civil Aeronautics Board (CAB) to monitor and evalute on a continuing basis the airlines' fitness for schedules operations.

The general purpose of this public policy is to ensure that airline operations are conducted safely and reliably. In order to comply with the Congressional mandate, the CAB has proposed a comprehensive system of informational requirements for original fitness determinations and ongoing data-filing requirements for continuing fitness. The CAB has also reached an accord with the Federal Aviation Administration (FAA) to integrate the CAB's economic monitoring of the airlines within the FAA's safety jurisdiction, because each agency has expertise that is relevant to the other's statutory mission.

Alternatives Under Consideration

The major alternatives are: (1) continuing the current, case-by-case approach to evidentiary standards; and (2) codification of those standards in a regulation. The CAB is inclined towards this second alternative because of the benefits listed below.

Summary of Benefits

The rule should help the CAB and the FAA to determine the fitness of air carrier applicants for new operating authority. It should also help the CAB and the FAA to monitor airlines' continuing fitness. While the benefits are difficult to quantify, they are complementary to other FAA and Board requirements that are designed to ensure the highest level of safety and reliability in airline operations.

Summary of Costs

The direct costs of compliance with the rule on the part of applicant and incumbent air carriers should be minimal in relation to the revenue involved. The CAB has an ongoing project to weigh the costs and benefits of reports and suggest ways to simplify them. The project will include a review of data received in accordance with this rule. Over time, the results of this project could further reduce the cost of this rule.

In the case of initial licensing, direct costs for an applicant consist of legal counsel, in-house or external consultants, and management time. For a major new applicant such costs could run between $100,000 and $500,000, taking into account the cost of the time necessary to pursue the application.

The cost of complying with CAB reporting requirements for monitoring continuing fitness will vary with the magnitude of the airline's operations. It appears that all of the data that the proposed rule may require to be filed and reported are already collected and compiled by each airline for general business and tax purposes. Accordingly, the additional cost for the airlines of complying with CAB requirements is probably minimal.

The major indirect cost to the national economy of the fitness licensing provision relates to the delay between the filing of an application and the granting of the application by the CAB. For a new air carrier, this delay may vary between 6 and 18 months. The only other substantial direct cost is that incurred by the government in processing applications and monitoring ongoing fitness. No other substantial indirect or direct costs appear likely.

Sectors Affected

This rule will affect air carriers, prospective air carriers, travelers, and shippers.

Related Regulations and Actions

Internal: Fitness determinations, including evidentiary requirements, have historically been made on a case-by-case basis. Requirements for the submission of information are found in 14 CFR 201 and 241.

External: Federal Aviation Administration safety regulations: 14 CFR 121, "Certification and Operations: Domestic, Flag, and Supplemental Air Carriers and Commercial Operators of Large Aircraft."

14 CFR 135, "Air Taxi Operators and Commercial Operators of Small Aircraft."

Active Government Collaboration

The CAB and the Federal Aviation Administration have reached an accord to integrate their procedures and share their expertise.

Timetable

Final Rule—winter 1979-1980.
Final Rule effective—spring 1980.
Regulatory Analysis—The CAB, as an independent agency, is not required to prepare a regulatory analysis as it is defined under Executive Order 12044. However, the CAB prepares essentially the same information in its NPRM's and final rules.

Available Documents

NPRM: 44 FR 44106, July 26, 1979 (CAB reference number for this document: EDR-385, Docket 36176).

Closing date for public comment—October 15, 1979.

Reply comment closing date—November 5, 1979.

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CAB

Air carrier insurance and liability

Legal Authority

Federal Aviation Act of 1958, § 401(q), 49 U.S.C. § 1371(q), as amended by the Airline Deregulation Act of 1978, P. L. 95–504, § 22(d), 92 Stat. 1722.

Statement of Problem

The Civil Aeronautics Board (CAB) staff estimates that the average bodily injury/death claim award for losses suffered by passengers and non-passengers has climbed from $55,182 in 1967 to a projected $252,834 in 1979, an increase of 450 percent. The CAB's insurance regulations, which require airlines to obtain insurance from private companies, now only apply to air taxis (operators of small aircraft), charter airlines, and domestic cargo carriers. The minimum limits required for these carriers range from $75,000 per person to $500,000 per person. There are no CAB insurance requirements for certificated passenger carriers, such as the large nationwide airlines.

The Airline Deregulation Act of 1978 requires all certificated air carriers to have liability insurance coverage as established by the CAB. Unless a carrier complies with the CAB's insurance rules, it cannot obtain or retain any operating authority. Although there has not been a problem with the ability of existing scheduled carriers to pay claims made against them, Congress concluded that airline deregulation would significantly reduce the barriers to entry into air transportation. This in turn could result in operations by new carriers that are less able to compensate the public for damage losses in an accident.

Changes in the liability protection rules appear to be needed to keep pace with the steadily increasing value of losses the public suffers in aircarft accidents. The restructuring and revision of insurance rules will also meet the mandate of the Congress, in ensuring protection of the public during the transition of air transportation from a heavily regulated to a deregulated market.

Alternatives Under Consideration

Possible alternatives the CAB is considering include (1) minimum standards for insurance policies and self-insurance plans, to prohibit certain types of exclusions of liability or to require certain specific terms, (2) minimum limits of coverage, (3) requiring disclosure of the carrier's insurance limits to passengers and shippers, and (4) no action at all at this time.

Minimum limits of liability and minimum standards for insurance policies would set specific amounts and terms and conditions that the carriers must meet. These standards would be similar to the CAB's current insurance rules. These alternatives have the advantage of ensuring a minimum financial responsibility for all existing carriers, whatever their past records, and for new carriers as the historical barriers to entry are reduced. It would also go further in meeting the intent of the Airline Deregulation Act, which emphasizes that safety in air transportation is to be given primary importance in the transition to deregulation.

For domestic air cargo transportation, the CAB now requires carriers to disclose their insurance and liability limits, but does not require specific amounts for those limits. While the CAB has only used this type of approach in regulation of insurance liability for a short time, it has the advantage of allowing carriers to establish their own liability limits within the boundaries of competiton and internal economic management. Its disadvantages are that it depends on a generally knowledgeable consumer, such as a shipper in cargo transportation, and may not be as effective in giving actual notice to vacation travelers and others who might not be regular users of air transportation.

Summary of Benefits

Both air passengers and air shippers can be expected to benefit from the insurance requirements being considered in this rulemaking. Both of these classes of users of air transportation would be better able to recover money damages in the event of an accident or damage to property.

Summary of Costs

Although the CAB has not previously required certificated route carriers to maintain insurance, most already have coverage in amounts equal to or greater than the limits being considered. All but one of the charter airlines also have such coverage. Some air taxi operators may have to increase their insurance coverage to meet the proposal. The CAB staff estimates that the increased annual cost to the airlines for new passenger liability coverage may be approximately $200 per seat, and the increase in cost for public liability coverage (insurance for liability to people other than passengers) may be approximately $200 to $4,000 per plane, depending on the size of the plane. These costs would be passed on to passengers and shippers as small increases in prices.

Sectors Affected

The rule will affect all types of direct air carriers: certificated route airlines, charter air carriers, air taxis, and all-cargo carriers. It would of course affect the insurance industry in the writing of the policies, and passengers and shippers by the improved protection and slightly higher prices.

Related Regulations and Actions

Internal: Insurance requirements for special classes of air carriers—
Indirect Cargo Carriers: 14 CFR 296.
Air Taxis: 14 CFR 298.
Domestic Cargo Carriers: 14 CFR 291.
Charter Carriers: 14 CFR 208.
External: The CAB staff is researching related actions by other agencies.

Active Government Collaboration

CAB staff is holding discussions with the Federal Aviation Administration, whose experience with accident litigation and insurance problems is helpful to the CAB in formulating a proposed rule.

Timetable

NPRM—November 1979.
Final Rule—spring 1980.
Final Rule effective—summer 1980.
Regulatory Analysis—The CAB, as an independent agency, is not required to prepare a regulatory analysis as it is defined under Executive Order 12044. However, the CAB prepares essentially the same information in its NPRM's and final rules.

Available Documents

None.

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CAB

Essential Air Service Subsidy Guidelines

Legal Authority

Federal Aviation Act of 1958, § 419(d), 49 U.S.C. § 1389(d), as amended by the Airline Deregulation Act of 1978, P.O. 95–504, 92 Stat. 1739.

Statement of Problem

The primary thrust of the Airline Deregulation Act of 1978 is to let the level, quality, and price of air transportation be determined by free competition of airlines seeking to meet consumer demand, instead of by pervasive government regulation. To minimize the potential disruption caused by airlines' increased freedom to reduce or eliminate service in particular markets, the Deregulation Act also established a program to preserve essential air service to small communities, using Federal subsidy when necessary. The Civil Aeronautics Board (CAB) is charged with the responsibility of determining the level of essential air transportation at each eligible point and ensuring that such service is provided. "Eligible points" basically are those to which any certificated airline was authorized to provide service on October 24, 1978 (555 points), plus certain other points that the CAB may designate. "Essential air transportation" is a level of air transportation that the CAB, according to statutory criteria, finds will satisfy the community's needs for air transportation to one or more principal destinations and will ensure the community's access to the nation's air transportation system.

This rulemaking to establish subsidy guidelines responds to section 419(d) of the Federal Aviation Act, as amended, which states:

The Board shall, by rule, establish guidelines to be used by the Board in computing the fair and reasonable amount of compensation required to insure the continuation of essential air transportation to any eligible point. Such guidelines shall include expense elements based upon representative costs of air carriers providing scheduled air transportation of persons, property, and mail, using aircraft of the type determined by the Board to be appropriate for providing essential air transportation to the eligible point.

During FY 1979, the CAB began work on subsidy cases for essential service to 27 points. During FY 1980 and 1981, 12 additional points each year are expected to require subsidy support.

Alternatives Under Consideration

The Airline Deregulation Act does not point the CAB toward any particular subsidy approach. On the Contrary, Congress expects the CAB to develop new and innovative subsidy methods. The primary emphasis is on insuring essential services, rather than on minimizing the costs of the program; i.e., the subsidy program must be structured so as not to hinder, in any way, the provision of essential services. But of course, the CAB must be prudent with Federal expenditures, so it is faced with the dual and conflicting objectives of keeping subsidy at a reasonable level without interfering with the provision of essential air services.

A step common to achieving both goals is to develop the market for air services. Specifically, increased traffic volumes can at once justify better service (more flights) and reduce subsidy cost. One of the alternatives available to the CAB is cost-plus subsidy, under which airlines are reimbursed for their costs and a profit element based on a predetermined rate of return. This approach does not appear to promote either goal. Instead, the CAB is considering an innovative incentive approach, under which costs above or below those expected would be shared with the government. This approach would allow the air carriers to reap the benefits of developing a market, thus offering them the strongest possible encouragement to do so.

Summary of Benefits

The benefits from the subsidy program are the avoidance of severe economic dislocation and the continuation of essential air service to communities that would otherwise lose that service as a result of airline deregulation. In some subsidy cases, the combination of deregulation and subsidy will result in more flights and better air service. This may lead to other tangible benefits, such as the attraction of new industry or business, and intangible benefits, such as an improved way of life stemming from better and continued access to the nation's air transportation system.

The subsidy guideline rule, as opposed to the subsidy program itself, should also provide several benefits. It would simplify the procedures for computing subsidy amounts, thus saving administrative time. It could also result in improved services and lower subsidy costs if it uses an incentive approach.

The CAB has not quantified either the extent of service improvements it anticipates or savings in subsidy dollars. The subsidy program and guidelines are not predicated on a cost/benefit analysis by the agency, but are required by law.

Summary of Costs

The CAB staff's preliminary estimates of the costs to the government of the underlying subsidy program are $380,000 for FY 1979, $9.4 million for FY 1980, and $13.4 million for 1981. The program is still in an early stage, and these estimates could prove to be understated, particularly if the defined level of "essential air transportation" is raised. A regulation establishig subsidy guidelines, as opposed to the subsidy program itself, is not likely to impose any significant costs.

Sectors Affected

Subsidies for essential air service will primarily affect these sectors: (1) air travelers and potential air travelers to small communities, (2) the air carrier industry—particularly small, communter airlines, (3) all taxpayers, and (4) indirectly, the economy of the smaller communities, due to the continued access for business.

Those affected most immediately will be the users of air transportation to and from the affected small communities, which are scattered throughout the country. The subsidies will permit continuation of air services that airlines would otherwise drop. Although the effect on individual taxpayers of the choice of guidelines will be slight in any event, the incentive plan should minimize subsidy compensation and save taxpayers in the aggregate several million dollars annually, when compared with other approaches to subsidy.

Related Regulations and Actions

Internal: The CAB recently adopted the following new regulations:
Terminations, Suspensions, and Reductions of Service—14 CFR 323
Procedures for Compensating Air Carriers for Losses—14 CFR 324
Guidelines for Individual Determinations of Essential Air Transportation—14 CFR 398

External: The CAB is a party to an inter-agency cooperative agreement, described below.

Active Government Collaboration

The CAB is a party to an inter-agency cooperative agreement for the purpose of fostering optimum air service to small communities through coordinated financial assistance. The agreement is titled "Small Community Air Transportation Memorandum of Cooperation." Other parties to it are: the Economic Development Administration (Department of Commerce), the Federal Aviation Administration (Department of Transportation), the Farmers Home Administration, and the Small Business Administration (Department of Commerce).

Timetable

NPRM—winter 1979–1980.
Final Rule—summer 1980.
Final Rule effective—summer 1980.

Regulatory Analysis—The CAB, as an independent agency, is not required to prepare a regulatory analysis as it is defined under Executive Order 12044. However, the CAB prepares essentially the same information in its NPRM's and final rules.

Available Documents

Final Rule adopting Part 323: 44 FR 20635, April 6, 1979 (PR–200).
Final Rule adopting Part 324: 44 FR 42171, July 19, 1979 (PR–209).
Final Rule adopting Part 398: 44 FR 52646, September 7, 1979 (PS–87).
Note: Numbers in parentheses are CAB reference numbers for these documents.

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CAB

Plain english for airline/passenger contracts

Note: This entry is a revision of the item titled "Revision of Airline Passenger Rule Tariffs," which appeared in the February 1979 edition of the Calendar.

Legal Authority

Federal Aviation Act of 1958, as amended, §§ 403, 404, and 411, 49 U.S.C. §§ 1373, 1374, and 1381.

Statement of Problem

Contracts between airlines and their passengers are extremely complicated documents. Thousands of provisions are written in technical legal language and published in tariffs, which are documents that airlines file with the Civil Aeronautics Board (CAB). The documents contain crucial information about what rights passengers do or do not have should they encounter air travel problems such as mishandled baggage, delayed or canceled flights, oversold flights (bumping), lost tickets, or fare misunderstandings. Unlike the practice with most contracts, air travelers are not given a copy of the tariffs to take home and read at their leisure. They must visit the Tariffs Section at the CAB or an airline ticket office where tariffs are kept open for public inspection. Because it is difficult for lay people to locate and understand important consumer information, most airline passengers do not find out about many important limitations on their rights until after they have a serious problem and register a claim with the airline.

Alternatives Under Consideration

Over the past several years, many businesses outside the airline industry have developed "plain English" contracts so their customers clearly understand what they are agreeing to. The CAB is considering issuing an ANPRM to solicit comments on ways that this approach might be applied to airline/passenger contracts.

Summary of Benefits

Passengers would have more reasonable expectations of just what is included in their air fares, and would be able to take precautions to avoid many types of air travel problems or minimize the consequences when problems do arise.

Summary of Costs

It is too early in the development of this regulation to estimate its costs or other economic impacts, but they are not likely to be substantial. They would include one-time airline costs to develop "plain English" contracts, and printing costs for increased availability to passengers.

Sectors Affected

A rule about plain English contracts would affect airlines, travel agents, and the traveling public (over 250 million passengers yearly).

Related Regulations and Actions

Internal: Exemption of U.S. and Foreign Air Carriers from Tariff Observance Requirements to Permit Resolution of Consumer Complaints, Order 78–12–49, Docket 34189.
Air Carrier Rules Governing Failure to Operate on Schedule or Failure to Carry, Order 79–4–115 and Order 79–9–129, Docket 35361.
Air Carrier Rules Governing the Application of Tariffs, Order 79–2–106, Docket 34772.
External: None.

Active Government Collaboration

None.

Timetable

ANPRM—winter 1979–1980.
NPRM—summer 1980.
Final Rule—winter 1980–1981.
Regulatory Analysis—The CAB, as an independent agency, is not required to prepare a regulatory analysis as it is defined under Executive Order 12044. However, the CAB prepares essentially the same information in its NPRM's and final rules.

Available Documents

The orders listed under Related Regulations and Actions can be obtained from the Distribution Section, Civil Aeronautics Board, Washington, D.C. 20428, (202) 673–5432.

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FEDERAL COMMUNICATIONS COMMISSION

Creation of "new" personal radio service (PR Docket 79–140)

Legal Authority

The Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303 and 403.

Statement of Problem

For over 30 years, the Federal Communications Commission has recognized the need for, and the value of, personal radio communications. The largest personal radio service is the Citizens Bank (CB) Radio Service, in which the FCC has licensed more than 14 million people. Other personal radio services include the General Mobile Radio Service, which offers the general public very high quality communications, but at considerable equipment costs, and the Radio Control Radio Service, which licenses people to operate model boats, cars, and airplanes by radio control. The CB Radio Service meets many personal and business needs, but there are continuing complaints by CB users about problems of channel congestion and interference.

The FCC is now exploring these issues:

(1) to what extent does the public view the limitations of the three personal radio services as problems; (The limitations include the complaints discussed above, as well as any other problems brought to out attention during the comment period.)

(2) whether creation of a new personal radio service in a different frequency range would solve any problems;

(3) what the demand would be for a new personal radio service;

(4) What features the public would like to see incorporated in a new personal radio service.

Alternatives Under Consideration

The FCC is considering whether to establish a new personal radio service in the 900 MegaHertz (MHz) band. The major alternative under consideration is

for the FCC to decline to create a new personal radio service. Secondary alternatives under consideration involve decisions concerning the specific features of a new personal radio service, if the FCC creates one. (For example, the FCC will decide whether equipment to be used in this new service should be designed so that it automatically identifies the station.)

Summary of Benefits

Some members of the public have suggested that the benefits of a new personal radio service at 900 MHz would include better quality communications than those available in the CB Radio Service; less potential than the CB Radio Service for causing television interference; and the possibility to incorporate special features (such as channels devoted to special uses) in the new service.

Since the FCC has asked the public to comment on the potential benefits of a new service, the FCC has not yet taken a position on the merits of the suggested benefits.

Summary of Costs

The FCC has requested the public to comment on the issue of possible costs. For example, the FCC expressly asked for comments on whether the costs of radios in the new service could be kept within the financial means of most potential users.

Because the issue of costs is open for public comment, the FCC has not taken a position on many of the questions related to potential costs. However, when issuing this Inquiry, the FCC stated that it would expect the initial cost of basic 900 MHz equipment to be in the range of $300–500. The FCC expects that prices would decrease as demand grows. This contrasts with the range of approximately $50–500 for CB equipment, depending on whether or not the unit has special features.

Sectors Affected

This Inquiry could affect all manufacturers of and dealers in two-way radio equipment, all two-way radio users, and indirectly, all owners of home entertainment equipment (such as stereos, televisions, etc.).

The FCC is interested in knowing whether this Inquiry will affect other sectors.

Related Regulations and Actions

The FCC has received a number of petitions for changes in the fundamental purpose of the Personal Radio Services. Two of these (RM–2776 and RM–3071) called for the creation of a "special" radio service between 27.505 and 27.900 MHz, which was, in effect, to be like the current Amateur Radio Service, without the requirement that now exists in the Amateur Radio Service that licensees pass examinations in receiving messages in Morse code. The FCC dismissed the petitions on the basis that a radio service (the Amateur Radio Service) satisfying the described communications requirements (which were almost exclusively Amateur in nature) already existed, and that the creation of a codeless service would be contrary to international agreements. (International agreements require Amateur radio operators using certain radio frequencies to be proficient in the international Morse code.) The FCC also based its denial on the fact that stations in other radio services and the U.S. Government were already using the requested frequency band. Recently, too, the Commission terminated the proceeding in Docket 19759 (the proposal to create a new personal radio service in the 220 MHz Band). The public comments filed in this proceeding were inconclusive. The FCC concluded that a "fresh start" was necessary on the creation of a new Personal Radio Service, and, therefore, that it would start a new rulemaking proceeding to request public comment.

Active Government Collaboration

None.

Timetable

Public Comment—period open until November 30, 1979.
Reply Comments—on or before December 31, 1979.

Available Documents

The Notice of Inquiry (June 7, 1979) is available on request from the FCC's Office of Public Affairs, Washington, D.C. 20554. Request PR Docket 79–140.

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FCC

Deregulation of competitive domestic telecommunications market (CC Docket 79–252)

Legal Authority

The Communications Act of 1934, as amended, 47 U.S.C. §§ 4(i), 4(j), 201, 202, 203, 204, 205, 214, and 403.

The Administrative Procedure Act, 5 U.S.C. § 553.

Statement of Problem

As a result of technological and regulatory developments in recent years, the telecommunications industry has evolved from one dominated by a few large entities to one where there is now some competition for the provision of some communications services. (The telecommunications industry provides telephone, telegraph, and similar "common carrier" services.)

The Federal Communications Commission (FCC) is considering the Problem that the rules it originally adopted to regulate a monopoly telecommunications market may have resulted in unnecessary regulatory burdens on smaller, competitive carriers.

Alternatives Under Consideration

In considering whether (and to what extent) the FCC needs to continue to regulate extensively in the common carrier field, the FCC is considering a number of alternatives:

(1) Should the FCC allow smaller ("non-dominant") carriers to file tariffs (prices, terms, and conditions of service) without requiring that they file underlying cost support data? (The current rules require them to do so.)

(2) Should the FCC assume that rates contained in the tariff filings of "non-dominant" carriers are lawful?

(3) Should the FCC relax its rules that now restrict the addition of new circuits or the discontinuation of service by smaller ("non-dominant") carriers?

(4) If the FCC establishes any of the above procedures for non-dominant carriers, how should it determine which carriers are dominant or non-dominant?

The FCC is also considering further deregulatory options, such as not regulating the smaller ("non-dominant") carriers at all. The FCC has not made a specific proposal, but has set forth the issues for public comment.

Summary of Benefits

In proposing this deregulation the FCC said that, if adopted, the proposal could save non-dominant carriers the costs of complying with FCC regulation. The proposal could also save the FCC the costs of implementing and enforcing the rules.

The FCC expects public comments on the question of potential benefits of the proposed deregulation. For this reason, the FCC will not make any express findings of benefits unless it decides to proceed with deregulation.

Summary of Costs

The FCC expects public comments on the question of potential costs of this proposal. For this reason, the FCC has not made any express findings of the costs of this proposal.

Sectors Affected

If adopted, this proposal could affect the domestic telecommunications industry and domestic telecommunications users and the internal work priorities of the FCC.

The FCC would like to learn during the public comment period of any other sectors that this Inquiry/Proposal would affect.

Related Regulations and Actions

The FCC is considering whether the public interest requires that long-distance telephone service be provided on a sole source (monopoly) basis or whether it should be opened to competition. (FCC Docket 78–72, MTS–WATS Market Structure Inquiry.)

Active Government Collaboration

None.

Timetable

Public Comment Period—open until January 18, 1980.
Reply Comments—until February 15, 1980.

Available Documents

The Notice of Inquiry/NPRM of September 27, 1979, is available on request from the FCC's Office of Public Affairs, Washington, D.C. 20554. Request FCC Docket 79–252.

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FCC

Notice of inquiry/notice of proposed rulemaking in the matter of radio deregulation (BC Docket 79–219)

Legal Authority

The Communications Act of 1934, as amended, 47 U.S.C. §§ 1, 154(i), 154(j), 303(g), 303(r) and 403.

Statement of Problem

The Federal Communications Commission (FCC) is reviewing some of its regulations governing commercial radio broadcast stations. In particular, the FCC is reviewing four groups of regulations which may no longer be needed in today's radio market.

In the 1930s and 1940s, when the existing structure of radio regulation was developed, the radio marketplace was very different from what it is today. There were many fewer stations, for example. Also, television was not the dominant medium it is today.

This inquiry/proposal is exploring whether the regulatory assumptions the FCC made in the 1930s and 1940s are still valid, especially considering the growth in the radio industry and the advent of television. In particular, the inquiry/proposal will focus on whether current radio regulations are the most effective and least costly way to achieve such goals as:

(1) adequate informational (non-entertainment) programming,

(2) reasonable limits on the number of commercial minutes each hour,

(3) consideration by the radio broadcaster of community needs and interests, and

(4) retention by the broadcaster of adequate records of nonentertainment programming and commercial time ("program logs").

Current FCC regulations accomplish these goals in a variety of ways. In the area of nonentertainment programming, FCC rules specify that the amount of nonentertainment programming must be at least a minimum percentage of a station's total programming. For AM stations, FCC rules specify that non-entertainment programming should be at least 8 percent of total programming. For FM stations, FCC rules specify 6 percent of total programming. If a radio station is applying for renewal of its license and proposes to program less than 8 percent (or 6 percent, as appropriate) nonentertainment programming, the FCC's Broadcast Bureau staff cannot routinely grant the renewal. The renewal application must be considered by the full Commission.

In the area of commercial limits, FCC rules now set commercial limits (18–20 minutes per hour, plus additional time during political campaigns) that, if a radio station renewal applicant exceeds them, can prevent routine granting of an application by the Broadcast Bureau under its delegated authority.

FCC policies also now require a radio broadcaster to consider the community's needs and interests when planning the station's programming. The FCC adopted a detailed primer setting out procedures for determining the composition of the area to be served, consulting with community leaders and members of the general public, enumerating community problems and needs, evaluating the problems and needs, and relating proposed programming to the evaluated problems and needs. The FCC has denied applications based on the failure of the applicant to ascertain these things in accordance with the requirements of the primer. The FCC calls this procedure "ascertainment."

In the area of program logs, current FCC rules require a broadcaster to keep detailed records of his programming and commercial time. The program log rules require numerous entries, such as the source of each program, the time each program begins and ends, the sponsor(s) of the program, and the public service announcements that the station broadcasts. A radio station licensee must make these logs available to the public on request.

In the notice proposing radio deregulation, the FCC said, "We have long been, and remain, committed to the principle that radio must serve the needs of the public. We have never, however, believed that radio is a static medium that requires the retention of every rule and policy once adopted. A regulation that was reasonable when adopted, and appropriate to meet a given problem, may be most inappropriate if retained once the problem ceases to exist. In our view, it is vital that our rules and policies be appropriate for the industry and marketplace we regulate, reducing regulation to the maximum extent consistent with the public interest, convenience and necessity. We note in passing that Congress is now examining whether legislative reform is necessary to foster optimum development of all communications industries, including broadcasting. Additionally, the President has ordered Executive agencies to adopt procedures to improve existing and future regulations, including the deletion of unneeded ones."

Alternatives Under Consideration

(1) The FCC said there were a number of alternative approaches by which it could modify or eliminate current nonentertainment rules and policies:

(a) The FCC could remove itself from all consideration of the amounts of nonentertainment programming that commercial radio licensees furnish, leaving it to the marketplace to determine what levels of such programming broadcasters would present.

(b) The FCC could relieve individual licensees of any obligation to provide nonentertainment programming but could, instead, analyze the amounts of such programming on a marketwide basis, and if the amount of such programming in a particular market fell below a certain level, the FCC then could take action to redress the matter.

(c) The FCC could free licensees of any specific responsibilities with respect to nonentertainment programming (as well as ascertainment and commercial limits) but would require licensees to show, if their renewals were challenged, that they were serving the public interest (FCC would use marketwide criteria for such evaluation).

(d) The FCC could impose quantitative programming standards for each nonentertainment programming category, such as a minimum number of hours per week for each category of programming or a specified percentage of time to be devoted to each category.

(e) The FCC could impose quantitative standards, but measure the adequacy of progamming on the basis of each station's expenditures. (The FCC could mandate a proportion of revenues or profits that a station must reinvest in nonentertainment programming.)

(f) The FCC could establish a minimum fixed percentage of local public service programming that licensees would have to present—including local news, public affairs and public service announcements, community bulletin boards, or any other locally-produced nonentertainment programming that served local needs.

(2) Changes in the commercial limit rules that the FCC is now considering include:

(a) Eliminating all rules and policies dealing with the amount of commercial time and allowing the marketplace to determine tolerable levels of commercialization;

(b) Setting quantitative standards which, if ignored, would result in the FCC imposing some sanction against the licensee;

(c) Eliminating all rules specific to individual licensees but interceding if heavy levels of commercialization occurred marketwide; or

(d) Retaining quantitative guidelines but only with regard to the Broadcast Bureau's delegation of authority.

(3) The Commission said there were four options warranting consideration in the area of ascertainment of community problems and needs:

(a) The FCC could eliminate all Federally mandated ascertainment requirements and leave it to marketplace forces to ensure that stations provided programming to meet the needs and problems of each station's listenership;

(b) The FCC could require that licensees conduct ascertainment but permit them to decide in good faith how best to conduct that ascertainment without the current detail of formalized FCC requirements;

(c) The FCC could retain the ascertainment requirement, but in a simplified form; or

(d) The FCC could retain existing ascertainment requirements.

(4) The FCC's requirements for program logging are intended, in part, to assure documentation of nonentertainment programming and commercial practices. If nonentertainment programming and commerical requirements were removed as a result of this proceeding, the FCC would consider eliminating or modifying program log requirements. But members of the public challenging a station's programming failure might need these records to substantiate such claims. Therefore, the FCC is considering the following three options:

(a) The FCC could eliminate the need for AM and commercial FM stations to keep program logs;

(b) The FCC could eliminate its program log requirements, but require any licensee keeping records of its programming or commercial schedules for its own purposes to make these available to the public in accordance with procedures outlined in the Commission's rules;

(c) The FCC could continue current program logging and disclosure requirements.

Summary of Benefits

The FCC said in the inquiry/proposal that it had seen evidence that market forces will, in most instances, yield programming that serves consumer well-being. If it adopts deregulation, the FCC anticipates that radio programming would reflect listeners' tastes, rather than regulatory decisions.

The FCC has asked for public comments on the issue of potential benefits of this proposal. Therefore, the FCC will not make any express findings of benefits from this inquiry/proposal unless it decides to proceed with deregulation.

Summary of Costs

Some members of the public have suggested that the deregulation inquiry/proposal will not result in broadcasting which serves the public interest.

The FCC has asked for public comment on potential costs of the inquiry/proposal. For this reason, the FCC has not made any express findings of costs.

Sectors Affected

This inquiry/proposal could affect radio broadcasters, radio listeners, and advertisers. If adopted, this inquiry/proposal could also affect the internal work priorities of the FCC.

The FCC is interested in learning during the comment period if this proceeding will affect any other sectors.

Related Regulations and Actions

The FCC is continuing a long-standing broadcast deregulation project. The purpose of this project is to review the continued usefulness of each radio and television broadcast regulation. The FCC will closely coordinate the work of this project with the radio deregulation inquiry/proposal.

Active Government Collaboration

None.

Timetable

Public Comment period—open until January 25, 1980.
Reply Comments—until April 25, 1980.

Available Documents

The Notice of Inquiry/NPRM issued September 6, 1979, is available on request from the FCC's Office of Public Affairs, Washington, D.C. 20554. Request BC Docket 79–219.

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FEDERAL MARITIME COMMISSION

Amendment to financial reports by common carriers by water in the domestic offshore trades

Legal Authority

Shipping Act of 1916, 46 U.S.C. §§ 817, 820 and 841(a). Intercoastal Shipping Act of 1933, 46 U.S.C. §§ 843, 844, 845, 845(a) and 847.

Amendment to the Intercoastal Shipping Act of 1933, P.L. 95–475.

Statement of Problem

P.L. 95–475, an amendment to the Intercoastal Shipping Act of 1933, has altered the Federal Maritime Commission's authority to regulate rates in the domestic offshore trades. "Domestic offshore trade" means that trade carried on by common carriers by water operating: (1) between the United States and its territories, possessions, and Puerto Rico; (2) between or within those territories, possessions, and Puerto Rico; (3) between the continental United States and Hawaii and Alaska; and (4) between, but not within Hawaii and Alaska. In order to properly implement P.L. 95–475, the law directs the Commission to prescribe by regulation the guidelines for determining the justness and reasonableness of rates of return or profits for common carriers by water in the domestic offshore trades. Presently, the Commission's General Order 11, "Financial Reports by Common Carriers by Water in the Domestic Offshore Trades," is only a reporting requirement and must be modified in order to serve as a substantive guideline for the

determination of just and reasonable rates of return or profits.

Alternatives Under Consideration

There are no realistic alternatives to issuing the guidelines, since the above-cited legal authority explicitly mandates them. The range of alternatives the Commission considered for the guidelines includes different criteria based on type of carrier, different reporting requirements based on size of carrier, cost justification by type of cargo, cost justification by specific commodity, and cost analysis with respect to general overall rate levels.

Summary of Benefits

Publication of the guidelines will enable the Commission to expedite its decisions in domestic offshore rate cases and should serve to limit the number of rate increases that carriers seek. Also, the guidelines should enable carriers to publish increases that are consistent with what the Commission and the shipping community will accept.

Summary of Costs

Although no quantitative estimates of the relative costs are available, we do not expect that there will be any substantial effect on rates. Shippers, the users of ocean transportation, are the Commission's real consumers; therefore, it is extremely difficult, if not impossible, to determine the cost of the proposed rules to the lay consumer.

Sectors Affected

The proposed rules will affect common carriers by water and shippers involved in the domestic offshore commerce of the Continental United States and its noncontiguous areas (Alaska, Virgin Islands, Puerto Rico, American Samoa, Hawaii, Guam, Northern Marianas, Johnston Island, Midway Island and Wake Island).

Related Regulations and Actions

Internal:

Commission's Rules of Practice and Procedure.

Commission General Order 38 (Publishing, Filing and Posting of Tariffs in Domestic Offshore Commerce).

The Commission also will revise its Rules of Practice and Procedure to incorporate the changes necessary to meet the requirements the P.L. 95–475 imposes.

External: None.

Active Government Collaboration

None.

Timetable

Staff recommendation to the Commission—December 1979.

Final Rules—winter 1979–1980.

This rulemaking does not require regulatory analysis under Executive Order 12044, since it is being developed through a formal rulemaking process in accordance with the Administrative Procedure Act.

Available Documents

Federal Maritime Commission Docket 78–46.

ANPRM—43 FR 53046–53047, Nov. 15, 1978.

NPRM—44 FR 26944–26955, May 8, 1979.

Transcript of informal public hearing regarding P.L. 95–475. Available from the Office of the Secretary, Federal Maritime Commission, Washington, D.C. 20573.

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FMC

Amendments to tariff requirements for controlled carriers

Legal Authority

The Administrative Procedure Act, § 4, 5 U.S.C. 553.

The Shipping Act of 1916, §§ 18(b), 18(c), 21, and 43, 46 U.S.C. §§ 817(b), 817(c), 820 and 841(a).

Ocean Shipping Act of 1978, P.L. 95–483.

Statement of Problem

Section 18(c) of the Shipping Act of 1916, as amended by the Ocean Shipping Act of 1978, provides for the regulation of the rates or charges of certain State-owned or controlled carriers in the foreign commerce of the United States. The term "controlled carrier" means a common carrier by water in the foreign commerce of the United States whose operating assets are directly or indirectly owned or controlled by the Government under whose registry the vessel operates. Controlled carriers, operating as "cross-traders" (carriers that operate in a specific trade and do not fly the flag of the exporting or importing nations in that trade) in the U.S. oceanborne foreign commerce and backed by the resources of their governments have penetrated the United States liner trade by actively and systematically pursuing a practice of rate-cutting (maintaining rates in their tariffs that are below a level which is just and reasonable) to attract more cargo for their ships. Such rate-cutting threatens to disrupt the international trade of the United States and to jeopardize the economic viability of the U.S. as well as other privately-owned carriers. The Ocean Shipping Act of 1978 (P.L. 95–483) strengthens the provisions of the Shipping Act of 1916 and thus the powers of the Federal Maritime Commission to regulate the rate-cutting practices of State-controlled carriers. The provisions of § 18(c) of the Shipping Act of 1916, as amended by the Ocean Shipping Act of 1978, became effective November 17, 1978, imposing upon the Federal Maritime Commission the responsibility to regulate the rates and practices of certain State-owned or controlled carriers operating in the oceanborne foreign commerce of the United States.

The Federal Maritime Commission proposes to amend 46 CFR 536 to implement the requirements of P.L. 95–483. The proposed amendments prescribe the technical requirements for the publication, filing, justification and suspension of controlled carrier tariff rates, changes, classifications and rules. They also require that all common carriers annually file with the Federal Maritime Commission an information circular which answers specific questions related to the carriers' ownership, vessels, subsidies, service, flag, reorganizations, annual reports, form of organization, forwarding activities, consolidation activities, and number of containers owned or leased.

This requirement, under authority of § 21 of the Shipping Act of 1916, is added to 46 CFR 536 so that the Commission may be apprised of any controlled carriers serving in U.S. trades, and the controlled carriers may be given an opportunity to submit information which may warrant an exemption from controlled carrier requirements.

Alternatives Under Consideration

There are no realistic alternatives, because the proposed rules are necessary to implement the requirements of P.L. 95–483.

Summary of Benefits

The proposed amendments provide the specific tariff filing requirements for publication, filing, justification, and suspension of controlled carrier tariff matter. It is necessary to provide a systematic method to adopt the standards set forth in P.L. 95–483, which was designed to prevent controlled carrier penetration and disruption of U.S. trades through rates and practices which are unjust and unreasonable.

A requirement that all common carriers file an information circular with the Federal Maritime Commission is needed for the Commission to properly classify common carriers as controlled carriers and allow the Commission to monitor controlled carriers entering or leaving trades in the U.S. foreign commerce.

Summary of Costs

No information is available at this time; however, the carriers filing the information circular will incur some direct costs. Shippers, the users of ocean transportation, are the Commission's real consumers; therefore, it is extremely difficult, if not impossible, to determine the cost of the proposed rules to the lay consumer.

Sectors Affected

The proposed amendments will affect all common carriers in the foreign commerce of the United States. The rule will require controlled carriers to publish just and reasonable rates, charges, classifications, and rules as prescribed by P.L. 95–483.

Related Regulations and Actions

None.

Active Government Collaboration

The Department of State and the Commission, before the rulemaking, coordinated an effort to initially identify State-controlled carriers.

Timetable

NPRM—fall 1979.

This rule does not require a regulatory analysis under Executive Order 12044, since it is being developed through a formal rulemaking process in accordance with the Administrative Procedure Act.

Available Documents

None.

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FMC

Certification of company policies and efforts to combat rebating in the foreign commerce of the United States

Legal Authority

The Administrative Procedure Act, § 4, 5 U.S.C. § 553.

The Shipping Act of 1916, §§ 21 and 43, 46 U.S.C. § 842.

The Shipping Act Amendments of 1979, P.L. 96–25.

Statement of Problem

The Shipping Act Amendments of 1979, P.L. 96–25, effective June 19, 1979, amend the Shipping Act of 1916 to strengthen the provisions prohibiting rebating in the United States foreign trades. Rebating is the illegal return by a carrier to a shipper (exporter) of part of the payment for transportation provided. Common carriers by water in the foreign commerce of the United States are prohibited by the Shipping Act of 1916 from charging rates lower than those in their published tariffs (publications containing the actual rates, charges, classifications, rules, regulations, and practices for transportation by water), which they must keep open to the public and file with the Federal Maritime Commission. A considerable surplus of cargo-carrying capacity over the supply of cargo available in the U.S. ocean liner trades has resulted in many carriers offering illegal rebates, secret inducements and incentives to attract cargo. Illegal rebating threatens the stability of the ocean commerce of the United States and the viability of the U.S. merchant marine. An unfair competitive advantage is gained by those carriers and shippers who are involved in illegal rebating. Prior to the enactment of the Shipping Act Amendments of 1979 (P.L. 96–25), existing laws were not effective in correcting the situation and were applied in a discriminatory manner against U.S. carriers. The Amendments permit the Federal Maritime Commission (FMC) to carry out its regulatory function to deter rebates in a prompt and equitable manner. For the first time, foreign-flag ocean carriers are required to comply with FMC subpoenas or face exclusion from U.S. ocean trades. Section 4 of P.L. 96–25 amends § 21 of the Shipping Act of 1916 by adding a new subsection (b) mandating the Federal Maritime Commission to require the Chief Executive Officer of every vessel operating common carrier by water in the foreign commerce of the United States to file a periodic written certification, under oath, attesting to company policies and efforts to combat rebating and to other information necessary for the Commission to carry out the provisions of P.L. 96–25. The Federal Maritime Commission has discretionary authority to require similar certification from any shipper, consignor, consignee, forwarder, broker, other carrier or other person subject to the Shipping Act of 1916.

The Federal Maritime Commission staff is considering recommending a new Part 552 ("Certification of Company Policies and Efforts To Combat Rebating in the Foreign Commerce of the United States") to 46 CFR to implement the requirements of P.L. 96–25. The proposed amendments will prescribe the technical requirements for the filing of certification of company policy to combat rebating, the filing of tariff notification of individual company policies prohibiting payment of rebates, and the annual reporting requirements.

Alternatives Under Consideration

There are no realistic alternatives, because the proposed rules are necessary to implement the requirements of P.L. 96–25.

Summary of Benefits

The proposed rules provide the specific requirements for the filing of certification of company anti-rebating policies and tariff notification of them. The elimination of the anti-competitive practice of rebating by all carriers in our ocean commerce will strengthen the ability of the American merchant marine to compete in our own trades, increase rate stability, and eliminate price discrimination. P.L. 96–25 increases penalties from $5,000 to $25,000 per violation and gives the Federal Maritime Commission authority to suspend the tariffs of carriers who refuse to comply with its orders in rebating investigations, subject to Presidential veto.

Summary of Costs

Specific information is not available at this time; however, the carriers that will be required to prepare and file reports under the proposed rules will incur some direct costs. Shippers, the users of ocean transportation, are the Commission's real consumers; therefore, it is extremely difficult—if not impossible—to determine the cost of the proposed rules to the lay consumer.

Sectors Affected

The proposed rules will affect all vessel-operating common carriers by water in the foreign commerce of the United States. The Commission also has discretionary authority to require similar certification from any shipper, consignor, consignee, forwarder, broker, other carrier or other person subject to the Shipping Act of 1916.

Related Regulations and Actions

None.

Active Government Collaboration

None.

Timetable

Staff Recommendation to the Commission—winter 1979–1980.

Final Rules—spring 1980.

This rule does not require a regulatory analysis under Executive Order 12044 since it is being developed through a formal rulemaking process in accordance with the Administrative Procedure Act.

Available Documents

Federal Maritime Commission Docket 79–65.

NPRM—44 FR 39232–39233, July 5, 1979.

Available for review in the Office of the Secretary, Federal Maritime Commission, Washington, D.C. 20573.

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FMC

Filing of agreements by common carriers and other persons subject to the Shipping Act of 1916

Legal Authority

Shipping Act of 1916, §§ 15, 21, 22 and 43, 46 U.S.C. §§ 814, 820, 821 and 841(a).

Administrative Procedure Act, § 4, 5 U.S.C. § 553.

Statement of Problem

Section 15 of the Shipping Act of 1916 requires that every common carrier by water or other persons subject to the Act file with the Commission a copy of every agreement with another carrier or other person subject to the Act. Upon Federal Maritime Commission (FMC) approval of an agreement, the agreed upon activity (rates, charges and other matters affecting competition) enjoys immunity from the application of the antitrust statutes to the extent covered by the approved agreement. Review of agreements has progressed from a process of primarily noting the presence or absence of certain legally defined conditions, including evaluation of the economic context in which such agreements would operate, to now applying in all substantially anticompetitive agreements what has become known as the "Svenska" test from "FMC, et al. v. Aktiebolaget Svenska Amerika Linien, et al.," 390 US 238, 240 (1968). The "Svenska" test requires that the agreement so tested must confer an important public benefit, meet a serious transportation need, or fulfill a valid regulatory purpose. A more recent test is the Europacific case (U.S. Court of Appeals for the District of Columbia, United States Lines, Inc. v. FMC, et al., 76–2004 and 77–1470). This case elaborated on the criteria that the Commission is expected to follow in the processing of agreements, including antitrust implications, hearing standards, availability of information to the public, and the minimizing of informal contacts with the contending parties.

These more stringent standards have required that the proponents of any proposed agreement furnish substantially more data than they had to in the past in justification of their proposal. Parties filing agreements for approval have tended to resist these requirements for a number of reasons, including the following: (1) filing parties have historically not been required to furnish such information, (2) those filing are uncertain of what is required, (3) some continue to believe that such requirements exceed the Commission's authority, (4) gathering of data is considered to be time-consuming and burdensome, and (5) some carriers based in foreign countries have been restrained by their governments from complying.

The above have led to difficulties in the processing of agreements, and the Commission and its staff have seen the need for development of a method to deal with filings more quickly.

Docket No. 76–63, which is pending before the Commission, would replace the current nonspecific guidelines to file agreements under the Commission's General Order 24 with specific filing requirements and would describe the supporting statement and materials which must accompany the filing. Failure to meet those requirements would result in the agreement being returned without being processed. In conjunction with this new General Order, the FMC has also drafted a Commission Order which establishes proposed guidelines for the internal processing of filed agreements.

Alternatives Under Consideration

The staff is presently making efforts to improve the handling of the above problems on a case-by-case basis. To continue to do so is a possible alternative. This is an ultimately unsatisfactory solution, however, because of the inevitable lapses caused by personnel changes, varying workloads, differing interpretations, and the difficulty of enforcing an implicit standard. Another possible solution would be to pass legislation reaffirming the Commission's jurisdiction and setting forth more detailed criteria for approvability. If such legislation were enacted, there would remain a need for procedural guidelines and provisions for public access to information on pending and approved agreements. In addition, such a change still would not eliminate all consideration of economic factors from the review of filed agreements. The FMC and its staff consider neither of the above alternatives to the present proposal to be satisfactory.

Summary of Benefits

The proposed rules will:

(1) impose definite responsibilities on the filing parties and the Commission staff,

(2) provide a method for disposition of incomplete filings without drawn-out formal proceedings,

(3) establish more uniform and consistent treatment of filings,

(4) expedite the processing of agreements,

(5) minimize the risk of the compromise of a subsequent proceeding by prohibiting improper contacts between the FMC staff and the various parties to that proceeding, and

(6) provide a regular and consistent manner for the public to gain access to information concerning a proposed action.

The major tangible savings to be realized are through the elimination of delays in dealing with defective filings. The proposed rules should result in substantial savings to the Commission and staff. To the extent that the rules prevent the compromise of any formal proceeding or allow a formal proceeding to be dispensed with, additional substantial savings will be realized. Also, to the extent that timely consideration of an action or proposed action affects the business fortunes of interested parties, timely treatment will result in savings.

Summary of Costs

No quantitative estimates of the relative costs are available. Filing parties would incur the additional expense of gathering and presenting acceptable economic data. In most cases, the filing parties should already possess such information in a form equivalent to that which would be required. In addition, proponents who might initially fail to comply with the filing requirements would incur the added expense of refiling. The necessity to maintain a public file and the need for positive process control would result in some additional initial cost to the Commission.

Sectors Affected

The proposed rules will directly affect all common carriers by water in the foreign commerce of the United States, independent ocean freight forwarders, and terminal operators who are party to an agreement which is required to be

filed with the Federal Maritime Commission.

Related Regulations and Actions

Internal: Commission General Order 24, Filing Agreements Between Common Carriers of Freight by Water in the Foreign Commerce of the United States, as revised (46 CFR 522.1–7).

The Commission has prepared a proposed Commission Order establishing guidelines for the internal processing of filed agreements.

External: None.

Active Government Collaboration

None.

Timetable

Staff Recommendation to the Commission—winter 1979–1980.

Final Rules—spring 1980.

This rule does not require a regulatory analysis under Executive Order 12044, since it is being developed through a formal rulemaking process in accordance with the Administrative Procedure Act.

Available Documents

Federal Maritime Commission Docket 76–63.

NPRM—41 FR 51622, November 23, 1976.

NPRM—44 FR 36077–36080, June 20, 1979.

Available for review in the Office of the Secretary, Federal Maritime Commission, Washington, D.C. 20573.

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FMC

Revision of the Commission's General Order 4, "Licensing of Independent Ocean Freight Forwarders"

Legal Authority

Shipping Act of 1916, §§ 21, 43 and 44, 46 U.S.C. §§ 820, 841(a) and 841(b).

Administrative Procedure Act, § 4, 5 U.S.C. § 553.

Statement of Problem

There is a need to revise and modify the Commission's General Order 4, "Licensing of Independent Ocean Freight Forwarders." An independent ocean freight forwarder is an individual, corporation, partnership, association, or other legal entity that for a fee dispatches shipments on behalf of others by oceangoing common carriers and handles the formalities incident to such shipments. Services rendered by this industry include the dispatching of export cargo on behalf of shippers; examining instructions and documents received from shippers; preparing and/or processing export declarations; booking or confirming cargo space; preparing and/or processing delivery orders and dock receipts; arranging for and/or furnishing trucks and lighters (boats used in unloading or loading vessels not lying at wharves, or in transporting freight about a harbor); preparing instructions to truckmen and lightermen; preparing and/or processing ocean bills of lading; preparing and/or processing government international commercial documents and arranging for their certification; arranging for and/or furnishing warehouse storage; arranging for insurance; clearing shipments in accordance with United States Government export regulations; preparing and/or sending advice notifications of shipments and other documents to banks, shippers, or consignees, as required; advancing necessary funds in connection with the foregoing; coordinating the movement of shipments from origin to vessel; rendering special services in connection with unusual shipments or difficulties in transit; and giving expert advice to exporters concerning letters of credit, licenses and inspections.

General Order 4 sets forth regulations providing for the licensing as independent ocean freight forwarders of those who desire to carry on the business of forwarding, the procedure for applying for licenses, the qualifications required of applicants, and the grounds for revocation or suspension of licenses. The General Order also contains rules pertaining to the practices of licensed independent ocean freight forwarders, ocean freight brokers (persons engaged by a carrier to sell or offer transportation for sale, and who hold themselves out by solicitation or advertisement as one who negotiates between shipper and carrier for the purchase, sale, conditions, and terms of transportation), and oceangoing common carriers pursuant to P.L. 87–254. The Federal Maritime Commission (FMC) staff feels that since the General Order was originally issued in December 1961, many of the rules published in that Order have become outdated and impractical, creating confusion and consequent inefficiency in their application. In addition, the General Order contains references to "grandfather" provisions which have long ceased to be valid.

Alternatives Under Consideration

To maintain the existing General Order 4 is an alternative; however, to do so would be unresponsive to the problems that have arisen under the regulations encompassed in the Order.

Summary of Benefits

By revising General Order 4, the Commission would clarify many of the current rules pertaining to the licensing and practices of independent ocean freight forwarders. These rules are necessary for the Commission to properly carry out its statutory responsibilities with respect to the licensing and practices of independent ocean freight forwarders.

Summary of Costs

No detailed cost information is available at this time.

Sectors Affected

The changes under consideration provide for rules and regulations affecting the activities of independent ocean freight forwarders engaged in forwarding cargo in the export commerce of the United States.

Related Regulations and Actions

None.

Active Government Collaboration

None.

Timetable

NPRM—winter 1979–1980.

This rule does not require a regulatory analysis under Executive Order 12044, since it is being developed through a formal rulemaking process in accordance with the Administrative Procedure Act.

Available Documents.

None.

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FMC

Surcharges under dual-rate contracts on less than ninety days' notice

Legal Authority

Shipping Act of 1916, §§ 14b, 18(b)(4) and 43, 46 U.S.C. §§ 813(a), 817 and 841(a).

Dual-Rate Contract System in the Foreign Commerce of the United States, 46 CFR 538.10.

Statement of Problem

Section 14b of the Shipping Act of 1916 authorizes the Commission to permit the use of dual-rate contracts. Dual-rate contracts are used by common carriers and conferences of carriers (an association of carriers permitted,

pursuant to an agreement approved by the Commission under § 15 of the Shipping Act of 1916, to discuss, establish and file rates and practices on behalf of its member lines) to offer lower rates to shippers who agree to give all or a fixed portion of their shipments to the carrier or conference. These dual-rate contracts must be approved by the Commission and must be available to all shippers (exporters) under equal terms and conditions. As far as rates are concerned, the Act requires that the contract rate shall not be more than 15 percent lower than the published noncontract rate.

The provision required by clause (2) of § 14b of the Shipping Act of 1916 is that:

. . . whenever a tariff rate for the carriage of goods under the contract becomes effective, insofar as it is under the control of the carrier or conference of carriers, it shall not be increased before a reasonable period, but in no case less than ninety days.

As the words, "insofar as it is under the control of the carrier" suggest, the imposition of rate increases on less than ninety days' notice may be permissible in some circumstances. In the Dual-Rate Cases, 8 F.M.C. 16 (1964), the Commission prescribed the clauses that it would require carriers to use in their dual-rate contracts if they wished to provide for rate increases on less than ninety days' notice. These clauses subsequently were adopted as Articles 14(a) through 14(c) of the Uniform Merchant's Contract that the Commission promulgated in Part 538 of its rules (46 CFR 538.10).

It is the Commission's perception that Article 14 of the Uniform Merchant's Contract, in its current form, may not be sufficiently responsive to the situation facing many carriers confronted with severe, sudden, and unforeseen cost increases. The recent surge in fuel costs is a prime example of this situation. Rapidly rising fuel costs have created critical financial problems for the ocean transportation industry, imposing serious cash flow problems for many ocean carriers. Many trade routes are marginally profitable and the carriers servicing them could be forced to abandon service on these routes if they cannot immediately pass on these fuel costs to shippers.

The Commission has proposed to enact rules to amend and clarify Article 14 of the Uniform Merchant's Contract contained in Subpart B of Part 538 of the Commission's Rules (46 CFR 538.10). The proposed rules would amend Article 14(c) to allow for the direct pass-through to shippers of sudden, severe and unforeseen cost increases on a minimum notice of 15 days.

Alternatives Under Consideration

Maintenance of existing rule 46 CFR 538.10 is an alternative. The existing rule, Article 14(c) of the Uniform Merchant's Contract, allows for a rate increase on 30 days' notice for "extraordinary conditions . . . which . . . may unduly impede, obstruct, or delay the obligation of the carrier . . ." It is possible, under the existing rule, to justify an increase which is based upon rising fuel costs on 30 days' notice. However, the Commission feels the 15 days proposal may be more responsive to carriers confronted with severe, sudden and unforeseen cost increases.

Summary of Benefits

We expect the proposed rule to contribute to the maintenance of service to existing ocean trade routes by enabling carriers who are operating on a narrow margin of profit to maintain financial integrity.

Summary of Costs

The FMC predicts that this rule would cause no appreciable costs to the Government or to carriers. Shippers will pay higher prices in cases where carriers pass through emergency costs to them. The required notice period would be cut in half so that the increases would be more immediate. Shippers, the users of ocean transportation, are the Commission's real consumers. Therefore, it is extremely difficult, if not impossible, to determine the pass-through costs of the proposed rules to the lay consumer.

Sectors Affected

The proposed rule would affect ocean carriers and shippers in the foreign commerce of the United States. Carriers would be allowed to pass along to shippers sudden, severe and unforeseen cost increases with the minimum required notice of such increases reduced to fifteen days.

Related Regulations and Actions

Internal: The Commission also has proposed a new section 536.18 to its tariff filing rules (46 CFR Part 536) which would specify the time and manner in which carriers seeking to invoke Article 14 of the Uniform Merchant's Contract must justify such action to the Commission.

External: None.

Active Government Collaboration

None.

Timetable

Final Rule—February 1980.

This rule does not require a regulatory analysis under Executive Order 12044, since it is being developed through a formal rulemaking process in accordance with the Administrative Procedure Act.

Available Documents

Federal Maritime Commission Docket 79–58.

NPRM—44 FR 32408–32418, June 6, 1979.

Available for review in the Office of the Secretary, Federal Maritime Commission, Washington, D.C. 20573.

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INTERSTATE COMMERCE COMMISSION

Improvement of TOFC/COFC regulation (Ex Parte No. 230 (Sub-5))

Legal Authority

Interstate Commerce Act, 49 U.S.C. § 10321.

Statement of Problem

The Federal Railroad Administration, the General Accounting Office, and the Interstate Commerce Commission have undertaken recent studies of efforts by the various transportation modes (such as rail-motor, motor-water, or any other combination of modes), to provide a continuous movement of freight between two points in combined service. These studies show that numerous factors have discouraged the development of intermodal traffic movement plans.

The principal factors that discourage intermodal traffic are the substantial changes in established operations which would be required to implement the plans, negotiations with collective bargaining representatives to modify established work rules (where employees are members of a labor union), and significant and often substantial cash outlays to install special material-handling equipment.

The major intermodal traffic movement concepts that the Commission presently administers are the Trailer-on-Flatcar (TOFC) and Container-on-Flatcar (COFC) plans. Generally, these plans implement the transportation of a truck, trailer, semi-trailer, or detachable container on a rail car.

The purpose of this proceeding is to determine what the Commission can do to increase the use of TOFC/COFC services. The proceeding is limited to

rail-motor intermodal movements; it does not embrace intermodal movements with a prior or subsequent movement by water.

There are five basic intermodal plans presently in use. Under Plan I, a motor carrier (truck operator) may substitute rail for motor service between points which the motor carrier is authorized to serve. Under Plan II, a railroad may provide complete door-to-door service; under Plan III the portion of the service that the railroad performs is limited to rail transportation between established TOFC ramps (the shipper must provide the trailers); Plan IV is comparable to Plan III, except that the shipper must also furnish the rail car. Plan V involves coordinated continuous motor-rail or motor-rail-motor services at joint rates which may be originated by either mode on the originator's shipment request (bill of lading). This latter plan facilitates coordination of rail and motor operations where the carriers serve different territories.

The Commission's TOFC/COFC traffic data indicate that more than 50 percent of all current TOFC/COFC traffic moves under Plan II (all-rail plan); 15 percent moves under Plans III and IV, and the remaining traffic moves under Plans I and V. To date, motor carrier participation in these intermodal traffic movement plans has been very limited.

Alternatives Under Consideration

There are several major alternatives under consideration. The first alternative is to exempt the rail and truck portions of TOFC/COFC service pricing from our regulation under § 10505 of the Interstate Commerce Act on the grounds that the limited scope of such plans makes economic regulation unnecessary (in 1978, for example, containerized shipments represented less than 8 percent of total railcar loadings). The principal benefit of this alternative is that railroad and trucking management would be permitted to establish a price (rate) for the continuous movement of traffic without Commission intervention, essentially allowing free market forces to establish the rate. (Under present regulation, decisions of this kind are subject to Commission review.) However, participants will be required to adhere to the statutory provisions designed to prevent broad differences in rates that tend to favor or discriminate against a particular shipper or group of shippers. Similarly, this alternative will require participants to publish their rates in a public price sheet (tariff) with the accompanying 30-day notice period in order for the Commission to monitor unjustified broad differences in rates, and to adhere to the Commission's present accounting and reporting requirements.

The major disadvantage is that the users of intermodal service would have little recourse—other than making a unilateral decision not to use a particular service—for a rate which is unreasonably disproportionate to the cost of providing the service. Under present regulation, concerned shippers could challenge an unreasonably high rate under the rate investigation and suspension provisions of the Interstate Commerce Act.

A second alternative would relax the rules and regulations governing the practices of motor carriers which participate in intermodal movements. At the present time, a motor carrier must have operating authority to serve the ultimate origin and destination points of a movement as well as the points at which it tenders traffic to or receives traffic from the railroad. This requirement discourages participation in intermodal plans, because a carrier has to seek new authority if the shipment consolidation points are changed. Similarly, carriers which do not now possess authority to perform transportation in intermodal service must petition the Commission for authority for each point at which they will perform service. This practice also tends to discourage efforts to experiment or develop intermodal plans. To remove this problem, the Commission is considering devloping a so-called "master certificate," which would encompass a generalized nationwide finding of public convenience and necessity based on the foreseen benefits of TOFC/COFC service and competition.

The benefit of this second alternative is that it would eliminate the need for specific, localized authority to serve the interchange point, and eliminate the attendant delay that would accompany each application for authority. The disadvantage of this alternative is that carriers now involved in intermodal traffic plans could lose traffic they now handle to new carriers.

A third alternative would revise our current policies regarding participation by truck operators performing services under contract (contract carriers) in intermodal plans. At present, contract carriers are not permitted to participate in intermodal service; this alternative would permit contract carriers to enter into intermodal service and negotiate with railroads for service under agreed rates. The principal benefit of this alternative is that contracts would generally be of several years duration and would reflect the individual needs and operating characteristics of the railroad and truck operator. This would lend stability to the intermodal plan and insure its continuance. A disadvantage is that the entrance of contract carriers into this freight market would further dilute the traffic available to existing truck operators.

Summary of Benefits

The principal benefit of revised TOFC/COFC regulations is that improved intermodal service will combine the best characteristics of rail and motor transportation by offering the long-haul cost and energy advantages of rail and the geographic operating flexibility of motor carriers. Moreover, it will offer containerized service, which may not now be available to some shippers because of present Commission regulatory policies, as a transportation alternative for shippers, and it will generate another source of revenues for the financially ailing railroad industry. Similarly, the increased competition that results from implementation of the proposal should be an effective force in allocating transportation resources and improving the quality of services.

Summary of Costs

We do not yet know the direct effect of the modified regulations on the costs associated with intermodal traffic. However, the reliance on market forces which should develop under all three alternatives could, in the long run, relieve inflationary pressures and defer or reduce the size of future increases in freight rates.

Sectors Affected

The alternatives under consideration would affect the railroad and trucking industries and users of commercial transportation services; it is conceivable that they will affect some geographical areas more than others.

The Commission staff expects the proposed rule to promote coordination of rail and motor services. This would more than likely force a realignment of the market for some freight. Some freight which is transported by an all-rail or all-motor movement, for example, could be diverted to a shared movement.

In addition, it will affect shippers who do not use intermodal traffic plans, as well as some low traffic-volume shippers, by giving them additional transportation alternatives. Because of the geographical flexibility of trucking, shippers not located on a rail line will have improved access to rail transportation.

The alternatives under consideration could have their most significant impact

in the western United States, where territories are more open and the long-haul benefits of rail transportation can be realized. Shippers in the western territories could conceivably benefit most under the improved regulations, if the Commission adopts them.

Related Regulations and Actions

Internal: "Practices of For-Hire Carriers of Property Participating in Trailer-on-Flatcar Services," 49 CFR 1090.

External: None.

Active Government Collaboration

None.

Timetable

NPRM—December 1979.

Hearing—January 1980 (Modified Procedure).

Final Rule—March 1980.

Regulatory Analysis—The ICC, as an independent agency, is not subject to the requirements ot Executive Order 12044 for a regulatory analysis.

Available Documents

ANPRM—"Improvement of TOFC/COFC Regulation," 44 FR 49279, August 22, 1979.

"Substituted Service—Water for Motor Service (Fishy-back Service)—Alaskan Trade," 361 I.C.C. 359 (1979).

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ICC
Intercorporate hauling (Ex Parte No. MC-122)

Legal Authority

Interstate Commerce Act, 49 U.S.C. § 10524.

Statement of Problem

Critics of government intervention in truck transportation focus on allegations of the inefficiently that regulation causes. They say that prices for truck transportation are too high because regulated truck operators can collectively establish rates and because regulation imposes artificial constraints on entry into the trucking business and operational freedom. Accordingly, they argue that regulation prohibits business enterprises which perform their own trucking operations from engaging in efficient use of their equipment.

Critics of regulation claim that regulation distorts markets and distribution facilities and that it retards innovation in patterns of operation. Those critics say that regulation imposes unnecessarily high costs on change because of the various administrative and legal requirements that it imposes on carriers. They believe that decisionmaking in a regulatory environment results in commodities being transported inefficiently and that a reliance on normal market forces would cure many of these problems.

In June 1977, at the request of the Commission, a task force studied and recommended to the Commission ways in which it could use market forces to improve regulation of the trucking industry. One recommendation was to relax the Commission's control over hauling between related corporations. At the present time transportation in furtherance of a primary business other than transportation is exempt from regulation by the Commission; this is so-called "private carriage." The statute does not define private carriage, but the Commission historically has defined the term narrowly to exclude transportation between corporations with a common owner; private carriage was limited to the transportation for and by a single corporation.

As a result of the task force recommendations, the Commission published an NPRM that will broaden the definition of private carriage to include (and thereby exempt from Commission regulation) transportation between and for members of a corporate family. Public response endorsed the change in policy. It is generally felt by private truck operators that a more liberal Commission policy over intercorporate hauling will provide opportunities to reduce the number of miles operated without lading, thereby allowing for the consolidation of fleets, improved fuel efficiency, and lower overall transportation costs.

This rulemaking will evaluate the need for a change in Commission policy.

Alternatives Under Consideration

There are four major alternatives under consideration in the proceeding.

The first is to maintain the status quo, i.e., do nothing additional. At the present time Commission regulations do not permit hauling between or for related corporations for compensation (it can be done, however, if it is performed without charge). The problem with this alternative is that it does not allow for improved efficiency in operation; rather, it discourages any change in current corporate transportation policies that would reduce fuel consumption or consolidate transportation fleets.

The second, third and fourth alternatives are related to the degree of control a parent corporation has over its subsidiary, but will encourage change in corporate transportation policies and encourage efficient operations.

The second alternative will permit compensated intercorporate hauling (without Commission regulation) for and between corporations that are at least 50 percent commonly owned.

The major advantage, relative to the options that require a more restrictive level of ownership, is that a greater number of private shippers could take advantage of compensated intercorporate hauling opportunities.

The primary disadvantage is that advocates of compensated intercorporate hauling may have underestimated the diversion of traffic from regulated carriers and the resulting adverse economic impact on carriers. If such diversion took place, undesirable effects would be maximized with this option. Moreover, it provides for less gradual adjustment to a new regulation by shippers, carriers, and consumers who might be adversely affected than would be afforded by the other alternatives.

The third alternative would permit compensated intercorporate hauling only for and between corporations that are 100 percent commonly owned.

This option has the advantage of taking a big step toward realizing the overall net benefits which are possible through increased efficiency in equipment and fuel use, expansion of markets and competition, and improved transportation service. It will make possible the least number of opportunities for compensated intercorporate hauling and minimize adverse impact on regulated carriers. This alternative reflects a strong policy of gradualism toward change to ensure that the relaxation of intercorporate hauling regulation is more clearly understood by the Commission before more far-reaching changes are made.

The major disadvantage is that this alternative would be too restrictive. A survey by one of the respondents to ascertain the benefits of relaxed rules on intercorporate hauling indicates that roughly two-thirds of the 1500 corporations surveyed by that respondent would not be able to take advantage of the relaxed policy because they are not 100 percent commonly owned.

The fourth alternative (the one which ICC feels shows the most promise) will permit intercorporate hauling by corporations that are 80 percent commonly owned. This alternative is a compromise between the 100 percent and 50 percent common ownership levels. A policy of caution and

gradualism is reflected in this alternative, but it broadens the scope and size of overall net benefits; moreover, it is in consonance with Internal Revenue Service guidelines permitting consolidated financial reports at the 80 percent common ownership level and recognizing a subsidiary owned 80 percent or more by its parent as part of a corporate family.

The Commission's approach to the problem of intercorporate hauling is self-regulatory; the policy change, if the Commission adopts it, will broaden the area of corporate transportation that is exempt from regulation by the Commission. At the present time, a substantial amount of intercorporate hauling is performed without compensation.

Summary of Benefits

The primary motivating factor in using or expanding private transportation is the necessity to meet unusual service demands that regulated carriers find impractical or impossible to meet. (Cost reduction is a secondary or complementary motive.) Unusual service requirements include multistop delivery, tightly scheduled pickup and delivery, coordinated and controlled commodity flows between facilities, or use of specialized equipment.

The proposed policy change will allow a broader use of existing equipment for corporations which already have a private transportation fleet and will perhaps reduce empty operating miles by as much as 30 percent. Fleet consolidation and elimination of duplicate staff could result in as much as a 40 percent saving in overall transportation costs for a combined operation.

For corporations which do not now have but wish to institute their own trucking operations, the proposed policy change could allow for a reduction in transportation costs for the combined corporation by as much as 25 percent of what it would cost them for transportation by regulated trucking companies.

Summary of Costs

The proposed change in policy could virtually guarantee a reduction in direct costs for trucking between related corporations by removing a portion of corporate decisionmaking from regulatory overview. Estimates from some of the parties which responded to the NPRM indicate that cost savings which could result from the broader definition of private carriage would be as much as three cents per mile less than the present cost to corporations which operate their own transportation fleet. Moreover, the policy change would alleviate the present burden on corporations to obtain operating certificates from the ICC where transportation is performed for and between a parent corporation and its subsidiary for compensation. A precise estimate of the savings to corporations is not available, but if present policy is changed, corporations would no longer have to obtain operating certificates, wait for accompanying agency action, or bear the expenses associated with those activities.

Similarly, there should be indirect cost savings to consumers. Although improved efficiency will not necessarily lower existing consumer prices (since a multitude of cost and competitive factors enter into pricing decisions), the change in policy should relieve inflationary pressure and defer or reduce future consumer price increases as corporate marketing decisions and inventory reduction, in response to better equipment availability and usage, lower overall production costs.

Sectors Affected

The proposed policy change will have broad impact because of the relationship of transportation costs to the price of commodities on market shelves.

The population nationwide will be indirectly affected, since the latest estimates show that 55 percent of overall inter-city truck tonnage moves by private carriage. The public ultimately pays these transportation costs in the wholesale or retail price of goods.

Corporations which now operate or desire in the future to operate private transportation fleets will be affected directly; similarly, regulated carriers will be affected, since they could lose a portion of current traffic that they now handle.

Related Regulations and Actions

Internal: "Intercorporate Parent-Subsidiary Transportation," 123 M.C.C. 768 (1975).

External: None.

Active Government Collaboration

Department of Transportation is appearing as a party in the proceeding and is advocating use of the 50 percent common ownership level to determine what constitutes a closely knit corporate family.

Timetable

Hearing—begins September 1979 (Modified Procedure).

Final Rule—December 1979.

Regulatory Analysis—the ICC, as an independent agency, is not subject to the requirements of Executive Order 12044 for a regulatory analysis.

Available Documents

"Intercorporate Parent—Subsidiary Transportation," 123 M.C.C. 768 (1975).

"Status Report—Intercorporate Hauling Regulation," Bureau of Economics, Interstate Commerce Commission, December 1978.

"Request for Comments Intercorporate Hauling," 43 FR 58002, December 11, 1978.

NPRM, "Intercorporate Hauling" (Ex Parte No. MC-122) Proposed Policy Statement, 44 FR 42838, July 20, 1979.

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ICC

Western Coal Investigation—Guidelines for Railroad Rate Structure (Ex Parte No. 347)

Legal Authority

Interstate Commerce Act, 49 U.S.C. § 10501.

Statement of Problem

In 1976 the Interstate Commerce Commission (the Commission) instituted an investigation of the railroad industry's freight rate structure on coal in response to allegations that prices for coal transportation were unreasonably high in relation to the costs. A public utility, which is a significant user of coal in generating electricity, argued that ratemaking for coal movements without an established rate ceiling does not properly consider the interests of the public, which ultimately bears the transportation costs.

That investigation revealed that a new and unprecedented demand for coal produced in the Western United States (so-called western coal), and the advantages of intermodal (combined rail and truck) transportation in the movement of coal created circumstances and conditions that distinguish coal production and transportation in the West from coal production and transportation in the East or Midwest.

The demand for western coal continues to increase, and the price of coal continues to increase accordingly. Consequently, the railroads, which transport a substantial portion of western coal shipments, are setting new, and usually higher shipping rates. The transportation rate ultimately affects

and may be a significant part of the delivered price of coal.

The principal task of this proceeding will be to determine appropriate minimum and maximum rate levels for large-volume movements (10,000 tons) of bituminous and lignite coal from Montana, North and South Dakota, Colorado, Wyoming, Utah, Arizona, and New Mexico to points in the United States where rail carriers are found to dominate all other modes in the movement of coal.

Alternatives Under Consideration

The major alternative under consideration is the establishment of upper and lower limits within which rail carriers will be free to change rates without intervention by the Commission (a so-called "zone of reasonableness"). There are several ways this zone can be defined—(1) as a percentage of rates based on the rail uniform freight classification (so-called "class rates"), (2) as a percentage of rates published for specified commodities (so-called commodity rates), (3) as a ratio of rates to variable or fully-allocated cost levels, or (4) some other basis or market condition peculiar to the movement of western coal.

The Commission will determine the manner of defining the zone from the comments it receives from interested parties.

Summary of Benefits

The benefit of establishing guidelines is the latitude it will give rail management in pricing western coal movements without fear of the Commission postponing the effectiveness of the established rates.

Similarly, the guidelines will help all users of rail service in coal movements to predict and become involved in the negotiation of western coal rates. The criteria the guidelines establish will also expedite the litigation of numerous western coal rate proceedings, because once the guidelines are in place, issues of whether rates bear a reasonable relation to costs or exceed the established limits will be reduced, for the most part, to a simple mathematical computation.

Summary of Costs

Guidelines setting maximum rate levels should keep costs for the transportation of western coal below those which would result without regulation. We cannot yet establish the precise cost savings, but in recent rate changes on coal movements some rates were increased by as much as 22 percent. The guidelines resulting from this proceeding will not necessarily prevent rate increases, but they should limit increases in rates to provable increases in costs. Presumably, but not necessarily, such increases in costs will equal changes in overall economic price indices.

Also, the costs of negotiating and litigating western coal rates should decrease indirectly, since the guidelines will indicate how high rail carriers, which substantially dominate the market, can raise rates without incurring the time delays that accompany the Commission's processing of complaints.

Sectors Affected

The proposed guidelines will have broad impact because of the relationship of transportation costs for coal to the delivered price of coal.

The guidelines will affect indirectly the population nationwide, since everyone uses energy. Moreover, today coal is primarily used for generating electricity, but in the future it may become the major source of energy for other processes, such as steel production or chemical manufacturing. The public pays for the price of coal when it pays electricity bills and the public will bear a portion of the costs of coal when it is used in other processes.

The guidelines will affect public utilities directly particularly electric utilities. Steel manufacturers and chemical companies are other industries that rely heavily on coal in the processing of raw materials and end products, and the rate levels of western coal movements will affect them similarly.

Cities west of the Mississippi have been the first affected by western coal railroad rates, since those cities have been the traditional users of western coal. However, the use of western coal is expanding, and it is conceivable that the price of coal will affect all regions of the country.

Related Regulations and Actions

Internal: "Investigation of Railroad Freight Rate Structure—Coal," 345 I.C.C. 493 (1976).

External: None.

Active Government Collaboration

Department of Energy and Department of Transportation have offered, by separate pleadings, alternatives for establishing maximum rate levels.

Timetable

Hearing—begins October 1979.
Notice of Proposed Guidelines (NPG)—Fall 1979.
Final Guidelines—summer 1980.
Regulatory Analysis—The ICC, as an independent agency, is not subject to the requirements of Executive Order 12044 for a regulatory analysis.

Available Documents

Ex Parte No. 270 (Sub-No. 4), "Investigation of Railroad Freight Rate Structure—Coal," 345 I.C.C. 493 (1976).

Ex Parte No. 338, "Standard and Procedures for the Establishment of Adequate Railroad Revenue Levels," 359 I.C.C. 270 (1978).

NPRM, "Western Coal Investigation—Guidelines for Railroad Rate Structure," (Ex Parte No. 347), 43 FR 22151, May 23, 1978.

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POSTAL RATE COMMISSION

Postal Rate Commission Docket MC79-2, to consider a request of the U.S. Postal Service for the establishment of an Express Mail Metro Service subclass filed with the Commission on December 7, 1978

Legal Authority

The Postal Reorganization Act of 1970, as amended, §§ 3621, 3622 and 3623, 39 U.S.C. § 3601 (1970).

Statement of Problem

This proposed new first-class mail subclass will provide expedited, same day delivery service within selected metropolitan service areas.

Although the present system of first-class mail is designed to provide priority delivery of mail throughout the country and within metropolitan areas, several factors make it an unsuitable system for mailers looking for intrametropolitan same-day delivery service of special mail matter. These include: (1) no requirement for insuring mailers to meet mail collection times, (2) regular letter-carrier pick-up schedules which do not always allow for sameday delivery service, and (3) mailers with delivery deadlines who are not satisfied with the consistency of delivery that regular first-class mail provides. There are similar problems with "Special Delivery," which is a priority mail subclass of first-class mail. These include: (1) the design of the service, which was not intended to provide same-day delivery, (2) lack of customer education on "Special Delivery" service standards; for example, "Special Delivery" labels have

not met with wide customer acceptance, since many customers still prefer to mark the envelopes with "Special Delivery" markings themselves, and (3) the difficulty of identifying "Special Delivery" mail, since many mailers often bundle it with other mail.

Based on the above conclusions, the Postal Service believes Express Mail Metro Service would fulfill the need for a rapid, same-day delivery service in the local marketplace.

Initially, the Postal Service has proposed this expedited service in three metropolitan areas: Chicago, Illinois; Columbus, Ohio; and Gulfport, Mississippi. If the Postal Rate Commission approves this subclass and it is successful, the Postal Service plans to offer Express Mail Metro Service in 31 major metropolitan post offices.

Express Mail Metro Service, while meeting the unique needs of mailers for rapid, same-day delivery, will also take advantage of existing techniques, procedures and practices within the Postal Service. For example, metro mail will move through a separate mail stream in highly visible, easily identifiable containers, thereby permitting instant recognition and top priority handling.

While this service is designed to fulfill a specific need for rapid movement of mail within a local business community, any mailer may use the service by bringing his mail to designated post offices in a participating city. In addition, customers using metro mail may arrange with the Postal Service for pick-up.

Service Standards

Customers may use any one of the following three options for delivery of Express Mail Metro Service:

Tendered By	Delivered By
10:00 a.m.	5:00 p.m. of same day.
Noon	5:00 p.m. of same day.
5:00 p.m.	10:00 a.m. of next day.

The Postal Service would back delivery standards by a service guarantee that provides full postage refund if delivery is late. The Postal Service would also provide, at no additional cost, Standard Express Mail insurance against loss, damage or rifling.

Proposed Rates

The Postal Service desires to make Express Mail Metro Service easily understood and readily acceptable to the public and plans to offer a simplified rate structure that has three basic prices, depending on weight.

Weight	Rate
1 lb. and under	$9
Over 1 through 8 lbs.	12
Over 8 through 70 lbs.	15

In addition, there will be a pick-up charge of $5.25 per stop, regardless of the number of items picked up.

Alternatives Under Consideration

Alternatives under the Commission's consideration have been presented by private courier services who oppose the institution of such a service. These include: Purolator Courier Corporation, Air Courier Conference of America, American Package Express Carriers Association, Associated Third Class Mailers, Association of Messenger Services, Inc., Association of Milwaukee Messenger Services, Avon Products, Inc., Central Carrier Corporation, Columbus Parcel Service, Inc., Council of Public Utility Mailers, Dow Jones and Company, Inc., Gelco Courier Services, Inc., U.S. Department of Justice, Messenger Service Association of Illinois, Metro Courier Committee, Metropolitan Messenger and Delivery Service Corporation, National Association of Greeting Card Publishers, J.C. Penney Company, Inc., and United Parcel Service. The Small Business Association also takes the same position.

The Officer of the Postal Rate Commission, who represents the general public's interests in all cases before the Commission, is proposing lower rates for Express Mail Metro Service than the Postal Service has suggested. He also proposes that the Postal Service implement it on a temporary basis, until it can gather actual cost and impact information.

Summary of Benefits

As we stated earlier, the Postal Service maintains that the proposed Express Mail Metro Service will provide the mailer with a needed, expeditious same-day delivery service in selected metropolitan areas.

Summary of Costs

Until the Commission issues its decision, the law governing the operations of the Postal Rate Commission prohibits the Commission from commenting on the economic effects of the Service's proposal. However, witnesses for the Postal Service believe that Express Mail Metro Service will increase the Service's annual net revenues by $34 million.

Sectors Affected

This proposal would affect any mailer who desires to use an expedited same-day delivery service of time-sensitive materials within a local business community; such a mailer will have the option of using the Postal Service or private courier companies. However, the private courier companies maintain that this would be government interference which adversely affects their businesses.

Related Regulations and Actions

None.

Active Government Collaboration

None.

Timetable

Commission decision recommended—December 1979.

Final decision by Governors of Postal Service following Commission decision and based on the Commission record.

Available Documents

Commission Notice instituting procedures for Postal Service's Request for the establishment of an Express Mail Metro Service Subclass, 43 FR 68664, December 15, 1978. Transcripts of Hearings which began on May 14, 1979 and were completed on September 25, 1979, as well as Testimony, Exhibits, Workpapers, Library References/Studies, Interrogatories and Answers. Requests for Oral Cross-Examination and Written Cross-Examination, Commission Orders and Notices, Presiding Officer's Orders, Rulings, Motions, and Notices, Petitions for Leave to Intervene and Request for Limited Participation, Commission's Recommended Decision (when issued) for Docket MC79–2.

For further information, please call the Commission's Docket Room at 254–3800 or write 2000 L Street, N.W., Suite 500, Washington, D.C. 20268.

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PRC

Postal Rate Commission Docket MC79-3, instituted by the Commission pursuant to 39 U.S.C. § 3623(b), to hear evidence on the preferential treatment, commonly referred to as "red-tag" treatment, afforded certain time-value publications sent as second-class mail.

Legal Authority

The Postal Reorganization Act of 1970, as amended, §§ 3621, 3622 and 3623, 39 U.S.C. § 3601 (1970).

Statement of Problem

The Commission established this case on January 4, 1979.

This proceeding stemmed from a previous case, Docket MC76-2, where the Officer of the Postal Rate Commission, who represents the interests of the general public in all Commission cases, proposed to expand, to all second-class mail users who request it, the availability of the preferred (red-tag) treatment afforded certain time-sensitive publications and to impose a surcharge for this preferential treatment. This preferential treatment allows such mail to be handled on a priority basis similiar to that given first-class mail.

When the Officer of the Postal Rate Commission made his proposal in the first case, the Commission in its decision found insufficient evidence to justify a surcharge. The Commission also found inadequate cost information to justify expansion of the "red-tag" treatment to any second-class mailer requesting it. (Second-class mailers mail magazines and newspapers.)

In the last postal rate case, Docket R77-1, filed two months after the record had closed on the original red-tag surcharge proposal, July 13, 1977, the Postal Service introduced a new costing concept—service-related cost (SRC), which imposed a higher cost for priority handling. However, there was insufficient data and time to pursue the applicability of service-related cost to red-tag service mail in Docket R77-1. Since the SRC concept was not involved in the original red-tag proposal, the Commission felt it should institute a new case to investigate the appropriateness of a red-tag surcharge for service using the SRC costing theory. If a surcharge were to be established, it would also be necessary to explore the feasibility of offering such priority handling to all second-class mailers willing to pay the surcharge.

Alternatives Under Consideration

Alternatives under consideration are presented by: red-tag mailers, who are opposed to a surcharge, because it would increase their rates and possibly force them to look for alternative methods of delivery; the Postal Service, who takes no position on the necessity for a surcharge for second-class mail; the Officer of the Commission, who represents the general public's interests and recommends that a clearly defined special service be established to provide expeditious delivery to second-class publications and that costs associated with providing such preferential treatment be borne only by publications using this service.

Parties in the proceeding include: United States Postal Service, Agricultural Publishers Association, Inc., American Business Press, American Library Association, American Newspaper Publishers Association, American Retail Federation, Association of American Publishers, Inc., and Book Manufacturers Institute, Association of Second Class Mail Publications, Catholic Press Association, Classroom Publishers Association, Department of Defense, Direct Mail/Marketing Association, Inc., Dow Jones & Company, Inc., Gestetner Corporation, Macmillan, Inc., Magazine Publishers Association, Inc., Meredith Corporation, The National Industrial Traffic League, National Newspaper Association, Samuel C. Pennington, Purolator Services, Inc., The Readers Digest Association, Inc., Time Incorporated, Fairchild Publications, International Labor Press Association AFL-CIO, James T. Lowder, Publisher, Ohio Antique Review, Inc., National Association of Greeting Card Publishers, The New Republican, Inc., New York Magazine Company, Inc., The New Yorker Magazine, Inc., Newsweek, Inc., U.S. News & World Report, Inc., United Parcel Service, and the Officer of the Commission.

Summary of Benefits

The red-tag proposal was brought before the Commission by the Officer of the Commission in a previous case. The Commission felt there were some issues still outstanding and instituted this case to answer those questions, with a view toward establishing a classification schedule that imposes costs for priority mail handling. This would make the mail classification schedule more fair and equitable to all mailers.

Summary of Costs

Witnesses of the Officer of the Postal Rate Commission estimate, based on 1975 mail volume figures, that the Postal Service would realize approximately $66 million in additional revenue per year if it establishes this subclass. However, the Postal Service has given no positive figures. The Postal Rate Commission will investigate this matter during hearings on this case and will attempt to get a more refined cost figure.

Sectors Affected

If the Postal Service established this subclass and imposed a surcharge, it would affect all second-class mailers. If so, users of red-tag service would pay a higher rate, and non-users might have their rates reduced.

Related Regulations and Actions

None.

Active Government Collaboration

None.

Timetable

The Commission instituted this proceeding on January 4, 1979.

Because this case did not originate with the Postal Service, as is usual, the Commission directed the Postal Service to file its case by March 15, 1979. However, the Postal Service was unable to meet this deadline and the date of filing was reset to May 31, 1979. The deadline for other parties to file their responses was changed from June 15, 1979, to June 29, 1979. Hearings began on September 11, 1979. No date has yet been set for closing the record, since this will depend on the time needed for cross-examining witnesses.

Available Documents

Commission Order No. 228, instituting the proceeding in MC79-3 and the Notice sent to the Federal Register on January 10, 1979, 44 FR 2211-214.

Transcripts of Hearings, as well as Testimony, Exhibits, Workpapers, Library References/Studies, Interrogatories and Answers, Requests for Oral Cross-Examination and Written Cross-Examination.

Commission Orders and Notices; Presiding Officer's Orders, Rulings, Motions and Notices, Petitions for Leave to Intervene and Request for Limited Participation; Commission's Recommended Decision (when issued) for Docket MC79-3.

For further information, please call the Commission's Docket Room at 254-3800 or write 2000 L Street, N.W., Suite 500, Washington, D.C. 20268.

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INDEX I: SECTORS AFFECTED BY REGULATORY ACTIONS

This index highlights those sectors of our society—economic, environmental, and social—which the agencies have identified as being affected by the regulations under development that are described in the Calendar. This is not intended to be a comprehensive index listing every sector affected either directly or indirectly. It is designed to display only those primary sectors most directly affected by the proposal. For full information on the effects of the regulation, you must refer to the full description of the regulation.

The index is organized alphabetically by Executive, and then by Independent agencies, by unit within the agency, and then by the title of the regulation under development by the agency. Across the top of the page, the general sectors which are affected are organized into three groups, with specific categories of sectors affected listed under each general category.

To use the index if, for instance, you own a business organization and wished to see if it was affected by a proposed regulation, you would look across the top of the page for the general category of "Trade and Industry", and within it, for the category of "Business and Industry". You would then look down the Business and Industry category until you found your particular business. You would see the name of the regulation, and the page number on which it appears, and would then have a quick reference to the regulations which might concern you most. Similarly, if you wished to know if any regulations affected the environment, your personal health and safety, or the transportation that you use to obtain your goods, you would look down the appropriate (i.e., Environmental and Natural Resources, Health and Safety or Transportation) column and be able quickly to see regulations that are of concern to you.

The Sectors Affected categories are listed below.

Trade and Industry includes;

Business and Industry

Some agencies have included SIC codes in the narrative describing sectors affected by the regulation. We are considering adding the SIC codes to this category in the index, and would welcome comments on whether this addition would be useful to readers.

Transportation

Within the Business and Industry category, there were so many transportation-related sectors that we created a separate column to indicate the various modes of transportation that may be affected by the regulations. These include parts of the transportation industry, such as air or land—non-rail.

Environment and Natural Resources

In this category, the sectors of the environment which may be affected by the actions under development are listed, e.g. air, land, water. Natural resources that could be affected, such as plants and animals, or marine life, are also noted.

Energy

We identify a more specific sector of the Environment and Natural Resources category in this column where specific sources of energy such as hydroelectric power are listed, as well as policies and programs dealing with energy such as conservation or pricing.

Health and Safety

This category includes actions that may affect human health and safety, such as labeling regulations, as well as specific programs such as health services, and topics of concern in health, such as cancer or nutrition.

The category also includes safety issues such as road and air safety, as well as specific places, such as the workplace, that would be made more safe by the regulation.

Special Populations

The final category in this broad group includes population groups which agencies have identified as being potentially affected by the regulation. They can include spatial groups such as "urban dwellers", employment grouping such as "miners" or physical groups such as "handicapped".

Other includes:

State and Local Government

Entries appear in this category if State or local government may be involved in implementing the regulatory action, or if they may be regulated themselves by the action.

Geographical

In this category, the agencies have indicated certain areas of the country that may be affected by the regulation such as "Western States" or a specific State or area within the country.

Comments

This category provides space for any comments which the agencies wish to make about special characteristics of the regulation, or sectors affected which do not fit into any of the major categories.

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DOC-NOAA	Regulations implementing a preliminary fishery management plan for Pacific billfish and oceanic sharks under the Fishery Conservation and Management Act of 1976, as amended	68213	Fisheries		Marine Life					Pacific Coast Areas; Pacific Trust Territories			

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EPA-OWWM	Control of Organic Chemicals in Drinking Water	68298	Water Treatment Plant		Water		General		State; Local			
EPA-OWWM	Effluent Guidelines and Standards Controlling the Discharge of Pollutants from Steam Electric Power Plants into Navigable Waterways	68251	Steam Electric Utility		Water; Marine Life		Drinking Water		State			
EPA-OWWM	Hazardous Waste Regulations: Core regulations to control hazardous solid waste from generation to final disposal	68299	General	Land--Non-Rail	Land; Ground water		General		State			
EEOC	Recordkeeping regulations, extending the length of time certain records, already required to be kept, should be retained	68316	General						State; Local		Employers; Labor Orgs.; Educ. Instits.	
GSA-NARS	Freedom of Information Act requests for national security classified information in the National Archives	68317	General								National Security	
NCUA	Organizing a Federal Credit Union	68259	Credit Unions									
VA	Nondiscrimination on the basis of handicap in programs and activities receiving or benefiting from Federal financial assistance	68318	General					Handicapped	State; Local			
CAB	Air Carrier Fitness	68343	Aviation	Air		Air Safety		Air Travelers				
CAB	Air Carrier Insurance and Liability	68344	Aviation; Insurance	Air				Air Travelers				
CAB	Essential Air Service Subsidy Guidelines	68344	Aviation	Air				Air Travelers to and from Small Communities				
CAB	Plain English for Airline/Passenger Contracts	68346	Aviation	Air				Air Travelers				
CPSC	Consumer Products Containing Asbestos	68302	Asbestos-Related			Cancer						
CPSC	Omnidirectional Citizen Band Base Station Antenna Standard	68304	Communications			Electrical						

INDEX I: SECTORS AFFECTED BY REGULATORY ACTION

			TRADE AND INDUSTRY		NATURAL AND HUMAN RESOURCES				OTHER		COMMENTS
AGENCY	TITLE OF REGULATION	PAGE NO.	BUSINESS AND INDUSTRY	TRANSPORTATION	ENVIRONMENT AND NATURAL RESOURCES	ENERGY	HEALTH AND SAFETY	SPECIAL POPULATIONS	STATE AND LOCAL GOVERNMENT	GEOGRAPHICAL AREAS	COMMENTS
CPSC	Upholstered furniture cigarette flammability standard	68305	Upholstered Furniture				Flammability				
FCC	Creation of New Personal Radio Service (PR Docket 79-140)	68346	Communications				2 Way Radio Users				
FCC	Deregulation of Competitive Domestic Telecommunications Market (CC Docket 79-252)	68347	Tele-Communications				Domestic Telecommunications e.g., Telephone Users				Deregulation
FCC	Notice of Inquiry/Notice of Proposed Rulemaking in the Matter of Radio Deregulation (BC Docket 79-219)	68348	Communications				Radio listeners and Advertisers				Deregulation
FERC	Procedures Governing Applications for Special Relief Under §§104, 106, and 109 of the Natural Gas Policy Act of 1978 (Docket No. RM79-67)	68252	Gas			Pricing; Production	Natural Gas Consumers				
FERC	Regulations concerning sales of electric power between qualifying cogeneration and small power production facilities and electric utilities, and exemption of such facilities from regulation, under §§201 and 210 of the Public Utilities Regulatory Policies Act of 1978 (PURPA)	68253	Electric Utility; Business & Industry With Power Generation			Alternative Sources	Electric Consumers	State Regulatory Commissions; Some Local			
FERC	Regulations Governing Applications for Major Unconstructed Projects	68255	Electric Utility		Water	Hydro-Electric Power	Electric Consumers	Some States; Local			
FERC	Regulations to Implement the Second Stage of Incremental Pricing under the Natural Gas Policy Act	68256	Utility; Users of Natural Gas			Gas Pricing	Natural Gas Consumers				
FERC	Valuation of Common Carrier Pipelines	68257	Pipeline; Oil	Common Carrier Pipelines		Oil and Petroleum Product Pricing					
FHLBB	Monitoring Fair Lending Practices	68260	Savings and Loans								
FHLBB	Proposed Amendments on Outside Borrowing	68261	Savings and Loans								

INDEX I: SECTORS AFFECTED BY REGULATORY ACTION

			TRADE AND INDUSTRY		NATURAL AND HUMAN RESOURCES					OTHER		COMMENTS
AGENCY	TITLE OF REGULATION	PAGE NO.	BUSINESS AND INDUSTRY	TRANSPORTATION	ENVIRONMENT AND NATURAL RESOURCES	ENERGY	HEALTH AND SAFETY	SPECIAL POPULATIONS	STATE AND LOCAL GOVERNMENT	GEOGRAPHICAL AREAS	COMMENTS	
FHLBB	Washington, D.C.-Md.-Va. SMSA Branching	68261	Savings and Loans						D.C.; Md.; Va.			
FMC	Amendment to financial reports by common carriers by water in the domestic offshore trades	68349	Common Carrier	Maritime							Financial reporting	
FMC	Amendments to tariff requirements for controlled carriers	68350	Common Carrier	Maritime								
FMC	Certification of company policies and efforts to combat rebating in the foreign commerce of the United States	68351	Common Carrier	Maritime								
FMC	Filing of agreements by common carriers and other persons subject to the Shipping Act of 1916	68352	Common Carrier	Maritime								
FMC	Revision of the Commission's General Order 4, "Licensing of Independent Ocean Freight Forwarders"	68353	Freight Forwarding	Maritime							Licensing	
FMC	Surcharges under dual-rate contracts on less than ninety days' notice	68353	Common Carrier	Maritime								
FTC	Medical Participation in Control of Blue Shield and Certain Other Open-Panel Medical Prepayment Plans	68328	Medical Care; Health Insurance				Medical Doctors					
FTC	Mobile Homes Sales and Service Trade Regulation Rule	68330	Mobile Home				Mobile Home Dwellers	Some States				
FTC	Proposed Trade Regulation Rule (TRR) on Standards and Certification (43 FR 57269, December 7, 1978)	68331	General									
FTC	Rulemaking on Children's Advertising	68334	Children's Television Programs; TV Broadcasting & Advertising				Children					
FTC	Trade Regulation Rule Concerning Credit Practices	68336	Consumer Credit; Debt Collection									

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			TRADE AND INDUSTRY		NATURAL AND HUMAN RESOURCES						OTHER		COMMENTS
AGENCY	TITLE OF REGULATION	PAGE NO.	BUSINESS AND INDUSTRY	TRANSPORTATION	ENVIRONMENT AND NATURAL RESOURCES	ENERGY	HEALTH AND SAFETY	SPECIAL POPULATIONS	STATE AND LOCAL GOVERNMENT	GEOGRAPHICAL AREAS	COMMENTS		
ICC	Improvement of TOFC/COFC Regulation (Ex Parte No. 230 (Sub-No. 5))	68354	Common Carrier	General					State; Local	Western States			
ICC	Intercorporate Hauling (Ex Parte No. MC-122)	68356	Common Carrier—Trucking	Land—Non-Rail									
ICC	Western Coal Investigation -- Guidelines for Railroad Rate Structure (Ex Parte No. 347)	68357	Freight Carrier-Coal; Utility	Rail		Coal Pricing			State; Local	Cities West of the Mississippi			
NRC	Decommissioning and Site Reclamation of Uranium and Thorium Mills	68307	Uranium; Thorium		Radiation		General		State				
NRC	Decommissioning of Nuclear Facilities	68307	Nuclear		Radiation		General		State				
NRC	Disposal of High Level Radioactive Waste in Geologic Respositories	68309	Nuclear Waste Disposal		Radiation	DOE	General		State; Local				
PRC	Postal Rate Commission Docket MC79-2 to consider a request of the U.S. Postal Service for the establishment of an Express Mail Metro Service subclass filed with the Commission on December 7, 1978	68358	Private Courier; Postal								General Public		
PRC	Postal Rate Commission Docket MC79-3, instituted by the Commission pursuant to 39 U.S.C. §3623(b), to hear evidence on the preferential treatment, commonly referred to as "red tag" treatment, afforded certain timevalue publications sent as secondclass mail	68360	Postal; Volume Periodical Mailer										

INDEX II: DATE OF NEXT REGULATORY ACTION

This index graphically shows the anticipated date of the next regulatory action that the agency plans to take for each regulation. The actions fall into four general categories: ANPRM (the date on which the Agency or Department plans to publish an Advance Notice of Proposed Rulemaking in the **Federal Register**), NPRM (the date on which the Agency or Department plans to publish a Notice Proposed Rulemaking in the **Federal Register**), Final Rule (the date on which the agency plans to publish the final rule in the **Federal Register**), and Other, the category that indicates the date of the next next anticipated action that is different from the above three categories. Independent agencies are most likely to have "other" actions, such as Notices of Inquiry, Final Guidelines, or Commission Decisions.

By refering to the Timetable category placed at the end of each entry in the Calendar, the reader can see the anticipated schedule for all future actions on each regulation. This index provides a handy reference for the most immediate action planned in each case.

Note: In every case, these dates are estimated. For current information on an action, call the agency contact listed for each entry.

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AGENCY	TITLE OF REGULATION	PAGE NO.	NOV '79	DEC '79	JAN '80	FEB '80	MAR '80	APR '80	MAY '80	JUN '80	JUL '80	AUG '80	SEP '80	OCT '80	NOV '80	DEC '80	1981
USDA-AMS	Amendments to Federal Seed Act Regulations	68320									←	N	→				
USDA-AMS	Proposed Federal Milk Order for Southwestern Idaho-Eastern Oregon Marketing Area (Boise, Idaho)	68318		F													
USDA-FNS	Regulation by the Secretary of Agriculture of foods sold on school premises in competition with the National School Lunch Program and the School Breakfast Program	68263			F												
USDA-FSQS	Proposed Net Weight Regulations	68321		N or F													
USDA-FSQS	Voluntary Meat and Poultry Plant Quality Control Systems	68265			←	F	→										
USDA-SCS	Watershed Protection and Flood Prevention Program	68208												N			
DOC-MARAD	Operating-differential subsidy for bulk cargo vessels engaged in world wide service; essential service requirement (46 CFR 252.21)	68338	F														
DOC-NOAA	Regulations implementing a fishery management plan for the butterfish fishery of the Northwest Atlantic Ocean under the Fishery Conservation and Management Act of 1976, as amended	68209	N														
DOC-NOAA	Regulations implementing a fishery management plan for the groundfish fishery for the Bering Sea/Aleutian Island area under the Fishery Conservation and Management Act of 1976, as amended	68211	N														
DOC-NOAA	Regulations implementing a preliminary fishery management plan for Pacific billfish and oceanic sharks under the Fishery Conservation and Management Act of 1976, as amended	68213	←	F	→												
DOC-NOAA-OCZM	Channel Islands Marine Sanctuary Regulations	68216	N														

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DOE-BCS HUD-NVACP	Energy performance standards for new buildings	68218		N													
DOE-CS	Energy Conservation Program for Consumer Products (Other than Automobiles)	68219				Multiple actions—see text for details											
DOE-ERA	Amendments to Puerto Rican naphtha entitlements regulations	68220		N													
DOE-ERA	Amendments to the emergency provisions of the crude oil buy/sell program	68222		N													
DOE-ERA	Gasohol Marketing Regulations	68223		N													
DOE-ERA	Incentives for refinery investment	68224		N													
DOE-ERA	Natural gas curtailment priorities and related issues	68225				N											
DOE-RA	Outer continental shelf (OCS) sequential bidding regulations	68226				F											
DOE-RA	Profit share bidding systems regulations for federal outer continental shelf (OCS) oil and gas leases	68227				F											
DOE-RA	Proposed outer continental shelf (OCS) bidding systems regulations	68228		F													
HEW-FDA	Chemical Compounds Used In Food Producing Animals; Criteria and Procedures For Evaluating Assays for Carcinogenic Residues	68267											O				
HEW-FDA	Food Labeling Initiatives	68268		O													
HEW-FDA	Prescription Drug Products; Patient Labeling Requirements	68270									F						
HEW-HCFA	Conditions of Participation for Skilled Nursing Facilities and Intermediate Care Facilities	68271				N											
HEW-HCFA	Life Safety Code in Hospitals, Skilled Nursing Facilities (SNFs) and Intermediate Care Facilities (ICFs)	68272		O													

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HEW-HCFA	Uniform Reporting Systems for Health Services Facilities and Organizations	68273		N													
HUD-NVACP DOE-BCS	Energy performance standards for new buildings	68218	N														
DOI-BLM	Surface management of mining claims located on the public lands	68229	N														
DOI-FWS	Endangered Species Act, §4, Regulations for Listing Endangered and Threatened Wildlife and Plants	68230			F												
DOI-HCRS	Rules and Regulations Pertaining to the Urban Park and Recreation Recovery Program	68231		F													
DOI-WPRS	Rules and regulations for acreage limitation under Federal Reclamation law	68232														N	
DOJ-BOP	Non-Discrimination Towards Inmates	68310	N														
DOJ-CRD	Regulations prohibiting discrimination solely on the basis of handicap in Federally assisted programs	68310							F								
DOJ-INS	Replacement of Alien Registration Receipt Cards - Requirement for Single Fingerprint and Personal Appearance	68311	N														
DOJ-LEAA	Equal Service Program Guidelines	68312	N														
DOJ-LEAA	Procedures Relating to the Implementation of the National Environmental Policy Act	68233	N														
DOL-ESA	Proposed amendment to the Sex Discrimination Guidelines (41 CFR 60-20) governing insurance and other employee benefit plans	68313	Date unknown, contingent on EEOC action														
DOL-ETA	Nondiscrimination on the Basis of Handicap in Federally Assisted Programs	68314	N														

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DOL-MSHA	Mandatory safety standards for surface coal mines and surface areas of underground coal mines	68274		A													
DOL-MSHA	Regulations setting forth requirements for safety and health training for mine construction workers	68275				A											
DOL-MSHA	Requirements for construction and maintenance of impoundments and tailings piles at metal and nonmetal mines	68276					A										
DOL-MSHA	Safety and health standards for construction work at all surface mines and surface areas of underground mines	68277							N								
DOL-OSHA	Chemical Warning Systems (chemical labeling)	68278				N											
DOL-OSHA	Generic standard for occupational exposure to pesticides during manufacture and formulation	68279							N								
DOL-OSHA	Regulation for reducing safety and health hazards in abrasive blasting operations	68280		N													
DOL-OSHA	Safety and health regulations for construction activities in tunnels and shafts	68282				N											
DOL-OSHA	Safety standard for walking and working surfaces in general industry	68283							N								
DOL-OSHA	Standard for occupational exposures to hexavalent chromium	68284							N								
DOT-FAA	Flammability standards for crewmember uniforms	68286				N											
DOT-FHWA	Certification of vehicle size and weight enforcement	68339		F													
DOT-FHWA	Design Standards for highways -- geometric design standards for resurfacing, restoration, and rehabilitation (RRR) of streets and highways other than freeways	68340	Date unknown—DOT is still evaluating alternative actions														

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DOT-FHWA	Hours of service of drivers	68287							N								
DOT-FHWA	Interstate maintenance guidelines	68341			F												
DOT-FHWA	Minimum cab space dimensions	68288							N								
DOT-FHWA	Withdrawal of Interstate segments and substitution of alternative transportation projects	68342		N													
DOT-FRA	Alerting lights display -- locomotives	68288			F												
DOT-NHTSA	Fuel economy standards for model years 1982-85 light trucks	68234		N													
DOT-USCG	Construction and equipment for existing self-propelled vessels carrying bulk liquefied gases	68289								N							
DOT-USCG	Construction standards for the prevention of pollution from new tank barges due to accidental hull damage; and regulatory action to reduce pollution from existing tank barges due to accidental hull damage	68235							N								
TREAS-ATF	Advertising Regulations under the Federal Alcohol Administration Act	68323		N													
TREAS-ATF	Partial Ingredient Labeling of Wine, Distilled Spirits, and Malt Beverages	68324							F								
TREAS-ATF	Revision of the Distilled Spirits Tax System	68325	O														
TREAS-ATF	Unlawful Trade Practices under the Federal Alcohol Administration Act	68326							F								
EPA-OANR	Environmental Standard for Inactive Uranium Mill Tailings	68290					N										
EPA-OANR	Gaseous Emission Regulations for 1983 and Later Model Year Heavy-Duty Vehicles	68237		F													
EPA-OANR	Gaseous Emission Regulations for 1985 and Later Model Year Heavy-Duty Vehicles	68236							N								

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EPA-OANR	Listing of coke oven emissions as a hazardous air pollutant and development of emission limitations	68238														N	
EPA-OANR	National emission standards for hazardous air pollutants - benzene	68239	Multiple actions—see text for details.														
EPA-OANR	Noise Emission Standard for Newly Manufactured Motorcycles	68240	No date available at time of this publication.														
EPA-OANR	Noise Emission Standard for Newly Manufactured Wheel and Crawler Tractors	68241															F 1982
EPA-OANR	Particulate Regulations for Light-Duty Diesel Vehicles	68242	F														
EPA-OANR	Policy and Procedures for Identifying, Assessing, and Regulating Airborne Substances Posing a Risk of Cancer	68292								F							
EPA-OANR	Proposed Emission Regulations for 1983 and Later Model Year Light-Duty Trucks	68243							F								
EPA-OANR	Regulations for the Prevention of Significant Deterioration (PSD) resulting from hydrocarbons for carbon monoxide, nitrogen oxides, ozone and lead (PSD Set II)	68244		A													
EPA-OANR	Review, and Possible Revision, of the National Ambient Air Quality Standards for Carbon Monoxide (CO)	68245		N													
EPA-OANR	Review, and Possible Revision, of the National Ambient Air Quality Standards for Particulate Matter (PM)	68246							N								
EPA-OANR	Review of the National Ambient Air Quality Standards for Nitrogen Dioxide	68248							N								
EPA-OANR	Review of the National Ambient Air Quality Standards for sulfur dioxide	68247					N										
EPA-OANR	Standards of performance to control atmospheric emissions from industrial boilers	68248												N			

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EPA-OANR	Visibility Plan Requirements	68249		A													
EPA-OPTS	Pesticide Registration Guidelines	68294	←						F						→		
EPA-OPTS	Rules and notice forms for premanufacture Notification of New Chemical Substances	68294					F										
EPA-OPTS	Rules restricting the commercial and industrial use of asbestos fibers	68295						←	N	→							
EPA-OPTS	Standards and Rules for Testing of Chemical Substances and Mixtures	68297	Multiple actions—see text for details														
EPA-ORD	Fuels and Fuel Additives Registration	68250		N													
EPA-OWWM	Control of Organic Chemicals in Drinking Water	68298			←	N	→										
EPA-OWWM	Effluent Guidelines and Standards Controlling the Discharge of Pollutants from Steam Electric Power Plants into Navigable Waterways	68251				N											
EPA-OWWM	Hazardous Waste Regulations: Core regulations to control hazardous solid waste from generation to final disposal	68299				F											
EEOC	Recordkeeping regulations, extending the length of time certain records, already required to be kept, should be retained	68316						←	F	→							
GSA-NARS	Freedom of Information Act requests for national security classified information in the National Archives	68317	←	N	→												
NCUA	Organizing a Federal Credit Union	68259		F													
VA	Nondiscrimination on the basis of handicap in programs and activities receiving or benefiting from Federal financial assistance	68318				F											
CAB	Air Carrier Fitness	68343		←	F	→											
CAB	Air Carrier Insurance and Liability	68344	←	N	→												

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CAB	Essential Air Service Subsidy Guidelines	68344			N												
CAB	Plain English for Airline/Passenger Contracts	68346			A												
CPSC	Consumer Products Containing Asbestos	68302				O											
CPSC	Omnidirectional Citizen Band Base Station Antenna Standard	68304															N 4/30/81
CPSC	Upholstered furniture cigarette flammability standard	68305	N														
FCC	Creation of New Personal Radio Service (PR Docket 79-140)	68346	O														
FCC	Deregulation of Competitive Domestic Telecommunications Market (CC Docket 79-252)	68347		O													
FCC	Notice of Inquiry/Notice of Proposed Rulemaking in the Matter of Radio Deregulation (BC Docket 79-219)	68348			O												
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FERC	Regulations concerning sales of electric power between qualifying cogeneration and small power production facilities and electric utilities, and exemption of such facilities from regulation, under §§201 and 210 of the Public Utilities Regulatory Policies Act of 1978 (PURPA)	68253			F												
FERC	Regulations Governing Applications for Major Unconstructed Projects	68255				N											
FERC	Regulations to Implement the Second Stage of Incremental Pricing under the Natural Gas Policy Act	68256							F								
FERC	Valuation of Common Carrier Pipelines	68257	No date available at time of this publication														
FHLBB	Monitoring Fair Lending Practices	68260		O													

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FHLBB	Washington, D.C.-Md.-Va. SMSA Branching	68261	No date available at time of this publication														
FMC	Amendment to financial reports by common carriers by water in the domestic offshore trades	68349			F												
FMC	Amendments to tariff requirements for controlled carriers	68350	N														
FMC	Certification of company policies and efforts to combat rebating in the foreign commerce of the United States	68351							F								
FMC	Filing of agreements by common carriers and other persons subject to the Shipping Act of 1916	68352							F								
FMC	Revision of the Commission's General Order 4, "Licensing of Independent Ocean Freight Forwarders"	68353			N												
FMC	Surcharges under dual-rate contracts on less than ninety days' notice	68353				F											
FTC	Medical Participation in Control of Blue Shield and Certain Other Open-Panel Medical Prepayment Plans	68328			N												
FTC	Mobile Homes Sales and Service Trade Regulation Rule	68330								O							
FTC	Proposed Trade Regulation Rule (TRR) on Standards and Certification (43 FR 57269, December 7, 1978)	68331								O							
FTC	Rulemaking on Children's Advertising	68334								O							
FTC	Trade Regulation Rule Concerning Credit Practices	68336								O							
ICC	Improvement of TOFC/COFC Regulation (Ex Parte No. 230 (Sub-No. 5))	68354		N													
ICC	Intercorporate Hauling (Ex Parte No. MC-122)	68356		F													

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ICC	Western Coal Investigation -- Guidelines for Railroad Rate Structure (Ex Parte No. 347)	68357								←	O	→					
NRC	Decommissioning and Site Reclamation of Uranium and Thorium Mills	68307						F									
NRC	Decommissioning of Nuclear Facilities	68307															N 1981
NRC	Disposal of High Level Radioactive Waste in Geologic Respositories	68309		A													
PRC	Postal Rate Commission Docket MC79-2 to consider a request of the U.S. Postal Service for the establishment of an Express Mail Metro Service subclass filed with the Commission on December 7, 1978	68358			No date available at time of this publication												
PRC	Postal Rate Commission Docket MC79-3, instituted by the Commission pursuant to 39 U.S.C. §3623(b), to hear evidence on the preferential treatment, commonly referred to as "red tag" treatment, afforded certain timevalue publications sent as secondclass mail	68360			No date available at time of this publication												

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APPENDIX I: PUBLIC PARTICIPATION IN THE FEDERAL REGULATORY PROCESS

This appendix is a major new addition to the Calendar. The introduction to the appendix describes the general requirements for public participation in the Executive and Independent Agencies of the Federal Government. The appendix introduction briefly discusses procedures that establish the public's role in Federal regulation development. Specific information on the procedures for each agency follows, including:

- the name of each unit, if any, in the Agency that issues regulations;
- a brief description of the functions of the agency or department and its unique public participation activities;
- a description of any special funding available for public participation activities;
- a list of documents describing the public participation procedures in the agency; and
- the contact person who can provide further information.

We welcome suggestions to make future editions of this appendix more valuable.

This appendix provides "first step" guidance toward effective participation in the Federal regulatory process. It describes how the rulemaking process works; and it discusses other procedures at the Federal level that help to ensure that the public's interests are considered fairly in the final decisionmaking process.

The Regulatory Council hopes this information will help the general public to realize the importance of its role as government overseer and the value of public participation as a mechanism for: (1) creating positive dialogue that will increase agency accountability for justifying regulatory proposals, (2) developing new approaches to regulatory issues, (3) increasing the public's understanding of the agency's problems and options in evaluating regulatory solutions, and (4) ensuring that the system works for everyone.

Public participation at the Federal level is not new. Public and special interest groups existed before the turn of the century and influenced many present-day laws and policies, such as the development and enforcement of labor laws, anti-discrimination and civil rights laws, and voting rights and consumer protection laws. Agency leaders know that public participation not only provides them with a healthy perspective on issues to make informed and wise decisions, but also contributes to the efficiency of government. That knowledge has motivated the implementation of procedures and practices that guarantee and protect the information flow from citizen to agency and back to the citizen.

Some basic definitions might be helpful here for notices to Federal regulatory proceedings:

(a) "Agency" means each and any authority of the Federal government and includes executive branch departments and agencies, independent agencies, and their components. (It does not include Congress or the courts.) The difference between executive branch agencies and independent agencies is not well defined. Executive branch agencies are headed by persons chosen by the President and serve at the pleasure of the President. Independent agencies are those whose heads are appointed by the President to chair the agency's commission or board for a specific length of time. There are specific limitations on the power of the President to remove the heads of these agencies. The board or commission sets certain regulatory policies for the agency and usually operates independently of the President.

(b) "Public" refers to any member of the U.S. populace, including business and industry and other regulated sectors.

(c) "Consumer" means any individual who uses, buys or acquires real or personal property, goods, services or credit for personal family or household purposes.

We have explained in the text other terms with which readers may not be familiar. The headings that follow are organized around the major provisions for public participation in Federal regulatory proceedings.

The Administrative Procedure Act

The Administrative Procedure Act obligates agencies to follow certain specific procedures for agency development, issuance and enforcement of regulations. The Act establishes agency obligations for ensuring public participation in rulemaking, adjudication and other proceedings. It applies to both executive branch and independent regulatory agencies. The Act's definition of "public" includes regulated entities.

Rulemaking

A rule is an agency statement on implementing, interpreting or enforcing a law or policy of the agency, or one that describes the agency's organization, procedure or practice. "Rule" also is used synonymously with "regulation." Rulemaking is the agency process for formulating, amending or repealing a rule. It is also the agency's primary procedure for soliciting public comments on existing and proposed rules.

There are two types of rulemaking proceedings: formal and informal. Formal rulemakings occur only when a statute requires a rule to be made based on the results of an adjudicated public hearing, which means the hearing is presided over by some agency staff person and where agency and public witnesses present legal facts and arguments on the rule much like what happens in a civil court. Such statutes are rare, largely because they often entail relatively time-consuming and cumbersome trial-like procedures.

Informal rulemaking, on the other hand, is like the legislative process, in which an agency publishes a proposed rule and then develops a final rule based on an analysis of the merits of written public comments submitted to the agency oral presentations made at public hearings.

The advantage of rulemaking as opposed to case-by-case enforcement of a law is that the agency can formulate policy, obtain the views of the public and regulated sectors, and affect the behavior of a whole industry or other large sector of the economy in one proceeding at one time, giving fair notice to all affected interests.

Agency obligations for rulemaking as set forth in the Administrative Procedure Act are as follows:

1. The agency must publish a "Notice of Proposed Rulemaking" (NPRM) in the **Federal Register** to make the public aware of proposed rules being considered by the agency. The **Federal Register** is a daily government publication that announces all proposed and final Federal regulations. The Register may be impractical for home use because of its volume and subscription cost, but usually it is available at Federal depository libraries and at university libraries.

2. The Notice must include:
   - —the time, place and nature of the proceeding;
   - —reference to the legal authority under which the rule is being proposed;
   - —the terms of the proposed rule's substance or a description of the subject and issue involved.

3. The agency must allow interested persons the opportunity to participate in the proceeding by submitting written comments to the agency, with or without the opportunity for an oral presentation. Interested persons can use this opportunity during the public comment period.

Making Public Comments

The public comment period gives the public the opportunity to oppose, applaud or suggest modifications in proposed rules.

Each agency may have its own specific requirements for acceptable public comments. Generally, agencies prefer that comments:

—be typed neatly;
—indicate the rulemaking proceeding that the comments address;
—include the writer's name, full address, and title and/or affiliation; and
—state clearly the arguments and information that the writer wishes to bring to the agency's attention.

When the comments reach the agency they are officially logged into the public record; and the reviewing staff analyzes the comments to determine whether any issues were raised that must be considered during the decisionmaking stage.

Interested persons should contact agencies directly for information on the opening and closing dates for comment periods on particular rulemakings, the address the comments should be sent to, and the number of required copies the agency wants you to submit. [Agency contacts you can call or write are listed in this appendix.)

4. When the agency finally issues the rule it must publish the rule in the **Federal Register** along with a statement about the rule's basis and purpose and a discussion of any significant issues raised in public comments.

5. The agency must publish substantive rules, i.e., non-procedural rules, at least 30 days before the rule becomes effective.

Rulemaking requirements do not apply to U.S. military or foreign affairs functions or agency matters related to personnel or public property, loans, grants, benefits or contracts. However, some agencies voluntarily apply the above requirements to those types of matters.

Neither do the requirements apply to rules stating a general agency policy, nor rules dealing with agency organization or procedure. Also excepted are situations where public participation is impracticable or unnecessary. When public participation is deemed unnecessary, the agency's reason for deciding so must be stated in the issued rule.

Adjudication

Many council member agencies enforce regulatory policies and procedures by adjudicating regulatory requirements on a case-by-case basis, and a few agencies rely primarily on adjudication to develop their regulatory policies. Adjudication leads to the formulation of an order, which is the agency's final disposition of a matter other than rulemaking. Such orders, or decisions or findings that make up the orders, must be based on evidence from agency hearing records related to the issue. Specialized agency employees called administrative law judges, who are independent from the rest of the agency, write the initial decision, which is reviewable by the agency head.

The Administrative Procedure Act requires that agencies provide timely public notice of an agency hearing to those persons entitled to participate in that hearing. That notice should include:

1. the time, place and nature of the hearing, all of which should reflect the convenience of the parties or their representatives;

2. the legal authority and jurisdiction under which the hearing is being held; and

3. the matters of fact and law asserted.

Executive Order 12044

Executive Order 12044, signed by the President on March 23, 1978, establishes a system for agency management of their regulatory responsibilities. Executive departments and agencies are required to comply with the order, and the President asked that independent agencies voluntarily comply.

One of the Executive Order's goals is meaningful public participation in regulatory decisionmaking;- and the Order builds upon the procedures for participation already created in the Administrative Procedure Act. The Executive Order recommends that agencies consider the following initiatives to provide early and meaningful opportunities for public participation in the development of regulations:

(a) publishing an Advance Notice of Proposed Rulemaking (ANPRM) to solicit public views before the agency actually proposes the regulation for public comment in an NPRM. Comments of an ANPRM can raise questions and considerations that help the agency decide whether to regulate and how;

(b) sending notices to publications in addition to the **Federal Register** that are read by those affected by the proposed regulation;

(c) notifying the affected parties directly; and/or

(d) holding open conferences or public hearings.

Executive Order 12044 also requires agencies to publish semiannual agendas as a separate mechanism for facilitating public participation. These agendas list all of the significant regulations that an agency has under development or scheduled for review. The lists also advise the public of the agency's regulatory action schedule, and thus ensure the earliest possible opportunity for public participation in rulemaking. At a minimum the agenda items identified as "major" by executive agencies are analyzed here in the Calendar of Federal Regulations.

The Order suggests that agencies give the public at least 60 days for public comment as opposed to the 30 days customarily allowed by agencies for comment on proposed regulations, and that the agencies should analyze and prepare a discussion of significant public comments before approving regulations.

To learn more about and to participate better in Federal regulatory proceedings, the public can take advantage of several provisions of: the Freedom of Information Act, the Federal Advisory Committee Act, the Government in the Sunshine Act, programs of financial assistance to participants in agency proceedings, and the Executive Order on Consumer Federal Programs.

Freedom of Information Act (5 U.S.C. Section 552)

The Freedom of Information Act (FOIA), passed in 1967, requires each Federal agency to make "promptly available to any person records identified and requested in accordance with the procedures established by agency rules."

An agency can refuse to disclose a record in cases where the record falls within one or more of the exemptions contained in the Act that describe matters or materials that may be kept confidential.

FOIA questions can be difficult to answer, and space does not permit a detailed explanation of all of the relevant issues. The Department of Justice's Office of Information Law and Policy oversees FOIA matters. For more information you can contact them at:

Office of Information Law and Policy
Department of Justice
Main Justice Building
Room 5259
10th St. & Constitution Ave., N.W.
Washington, D.C. 20530
Phone (202) 633–2674

Federal Advisory Committee Act (5 U.S.C. Appendix I)

The Federal Adivisory Committee Act (FACA) lets the public know about meetings between agencies and outside groups. It also controls the number and

composition of advisory committees that agencies establish to assist them in their work. Section 10 of the Act requires open meetings and advanced public notice of all advisory committee meetings. Agencies may close such meetings only if the meeting agenda includes a subject that should be kept confidential under one or more of the exemptions of the "Sunshine Act," which is explained in the following section.

The General Services Administration's Committee Management Secretariat oversees FACA matters. For more information contact:

Committee Management Secretariat
General Services Administration
18th & F Sts., N.W.
Washington, D.C. 20405
Phone (202) 566–1642

The Sunshine Act

The Government in the Sunshine Act, referred to simply as the "Sunshine Act" and signed into law in 1976, opens various meetings to public observation in those agencies headed by a board or commission. The Act allows for public notice of all agency meetings and specifies the circumstances under which the agency may close meetings to the public or may withhold information from meeting notices. Meetings are closed to the public if the issues on the meeting agenda pertain to:

(a) secret matters of national defense
(b) agency personnel rules and practices
(c) confidential commercial or financial information
(d) criminal charges
(e) personal privacy invasion
(f) investigatory records for law enforcement purposes
(g) supervision of financial institutions
(h) previously disclosed agency actions and/or
(i) agency participation in a civil court case

Interested members of the public should contact the agency for information about how to receive meeting notices, how to request that a closed meeting be opened, or where to review public records of agency meetings that are available for review.

Financial Assistance

Some agencies provide financial assistance to interest groups and individuals who can contribute substantially to a particular proceeding and who can prove a need for agency financial assistance.

Eligibility requirements and application procedures for financial assistance vary among the agencies that make such assistance available. You should contact these agencies directly to obtain specific information about their financial assistance programs.

Executive Order on Federal Consumer Programs

On September 26, 1979, the President signed Executive Order 12160, "Providing for the Enhancement and Coordination of Federal Consumer Programs." It establishes a comprehensive Federal policy to guide all agencies in responding to consumer issues.

Agencies will publish programs for compliance with the Executive Order in the **Federal Register** for public comment early in December 1979.

AGENCY PUBLIC PARTICIPATION ACTIVITIES

The 36 Regulatory Council agencies each submitted general information on their public participation programs—and in particular on those procedures that differ from or supplement the government-wide practice described above. What follows is a summary of that information, a brief sketch of the role of the agency itself, and a list of documents that provide more details about the agency's public participation activities. The Regulatory Council encourages your interest and involvement.

Administrative Conference of the United States (ACUS)

Units That Issue Regulations

The Administrative Conference has no regulatory responsibilities. The only regulations it issues pertain to its organizational duties found at 1 C.F.R. parts 301–304. The formal work product of the Conference is reflected in Recommendations and Statements concerning administrative practice and procedure, codified at 1 C.F.R. parts 305 and 310.

Functions

The Administrative Conference is an independent agency established to study procedural problems arising in the operation of federal agencies and programs and to make recommendations for improvement to the agencies, the President, Congress and the courts. The Office of the Chairman provides advisory and consultative assistance to the government and the public.

Public Participation Funding

The Administrative Conference's activities are all open to the public and ACUS enthusiastically solicits public participation; however, none of its activities require funding of participants.

Public Participation Documents

"An Interpretive Guide to the Government in the Sunshine Act." (Limited quantities are available from the librarian in the Office of the Chairman.)

The continuing series of recommendations and reports on administrative procedure is also available from the librarian in the Office of the Chairman. There is normally no charge for such documents if an adequate supply is on hand.

Information Contact

For information on general public participation procedures or for publications requests:

Jeffrey S. Lubbers
Senior Staff Attorney
Administrative Conference of the United States
Suite 500
2120 L Street, N.W.
Washington, D.C. 20037
Phone: (202) 254–7020 or
Sue Boley
Librarian
Administrative Conference of the United States
Suite 500
2120 L Street, N.W.
Washington, D.C. 20037

ACUS maintains a mailing list for its annual reports and occasional newsletters. Contact either of the persons listed above.

Department of Agriculture (USDA)

Units That Issue Regulations

Agricultural Marketing Service
Agricultural Stabilization and Conservation Service
Animal and Plant Health Inspection Service
Farmers Home Administration
Federal Crop Insurance Corporation
Federal Grain Inspection Service
Food and Nutrition Service
Food Safety and Quality Service
Foreign Agricultural Service
Forest Service
Office of the General Sales Manager
Rural Electrification Administration
Safety and Health
Soil Conservation Service

Functions

USDA establishes national policy regarding the nation's production, distribution and consumption of agricultural commodities, foodstuffs and forest resources, as well as national policy governing the use of agricultural commodities or services for personal or household purposes.

The majority of rulemakings at USDA are informal, or notice and comment

actions. Each of the administrative units named above solicits public comments on policy issues under consideration.

The exception is the formal rulemaking process required for commodity marketing orders administered by the Agricultural Marketing Service (AMS). Before holding an evidentiary hearing AMS performs a prenotice investigation, reviewing public comments framing the issues that must be covered in developing an adequate decision. Following the public hearing and analysis of the record a recommended decision is issued, subject to comment and the filing of exemptions. AMS' final decision is put to a referendum by the regulated producers that the final order will affect.

Each USDA unit listed above has a public participation contact. The primary information contact listed below under "Information Contact" can refer you to the appropriate person.

Public Participation Funding

In March, 1979, USDA proposed regulations to govern reimbursement to selected groups and individuals who participate in agency rulemaking proceedings. While the agency head responsible for the particular proceeding decides whether funds are available, an independent Department-level Evaluation Board makes the final decision on funding. The issuance of final regulations is in the process of clearance.

Public Participation Documents

None.

Information Contact

In addition to the normal educational and informational responsibilities, USDA's public participation office monitors the adequacy of the opportunity for the public to participate in all agency proceedings. For further information contact:

Elizabeth A. Webber
Director of Public Participation
Department of Agriculture
Room 119–A
Washington, D.C. 20250
Phone (202) 447–2113

Department of Commerce (DOC)

Units That Issue Regulations

Bureau of Census
Bureau of Economic Analysis
Economic Development Administration
Industry and Trade Administration
Maritime Administration
Minority Business Development Agency
National Bureau of Standards
National Oceanic and Atmospheric Administration
National Technical Information Service
National Telecommunications and Information Administration
Patent and Trademark Office

Functions

The principal mission of the Department is to foster, promote and develop the foreign and domestic concerns of the United States. The activities of the components of the Department in furthering the mission are broad and varied in scope and cover such diverse areas as: patents, assistance to minority business and economically depressed areas, tourism, weather, ocean and atmospheric programs, standards development, promotion of domestic and international trade, the censuses, statistical and economic data and analyses; ship subsidies and telecommunications policy.

The departmental units each have different procedures for developing and promulgating regulations, including public notification and participation. These procedures were published in the **Federal Register** on January 9, 1979, as a Department administrative order (44 FR 2082). The administrative order, entitled "Issuing Departmental Regulations," implements Executive Order 12044, "Improving Government Regulations."

Public Participation Funding

In response to President Carter's May 16 memorandum to Executive Branch agencies and departments on funding public participation, DOC is reviewing the need and scope of its agencies providing such assistance. Currently, DOC's National Oceanic and Atmospheric Administration (NOAA) is the only departmental unit that has such a program. NOAA provides compensation for certain fees and costs of public participation in its proceedings that involve a public hearing. Applicants for these funds must demonstrate that they (1) represent an interest that can contribute to a fair determination of the proceeding, and (2) do not have sufficient resources to participate otherwise. The requirements and procedures for applying for these funds have been published in the Code of Federal Regulations (15 CFR Part 904).

You can obtain more information on public participation funding by NOAA from the contact person listed under "Information Contact."

Public Participation Documents

The Department of Commerce (DOC) currently has no books or pamphlets on public participation, except for its administrative order on "Issuing Departmental Regulations."

However, DOC's Office of Consumer Affairs (OCA) is developing a consumer program in response to Executive Order 12160, "Providing for Enhancement and Coordination of Federal Consumer Programs." A draft of the program will be published in the **Federal Register** for public comment during the week of December 3. One element of the program will be the development of informational materials for consumers.

Information Contact

Meredith M. Fernstrom, Director
Office of Consumer Affairs
Department of Commerce, Room 5869
Washington, D.C. 20230
Phone: (202) 377–5001

For information on public participation funding contact:

Michael Levitt
National Oceanic and Atmospheric Administration
Office of the General Counsel
Department of Commerce
Main Commerce Bldg., Rm. 5814
Washington, D.C. 20230
Phone (202) 377–4080

Department of Energy (DOE)

Units That Issue Regulations

Conservation and Solar Applications
Economic Regulatory Administration
Resource Applications

Functions

The President established DOE in 1977 to consolidate the major energy programs scattered throughout the government into a unified agency that could provide a national energy policy. DOE has played a major role in developing regulatory initiatives for energy policy, including a program for solar energy, plans for gasoline rationing, a program for phased decontrol of crude oil, and a program for import reduction.

DOE responded to Executive Order 12044 with an agency Order making certain public participation procedures mandatory. Some of these procedures include:

- Notification of interested parties, the Governor of each state, DOE regional representatives, and appropriate Federal advisory committees;
- Distribution of appropriate notices or press releases describing the regulatory action to trade journals, newspapers, and newsletters read by interested parties;
- Public hearings and conferences with interested groups and individuals (with adequate advance notification), where appropriate; and
- Provision for one or more public hearings, preceded by at least 14 days

notification, for all significant regulations proposed.

In addition, the Department conducts citizen participation workshops. It is the responsibility of each program area to conduct those workshops that pertain to their particular program area.

When the Department solicits public comments, it requires full, verbatim transcripts for all public hearings. These transcripts are used in all proceedings where citizens comment for the official records. Our Office of Consumer Affairs publishes public comments in some issues of the "The Energy Consumer."

The Office of Consumer Affairs has the primary responsibility for managing and coordinating the public participation efforts of the Department. However, DOE program areas are directly accountable for regular and substantive public participation programs.

Public Participation Funding

DOE is prohibited by Congress from providing funding for public participation. Therefore, no funding is available.

Public Participation Documents.

All the following documents are available from the Office of Consumer Affairs:

"Citizen Participation Manual"
"3emi-Annual Regulatory Agency"
"DOE Order 2030.1"
"The Energy Consumer"

Information Contact

The Office of Consumer Affairs maintains a mailing list for distribution. In addition, citizens with specific interests can have their names placed on specialized mailing lists. The Technical Information Center at Oak Ridge, Tennessee, also has a mailing list for its "Energy Meetings" bulletin. For more information contact:

Bill Holmberg
Director, Citizen Participation
Office of Consumer Affairs
Department of Energy
Forrestal Bldg., Rm. 7B–198
1000 Independence Ave., S.W.
Washington, D.C. 20585
(202) 252–5877

Hotline Numbers: For problems with getting gasoline or heating oil, or to report excessive dealer prices: (800) 424–9246. In the Washington, D.C., area call (202) 254–9246.

For questions and comments on alcohol fuel technology call: (800) 535–2840. In Louisiana call (800) 353–2870.

Department of Health, Education, and Welfare (HEW)

Units That Issue Regulations

Assistant Secretary for Education
Assistant Secretary for Human Development Services
Health Care Financing Administration
Office of Child Support Enforcement
Office of the Inspector General
Office of the Secretary
Social Security Administration
U.S. Public Health Service

Functions

HEW is the domestic funding agency for 300 programs that focus on assistance to the economically disadvantaged, Social Security retirement, educational opportunity and social service. The agency also regulates standards for food and drug safety and performs basic and applied research in health and education.

HEW frequently publishes an advance notice of proposed rulemaking (ANPRM) to allow the earliest possible public participation in agency rule proposals. The Department also frequently holds regional hearings and meetings to obtain public input in decisionmaking activities. For new education regulations, public meetings are being held at the times and places most convenient for those affected by the regulations. Accommodation will be made to allow certain groups to participate in the meetings that might not be able to otherwise.

A pilot program of service desks will be opened in four regions to answer questions from manufacturers about FDA regulations. The desks, located in East Orange, New Jersey; Chicago, Illinois; Atlanta, Georgia; and Santa Ana, California, will respond to questions dealing with problems such as how to fill out applications and other government forms, what regulations must be followed to market a new product, and how FDA regulations affect manufacturers' products or manufacturing processes.

Finally, in response to the President's specific concern about the impact of Federal regulations on small businesses, the Food and Drug Administration is attempting to give special assistance to small businesses in their attempt to decipher the various government regulations with which they must comply. The FDA will begin two initiatives into the simplification of regulations. FDA also will be appointing an official to the Commissioner's staff to "help assure a consistent agency-wide policy for small business."

Public Participation Funding

HEW is currently developing a proposed regulation that will allow for compensation to the public for participation in the regulations development process. The Food and Drug Administration (FDA) published a final regulation on public participation funding in the October 12, 1979 **Federal Register**. The name and address of the FDA contact person is listed below under "Information Contact."

Public Participation Documents

None available at this time.

However HEW's regulatory agenda provides important information that may lead to increased public participation. This document exceeds the requirements of Executive Order 12044 by identifying not only "significant" regulations but all regulations under development or consideration at the Department. Over 400 regulations are presented in each agenda. The Department's next agenda will be published on December 14, 1979.

Information Contact

The Department-wide contact person for public participation activities is:

Lee Feldman, Deputy Director
Regional and Outreach Division
Office of Public Affairs
Department of Health, Education and Welfare
200 Independence Avenue, S.W.
Washington, D.C. 20201
Telephone: (202) 245–6637

For information on proposed regulations currently being drafted for compensation of citizen participation contact:

Steven Cole
Acting Deputy General Counsel
Office of General Counsel
Department of Health, Education and Welfare
200 Independence Avenue, S.W.
Washington, D.C. 20201
Telephone: (202) 245–6733 or

Glenn Kamber, Director
Regulations Management Unit
Department of Health, Education and Welfare
200 Independence Avenue, S.W.
Washington, D.C. 20201
Telephone: (202) 245–3161

For information on FDA public participation funding contact:

Alex Grant, Special Assistant to the Commissioner on Consumer Affairs
Food and Drug Adminstration
Room 1685, HF–7
5600 Fishers Lane
Rockville, Maryland 20857
Telephone: (301) 443–5004

Department of Housing and Urban Development (HUD)

Units That Issue Regulations

Community Planning and Development
Fair Housing and Equal Opportunity
Government National Mortgage Association
Housing
Neighborhoods, Voluntary Associations and Consumer Protection
New Community Development Corporation

Functions

HUD's national goal is to ensure that the basic rights of all consumers are considered, respected and protected in all the agency's housing and community development activities. The agency hopes to achieve this goal through promoting viable communities, providing decent housing, achieving equal opportunity and effectively coping with natural disasters.

HUD has implemented several of the Administration's recommendations for extended public participation, including publishing advance notices of proposed rulemaking (ANPRM), extending public comment periods to 60 days, holding public hearings on proposed regulatory changes, and announcing regulatory changes in publications oriented toward special interest groups. HUD's mailing list numbers about 78,000 individuals.

Public Participation Funding

No funding available at this time.

Public Participation Documents

None available at this time.

Information Contact

Father Geno Baroni
Assistant Secretary for Consumer Affairs and Regulatory Functions
Department of Housing and Urban Development
Office of Public Affairs
7th & D Streets, S.W.
Room 4100
Washington, D.C. 20410
Phone: (202) 755–0950

Department of the Interior (DOI)

Units That Issue Regulations

Bureau of Indian Affairs
Bureau of Land Management
Bureau of Mines
Bureau of Reclamation
Fish and Wildlife Service
Geological Survey
Heritage Conservation and Recreation Service
National Park Service
Office of Minerals Policy and Research Analysis
Office of Surface Mining and Enforcement
Office of Water Research and Technology

Functions

The Department of the Interior manages some 450 million acres of public land, or 20 percent of the nation's total land base. The Department also protects endangered species of fish and wildlife, monitors surface mined land reclamation, administers programs for the nationwide inventory, study and management of water, lands, minerals, and fish and wildlife resources; administers, protects and interprets natural archeological, historic, and other cultural and recreation areas of national significance; and plans, constructs and maintains water resource facilities in Western States. In addition, DOI implements the Federal trust responsibility for Alaska Natives and Native American tribes, bands and communities; and provides program services, and advocacy/coordination with the programs of other government agencies for those groups. The Department also has oversight responsibilities in U.S territorial affairs.

DOI as a whole uses a wide variety of public participation techniques, including workshops, public hearings, regional meetings, distribution of draft rules, press releases, etc. Each unit that issues regulations has an individual outreach plan especially geared toward the public's interest in that unit's activities.

Public Participation Funding

None.

Public Participation Documents

Departmental Manual Chapter, "Public Participation in Decision-Making" (Part 301, Departmental chapter 2, DM2) is available from the Office of the Assistant Secretary for Policy, Budget and Administration listed below.

Information Contact

Ms. Cecil Hoffman
Special Assistant to the Assistant Secretary for Policy, Budget, and Administration and Public Participation Coordination Officer
U.S. Department of the Interior
18th and C Streets, N.W.
Washington, D.C. 20240
Phone: (202) 343–5106 or
Chris Carlson, Assistant to the Secretary and Director of Public Affairs
U.S. Department of the Interior
18th and C Streets, N.W.
Washington, D.C. 20240
Phone: (202) 343–8331

Department of Justice (DOJ)

Units That Issue Regulations

Antitrust Division
Bureau of Prisons
Civil Rights Division
Criminal Division
Drug Enforcement Administration
Immigration and Naturalization Service
Federal Bureau of Investigation
U.S. Parole Commission

Functions

The DOJ enforces criminal laws and laws against subversion, ensures healthy business competition, safeguards the consumer, and enforces drug, immigration and naturalization laws. The DOJ also plays a significant role in crime prevention, crime detection, and rehabilitation of offenders. In addition, the Department represents the United States in the Supreme Court and generally renders legal advice and opinions upon request to the President and heads of executive departments.

Within the DOJ, none of the divisions or components that engage in regulatory activity operates under formalized public participation procedures.

As a law enforcement agency, the DOJ does not engage in much informal rulemaking activity and, therefore, has not centralized the function of providing information about public participation in such activity. However, pursuant to Attorney General Order No. 831–79, May 25, 1979, the Associate Attorney General and the Deputy Attorney General exercise oversight over components' regulatory agenda with administrative support from the Office of the Administrative Counsel, Justice Management Division.

Public Participation Funding

DOJ is not authorized to fund public participation activities.

Public Participation Documents

None.

Information Contact

For referral to a knowledgeable official on the agency's regulatory agenda and any related public activity in the appropriate DOJ component contact:

William Snider, Administrative Counsel
Justice Management Division
U.S. Department of Justice
Washington, D.C. 20530
Phone (202) 622–3452

The Department maintains general public information mailing lists. Any

person who wishes to have his or her name included may contact:

Sandy Smith
Office of Public Affairs
U.S. Department of Justice
Room 5114
Washington, D.C. 20530
Phone (202) 633–2014

Department of Labor (DOL)

Units That Issue Regulations

Bureau of International Labor Affairs
Bureau of Labor Statistics
Employment and Training Administration
Employment Standards Administration
Labor-Management Service Administration
Mine Safety and Health Administration
Occupational Safety and Health Administration

Functions

DOL is primarily concerned with the quality of work-life in America and with the worker/employer-job relationship, including working conditions, pay, job and pay discrimination, job training, collective bargaining, workers compensation and unemployment insurance. In addition, DOL administers the Labor Management Reporting and Disclosure Act and works with the Internal Revenue Service to administer the Employee Retirement Income Security Act of 1974.

DOL develops a public participation plan for each significant rule proposed. Each of the administrative units named above has designated a consumer representative to handle inquiries and complaints; and the Special Assistant to the Secretary for Consumer Affairs coordinates public participation for all the units and the outreach activities of DOL's regional offices.

MSHA and OSHA use advisory committees set up on an ad hoc basis to determine the need for regulatory action as well as the content of a needed regulation. Any member of the public may request an informal public hearing in connection with the development of the regulation. MSHA and OSHA also are authorized to implement temporary standards under action circumstances.

Public Participation Funding

None.

Public Participation Documents

None.

Information Contact

For general information or referral to the consumer representative for any administrative unit name above, contact:

John Leslie, Special Assistant to the Secretary for Consumer Affairs
Department of Labor
3rd St. and Constitution Ave., N.W.
Room 1032 South
Washington, D.C. 20210
Telephone: (202) 523–7304

Department of Transportation (DOT)

Units That Issue Regulations

Federal Aviation Administration
Federal Highway Administration
Federal Railway Administration
National Highway Traffic Safety Administration
Office of the Secretary
Research and Special Projects Administration
St. Lawrence Seaway Development Corporation
U.S. Coast Guard
Urban Mass Transportation Administration

Functions

DOT fosters the development and maintenance of safe, effective transportation systems to move people and goods. Each administrative unit named above has separate activities to reach the public depending upon the nature of ongoing proceedings. DOT's Office of Consumer Affairs coordinates the public and participation activities of all the administrative units.

An appendix to the Department's semi-annual regulatory agenda contains information on how interested persons may include their names on the Agency's general mailing list to receive documents issued within the Department.

The Office of Consumer Affairs publishes a newsletter of general public interest. To receive the newsletter, call or write the person listed below under "Information Contact."

Public Participation Funding

DOT's National Highway Traffic Safety Administration (NHTSA) is operating a demonstration program for certain of its rulemaking proceedings that provides financial assistance to individuals and groups who otherwise would be unable to participate effectively in NHTSA proceedings.

See the following section for the information contact person on this program.

Public Participation Documents

The "Transportation Consumer Newsletter" and "How to Participate in NHTSA's Public Participation Program" are available from DOT's Office of Consumer Participation. (See "Information Contact" below.)

Also, Department of Transportation Regulatory Policies and Procedures," 44 FR 11034, Monday, February 26, 1979.

Information Contact

Contact the following office for information on any DOT activity:

Office of Consumer Affairs
Department of Transportation
400 Seventh Street, S.W.
Room 904
Washington, D.C. 20509
Phone (202) 275–4166

For information on NHTSA's public participation funding contact:

Ann Mitchell
NHTSA
Office of Consumer Participation
Department of Transportation
400 Seventh Street, S.W.
Room 5232
Washington, D.C. 20590
(202) 426–9550

Department of the Treasury

Units That Issue Regulations

Bureau of Alcohol, Tobacco and Firearms
Bureau of Government Financial Operations
Bureau of Public Debt
Comptroller of the Currency
Internal Revenue Service
Office of Revenue Sharing
Office of the Secretary
U.S. Customs Service
U.S. Savings Bonds Division
U.S. Secret Service

Functions

The Department of the Treasury collects disburses and ensures the integrity of government revenues.

The Department has the following unique public participation and outreach activities:

- Agenda of pending regulations released on a monthly basis by IRS. The Bureau of National Affairs reprints and circulates it to subscribers.
- Direct distribution of regulatory documents issued by the Comptroller of the Currency to all national banks.
- Publication of all Customs NPRMs and Final Rules in the *Customs Bulletin* which is mailed to any individual expressing an interest in Customs regulatory activities.
- Public speaking by Treasury officials on Treasury regulatory activities.
- Public hearings scheduled by IRS if even one party so requests. Public hearings held in cities outside of Washington by AT&F, with evening hearing times available upon request.

Public Participation Documents

No general materials available. For information on specific regulatory activities write or call the "Information Contact" listed below.

Public Participation Funding

None available.

Information Contact

Mr. Steven L. Skancke
Deputy Executive Secretary
Department of the Treasury
Room 3408, Main Treasury
Washington, D.C. 20220
Telephone: (202) 566–2269

Individuals interested in adding their names to the general public information mailing list may do so by writing to the agency's deputy executive secretary listed above.

Equal Employment Opportunity Commission (EEOC)

Units That Issue Regulations

Field Services
Office of Policy Implementation
Systemic Programs

Each commissioner also may issue regulations with the approval of the majority of the full Commission.

Functions

EEOC's primary responsibility is to enforce Title VII of the Civil Rights Act of 1964, which prohibits discrimination in employment on the basis of race, color, religion, sex or national origin. In addition, the agency recently assumed jurisdiction over the Equal Pay Act and the Age Discrimination in Employment Act.

EEOC involves affected Federal agencies, state and local governments, business, labor unions, public interest organizations, civil rights groups and various individuals early in the process of developing proposed regulations. The EEOC's outreach plan is a very extensive one and includes holding public conferences and hearings, sending press releases and notices to special interest publications and publishing an advance notice of proposed rulemaking to allow public comments at the earliest rule development stage.

Public Participation Funding

None.

Public Participation Documents

None.

Information Contact

Karen Danart, Deputy Director
Office of Policy Implementation
2401 E Street, N.W.
Washington, D.C. 20506
Telephone: (202) 634–7060

Environmental Protection Agency (EPA)

Units That Issue Regulations

Office of Air, Noise and Radiation
Office of Enforcement
Office of Planning and Management
Office of Research and Development
Office of Toxic Substances
Office of Water and Waste Management

Functions

The President created EPA in 1970 to administer environmental laws, conduct research and demonstration projects, establish and enforce standards, monitor pollution in the environment and assist state and local governments in their efforts to restore and protect the environment. EPA's regulatory responsibilities are in the areas of air, water, toxics, pesticides and solid waste management programs.

The agency develops an individual outreach plan for most proposed regulations. The agency develops a special contact list, publishes an advance notice of proposed rulemaking, provides informal open meetings and workshops to explore regulatory issues, and then develops a summary of public viewpoints and preferences for inclusion into the final decisionmaking process. EPA also provides feedback on the outcome of public involvement to all those who participated.

There is no required format for submitting a rulemaking petition; and multiple copies of public comments are not required, except in special cases to expedite agency review of comments.

Public Participation Funding

EPA is developing a pilot program to compensate selected participants for their participation in specific forthcoming rulemakings, including rules issued under the Clean Air Act, the Clean Water Act and the Toxic Substances Control Act. The general qualifications would be that:

(1) the participant would be unable to participate effectively without agency compensation, and

(2) the participant could make a useful contribution to a full and fair assessment of the issues involved.

Those individuals and groups participating in rulemaking proceedings regarding the control of hazardous chemical substances and mixtures not only must meet the above two requirements but also must have little economic interest in the outcome of the proceeding.

Public Participation Documents

"Public Participation in Solid Waste Management—Interim Guidelines"
"The Water Program Public Participation Policy"

EPA also has published numerous other books and pamphlets on several significant regulations and on various of its programs. All documents are free. Contact the Office of Public Awareness listed below.

Information Contact

Sharon Francis, Special Assistant to the Administrator for Public Participation
Environmental Protection Agency
401 M Street, S.W.
Room 1227 West Tower
(A–100)
Washington, D.C. 20460
Phone: (202) 245–3066

To receive copies of agency publications call or write:

Joan Martin Nicholson, Director
Office of Public Awareness
Environmental Protection Agency
401 M Street, S.W.
Room 311 West Tower
(A–107)
Washington, D.C. 20460
Telephone: (202) 755–0700 or
James Keys
Public Information Center
Environmental Protection Agency
401 M Street, S.W.
Lobby West Tower
(PM–215)
Washington, D.C. 20460
Telephone: (202) 755–0707

To have your name included on the agency's mailing list call or write:

Paul H. Wyche, Jr.
Constituent Coordinator
Environmental Protection Agency
401 M Street, S.W.
Room 355 West Tower
(A–107)
Washington, D.C. 20460
Telephone: (202) 755–0132

General Services Administration (GSA)

Units That Issue Regulations

Automated Data and Telecommunications Service
Executive Committee on the Federal Register
Federal Property Resources Service
Federal Supply Service
Information Security and Oversite Office
National Archives and Records Service
Office of Acquisition Policy
Office of General Counsel
Office of Human Resources and Organization
Public Archives and Records Service
Regulatory Law Division

Transportation and Public Utilities Service

Functions

GSA is the Federal Government's business manager. GSA's regulations establish other agencies' procedures on matters such as managing Federal property and records, constructing and operating buildings, obtaining and distributing supplies, using and disposing of property, managing transportation, traffic and communications; stockpiling strategic materials and managing the Government's automatic data processing resources program. While GSA is not a major regulatory agency, when agencies apply GSA regulations, the rules do have an effect on the public, for example, the rule on smoking in public buildings.

Depending on the nature and interest of the target audience, each of GSA's proposed regulations follow one or more of these outreach techniques: publishing an advance notice of proposed rulemaking, holding open conferences or public meetings, sending notices of proposals to special interest publications, or notifying interested parties directly. These procedures do not apply in cases of national security classified rules, Federal procurement regulations, Federal requisition regulations and GSA procurement regulations.

Public Participation Funding

None.

Public Participation Documents

None at the present time.

Information Contact

For general information about regulations being developed call or write:

Anthony Artigliere, Chief
Directives Management Branch
General Services Administration
18th and F Streets, N.W.
Washington, D.C. 20405
Phone: (202) 566–0666

For information on public participation in general:

David F. Peterson
Director of Consumer Affairs
General Services Administration
18th and F Streets, N.W.
Room G–142
Washington, D.C. 20405
Phone: (202) 556–1794

Non-profit consumer organizations can enter their names on a special mailing list by contacting:

Teresa Nasif
Consumer Information Center
General Services Administration
18th and F Streets, N.W.
Room G–142
Washington, D.C. 20405
Phone: (202) 556–1794

GSA Hotline for reporting fraud or violations:

(800) 566–1780
(202) 424–5210—Washington, D.C. metro area only.
Or Write:
GSA Hotline
P.O. Box 28341
Washington, D.C. 20005

Dial-A-Reg: Call the following numbers in the city nearest you for information on selected documents scheduled for publication in the next day's **Federal Register**:

(202) 523–5022—Washington, D.C.
(312) 663–0884—Chicago, Illinois.
(213) 688–6694—Los Angeles, California.

National Credit Union Administration (NCUA)

Units That Issue Regulations

All regulations are issued by the NCUA Board.

Functions

NCUA is responsible for chartering, regulating, and supervising Federal Credit Unions. The agency is also responsible for administering the National Credit Union Share Insurance Fund, which insures the share (savings) accounts of the members of all Federally-chartered credit unions and select state charted credit unions. The NCUA board also serves as the board of directors of the National Credit Union Administration Central Liquidity Facility, which is a mixed ownership government corporation created to provide funds to meet the liquidity needs of credit unions.

Public Participation Funding

No funding is available at this time.

Public Participation Documents

NCUA final report "In response to Executive Order 12044: Improving Government Regulations" 44 FR 17954, March 23, 1979.

Information Contact

Robert S. Monheit
Senior Attorney and Regulatory Development Coordinator
Office of General Counsel
National Credit Union Administration
2025 M Street, N.W.
Washington, D.C. 20456
Telephone: (202) 632–4870

Small Business Administration (SBA)

Units That Issue Regulations

All regulations are issued under the signature of the agency Administrator.

Functions

The Small Business Administration was created by Congress in 1953 to assist, counsel and assure the success of the small business community in a competitive free-enterprise economy. The agency provides the small business community with financial assistance, management training and counseling, and help in getting a fair share of Government contracts through over 100 offices in all parts of the nation. SBA also serves as small business' chief advocate in the Federal Government and administers the Government's home, personal property and business Disaster Loan Recovery Program.

SBA does not favor the Administrative Procedure Act's exemption of regulations concerning grants, loans and other forms of financial assistance from normal public participation procedures; and notices on these matters also go out to the general public for comments. Otherwise, the agency's procedures are in keeping with the spirit of Executive Order 12044.

Public Participation Funding

None.

Public Participation Documents

The SBA's regulations dealing with public participation in rulemaking can be found at 13 CFR 101.9. Copies may be obtained by calling or writing the "Information Contact" listed below.

Information Contact

For general information on the preparation of regulations and policy, the promulgation of rules or public participation procedures contact:

George M. Grant, Jr., Associate General Counsel for Legislation
Small Business Administration
1441 L Street, N.W.
Room 700
Washington, D.C. 20416
Phone (202) 653–6662

Address general inquiries or other questions on receiving any of the agency's various publications on business assistance programs call or write the SBA regional, district or branch office located near you. Consult your local telephone directory for the address and phone number.

United States International Trade Commission (USITC)

Units That Issue Regulations

The Office of the General Counsel at the Commission is responsible for recommending the adoption of regulations by the Commission, recommending rulemaking proceedings, and preparing notices for rulemaking proceedings.

Functions

The Commission is an independent agency created to provide the Congress and the Executive Branch with expert advice on matters related to U.S. foreign trade. In addition to the general advisory responsibilities, the Commission conducts many investigations related to the impact of imported products on the domestic markets of U.S. producers.

Public Participation Funding

None.

Public Participation Documents

"Summary of Statutory Provisions Related to Import Relief" (Publication No. 842, June 1978), summarizes the statutory provisions for agency investigations of the impact of imports in domestic product markets. It is available from the Office of the Secretary.

A brochure that generally describes the agency is now dated, but a new edition will be available soon.

Information Contact

Mr. Hal Sundstrom
Assistant Secretary and Public Information Officer
Office of the Secretary
U.S. International Trade Commission
701 E Street, N.W.
Washington, D.C. 20436
Phone: (202) 523-0161

This agency has a general public mailing list. Address requests to be added to the mailing list to the Office of the Secretary.

Veterans Administration (VA)

Units That Issue Regulations

Department of Medicine and Surgery
Department of Veterans Benefits
National Cemetery Systems

Other units can on occasion issue internal regulations, that is, for adherence by the agency only.

Functions

The VA provides services to veterans and their dependents through a variety of programs including compensation, pension, education, vocational rehabilitation, insurance, home loans, burial, and health care and hospitalization.

The VA works closely with community organizations and knowledgeable individuals involved in veterans' interests in reviewing its regulations and procedures to determine program responsiveness to consumers' needs. VA hospitals and regional offices provide many services and disseminate information at the local level, where consumer involvement is particularly visible.

Also, the VA sends copies of proposed regulations to the U.S. House and Senate Veterans Affairs Committees, to veterans organizations and other interested parties. The VA encourages the public to submit written comments on the agency's regulatory activities. There are no formal requirements for submitting these comments, and the comment period on all rulemaking proceedings is 60 days.

Public Participation Funding

None.

Public Participation Documents

None.

Information Contact

Office of Consumer Affairs
Veterans Administration
810 Vermont Avenue, N.W.
Washington, D.C. 20420
(202) 389-2843

Civil Aeronautics Board (CAB)

Functions

The CAB is responsible for economic regulation of air transportation and for overseeing the transition to a deregulated air transportation system.

Private and public interest groups who petition CAB for rulemaking must file an original and 19 copies of the petition with CAB's Docket Section. Respondents to the petition should also file an original and 19 copies. Individuals may file their comments as consumers without filing multiple copies.

Public Participation Funding

The CAB has a program for reimbursing certain persons participating in all types of proceedings, including rulemaking. The primary eligibility criteria are (1) the applicant must be expected to contribute substantially to a full and fair resolution of the proceeding; (2) the applicant must be unable to afford to participate without funding; and (3) the applicant's interest in the outcome of the proceeding must be small compared to the burden of participation.

The criteria and procedures for this program are set out in 14 CFR Part 305 (adopted at 43 FR 56878; December 5, 1978).

Public Participation Documents

CAB's available documents describe the agency's public participation funding program:

"Applying for Compensation for Participation in CAB proceeding."
"14 CFR Part 304."

Also, public files on agency proceedings may be examined at CAB in Room 711, 1825 Connecticut Avenue, N.W., Washington, D.C., during normal business hours Monday–Friday.

Information Contact

For more information about the funding program contact:

Glen E. Robards, Jr.
Assistant to the Managing Director
Civil Aeronautics Board
1825 Connecticut Avenue, N.W.
Washington, D.C. 20428
Telephone: (202) 673-5189

For documents on funding phone (202) 673-5432.

For information on public participation, apart from the funding program:

Mark Schwimmer
Rules and Legislation Division
Office of the General Counsel
Civil Aeronautics Board
1825 Connecticut Avenue, N.W.
Washington, D.,C. 20428
Phone: (202) 673-5442

For consumer complaints contact:
Consumer Assistance Section
Bureau of Consumer Protection
Civil Aeronautics Board
1825 Connecticut Avenue, N.W.
Washington, D.C. 20428
Telephone: (202) 673-6047

Commodity Futures Trading Commission (CFTC)

Functions

The CFTC is an independent regulatory agency that exercises rulemaking and enforcement powers over trading on 10 commodity exchanges offering futures contracts in a wide variety of commodities. The Commission's regulatory and enforcement programs are designed to prevent deliberate market distortions and manipulations, to ensure fair trade processes, to protect the financial integrity of the marketplace and the brokerage community; and to assure the rights of customers, while providing an additional forum for release of their legitimate grievances.

The CFTC also administers a reparations procedure under which it can order a firm or person to pay damages to someone who proves damage by that person or firm caused by a violation of the Commodity Exchange Act as amended, or of CFTC regulations. This procedure provides an alternative to arbitration or litigation for members of the public who believe they have been damaged by persons or companies registered with or required to be registered with the CFTC, including floor brokers, futures commission merchants, commodity trading advisors, commodity pool operators and associated persons.

Public Participation Funding

None.

Public Participation Documents

CFTC 101: Reparations
CFTC 102: Economic Purposes of Futures Trading
CFTC 103: Farmers, Futures and Grain Prices

Information Contact

For information concerning public participation or being included on the agency's public information mailing list call or write:
David Rosen, Director
Office of Public Information
Commodity Futures Trading Commission
2033 K Street, N.W.
Washington, D.C. 20581
Phone (202) 254–8630
For publications requests contact:
Irwin B. Johnson
Division of Economics and Education
Commodity Futures Trading Commission
2033 K Street, N.W.
Washington, D.C. 20581
Phone (202) 254–5273
CFTC's Consumer Hotline provides information concerning firms or persons dealing in commodity futures or similar instruments, such as options and leverage. The toll-free phone numbers are:
(800) 424–9838
Alaska, Hawaii: (800) 424–9707
Metro D.C. area: (202) 254–7837

Consumer Product Safety Commission (CPSC)

Units That Issue Regulations

The Commission votes on and issues all regulations from the Agency

Functions

CPSC issues rules that concern the manufacture and distribution of products so as to ensure the health and safety of the public.

Public Participation Funding

CPSC established an Office of Public Participation (OPP) in January, 1977, primarily to administer a funding program for public participants in agency proceedings.
CPSC provides reimbursement to selected participants in agency proceedings where public comments are invited, such as matters involving the Consumer Product Safety Act, the Federal Hazardous Substances Act, the Flammable Fabrics Act, and the Poison Prevention Packaging Act. CPSC selects the proceedings in which there is opportunity for financial compensation of public participants.
For more information contact the Office of Public Participation.

Public Participation Documents

"CPSC's Office of Public Participation and Financial Compensation Program" and a weekly document called "The Public Calendar" are both available from the Office of the Secretary.

Information Contact

Catherine Bolger
Office of Public Participation
Consumer Product Safety Commission
1111 Eighteenth Street, N.W.
Room 300
Washington, D.C. 20207
Phone (202) 254–6241
For public participation documents call or write:
Office of the Secretary
Consumer Product Safety Commission
1111 Eighteenth Street, N.W.
Room 300
Washington, D.C. 20207
Phone (202) 634–7700
Toll-free hotlines:
Continental US: (800) 638–8326
Maryland only: (800) 492–8363
Alaska, Hawaii, Virgin Islands and Puerto Rico: (800) 638–8333
A teletype for the deaf is available from 8:30 a.m. to 5:00 p.m., Monday-Friday, for those who call the hotline number.

Federal Communications Commission (FCC)

Units That Issue Regulations

The FCC's seven-member Commission issues and approves all agency regulations.

Functions

The FCC regulates both interstate and U.S.-foreign radio, television, wire, cable, and satellite communications.
The FCC publishes a "Sunshine Agenda" prior to each open FCC meeting that provides brief summaries of each item scheduled for discussion.

The FCC's Consumer Assistance Office (CAO) conducts public participation workshops in various locations across the country. These sessions teach members of the public how to participate in FCC rulemaking proceedings.
CAO also publishes *Feedback*, a plain English, consumer-oriented summary of major FCC proposals, and *Actions Alert*, a weekly bulletin reminding consumers of major pending actions at the FCC.

Public Participation Funding

The FCC is considering the creation of a program to fund public participation. At this time, the FCC does not have such a program.

Public Participation Documents

You can obtain the following documents on public participation as well as other publications about the agency from the FCC's Consumer Assistance Office free of charge.
"A Guide to Open Meetings"
"The Public and Broadcasting: A Procedure Manual"
"How FCC Rules are Made"
"FCC Information Seekers Guide"
"FCC *Feedback*"
"FCC *Actions Alert*"

Information Contact

Erika Ziebarth Jones
Acting Chief
Consumer Assistance Office
Federal Communications Commission
Room 258
1919 M Street, N.W.
Washington, D.C. 20554
Phone (202) 632–7000
Call the Consumer Assistant Office for information on receiving its mailing lists for *Feedback* and *Actions Alert*.
The CAO operates a special phone for the hearing impaired 8:00 A.M. to 5:30 P.M., Monday-Friday. Telephone: (202) 632–6999.
For a recorded list of FCC press releases telephone (202) 632–0002 (the recording is changed twice daily).

Federal Deposit Insurance Corporation (FDIC)

Units That Issue Regulations

FDIC's Board of Directors issues regulations for the agency.

Functions

FDIC administers a Federal insurance program for the deposits in banks belonging to the Federal Reserve System and in State banks and U.S. branches of foreign banks that apply and qualify for FDIC insurance. It also regulates at the Federal level FDIC-insured State chartered banks that are not members of the Federal Reserve System.

Public Participation Funding

Consideration is given on a case-by-case basis. Requests should be directed to the Deputy to the Chairman listed below under "Information Contact."

Public Participation Documents

FDIC Statement of Policy entitled "Development and Review of FDIC Rules and Regulations." Copies can be obtained from the Information Office listed below.

Information Contact

For information on public participation:
Hoyle L. Robinson
Executive Secretary
Office of the Executive Secretary
Federal Deposit Insurance Corporation
550—17th Street, N.W.
Washington, D.C. 20429
Phone (202) 389–4425
For information on funding:
Alan R. Miller
Deputy to the Chairman
Federal Deposit Insurance Corporation
550—17th Street, N.W.
Washington, D.C.
Phone (202) 389–4211
For publications requests:
Information Office
Federal Deposit Insurance Corporation
550—17th Street, N.W.
Washington, D.C. 20429
Phone (202) 389–4221

Federal Election Commission (FEC)

Units That Issue Regulations

All regulations issued by the Federal Election Commission are approved by affirmative vote of at least four Commissioners. No office of the Commission has authority to issue regulations without such approval.

Regulations promulgated under the Federal Election Campaign Act of 1971, as amended (2 U.S.C. § 431, et. seq.), and chapters 95 and 96 of the Internal Revenue Code of 1954 (Title 26, United States Code) must be transmitted to Congress prior to final prescription. If neither House of Congress disapproves the proposed regulation within 30 legislative days after transmittal, it may be prescribed by the Commission. (See, 2 U.S.C. § 438(c), 26 U.S.C. §§ 9009(c), 9039(c).)

Functions

The Federal Election Commission administers, formulates policy, and seeks to obtain compliance with respect to the Federal Election Campaign Act of 1971, as amended, and chapters 95 and 96 of the Internal Revenue Code of 1954. Its functions include administering the Federal campaign finance disclosure requirements, contribution and expenditure limitations; prohibitions on certain contributions to Federal Candidates, and public financing of Presidential nominating conventions and elections.

Public Participation Funding

None.

Public Participation Documents

None.

Information Contact

Dr. Gary Greenhalgh
Assistant Staff Director for Public Information
Federal Election Commission
1325 K Street, N.W.
Washington, D.C. 20463
Phone: (202) 523–4068
Outside the Washington, D.C. metro area phone (800) 424–9530.

Federal Energy Regulatory Commission (FERC)

Units That Issue Regulations

There are no administrative units within the Federal Energy Regulatory Commission that have the authority to issue regulations. The full Commission votes on and issues all FERC regulations.

Functions

FERC is an independent five-member commission within the Department of Energy (DOE). As the successor to the former Federal Power Commission, FERC sets rates and charges for transporting and selling natural gas, for transmitting and selling electricity, and for licensing hydroelectric power projects. FERC also decides whether to exercise independent jurisdiction in many DOE regulatory policies.

FERC often holds public hearings and informal public conferences in Washington, D.C., and other regions of the country on major rulemaking proposals. These hearings and conferences generally are presided over by a member of the Commission and are announced in the **Federal Register**.

Also, after a proposed rule appears in the **Federal Register** the public has 45 days in which to submit written comments on the proposal. The Commission requires 14 copies of written comments, but in special circumstances the Commission may waive that requirement.

Public Participation Funding

In spite of the Commission's efforts to obtain compensation for public participation, the Congress wrote an absolute restriction on public participation funding into the FERC's FY 1980 appropriation bill.

Public Participation Documents

While the Commission does not have any publications specifically on public participation, it does maintain several mailing lists designed to disseminate widely information on its activities and on ongoing proceedings free of charge. These mailing services are as follows:

- Department of Energy Weekly Announcements—a weekly compilation of all news releases issued by FERC and DOE.
- RU Mailing List—All FERC orders in rulemaking dockets.
- NGPA Mailing List—Natural Gas Policy Act releases, notices, rulemakings.
- Mailing List for Consumer Organizations—Commission Announcement notices, etc., that are of interest to consumer organizations.
- Incremental Pricing Mailing List—Incremental Pricing, notices and rulemakings.

Lists of all publications and special reports issued by the FERC can also be obtained from the Division of Public Information within the Office of Congressional and Public Affairs. The Division of Public Information plans to issue in the near future a guide to public information available at the FERC.

Information Contact

For more information on FERC's public participation program call or write:
Office of the Secretary
Federal Energy Regulatory Commission
825 North Capitol Street N.E.
Room 9310
Washington, D.C. 20426
Phone: (202) 357–8400 or
Office of Congressional and Public Affairs
Federal Energy Regulatory Commission
825 North Capitol Street, N.E.
Washington, D.C. 20426
Phone: (202) 357–8373
For further information on public participation funding at the FERC:
Kenneth S. Levine
Director, Office of Congressional and Public Affairs
Federal Energy Regulatory Commission
825 North Capitol Street, N.E.
Washington, D.C. 20426
Phone: (202) 357–8373
The FERC Division of Public Information within the Office of Congressional and Public Affairs also

maintains a daily recorded message listing all orders and notices issued by the Commission. The message is changed at 10:00 a.m. and 3:00 p.m. each day; call (202) 357–8555.

Federal Home Loan Bank Board (FHLBB)

Units That Issue Regulations

Office of General Counsel Regulations Division

Functions

The Board is an independent regulatory agency that charters Federal savings and loan associations, provides insurance of accounts in both Federal and State-chartered associations through the Federal savings and loan insurance corporation; and issues and enforces regulations to ensure safe and sound operation of savings and loan institutions under its jurisdictions.

Public Participation Funding

None.

Public Participation Documents

Information on public participation in Board meetings, hearings, and other aspects of the regulatory process is available in 12 CFR Part 505.

Information Contact

Frank O. Bolling, Director
Communications Office
Federal Home Loan Bank Board
1700 G Street, N.W.
Washington, D.C. 20552
Phone: (202) 377–6677

The Board maintains a general public information mailing list. Any interested person may be included on the list by calling or writing the Communications Office above.

Copies of press and statistical releases are also available.

Federal Maritime Commission (FMC)

Functions

FMC is an independent regulatory agency primarily responsible for administering Federal statutes concerned with the regulation of ocean shipping in the U.S. foreign commerce and the U.S. domestic offshore commerce.

Shippers are the FMC's real consumers since individuals are not connected usually with ocean freight rates and practices. While any interested party may participate in rulemaking proceedings, public replies to written comments submitted are allowed when the FMC deems it necessary or desirable in complicated or important rulemakings.

FMC also has a public reference/dockets room where the public can review files on agreements and tariffs. The eight FMC field offices also have public reference rooms. Call the Office of Public Participation listed under "Information Contact" for the field office nearest you if it is not listed in your telephone directory.

Public Participation Funding

None.

Public Participation Documents

None.

Information Contact

The agency contacts for public participation are:

Francis C. Hurney, Secretary
Federal Maritime Commission
1100 L Street, N.W.
Room 11101
Washington, D.C. 20573
Phone: (202) 523–5725 or
Otto J. Kirse
Office of Public Participation
Federal Maritime Commission
1100 L Street, N.W.
Room 11101
Washington, D.C. 20573
Phone: (202) 523–5800

Federal Mine Safety and Health Review Commission (FMSHRC)

Units That Issue Regulations

With the exception of certain administrative matters, the agency does not engage in the formal promulgation of regulations; the primary function of FMSHRC is to adjudicate.

Functions

Congress created FMSHRC as an independent agency to adjudicate disputes under the Mine Safety and Health Act of 1977.

Section 105(c) of the Act (30 U.S.C. 815(c)) contains a Congressional mandate for legal representation for miners and their representatives in private disputes brought before FMSHRC against mine operators because of alleged discrimination in safety and health matters. Congress provided that when the Solicitor of the Department of Labor does not provide legal representation, a miner or representative who wins the dispute can recoup costs, including attorney fees, from the mine operator.

FMSHRC presently is examining the Act to determine whether there exist other possibilities for encouraging public participation in proceedings before it.

Public Participation Funding

The provision by Congress for a miner or his representative to recoup costs and legal fees under certain circumstances in discrimination and compensation cases may be found at Title 30, Section 815(c) of the United States Code.

There is no additional provision or procedure for funding of public participation at this time, although such a plan is in the initial stages of consideration by the agency.

Public Participation Documents

The Rules of Procedure for cases tried before FMSHRC are available from FMSHRC or can be found in Title 29, Part 2700 of the Code of Federal Regulations.

FMSHRC also is considering the publication of a pamphlet explaining how the Commission operates.

Information Contact

Donald F. Terry
Executive Director
Federal Mine Safety and Health Review Commission
1730 K Street, N.W.
Sixth Floor
Washington, D.C. 20006
Phone: (202) 653–5625

Federal Reserve System (FRS)

Units That Issue Regulations

Board of Governors of the Federal Reserve System

Functions

The primary responsibility of the Federal Reserve System is the conduct of monetary policy which affects the availability of money and credit. It exercises supervisory and regulatory authority over member banks and all bank holding companies. It also acts as the fiscal agent for the Treasury and has responsibility for implementing numerous consumer laws such as Truth in Lending.

Depending upon the nature of the proposed regulation and the interests of the affected sector, the Federal Reserve Board (FRB) utilizes a variety of outreach procedures, including publishing an advance notice of proposed rulemaking (ANPRM) that may suggest specific issues on which comments should be focused. FRS may also choose to schedule an informal public hearing or directly solicit views from interested persons or groups.

The Board's Regulations B and Z, which implement the Equal Credit Opportunity and Truth in Lending Acts, provide for special public participation in matters related to the Acts. If the FRB receives a request for public comment on an official staff interpretation of these regulations before the effective date is suspended, the FRB will

republish the proposed staff interpretation for public comment.

Public Participation Funding

None.

Public Participation Documents

Rules of Procedure, 12 CFR 262
Rules of Organization and Procedure of the Consumer Advisory Council, 12 CFR 267
Rules Regarding Public Observation of Meetings, 12 CFR 261b
Procedures for Issuing Official Staff Interpretations of Regulations B and Z, 12 CFR 202.1(d), 226.1(d)

Information Contact

Joseph R. Coyne
Assistant to the Board
Federal Reserve Board
Washington, D.C. 20551
Phone: (202) 452–3204

To include your name on the agency's general public information mailing list or to obtain copies of the public participation documents listed above call or write:

Publications
Federal Reserve Board
Washington, D.C. 20551
Telephone: (202) 452–3244

Federal Trade Commission (FTC)

Units That Develop Regulations

Bureau of Consumer Protection
Bureau of Competition

Functions

The Commission's functions are aimed at promoting competition and fair and honest dealing in the economy. It seeks to remove market restrictions that drive up prices and limit the supply of goods and services. It also seeks to protect consumers by ensuring that commercial information available to consumers is accurate and complete.

Public Participation Funding

By statute, the FTC has the authority to compensate people for participation in most FTC Bureau of Consumer Protection rulemaking proceedings. Interested persons, whether they represent a consumer or a small business point of view, can be funded if they meet the statutory criteria. Direct questions regarding such compensation to the person listed under "Information Contact."

Public Participation Documents

"Staff Guidelines"
"Rulemaking and Public Participation Under the FTE Improvement Act"
"Applying for Reimbursement for FTC Rulemaking Participation"

Information Contact

For information on general public participation and funding please call or write:

Bonnie Naradzay
Special Assistant for Public Participation
Office of the General Counsel
Federal Trade Commission
Washington, D.C. 20580
Telephone: (202) 523–3796

Interstate Commerce Commission (ICC)

Units That Issue Regulations

Bureau of Accounts
Bureau of Operations
Bureau of Traffic
Office of Policy and Analysis
Office of Proceedings

Functions

Congress created the Interstate Commerce Commission in 1887 to regulate railroads, trucking companies, bus lines, freight forwarders, and water carriers.

In the transportation economics area the Commission settles controversies over rates and charges among competing carriers; in the transportation service area the Commission grants the right to operate to the companies it regulates.

ICC's Office of Special Counsel represents the public interest in all agency proceedings.

Public Participation Funding

No funding available at this time.

Public Participation Documents

"Motor Carrier Information Bulletin, No. 1," Bulletin No. 1," published by ICC's Bureau of Operations.
"Motor Carrier Information Bulletin, No. 2" published by ICC's Bureau of Operations.
"Buying Transportation," Public Advisory No. 7, published by ICC.
"Entering the Trucking Business," Public Advisory No. 6, published by ICC.

All publications are free of charge and available from the Small Business Assistance Office listed below.

Information Contact

For information on public interest issues in agency proceedings call or write:

Edward J. Schack, Special Counsel
Office of the Special Counsel
Interstate Commerce Commission
12th St. and Constitution Ave., N.W.
Washington, D.C. 20423
(202) 275–7411 or
Small Business Assistance Office
Interstate Commerce Commission
12th St. and Constitution Ave., N.W.
Washington, D.C. 20423
(202) 275–7597

To include your name on the agency's general public information list call or write:

Interstate Commerce Commission
Office of Communications
12th St. and Constitution Ave., N.W.
Washington, D.C. 20423
(202) 275–7252

Consumer Hotline: (800) 424–9312
Spanish-speaking Coordinator: (202) 275–7574

National Labor Relations Board (NLRB)

Insamuch as the NLRB does not normally utilize rulemaking procedures for the purpose of issuing rules and regulations, the NLRB has no regulatory units.

Functions

NLRB has two basic functions. They are (1) to determine through secret ballot elections, the free choice of employees as to whether they wish to be represented by a union for collective bargaining purposes; and (2) to prevent and remedy unfair labor practices by either employers or unions which adversely affect employees' rights to self-organization and collective bargaining.

Public Participation Documents

"A Guide to Basic Law and Procedures Under the National Labor Relations Act."

This guide is available through the Superintendent of Documents, U.S. Printing Office, Washington, D.C. 20402, at a charge of $2.20.

Public Participation Funding

The NLRB does not offer funding for public participation.

Information Contact

Thomas W. Miller, Jr., Director
Division of Information
National Labor Relations Board
1717 Pennsylvania Avenue, N.W.
Room 710
Washington, D.C. 20750
Telephone: (202) 632–4950

The Division of Information also maintains several mailing lists that include the following:

1. Weekly Summary of NLRB Cases
2. Monthly Election Reports
3. News Releases

Occupational Safety and Health Review Commission (OSHRC)

Units That Issue Regulations

The Review Commission does not issue regulations, but does issue rules of

procedure which govern its administrative proceedings.

Functions

The Review Commission is an independent quasi-judicial agency created by Congress to adjudicate contested enforcement actions arising under the Occupational Safety and Health Act of 1970, 29 U.S.C. §§ 651–678.

Public Participation Funding

None.

Public Participation Documents

"A Guide to Procedures of the Occupational Safety and Health Review Commission," (also available in Spanish)

"OSHRC: The Federal Job Safety and Health 'Court'"

"Rules of Procedure"

These are available free from the Office of Information at the address below.

Information Contact

Linda Dodd
Public Information Officer
Occupational Safety and Health Review Commission
1825 K Street, N.W., Room 701
Washington, D.C. 20006
Phone: (202) 634–7943

Nuclear Regulatory Commission (NRC)

Units That Issue Regulations

The Executive Director for Operations

Under 10 CFR 1.40(d) the Executive Director for Operations has been delegated authority to issue amendments to the Commission's regulations which are corrective, minor, or non-policy in nature, and do not substantially modify existing regulations. The Executive Director for Operations also may issue amendments to regulations in final form, if no significant adverse comments or questions have been received on the proposed rule change.

In addition, under 10 CFR 1.40(o), the Executive Director has been delegated authority to deny petitions for rule making of a minor or non-policy nature, where the grounds for denial do not substantially modify an existing precedent.

Functions

The NRC regulates civilian nuclear activities to protect the public health and safety, national security, and the quality of the environment as well as to ensure that the public and private sectors obey the antitrust laws.

NRC has taken steps to enhance both the accessibility and quality of public participation in its rulemaking activities. These steps include:

- Placing Commission staff papers discussed in open Commission meetings in the public docket room;
- Publishing an agenda of petitions for rulemaking;
- Publishing quarterly a status summary report called the "Green Book" that lists, among other things, those regulations under development by the Office of Standards Development;
- Publishing advance notice of proposed rulemaking (ANPRM) on major actions;
- Providing the Commission, and making available to the public, an analysis of comments and a discussion of their resolution; and
- Holding public hearings or meetings on rulemaking actions of particular interest and importance.

Public Participation Funding

None.

Public Participation Documents

The NRC's Annual Report, for sale by the Superintendent of Documents, Government Printing Office, includes a section which discusses provisions in NRC regulations for formal participation by the public in rule making, licensing and other proceedings.

The conduct of Commission proceedings, including the opportunities for public participation, is in 10 CFR Part 2 of the Commission's regulations, "Rules of Practice for Domestic Licensing Proceedings."

NRC's procedures for public participation in agency rulemaking are set forth in Subpart H Rules Making, of NRC's Rules of Practice (10 CFR Part 2).

Information Contact:

For information concerning the status of proposed rules or petitions for rulemaking or other information concerning NRC's rulemaking activities, call or write:

Chief, Rules and Procedures Branch
Division of Rules and Records
U.S. Nuclear Regulatory Commission
Room 1713 MNBB
Washington, D.C. 20555
Phone: (301) 492–7086

Address rulemaking petitions to:
Secretary,
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555
Attn: Chief, Docketing & Service Section

Copies of all petitions are available for public review at:
NRC Public Document
1717 H Street, N.W.
Washington, D.C. 20555

Information concerning the agency's public information mailing list can be obtained from:
Division of Technical Information and Document Control
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555
Phone: (301) 427–7566

Postal Rate Commission (PRC)

Units That Issue Regulations

The Commission as a whole issues all decisions, which are forwarded on to the Governors of the Postal Service for final approval. The Governors, under varying requirements, may approve, allow under protest, reject, or modify a Commission decision.

Functions

The Postal Rate Commission is an independent Federal regulatory agency composed of five Commissioners appointed by the President, with the advice and consent of the Senate. The Commission, acting upon requests from the U.S. Postal Service or on its own initiatives, recommends changes in postal rates, mail classification and service changes. The Commission also has the appellate authority to review all Postal Service determinations to close or consolidate small post offices.

PRC's "Rules of Practice and Procedure" govern all proceedings before the Commission in addition to the laws contained in the Administrative Procedure Act.

PRC's Officer of the Commission (OOC) represents the interests of the general public in any proceeding. The agency's *ex parte* rule forbids the OOC and his/her staff to have discussion with the Commission or its advisory staff on the issues in the proceeding. This is to make sure no prejudgment exists when the Commission is hearing a case. The OOC is listed below under "Information Contact."

Public Participation Funding

None.

Public Participation Documents

None.

Information Contact

Any person interested in participating before the Commission may contact:
Mr. David Harris
Secretary and Chief Administrative Officer
Postal Rate Commission
2000 L St., N.W., Suite 500
Washington D.C. 20268
Phone: (202) 254–3880

General public interest issues can be discussed with:

Stephen Sharfman
Officer of the Commission
Postal Rate Commission
2000 L St., N.W.
Room 500
Washington D.C. 20268
Phone: (202) 254–3840

Securities and Exchange Commission (SEC)

Units That Issue Regulations

All regulations are issued by the Commission as a whole. However, proposed regulations may be suggested to the Commission by any staff division or autonomous office. The principal staff units with direct responsibility for proposing regulations are:
Division of Corporate Regulation
Division of Corporate Finance
Division of Investment Management
Division of Market Regulation
Office of Chief Accountant

Functions

The Commission is responsible for overseeing the operations of the nation's securities trading markets. It has direct responsibility for regulation of those engaged in trading securities or selling them to the public, such as stockbrokers, persons who trade securities on the floors of exchanges, investment advisers, mutual fund operators and others. The Commission also administers the "full disclosure system" which assures that publicly owned companies disclose publicly all material information regarding their operations. In addition, the Commission has responsibilities relating to public utility holding companies and to bankruptcies of public corporations.

Public Participation Funding

None.

Public Participation Documents

A Brochure entitled "SEC Publications" lists other material published by the Commission and is available from the Publications Section listed Below.

Notice of rule proposals as well as rule adoptions, schedules of open commission meetings, and many other announcements of interest to the public are published each day in the "SEC News Digest," which is also available by subscription from the Superintendent of Documents, at a cost of $100 per year.

In addition to publication in the **Federal Register**, all rule proposals issued by the Commission are published in the "SEC Docket," which available by subscription at a cost of $79 per year from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

Information Contact

Copies of specific rule proposals or corporate disclosure documents may be obtained by writing to:
Public Reference Section
Securities and Exchange Commission
500 North Capitol Street, N.E.
Washington, D.C. 20549

General inquiries or questions about the availability of the above-listed documents may be addressed to:
Office of Public Affairs
Securities and Exchange Commission
500 North Capitol Street, N.E.
Telephone: (202) 272–2650 or (202) 523–5360

Comments on rule proposals should be directed to:
George Fitzsimmons, Secretary to the Commission
Securities and Exchange Commission
500 North Capitol Street, N.E.
Washington, D.C. 20549

APPENDIX II: STATUS OF REGULATIONS FROM FEBRUARY, 1979 EDITION

This Appendix contains information about those entries that appeared in the first edition of the Calendar of Federal Regulations in February, 1979, but are not described in this edition. Descriptions of regulations that appeared in the first edition and that are still under development by the Agencies and Departments appear in this edition, with expanded information about the problem the agency intends the regulation to solve, the costs and benefits of the proposed action, and the sectors affected.

Entries that appeared in the first edition but do not appear in this second edition either went to final rule, were withdrawn, or were subject to some other action that made them inappropriate for inclusion in this Calendar. These entries and the actions that agencies have taken on them, are noted in this appendix.

We have also noted any significant word changes in the titles of the regulations, to help the reader locate an entry that has been renamed but is described in both editions of the Calendar.

APPENDIX II: STATUS OF REGULATIONS FROM FEBRUARY, 1979 EDITION

AGENCY	TITLE OF REGULATION	PAGE NO.	ACTIVITY SINCE LAST EDITION
DOC - EDA	Special Economic Development and Adjustment Assistance Grants	11425	Postponed pending Congressional action on amendments to the Public Works and Economic Development Act.
DOC - NOAA	Regulations Implementing a Fishery Management Plan for the Stone Crab Fishery in the Gulf of Mexico Fishery Conservation Zone adjoining the West Coast of Florida from the Florida/Alabama Line	11437	Final Rule -- 44 FR 53519, 9/14/79.
DOE - ERA	Amendments to Entitlement Program to Reduce the level of Benefits Received under Small Refiner Bias	11440	Final rule -- 44 FR 25621, 5/2/79.
DOE - ERA	Amendments to Impose Entitlements Obligation to the First Purchase of Price Controlled Domestic Crude Oil	11440	"On hold" by DOE.
DOE - ERA	Deregulation of Butane, Natural Gasoline, Propane, and Other Natural Gas Liquids	11441	Still pending--no date for final rule has been established.
DOE - ERA	Exemption of Aviation Fuel from the Mandatory Petroleum Allocation and Price Regulation	11461	Final rule effective -- 44 FR 7070, 2/5/79
DOE - ERA	Exemption of Motor Gasoline from Mandatory Petroleum Allocation and Price Regulations	11441	"On hold" by DOE

APPENDIX II: STATUS OF REGULATIONS FROM FEBRUARY, 1979 EDITION

AGENCY	TITLE OF REGULATION	PAGE NO.	ACTIVITY SINCE LAST EDITION
DOE - ERA	Final Rule Implementing the Fuel Utilization Act of 1978	11444	Interim final rule 44 FR 43176, 7/23/79. Final rule on transitional facilities 44 FR 60690, 10/19/79
DOE - ERA	Final Rules with Respect to the Department of Energy's Contingency Gasoline Rationing Plan	11443	New NPRM under development reflect legislative revisions to the National Energy Policy and Conservation Act
DOE - ERA	Permanent Revision of Standby Petroleum Product Allocation and Price Regulations	11442	Still pending - no schedule for final rule has been established
HEW	Nondiscrimination on the Basis of Age in Activities Receiving Federal Financial Assistance	11426	Final Rule -- 44 CFR 33768, 6/12/79.
HUD - FIA	Regulations Establishing Departmental Procedures for Implementing Executive Orders on Flood Plain Management and Wetlands Protection	11444	NPRM -- 44 FR 47006,8/9/79 Going to final rule 12/79.
HUD - HOUS	Administrator Qualifications and Procedures for HUD Building Products Certification Program	11458	Final rule -- 44 FR 54656, 9/20/79

APPENDIX II: STATUS OF REGULATIONS FROM FEBRUARY, 1979 EDITION

AGENCY	TITLE OF REGULATION	PAGE NO.	ACTIVITY SINCE LAST EDITION
HUD - HOUS	Standards for the Design, Construction, and Alteration of Residential Structures to Ensure Accessability to the Physically Handicapped	11427	Proposed rule -- Part 40 re: revised prescription of design standards 44 FR 10586, 2/21/79. (Since American National Standards Institute (ANSI) will be promulgating new standards re: building access for the handicapped, HUD will not proceed to final rulemaking but will issue new proposed rules incorporating ANSI standards in 12/79.) Proposed rule -- Part 41 re: policies, procedures, implementation and enforcement -- 44 FR 10590, 2/21/79. Final Rule -- 44 FR 12358, 3/6/79.
HUD - HOUS	Tax Exemption under Section 11(b) of the United States Housing Act of 1937, of Obligations Issued by Public Housing Agencies to Finance Section 8 Projects.	11428	Final rule -- 44 FR 12358, 3/6/79
DOI - OSM	Permanent Regulatory Program Implementing Section 401(b) of the Surface Mining Control and Reclamation Act of 1977	11447	Final Rule -- 44 FR 14901-15309 (Bk. II), 3/13/79

APPENDIX II: STATUS OF REGULATIONS FROM FEBRUARY, 1979 EDITION

AGENCY	TITLE OF REGULATION	PAGE NO.	ACTIVITY SINCE LAST EDITION
DOL - ESA	Labor Standards for Federal Service Contracts	11431	Withdrawn from Calendar by DOL — proposed rule does not meet DOL criteria for major regulations.
DOL - ESA	Labor Standards Provisions Applicable to the Davis-Bacon Act and Related Acts and Contract Work Hours and Safety Standards Act	11429	Withdrawn from Calendar by DOL -- proposed amendments do not meet DOL criteria for major regulations.
DOL - ESA	Proposed Amendment to Equal Pay Act Interpretative Bulletin Dealing with Insurance and other Employee Benefit Plans	11429	Transferred to EEOC.
DOL - MSHA	Regulations Providing for Automated Temporary Roof Support Standards	11396	No action anticipated within the next 12 months.
DOL - MSHA	Requirements to Provide Self-Contained (Oxygen Generating) Self-Rescuers to Underground Metal and Nonmetal Miners	11396	Withdrawn from Calendar by DOL -- regulation does not meet criteria for major regulations
DOL - MSHA	Safety and Health Standards for Construction Work on Mine Property	11397	Change of title for this edition -- Safety and Health Standards for Construction Work at all Surface Mines and Surface Areas of Underground Mines.

APPENDIX II: STATUS OF REGULATIONS FROM FEBRUARY, 1979 EDITION

AGENCY	TITLE OF REGULATION	PAGE NO.	ACTIVITY SINCE LAST EDITION
DOL - OSHA	Identification, Classification, and Regulation of Toxic Substances Posing a Potential Occupational Carcinogenic Risk	11398	Final rule -- expected before November 28; exact citation not available at time of this publication.
DOL - OSHA	Occupational Exposure to Pesticides	11399	Change of title for this edition -- Generic standard for occupational exposure to pesticides during manufacture and formulation.
DOT	Non-discrimination on the Basis of Handicap in Federally Assisted Programs and Activities	11432	Final Rule — 44 FR 25016, 5/31/79.
DOT - FAA	Wind Sheer Equipment Requirements	11401	Withdrawn - determined not to be a "major" regulation.
DOT - NHTSA	Fuel Economy Standards for Model Years 1984-1986 Passenger Cars	11448	Withdrawn to concentrate efforts on light truck fuel economy standards in the near term.
DOT - USCG	Implementation of the Port and Tanker Safety Act of 1978 and the International Conference on Tanker Safety and Pollution Prevention by Requiring Ballast Tanks, Dedicated Clean Ballast Tanks, and Crude Oil Washing Systems for Certain New and Existing Tank Vessels.	11451	Final rule — exact citation not available at time of this publication.

APPENDIX II: STATUS OF REGULATIONS FROM FEBRUARY, 1979 EDITION

AGENCY	TITLE OF REGULATION	PAGE NO.	ACTIVITY SINCE LAST EDITION
DOT - USCG	Offshore Oil Pollution and Liability and Compensation Fund	11449	Final rule -- 44 FR 16860, 3/19/79
DOT - USCG	Requirements for Inert Gas Systems for Oil Tankers of Over 20,000 Dead Weight Tons	11403	Final rule -- exact citation not available at time of this publication.
EPA - OANR	Gaseous Emission Regulations for 1983 and Later Model Year Heavy-Duty Engines	11408	Change of title for this edition -- Gaseous Emission Regulations for 1983 and Later Model Year Heavy-Duty Vehicles.
EPA - OANR	Prevention of Significant Deterioration.	11452	Change of title for this edition -- Regulations for the Prevention of Significant Deterioration (PSD) Resulting From Hydrocarbons for Carbon Monoxide, Nitrogen Oxides, Ozone, and Lead (PSD Set II).
EPA - OANR	Reducing Benzene Emissions to the Atmosphere.	11407	Change of title for this edition -- National Emission Standards for Hazardous Air Pollutants-Benzene.
EPA - OANR	Standards of Performance to Control Atmospheric Emissions from Utility Fossil-Fuel-Fired Steam Generators	11452	Final Rule -- 44 FR 33580, 6/11/79.
VA	Implementation of the Veteran's and Survivor's Pension Improvement Act	11434	Final rule -- 44 FR 45930, 8/6/79.

APPENDIX II: STATUS OF REGULATIONS FROM FEBRUARY, 1979 EDITION

AGENCY	TITLE OF REGULATION	PAGE NO.	ACTIVITY SINCE LAST EDITION
VA	Implementation of the Veterans Disability Compensation and Survivors Benefit Act of 1978	11434	Final Rule -- 44 FR 22716, 4/17/79.
CAB	Market Entry Policies	11464	Withdrawn by CAB.
CAB	Revision of Airline Passenger Rules Tariffs	11464	Change of title for this edition -- Plain English for Airline/Passenger Contracts.
CPSC	Blade Contact Standards for Walk-behind Power Lawn Mowers and Proposed Certification Rule	11418	Final Standard -- 44 FR 9990, 2/15/79. Certification Rule -- 44 FR 10033, 2/15/79.
CPSC	Proposed Amendment to Cellulose Insulation Standard, Proposed Labelling Rule for Cellulose Insulating and Proposed Certification Rule	11420	Labelling requirement of final rule -- 44 FR 3993, 7/6/79. Final rule on amendment to standard -- 44 FR 39938, 7/6/79. Final rule for interim safety -- 44 FR 39983, 7/6/79.
FERC	Mandatory Requirements for the Collection and Reporting of Information Associated with the Costs of Providing Electric Service	11455	Final Rule -- 44 FR 33847, 6/13/79
FERC	Regulations Implementing Incremental Pricing under Title II of the Natural Gas Policy Act of 1978.	11454	Final rule for first stage -- 44 FR 57726, 10/5/79; 44 FR 57754, 10/5/79. See entry in this edition of the Calendar for regulation implementing 2nd stage.

APPENDIX II: STATUS OF REGULATIONS FROM FEBRUARY, 1979 EDITION

AGENCY	TITLE OF REGULATION	PAGE NO.	ACTIVITY SINCE LAST EDITION
FERC	Regulations Implementing Section 401 of the Natural Gas Policy Act of 1978	11455	Final Rule -- 44 FR 26855, 5/8/79.
ICC	Investigation of Railroad Freight Rates for Recyclable Commodities	11456	ICC Decisions -- 361 I.C.C. 641 (1979); 361 I.C.C. 856 (1979).
ICC	Policy Statement of Motor Carrier Regulations (Ex Parte No. MC-121)	11466	I.C.C. Decision -- 44 FR 60296, 10/19/79.
ICC	Rail General Exemption Authority - Fresh Fruits and Vegetables (Ex Parte No. 346 (Sub. - No. 1))	11466	Final Rule -- 44 FR 18229, 3/27/79.
PRC	U.S. Postal Service Request for Changes in the Domestic Mail Classification Schedule as it Relates to Bulk Parcel Post, Docket MC 78-1, Filed with the Commission on 9/8/78	11467	Proceeding extended to 12/5/79; Evidentiary record -- expected to close by 11/1/79.
PRC	U.S. Postal Service Request for a Recommended Decision on Establishing An Electronic Computer Originated Mail Subclass, Docket MC 78-3, Filed with the Commission on 9/8/78	11468	Hearings Completed; Commission decision -- expected by 12/79.
PRC	U.S. Postal Service, Surcharge Rate Request for Nonstandard Mail, Docket R78-1, Filed with the Commission on April 25, 1978	11469	Commission Recommended Decision -- 2/26/79. Commission Recommended Decision approved by Governors of the Postal Service -- 4/3/79.

APPENDIX III: PUBLICATION DATES FOR AGENCY REGULATORY AGENDAS

In response to Executive Order 12044, all Executive Agencies, and those independent agencies that voluntarily choose to comply, publish semiannual agendas of significant regulations under development and review. The agendas describe the regulations the agencies are considering, the need for and the legal basis of the action being taken, the status of regulations previously listed on the agenda, and an agency contact.

While the regulations described in this Calendar are those considered most important by the agencies submitting entries, those regulations listed on the semiannual agendas include all those that are considered significant by the agencies—a larger list. This index provides the dates of each agency's last published semiannual agenda and the **Federal Register** citation to enable the public to gain quick access to a list of all significant regulations the agency is considering or reviewing. The appendix also lists the expected date of publication of the next agenda.

The Regulatory Council and the Office of Management and Budget are exploring the possibility of coordinating the publication dates of the Calendar of Federal Regulations and the semiannual agency agendas. Doing so would provide, twice a year, a comprehensive picture of regulations being developed by the agencies. We welcome your comments on this idea.

APPENDIX III: PUBLICATION DATES FOR AGENCY REGULATORY AGENDAS

Executive Agencies

Name of agency	Publication date of last agenda	Federal Register citation	Publication date of next agenda
Administrative Conference of the U.S	Not applicable		
Department of Agriculture	May 15, 1979	44 FR 28474	November 15, 1979.
Department of Commerce	September 18, 1979	44 FR 54166	May 15, 1980.
Department of Energy	November 9, 1979	44 FR 65274	April 25, 1980.
Department of Health, Education, and Welfare	August 16, 1979	44 FR 48040	December 14, 1979.
Department of Housing and Urban Development	August 1, 1979	44 FR 45342	February 1, 1980.
Department of the Interior	July 20, 1979	44 FR 42701	January 31, 1980.
Department of Justice, Civil Rights Division	August 1, 1979	44 FR 45295	On or before January 31, 1980.
Drug Enforcement Administration	September 19, 1979	44 FR 45312	On or before January 31, 1980.
Immigration and Naturalization Service	Anticipated January 31, 1980 (first agenda).		
Law Enforcement Assistance Administration	April 20, 1979	44 FR 23770	Anticipated November 1979.
Parole Commission	March 23, 1979 (first agenda).	44 FR 17756	On or before January 31, 1980.
Department of Labor	November 13, 1979	44 FR 65566	First week in April, 1980.
Department of Transportation	August 27, 1979	44 FR 50140	February 25, 1980.
Department of the Treasury, Comptroller of the Currency.	September 5, 1979	44 FR 51813	February 1, 1980.
Government Financial Operations Bureau	September 28, 1979	44 FR 55910	March 31, 1980.
Internal Revenue Service	October 1, 1979	44 FR 56504	March 31, 1980.
Public Debt Service	October 15, 1979	44 FR 59246	April 15, 1980.
All other offices and bureaus	August 1, 1979	44 FR 45326	February 1, 1980.
Environmental Protection Agency	June 8, 1979	44 FR 33332	December 1979
Equal Employment Opportunity Commission	November 2, 1979	44 FR 63485	January 19, 1980.
General Services Administration	May 18, 1979	44 FR 29368	November 30, 1979.
National Credit Union Administration	July 2, 1979	44 FR 38560	December 17, 1979.
Small Business Administration	August 2, 1979	44 FR 45412	January 31, 1980.
United States International Trade Commission	Not applicable		
Veterans Administration	June 18, 1979	44 FR 34971	December 18, 1979.

Independent Regulatory Agencies

Civil Aeronautics Board	November 9, 1979	44 FR 65104	May, 1980.
Commodity Futures Trading Commission	January 23, 1979	44 FR 4752	Not known at present.
Consumer Product Safety Commission	Not known at present		
Federal Communications Commission	October 29, 1979	44 FR 61979	April 21, 1980.
Federal Deposit Insurance Corporation	September 28, 1979	44 FR 55890	March, 1980.
Federal Election Commission	Not applicable		
Federal Energy Regulatory Commission	Not applicable		
Federal Home Loan Bank Board	October 5, 1979	44 FR 57419	March, 1980.
Federal Maritime Commission	Not applicable		
Federal Mine Safety and Health Review Commission.	Not applicable		
Federal Reserve System	August 2, 1979	44 FR 45406	February 4, 1980.
Federal Trade Commission	August 1, 1979	44 FR 45177	February 1, 1980.
Interstate Commerce Commission	July 19 1979	44 FR 42561	Early 1980.
National Labor Relations Board	Not applicable		
Nuclear Regulatory Commission	Not known at present		
Occupational Safety and Health Review Committee.	Not applicable		
Postal Rate Commission	Not applicable		
Securities and Exchange Commission	September 10, 1979	44 FR 52810	Exact date not known at time of this publication..

APPENDIX IV: IMPORTANT REGULATIONS SCHEDULED FOR AGENCY REVIEW

In response to Executive Order 12044, Executive Agencies and those Independent Agencies who voluntarily chose to comply, must periodically review their existing regulations to determine whether they are still effectively achieving their intended goals. This index lists those important regulations that agencies are reviewing pursuant to the Executive Order or their own internal review procedures.

In some cases, regulatory actions described in Calendar entries were initiated as a result of this review process. These are not included a second time in the Appendix, since they are described in the text.

Contact the "information contact" listed in Appendix II: "Public Participation in Federal Rulemaking," for guidance on how to get further information on these regulations.

AGENCY	TITLE OF REGULATION	CITATION
USDA	Emergency Watershed Protection Program (Section 216)	7 CFR 624
USDA	Federal Seed Act	7 CFR Ch. 1, 201 and 202
USDA	Watershed Program	7 CFR 622
DOC - EDA	Business Development Program	13 CFR 306
DOC - ITA	Export Administration Regulations	15 CFR 368-399
DOL - ESA	Black Lung Benefits: Requirements for Coal Mine Operators Insurance	20 CFR 726
DOL - ESA	Criteria for Determining Whether State Workers' Compensation Laws Provide Adequate Compensation for Pneumoconioses	20 CFR 722
DOL - ESA	Labor Standards for Federal Service Contracts	29 CFR 4
DOL - ESA	Labor Standards Provisions, Davis-Bacon and Related Acts	29 CFR 1,3,5
DOL - ESA	Office of Federal Contract Compliance Programs	41 CFR 60-1, 60-2 60-3, 60-4, 60-20, 60-30, 60-60, 60-250, 60-741

APPENDIX IV: IMPORTANT REGULATIONS SCHEDULED FOR AGENCY REVIEW

AGENCY	TITLE OF REGULATION	CITATION
DOL - ESA	Standards for Determining Coal Miner's Disability on Death Due to Pneumoconioses	20 CFR 718
DOL - ETA	Extended Benefits for Unemployment Insurance Claimants	20 CFR 615
DOL - LMSA	Revision of Certain Annual Information Return/Reports	29 CFR 2520
DOL - MSHA	Respirable Dust Standard for Surface Coal Mines	30 CFR 71
DOL - MSHA	Respirable Dust Standards for Underground Coal Mines	30 CFR 70
DOL - MSHA	Underground Coal Mine Safety Standards	30 CFR 75
DOL - OSHA	Asbestos Standard	29 CFR 1910.94(a)
DOL - OSHA	Cadmium Standard	29 CFR 1910.94(a)
DOL - OSHA	Electrical	29 CFR 1910 Subpart S
DOL - OSHA	Fire Protection	29 CFR 1910 Subpart L

APPENDIX IV: IMPORTANT REGULATIONS SCHEDULED FOR AGENCY REVIEW

AGENCY	TITLE OF REGULATION	CITATION
DOL - OSHA	Floor and Wall Openings and Stairways	29 CFR 1926 Subpart M
DOL - OSHA	Hazardous Materials	29 CFR 1910, Subpart H
DOL - OSHA	Laboratory Accreditation	29 CFR 1907
DOL - OSHA	Ladders and Scaffolding	29 CFR 1926 Subpart L
DOL - OSHA	MOCA Standard	29 CFR 1910.94(a)
DOL - OSHA	Multi-piece Wheel Rims	29 CFR 1910.177
DOL - OSHA	Nickel Standard	29 CFR 1910.94(a)
DOL - OSHA	Safety and Health Regulations for Marine Terminal Facilities	29 CFR 1918 Subparts M-S
DOL - OSHA	Shiprepairing, shipbuilding, shipbreaking	29 CFR 1915, 1916, 1917
DOL - OSHA	Tunnelling	29 CFR 1926
EPA	Effluent Guidelines	40 CFR 401-467

APPENDIX IV: IMPORTANT REGULATIONS SCHEDULED FOR AGENCY REVIEW

AGENCY	TITLE OF REGULATION	CITATION
EPA	National Ambient Air Quality Standards	40 CFR 50
EPA	New Source Performance Standards	40 CFR 60
EEOC	Procedures for EEO in the Federal Government	29 CFR 1613
NCUA	Conversion from Federal to State Credit Union, and Conversion from State to Federal Credit Union	12 CFR 706 and 707
NCUA	Election Report, and Financial and Statistical and Other Reports	12 CFR 701.11 and 701.13
NCUA	Employee Responsibility and Conduct	12 CFR 735
NCUA	Establishment of Cash Fund	12 CFR 701.10
NCUA	Investments and Deposits	12 CFR 703.3
NCUA	Mergers of Credit Unions, Division of Assets, Liabilities, and Capital	12 CFR 708 and 709
NCUA	Minimum Security Device and Procedures	12 CFR 748
NCUA	Safe Deposit Box Service	12 CFR 701.30

APPENDIX IV: IMPORTANT REGULATIONS SCHEDULED FOR AGENCY REVIEW

AGENCY	TITLE OF REGULATION	CITATION
NCUA	Selling and Cashing Checks and Money Orders	12 CFR 701.22 and 701.23
NCUA	Standard Form of ByLaws and Amendment of ByLaws	12 CFR 701.3 and 701.4
NCUA	Supervisory Committee Audit	12 CFR 701.12
CPSC	Safety Standard for Architectural Glazing Materials	16 CFR 1201
CPSC	Safety Standard for Swimming Pool Slides	16 CFR 1207
CPSC	Standard for the Flammability of Matressess (and matress pads) (FF 4-72)	16 CFR 1632
FHLBB	Insurance of Accounts	12 CFR 561 et seq.
FMC	Collection and Compromise of Civil Penalties (Docket No. 79-66)	46 CFR 505
FMC	Discovery in Formal Proceedings (Docket No. 79-12)	46 CFR 502
FMC	Exemption of Tariff Filing Requirements by Agricultural Carriers in Canadian Trades (Docket No. 79-63)	46 CFR 536

APPENDIX IV: IMPORTANT REGULATIONS SCHEDULED FOR AGENCY REVIEW

AGENCY	TITLE OF REGULATION	CITATION
FMC	Filing of Tariffs in Domestic Offshore Trades (Docket No. 79-1)	46 CFR 531
FMC	Freight Forwarder Bids on Government Cargo (Docket No. 78-53)	46 CFR 510
FMC	Increase in Maximum Amount of Security to be Submitted by Passenger Vessel Operators (Docket No. 79-93)	46 CFR 540
FMC	Reconsideration and Stay in Formal Proceedings (Docket No. 79-52)	46 CFR 502
FMC	Self-Policing of Independent Operators	46 CFR 528
FRS	Regulation A - Extensions of Credit by Federal Reserve Banks	12 CFR 227
FRS	Regulation B--Equal Credit Opportunity	12 CFR 202
FRS	Regulation F--Securities of State Members	12 CFR 206
FRS	Regulation G--Securities Credit by Persons Other than Banks, Brokers or Dealers	12 CFR 207
FRS	Regulation H--Membership of State Banking Institutions in the Federal Reserve System	12 CFR 208

APPENDIX IV: IMPORTANT REGULATIONS SCHEDULED FOR AGENCY REVIEW

AGENCY	TITLE OF REGULATION	CITATION
FRS	Regulation J--Collection of Checks and Other Items and Transfer of Funds	12 CFR 210
FRS	Regulation P--Minimum Security Devices and Procedures for Federal Reserve Banks and State Member Banks	12 CFR 216
FRS	Regulation Q--Interest on Deposit	12 CFR 217
FRS	Regulation T--Credit by Brokers and Dealers	12 CFR 220
FRS	Regulation U--Credit by Banks for the Purpose of Purchasing or Carrying Margin Stocks	12 CFR 221
FRS	Regulation X--Rules Governing Borrowers Who Obtain Securities Credit	12 CFR 221
FRS	Regulation Y--Bank Holding Companies	12 CFR 225
FRS	Regulation Z--Truth in Lending	12 CFR 226
FTC	Cooling-off Period for Door-to-Door Sales	16 CFR 429
FTC	Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures	16 CFR 436

APPENDIX IV: IMPORTANT REGULATIONS SCHEDULED FOR AGENCY REVIEW

AGENCY	TITLE OF REGULATION	CITATION
FTC	Proprietary Vocational and Home Study Schools Trade Regulation Rule	16 CFR 438
FTC	Retail Food Store Advertising and Marketing Practices	16 CFR 424
ICC	Abandonment of Railroad Lines and Discontinuance of Service (Ex Parte No. 274 (Sub-Nos. A,B, and D))	49 CFR 1110-1119
ICC	Anti-trust and Competition Factors in Motor Carrier Finance Proceedings (Ex Parte No. 55 (Sub-No. 38))	49 CFR 1132-1135
ICC	Passenger and Freight Tariffs and Schedules (Ex Parte No. 284 (Sub-No. 2))	49 CFR 1300-1310

APPENDIX V: STATEMENTS FROM AGENCIES WITH NO ENTRIES IN THIS EDITION OF THE CALENDAR

For various reasons, eleven agencies—Independent and Executive—of the Council did not submit entries describing proposed regulations for this edition of the Calendar. This appendix includes letters from the heads of those agencies, explaining why they did not submit entries for this edition.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

2120 L STREET, N.W., SUITE 500
WASHINGTON, D.C. 20037
(202) 254-7020

OFFICE OF
THE CHAIRMAN

November 15, 1979

The Honorable Douglas M. Costle
Chairman
The Regulatory Council
401 M Street, N.W.
Washington, D.C. 20460

Dear Mr. Costle:

This responds to your request for a letter of explanation about why the Administrative Conference of the United States has not submitted entries for inclusion in the Regulatory Council's Calendar of Federal Regulations.

The Administrative Conference has no regulatory responsibilities. The only regulations it issues pertain to its organizational duties and are therefore not covered by Executive Order 12044, or appropriate for inclusion on the calendar.

I understand that you wish to publish this letter in the appendix to your calendar. For the information of those who may wish to know more about the Administrative Conference, our organization regulations are found at Title 1 of the Code of Federal Regulations, parts 301-304. The formal work product of the Conference is reflected in Recommendations and Statements concerning administrative practice and procedure. These are adopted in Plenary Sessions of the Conference, published in the Federal Register and codified at 1 C.F.R. parts 305 and 310. Further information is available from my office (202/254/7020).

We, of course, continue to support the Council's publication of a regulatory calendar, as a concrete aid to improving the management of the regulatory process.

Sincerely yours,

Margaret A. McKenna
Acting Chair

U.S. SMALL BUSINESS ADMINISTRATION
WASHINGTON, D.C. 20416

OFFICE OF THE ADMINISTRATOR

November 19, 1979

Honorable Douglas Costle
Chairman, Regulatory Council
Enviromental Protection Agency
401 M Street, S. W.
Washington, D. C. 20450

Attention: Mark Schoenberg

Dear Mr. Chairman:

It is my privilege to acknowledge our recent appointment to the Regulatory Council. Since our participation began subsequent to your preparation of the upcoming semiannual Calendar of Regulations, we will not be furnishing you with a submission for this edition. However, we look forward to working with you in the future as an active member of the Council.

Sincerely,

A. Vernon Weaver
Administrator

UNITED STATES
INTERNATIONAL TRADE COMMISSION
WASHINGTON, D.C. 20436

BY HAND
November 21, 1979

The Honorable Douglas M. Costle
Chairman
The Regulatory Council
401 M Street, S.W.
Washington, D.C.

Dear Mr. Costle:

This is in response to your memorandum of November 15, 1979, in which you requested a letter describing the Commission's investigative proceedings, the nature of the analytic information processed by the Commission and the economic impact of the agency's investigations. The Commission conducts investigations concerning the impact of imports on the product markets of domestic manufacturers under different statutory authorities. The character of the Commission's investigative responsibility depends upon the specific statutory mandate. In some cases, the Commission's investigation consists of a purely informational study and no Government action is required as a result of its findings. In other cases, the executive branch is directed by statute to respond to Commission findings, recommendations, or determinations.

Very few individual investigations involve imports valued at $100 million during a given year. On the other hand, imports valued at this amount may be subject to investigation in a given year if the values of the different imports investigated under these different statutes are aggregated. Although the individual investigations are not appropriate for a regulatory calendar describing agency rulemaking, the public may wish to follow the types of products subject to the administration of these statutes or be aware of the investigations docketed at the Commission at any given time. The Office of the Secretary at the Commission publishes a monthly calendar which describes the coverage of each investigation and indicates the date scheduled for hearings, briefs and Commission determinations.

I hope this information is helpful to you. If we can be of any further assistance, please let us know.

Sincerely,

R N Shewmaker

Russell N. Shewmaker
General Counsel

UNITED STATES OF AMERICA
COMMODITY FUTURES TRADING COMMISSION
2033 K Street, N.W.
Washington, D.C. 20581

November 20, 1979

Mr. Douglas M. Costle
Chairman
The Regulatory Council
Washington, D.C. 20460

Dear Mr. Costle:

Chairman Stone has asked me to respond to your letter of November 15, 1979, in which you inquire as to the Commission's progress in developing a regulatory calendar. Although certain logistic problems, such as the fact that the Commission currently schedules matters for consideration on a quarterly, rather than semi-annual basis, prevented us from making a submission to the second edition of the Calendar of Federal Regulations, I am pleased to inform you that this Commission intends to participate fully in the Council's future activities.

We look forward to working with you on this useful and important project in the months ahead.

Sincerely,

Barbara L. Leventhal

Barbara L. Leventhal, Director
Office of Policy Review

FEDERAL DEPOSIT INSURANCE CORPORATION, Washington, D.C. 20429

OFFICE OF THE GENERAL COUNSEL

November 20, 1979

Mr. Douglas M. Costle, Chairman
United States Regulatory Council
401 M Street, S.W.
Washington, D.C. 20460

Dear Mr. Costle:

On May 21, 1979, FDIC's Board of Directors adopted a policy statement setting forth new procedures for improving and simplifying FDIC regulations. These procedures formulate a voluntary program for achieving President Carter's goal for improved Government regulations as outlined in Executive Order 12044.

As is stated in the FDIC policy statement, FDIC intends to review each of its existing regulations at least once every five years to determine whether the regulation should be continued, revised, or eliminated. The first review has been initiated and most of FDIC's existing and proposed new regulations have been reviewed. To date, action has been taken or proposed on ten (10) of these regulations. Two of the regulations were eliminated; a third was substantially reduced; a proposed regulation was withdrawn and replaced by a substantially simplified policy statement; and a proposal was issued recommending the elimination of four more regulations and the reduction and/or simplification of two others. Additional proposals to simplify and/or reduce other regulations are currently being drafted.

Although FDIC had regulatory matters under active or very preliminary consideration at the time of the deadline for the submission of entries for the November edition of the Calendar of Federal Regulations, it did not provide any entries either because (1) the regulation did not meet the test for "significance" prescribed by the Regulatory Council, (2) it appeared that the regulation would be finalized before the publication of the November calendar, or (3) we were in such a preliminary exploratory stage that there was insufficient information about the regulation to make its inclusion in the calendar meaningful. It should be noted, however, that FDIC published a Semiannual Agenda of Regulations in March and September of 1979 in order to provide the public the broadest possible picture of FDIC's regulatory program. The September agenda provides information on regulations

that have been proposed by FDIC but not yet finally adopted, certain regulations that are currently under development, and existing regulations that are under review. The agenda also contains a list of those regulations on which final action has been taken since the publication of the March agenda. Copies of the September agenda are available to the public at FDIC's Information Office ((202)- 389-4221).

Sincerely,

Jerry L. Langley
Senior Attorney

FEDERAL ELECTION COMMISSION
1325 K STREET N.W.
WASHINGTON, D.C. 20463

August 6, 1979

Mr. Mark G. Schoenberg
Associate Director for Operations
and Interagency Coordination
The Regulatory Council
Washington, D. C. 20460

Dear Mr. Schoenberg:

I am writing in reference to your Memorandum of July 20, providing guidelines for entries in the November edition of the Regulatory Calendar.

Due to the nature of the Commission's regulatory activities, non of the proposed rules we are planning to issue would have sufficient economic impact to warrant their inclusion in the Calendar. We also do not plan to issue any regulations that would be of such a precedent setting nature or of such wide scope as to justify their entry in the Calendar.

Thank you for inviting us to participate in the Calendar.

Sincerely,

William C. Oldaker
General Counsel

cc: Chairman Tiernan

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

1730 K STREET NW, 6TH FLOOR
WASHINGTON, D.C. 20006

CHAIRMAN
Jerome R. Waldie
COMMISSIONERS
Richard V. Backley
Frank F. Jestrab
A. E. Lawson
Marian Pearlman Nease

November 19, 1979

Mr. Douglas M. Costle
Chairman
The Regulatory Council
401 M Street, S.W.
Washington, D.C. 20460

Dear Mr. Chairman:

The Federal Mine Safety and Health Review Commission is an independent adjudicatory agency created by Section 113 of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801 et seq. The Commission's rulemaking authority extends only to the conduct of its own proceedings, the proceedings of its administrative law judges, and rules implementing the Government in the Sunshine Act and similar procedural matters prescribed by statute. In all other respects, the Commission acts by adjudication. We do not, therefore, have an entry for the body of the upcoming Calendar of Federal Regulations.

We remain actively interested in the Regulatory Council and its goals, however, and we have submitted for the Appendix of the Calendar a description of opportunities for public participation which are contained in our Act.

Sincerely,

Jerome R Waldie

Jerome R. Waldie,
Chairman

JRW:clg

THE REGULATORY COUNCIL

BOARD OF GOVERNORS
OF THE
FEDERAL RESERVE SYSTEM
WASHINGTON, D.C. 20551

NANCY H. TEETERS
MEMBER OF THE BOARD

January 29, 1979

Mr. Douglas M. Costle, Chairman
The Regulatory Council
401 M Street, S.W.
Washington, D. C. 20460

Dear ~~Mr. Costle~~ Doug:

As we informed you earlier this month, the Board of Governors, in support of the President's program to improve government regulation, has adopted a policy statement concerning its regulatory procedures. This policy is intended to improve the quality of the Board's regulations through greater public participation in their development and early involvement by Members of the Board of Governors to ensure that regulations are not unduly burdensome and complex.

To implement the new policy, the Board has just published its first semiannual regulatory agenda, listing regulatory matters likely to be under consideration during the coming six months. We are pleased to enclose a copy of the agenda, and we hope it will be useful in the execution of your program.

Sincerely,

Nancy

Enclosure

EDITOR'S NOTE: The Federal Reserve's semi-annual agenda is available at 44 FR 45406 (August 2, 1979).

This letter appeared in the first edition of the Calendar. We have republished it here because the Federal Reserve had nothing further to add to this letter at this time.

NATIONAL LABOR RELATIONS BOARD

Washington, D.C. 20570

August 3, 1979

Mr. Mark G. Schoenberg
Associate Director for Operations
and Interagency Coordination
The Regulatory Council
Washington, D. C. 20460

Dear Mr. Schoenberg:

The following is in response to your memorandum of July 20, 1979, regarding Calendar Production.

As indicated in Chairman Fanning's letter of December 11, 1978, the Board does not normally utilize rulemaking procedures for the purpose of issuing rules and regulations which have measurable economic impact or regulate conduct of employers and unions that would be of interest and use to the Regulatory Council. After studying your memorandum of July 20, I have concluded that the National Labor Relations Board has no pending regulations which would warrant submission to the Council's Calendar. We will, of course, continue to monitor our operations and should the occasion arise when it would be appropriate for the Board to issue such regulations, we will, to the extent appropriate, be happy to inform the Regulatory Council of the use of such procedures and their impact.

If you have any questions on this matter, please do not hesitate to contact me.

Sincerely yours,

William A. Lubbers

William A. Lubbers
Executive Secretary

UNITED STATES OF AMERICA
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION
1825 K STREET, NW
WASHINGTON, D C 20006

November 19, 1979

The Honorable Douglas M. Costle
Chairman
United States Regulatory Council
401 M Street, S.W.
Washington, D.C. 20460

Dear Mr. Costle:

The purpose of this letter is to report the progress the Occupational Safety and Health Review Commission has made in achieving the goals of Executive Order 12044, Improving Government Regulations.

As you know, the Review Commission is an independent adjudicatory agency established pursuant to the Occupational Safety and Health Act of 1970. The agency is separate and distinct from the Occupational Safety and Health Administration of the Department of Labor. The primary function of the Commission is to review contests filed under the Occupational Safety and Health Act. Performing this function are approximately 45 Administrative Law Judges who hold hearings and decide cases. The three Presidentially appointed Commission Members constitute the second level of review within the agency and review designated Judges' decisions prior to possible review by the appropriate Federal Court of Appeals.

Because of this type of independent adjudicatory mandate, OSHRC does not engage in substantive "rulemaking". Those rules which have been published by the Review Commission are largely procedural in nature, such as the Rules of Procedure and regulations required for implementation of applicable statutes such as the Freedom of Information Act.

The Review Commission has published four pamphlets on its operation which are available without charge to the public. One pamphlet explains the operation of the Review Commission within the context of the statutory scheme of the Act. Another lists and

explains the Rules of Procedure from the viewpoint of a contesting party in an action before the Review Commission. This pamphlet is also available in Spanish. The final pamphlet is a complete print of the Review Commission's Rules of Procedure which are codified in volume 29 of the Code of Federal Regulations Section 2200.1 through Section 2200.110. These pamphlets may be obtained from the Information Office of the Review Commission, 1825 K Street, N.W., Room 701, Washington, D.C. 20006.

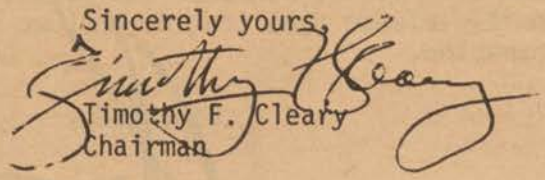
Two additional projects are currently in progress. The first is a revision of several of the Rules of Procedure. In addition to eliminating certain procedural problems existing in the present rules, it is our hope that the revised version of the rules will be easier to understand. The elimination of procedural complexities will both speed and simplify the adjudication process. The second project is the promulgation of a new procedural mechanism that provides for a separate simplified method of case-handling to be available in certain classes of cases at the option of the parties. The simplified procedure will make it easier for persons without experience in legal or administrative matters to present cases before the Review Commission. The procedure will also allow less complex cases to be handled more informally at less expense, both in time and money, to all concerned. We are most optimistic that the simplified procedure will have the combined effects of making Review Commission adjudications more responsive, more understandable, and more accessible to both employers and employees.

The public response to the proposed changes has been gratifying. On October 30, 1978, an information public hearing was held in Chicago and on February 8, 1979, another public hearing was held in Washington. I believe it is essential that this agency continue to share with the American people proposed Rules of Procedure changes which affect parties appearing before the Commission.

The Commission has instituted a program of one day seminars across the country designed to explain the role of the Commission and to assist the affected public in utilizing the services of the Commission.

I look forward to our continued support of improved regulatory management. Please let me know if I can be of further assistance.

Sincerely yours,



Timothy F. Cleary
Chairman

TFC/svp

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

OFFICE OF THE
GENERAL COUNSEL

November 21, 1979

BY HAND

The Honorable Douglas M. Costle
Chairman
United States Regulatory Council
401 M St., S.W.
Washington, D.C. 20460

Dear Mr. Costle:

This responds to your letter of November 15, 1979, received by our Office on November 20, 1979, in which you request that the Commission state its reasons for not submitting an entry for the second edition of the Calendar of Federal Regulations.

As you know, the Commission published in September, 1979, a revised agenda of important regulatory matters which are likely to come before it for consideration in the next several months, and has recently transmitted a copy of that agenda to you for use in connection with the Regulatory Council's work. As explained in an earlier letter of Chairman Williams dated February 1, 1979, the Commission is appreciative of the opportunity to cooperate with the Council as an active observer; however, we do not believe that it would be consistent with the Commission's Congressionally-mandated status as an independent regulatory agency to participate directly in the Council's work.

I trust that this letter confirms our relationship with the Regulatory Council. Please feel free to contact me if you require additional information.

Sincerely,

Ralph C. Ferrara
General Counsel

[FR Doc. 79-36759 Filed 11-27-79; 8:45 am]
BILLING CODE 6560-24-C